

Complaint

IN THE MATTER OF

GENERAL ELECTRIC COMPANYCONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE
COMMISSION ACT*Docket C-4119; File No. 0410106**Complaint, September 9, 2004--Decision, October 25, 2004*

This consent order, among other things, requires Respondent General Electric Company -- a diversified technology and services company -- to divest the nondestructive testing business of InVision -- a leading supplier of explosive detection systems to the United States Government for civil aviation security -- within six months. An accompanying Order to Hold Separate and Maintain Assets requires the respondent to preserve the business as a viable, competitive, and ongoing operation until the divestiture is achieved, and to ensure that no material confidential information is exchanged between General Electric and the business.

Participants

For the Commission: *Sean G. Dillon, Stephanie A. Parks, Robert R. Pickett, Michael R. Moiseyev, Daniel P. Ducore, John Yun, Jeffrey H. Fischer and Mark Frankena.*

For the Respondent: *Jonathan Gleklen, Arnold & Porter.*

COMPLAINT

Pursuant to the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission ("Commission"), having reason to believe that Respondent General Electric Company ("GE"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire InVision Technologies ("InVision"), a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act ("FTC Act"), as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the

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public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENT

1. Respondent GE is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its offices and principal place of business located at 3135 Easton Turnpike, Fairfield, Connecticut 06431.
2. Respondent GE is engaged in, among other things, the research, development, manufacture and sale of x-ray non-destructive testing (“NDT”) and inspection equipment, including standard x-ray cabinets, automated defect recognition-capable NDT and inspection systems (“ADR-capable x-ray systems”), and high-energy x-ray generators. NDT and inspection equipment is used in a wide range of industries to inspect the structure and tolerance of materials or identify objects inside materials without damaging the materials or impairing their future usefulness.
3. Respondent GE is, and at all times herein has been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affects commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

II. THE ACQUIRED COMPANY

4. InVision is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 7151 Gateway Boulevard, Newark, CA 94560. InVision’s x-ray NDT and inspection equipment subsidiary, YXLON International X-ray GmbH, is headquartered at Essener Str. 99, Gebäude 227, D-22419, Hamburg, Germany, with its offices and principal place of business in the United States located at 3400 Gilchrist Road, Akron, Ohio 44260-1221.

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5. InVision is engaged in, among other things, the research, development, manufacture, and sale of x-ray NDT and inspection equipment, including standard x-ray cabinets, ADR-capable x-ray systems, and high-energy x-ray generators.

6. InVision is, and at all times herein has been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affects commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

III. THE ACQUISITION

7. GE and InVision entered into a stock Purchase Agreement dated as of March 15, 2004 (the “Purchase Agreement”) whereby GE agreed to acquire InVision for approximately \$900 million (the “Acquisition”).

IV. THE RELEVANT MARKETS

8. For the purposes of this Complaint, the relevant lines of commerce in which to analyze the effects of the Acquisition are:

- a. the research, development, manufacture, and sale of standard x-ray cabinets, which are multi-purpose, standardized x-ray NDT and inspection systems offered in generic configurations and consisting of an x-ray generator, an x-ray tube, a lead cabinet in which to place the object to be x-rayed, a manipulation device to maneuver the object, and a detection device;
- b. the research, development, manufacture, and sale of ADR-capable x-ray systems, which are x-ray NDT and inspection systems integrated with specialized imaging software that eliminates the need for manual inspection of objects in favor of an automated process that improves inspection quality, increases throughput and decreases labor costs; and

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c. the research, development, manufacture, and sale of high-energy x-ray generators, which are the power supplying components of x-ray NDT and inspection systems that can generate between 350 and 450 kilovolts of power.

9. For the purposes of this Complaint, the United States is the relevant geographic area in which to analyze the effects of the Acquisition in the relevant lines of commerce. Foreign suppliers of these products that have not established the necessary service and support network, brand reputation, and customer acceptance in the United States, are not effective competitors for U.S. customers.

V. THE STRUCTURE OF THE MARKETS

10. The U.S. market for the research, development, manufacture, and sale of standard x-ray cabinets is highly concentrated. GE and InVision are the two leading suppliers of standard x-ray cabinets in the United States. The Acquisition would significantly increase concentration in the U.S. market for the research, development, manufacture, and sale of standard x-ray cabinets. After the Acquisition, GE would become the dominant supplier of standard x-ray cabinets in the United States.

11. The U.S. market for the research, development, manufacture, and sale of ADR-capable x-ray systems is highly concentrated. GE and InVision are the two leading suppliers of ADR-capable x-ray systems in the United States. The Acquisition would significantly increase concentration in the U.S. market for the research, development, manufacture, and sale of ADR-capable x-ray systems. After the Acquisition, GE would eliminate the only other viable supplier of ADR-capable x-ray systems to U.S. customers, leading to a virtual merger to monopoly.

12. The U.S. market for the research, development, manufacture, and sale of high-energy x-ray generators is highly concentrated. GE and InVision are the two leading suppliers of high-energy x-ray generators in the United States. The

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Acquisition would significantly increase concentration in the U.S. market for the research, development, manufacture, and sale of high-energy x-ray generators. With the Acquisition, GE would be the dominant supplier of high-energy x-ray generators in the United States.

VI. ENTRY CONDITIONS

13. Entry into each of the relevant markets is a difficult and time-consuming process because of, among other things, the time and cost associated with (a) researching and developing standard x-ray cabinets, ADR-capable x-ray systems, and high-energy x-ray generators; (b) establishing a service and support network; and (c) developing the necessary brand reputation and customer acceptance in each of these markets.

14. New entry into any of the relevant markets sufficient to deter or counteract the anticompetitive effects described in Paragraph 17 is unlikely to occur because the costs of entry into any of the relevant markets are high relative to the potential sales opportunities available to an entrant.

15. New entry into any of the relevant markets sufficient to deter or counteract the anticompetitive effects described in Paragraph 17 would not occur in a timely manner because it would take over two years for an entrant to accomplish the steps required for entry and to achieve a significant market impact.

16. Expansion by smaller competitors in any of the relevant markets sufficient to deter or counteract the anticompetitive effects described in Paragraph 17 is unlikely to occur in a timely manner because of, among other things, the time and cost associated with (a) establishing an effective service and support network; and (b) developing the necessary brand reputation and customer acceptance in each of these markets.

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VII. EFFECTS OF THE ACQUISITION

17. The effects of the Acquisition, if consummated, may be substantially to lessen competition and to tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, in the following ways, among others:

- a. by eliminating actual, direct, and substantial competition between GE and InVision in the U.S. market for the research, development, manufacture, and sale of standard x-ray cabinets, thereby: (i) increasing the likelihood that GE would unilaterally exercise market power in this market; (ii) reducing existing incentives to improve product quality or to pursue further innovation in this market; and (iii) increasing the likelihood that standard x-ray cabinet customers would be forced to pay higher prices;
- b. by eliminating actual, direct, and substantial competition between GE and InVision in the U.S. market for the research, development, manufacture, and sale of ADR-capable x-ray systems, thereby: (i) increasing the likelihood that GE would unilaterally exercise market power in this market; (ii) reducing existing incentives to improve product quality or to pursue further innovation in this market; and (iii) increasing the likelihood that ADR-capable x-ray system customers would be forced to pay higher prices; and
- c. by eliminating actual, direct, and substantial competition between GE and InVision in the U.S. market for the research, development, manufacture, and sale of high-energy x-ray generators, thereby: (i) increasing the likelihood that GE would unilaterally exercise market power in this market; (ii) reducing existing incentives to improve product quality or to pursue further innovation in this market; and (iii) increasing the likelihood that high-energy x-ray generator customers would be forced to pay higher prices.

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VIII. VIOLATIONS CHARGED

18. The Purchase Agreement described in Paragraph 7 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

19. The Acquisition described in Paragraph 7, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this ninth day of September, 2004, issues its Complaint against said Respondent.

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DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Respondent General Electric Company (“GE”), hereinafter referred to as “Respondent,” of InVision Technologies, Inc. (“InVision”), and Respondent having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Acts if it consummated the acquisition, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Hold Separate and Maintain Assets (“Hold Separate Order” attached to this Order as Appendix I), and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from an interested person pursuant to section 2.34 of the Rules, now in further conformity with the procedure

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described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent General Electric Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 3135 Easton Turnpike, Fairfield, Connecticut 06431.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

ORDER**I.**

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “GE” or “Respondent” means General Electric Company, its directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by General Electric Company (including, but not limited to, the GE Inspection Technologies business of General Electric Company), and the respective directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns of each.
- B. “InVision” means InVision Technologies, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its offices and principal place of business located at 7151 Gateway Boulevard, Newark, California 94560; and joint ventures, subsidiaries, divisions, groups, and affiliates controlled by InVision.

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- C. “YXLON” means YXLON International X-ray GmbH (Germany), YXLON International Inc. (Akron, Ohio); YXLON International Holding GmbH (Germany); YXLON International A/S (Copenhagen); YXLON International KK (Tokyo); and YXLON International CT GmbH (Hattingen), wholly-owned subsidiaries of InVision; and joint ventures, subsidiaries, divisions, groups, and affiliates controlled by such subsidiaries.
- D. “Commission” means the Federal Trade Commission.
- E. “Acquirer” means any entity that receives the prior approval of the Commission to acquire the X-Ray NDT Business pursuant to Paragraph II or III of this Order.
- F. “Acquisition” means the proposed acquisition of all of the outstanding stock of InVision by Respondent pursuant to the Agreement and Plan of Merger dated March 15, 2004, by and among InVision, Respondent and Jet Acquisition Sub, Inc.
- G. “Acquisition Date” means the date the Acquisition is consummated.
- H. “Confidential Business Information” means all information owned by, or in the possession or control of, InVision that is not in the public domain related to X-Ray NDT Products.
- I. “Divestiture Agreement” means any agreement that receives the prior approval of the Commission between Respondent and an Acquirer (or between a trustee appointed pursuant to Paragraph III of this Order and an Acquirer) related to the X-Ray NDT Business required to be divested pursuant to Paragraph II or III of this Order.
- J. “Divestiture Trustee” means the trustee appointed by the Commission pursuant to Paragraph III of this Order.

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- K. “Effective Date of Divestiture” means the date on which Respondent (or a Divestiture Trustee) divests to the Acquirer the X-Ray NDT Business completely and as required by Paragraph II or III of this Order.
- L. “Governmental Entity” means any Federal, state, local or non-U.S. government or any court, legislature, governmental agency or governmental commission or any judicial or regulatory authority of any government.
- M. “Hold Separate Trustee” means the person appointed pursuant to Paragraph II of the Hold Separate Order in this matter.
- N. “NDT” means non-destructive testing.
- O. “NDT Product” means any non-destructive testing equipment or system, excluding medical and explosive detection products and systems, used for the examination of materials and components without damaging or destroying them.
- P. “Non-NDT Product” means any product, other than X-Ray NDT Products, researched, developed, manufactured, used or sold by InVision.
- Q. “X-Ray NDT” or “X-Ray NDT Product” means NDT that uses X-Ray (using film-based systems, non-film-based systems and digital imaging systems) or computed radiography as the inspection modality.
- R. “X-Ray NDT Business” means YXLON, X-Ray NDT Documents, X-Ray NDT Intellectual Property, X-Ray NDT Software, X-Ray NDT Manufacturing Equipment, and all of InVision’s operations and businesses related to X-Ray NDT Products, including, but not limited to the production and manufacturing, inventory, real property, marketing, advertising, promotion, contracts, distribution, sale or after-sales support related to X-Ray NDT Products.

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- S. “X-Ray NDT Documents” means all documents (including, but not limited to, computer files, electronic mail, and written, recorded, and graphic materials) possessed or owned by InVision related to X-Ray NDT Products, including, but not limited to, the following specified documents: reports relating to the research and development of X-Ray NDT Products or of any materials used in the research, development, manufacture, marketing or sale of X-Ray NDT Products; all market research data and market intelligence reports; customer information; all records relating to employees that accept employment with the Acquirer (excluding any personnel records the transfer of which is prohibited by applicable law); all records, including customer lists, sales force call activity reports, vendor lists, sales data, reimbursement data, manufacturing records, manufacturing processes, and supplier lists; all data contained in laboratory notebooks relating to X-Ray NDT Products; all diagrams and schematics relating to X-Ray NDT Products; all analytical and quality control data; and all correspondence with governmental agencies relating to X-Ray NDT Products, but excluding (i) all tax returns, financial statements, and working papers of InVision relating to Non-NDT Products; and (ii) documents and other information subject to attorney-client privilege relating to Non-NDT Products; *PROVIDED, HOWEVER*, that, if a document required to be produced pursuant to this Paragraph also contains information that is not related to the X-Ray NDT Products, Respondent need not produce that information to the extent it is contained within a discrete segment of the document that otherwise must be produced. *PROVIDED FURTHER*, that the Acquirer shall be allowed access to redacted copies of such documents otherwise excluded by this Paragraph to the extent they relate to X-Ray NDT Products.
- T. “X-Ray NDT Employees” means all of those individuals employed by YXLON or InVision (irrespective of the portion of working time involved) with any responsibility

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for the research, design, development, engineering, manufacturing, distributing, marketing, sales, or after-sales service and support of X-Ray NDT Products worldwide within the eighteen (18) month period immediately prior to the Effective Date of Divestiture.

U. “X-Ray NDT Intellectual Property” means all of the following possessed or owned by InVision related to X-Ray NDT:

1. X-Ray NDT Patents;
2. X-Ray NDT Trademarks;
3. X-Ray NDT Trade Dress;
4. X-Ray NDT Manufacturing Technology;
5. X-Ray NDT Scientific and Regulatory Material; and
6. rights to sue and recover damages or obtain injunctive relief for infringement, dilution, misappropriation, violation or breach of any of the foregoing.

V. “X-Ray NDT Manufacturing Equipment” means all of YXLON’s and InVision’s rights and ownership in equipment, machines, and computers, and all parts, information, files, diagrams, schematics, instructions, software, and hardware related thereto, used in the manufacture, quality assurance and quality control, and packaging of X-Ray NDT.

W. “X-Ray NDT Manufacturing Technology” means all technology, trade secrets, know-how, diagrams, schematics, software, calibrations, inventions, practices, proprietary algorithms, testing techniques, methods and other confidential or proprietary information related to the manufacture, quality assurance and quality control, and packaging of X-Ray NDT Products owned or used by

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InVision, including, but not limited to, manufacturing records, sampling records, standard operating procedures and batch records related to the manufacturing process, and supplier lists.

- X. “X-Ray NDT Patents” means all patents, patent applications and statutory invention registrations, in each case possessed or owned by InVision relating to X-Ray NDT Products, including all reissues, divisions, continuations, continuations-in-part, supplementary protection certificates, extensions and reexaminations thereof, all inventions disclosed therein, all rights therein provided by international treaties and conventions, and all rights to obtain and file for patents and registrations thereto in the world, related to the manufacture, use, sale, service, research or development of X-Ray NDT Products.
- Y. “X-Ray NDT Scientific and Regulatory Material” means all technological, scientific, chemical, and electrical materials and information related to X-Ray NDT owned or used by InVision and all rights thereto, in any and all jurisdictions.
- Z. “X-Ray NDT Software” means computer programs, including all software implementations of algorithms, models, and methodologies whether in source code or object code form, databases and compilations, including any and all data and collections of data, all documentation, including user manuals and training materials, related to any X-Ray NDT Products distributed, marketed, manufactured, or sold by or on behalf of InVision; *PROVIDED, HOWEVER*, that “X-Ray NDT Software” does not include software that is readily purchasable or licensable and which has not been modified in a manner material to the use or function thereof (other than through user preference settings).
- AA. “X-Ray NDT Trade Dress” means all trade dress of X-Ray NDT Products distributed, marketed, or sold by or on behalf of InVision, including, but not limited to, domain

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names and internet sites, product packaging associated with the sale of X-Ray NDT Products worldwide and the lettering of such X-Ray NDT trade names or brand names.

- BB. “X-Ray NDT Trademarks” means all trademarks, trade names and brand names including registrations and applications for registration thereof (and all renewals, modifications, and extensions thereof) and all common law rights, and the goodwill symbolized thereby and associated therewith, for X-Ray NDT researched, developed, distributed, marketed, or sold by or on behalf of InVision.

II.

IT IS FURTHER ORDERED that:

- A. Respondent shall divest the X-Ray NDT Business absolutely and in good faith, at no minimum price, within six (6) months from the date Respondent executed the Agreement Containing Consent Orders.
- B. Respondent shall divest the X-Ray NDT Business to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.
- C. Until the Effective Date of Divestiture of the X-Ray NDT Business, Respondent shall take such actions as are necessary to maintain the viability and marketability of the X-Ray NDT Business and to prevent the destruction, removal, wasting, deterioration, or impairment of the X-Ray NDT Business, except for ordinary wear and tear.
- D. Nothing in this Order shall prohibit Respondent from entering into an agreement with the Acquirer of the X-Ray NDT Business, at the Acquirer’s option, in which the Respondent receives:

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1. a license to use X-Ray NDT Intellectual Property in a field of use that excludes X-Ray NDT; and
2. the right to use the YXLON name for a transitional period of time on Non-NDT Products that were manufactured and sold by YXLON.

E. Respondent shall:

1. not interfere, directly or indirectly, with the hiring or employing by the Acquirer of X-Ray NDT Employees, and shall remove any impediments or incentives within the control of Respondent and InVision that may deter these employees from accepting employment with the Acquirer, including, but not limited to, any non-compete provisions of employment or other contracts with Respondent or InVision that would affect the ability or incentive of those individuals to be employed by the Acquirer. In addition, Respondent shall not make any counteroffer to an X-Ray NDT Employee who receives a written offer of employment from the Acquirer;
2. provide all X-Ray NDT Employees with reasonable financial incentives to continue in their positions until the Effective Date of Divestiture. Such incentives shall include, but are not limited to, a continuation of all employee benefits, including regularly scheduled raises and bonuses and a vesting of all pension benefits (as permitted by law and for those X-Ray NDT Employees covered by a pension plan), offered by Respondent until the Effective Date of Divestiture;
3. not, for a period of two (2) years following the Effective Date of Divestiture, directly or indirectly, solicit or otherwise attempt to induce any employees of the Acquirer having any responsibility related to the X-Ray NDT Business to terminate their employment relationship with the Acquirer. *PROVIDED, HOWEVER*, that Respondent may:

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- a. advertise for employees in newspapers, trade publications or other media not targeted specifically at X-Ray NDT Employees; or
- b. hire X-Ray NDT Employees who apply for employment with Respondent, as long as such employees were not solicited by Respondent in violation of this Paragraph II.E;

PROVIDED, HOWEVER, that this Paragraph II.E. shall not prohibit Respondent from making offers of employment to or employing any X-Ray NDT Employee after the Effective Date of Divestiture where the Acquirer has notified Respondent in writing that the Acquirer does not intend to make an offer of employment to that employee.

- F. Prior to the Effective Date of Divestiture, Respondent shall secure all consents and waivers from all private entities that are necessary for the divestiture of the X-Ray NDT Business to the Acquirer, and for the continued research, development, manufacture, sale, service, marketing or distribution of X-Ray NDT Products by the Acquirer.
- G. Respondent shall not use, directly or indirectly, any Confidential Business Information (other than as necessary to comply with requirements of this Order) related to the research, development, engineering, manufacture, use, distribution, cost, pricing, supply marketing, sale or after-sale servicing of X-Ray NDT Products, and shall not disclose or convey such Confidential Business Information, directly or indirectly, to any person except the Acquirer, the Hold Separate Trustee, and the Divestiture Trustee, if appointed; *PROVIDED, HOWEVER*, this provision shall not apply to any Confidential Business Information related to X-Ray NDT Products that Respondent can demonstrate to the Commission that Respondent obtained without the assistance of InVision prior to the Effective Date of Divestiture.

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- H. Respondent shall, to the extent permissible under applicable laws and as a condition of continued employment post-divestiture, require that each employee of Respondent with access to any Confidential Business Information related to the X-Ray NDT Business sign a confidentiality agreement pursuant to which such employee shall be required to maintain all such Confidential Business Information strictly confidential, including the nondisclosure of such information to all other employees, executives or other personnel of Respondent (other than as necessary to comply with the requirements of this Order). *PROVIDED, HOWEVER*, that:
1. Respondent may use such information only to the extent necessary to defend or prosecute claims relating to assets or liabilities that are retained by Respondent after the Acquisition Date.
 2. This Paragraph II.H. shall not apply to any Confidential Business Information related to X-Ray NDT Products that Respondent can demonstrate to the Commission that Respondent obtained without the assistance of InVision prior to the Effective Date of Divestiture.
- I. The purpose of the divestiture of the X-Ray NDT Business is to ensure the continued operation of the X-Ray NDT Business in the same manner in which it was engaged from the date the Consent Agreement is signed until the date Respondent divests the X-Ray NDT Business to an Acquirer, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

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III.**IT IS FURTHER ORDERED** that:

- A. If Respondent has not fully complied with the obligations to divest the X-Ray NDT Business as required by Paragraph II of this Order, the Commission may appoint a Divestiture Trustee to divest the X-Ray NDT Business in a manner that satisfies the requirements of Paragraph II. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondent shall consent to the appointment of a Divestiture Trustee in such action to divest the X-Ray NDT Business. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph III shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondent to comply with this Order.
- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed Divestiture Trustee, Respondent shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- C. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the

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Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestiture required by this Order.

D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph III, Respondent shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to divest the X-Ray NDT Business.
2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission; *PROVIDED, HOWEVER*, the Commission may extend the divestiture period only two (2) times.
3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities related to the relevant assets that are required to be divested by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondent shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent shall extend the time for divestiture under this Paragraph III in

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an amount equal to the delay, as determined by the Commission.

4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an acquirer as required by this Order;

PROVIDED, HOWEVER, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondent from among those approved by the Commission;

PROVIDED FURTHER, that Respondent shall select such entity within five (5) days after receiving notification of the Commission's approval.

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of the Respondent, and the Divestiture

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Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

6. Respondent shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.
 7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
 8. The Divestiture Trustee shall report in writing to Respondent and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
 9. Respondent may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *PROVIDED, HOWEVER*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
- E. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph III.

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- F. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.
- G. The Divestiture Trustee appointed pursuant to Paragraph III of this Order may be the same Person appointed as Hold Separate Trustee pursuant to the relevant provisions of the Order to Hold Separate in this matter.

IV.

IT IS FURTHER ORDERED that within thirty (30) days after the date this Order becomes final, and every sixty (60) days thereafter until Respondent has fully complied with Paragraphs II and III of this Order, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondent shall submit at the same time a copy of its report concerning compliance with this Order to the Hold Separate Trustee, if any Hold Separate Trustee has been appointed pursuant to the Hold Separate Order in this matter. Respondent shall include in its reports, among other things that are required from time to time, a full description of the efforts being made to comply with the relevant Paragraphs of the Order, including a description of all substantive contacts or negotiations related to the divestiture of the relevant assets and the identity of all parties contacted. Respondent shall include in its reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning completing the obligations.

V.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any proposed (1)

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dissolution of the Respondent, (2) acquisition, merger or consolidation of Respondent, or (3) any other change in the Respondent that may affect compliance obligations arising out of the order, including but not limited to assignment and the creation or dissolution of subsidiaries.

VI.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice, Respondent shall permit any duly authorized representative of the Commission:

- A. access, during office hours of Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondent related to compliance with this Order; and
- B. upon five (5) days' notice to Respondent and without restraint or interference from Respondent, to interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

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ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent General Electric Company hereinafter referred to as “Respondent,” of InVision Technologies, Inc. (“InVision”), and Respondent having been furnished thereafter with a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge Respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission, having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues this Order to Hold Separate and Maintain Assets (“Hold Separate Order”).

1. Respondent General Electric Company is a corporation organized, existing and doing business under and by virtue of the

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laws of the State of New York, with its office and principal place of business located at 3135 Easton Turnpike, Fairfield, Connecticut 06431.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

I.

IT IS ORDERED that, as used in this Hold Separate Order, the following definitions shall apply:

- A. “GE” means General Electric Company, its directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by General Electric Company (including, but not limited to, the GE Inspection Technologies business of General Electric Company), and the respective directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns of each.
- B. “InVision” means InVision Technologies, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its offices and principal place of business located at 7151 Gateway Boulevard, Newark, California 94560; and joint ventures, subsidiaries, divisions, groups, and affiliates controlled by InVision.
- C. “YXLON” means YXLON International X-ray Gmbh (Germany), YXLON International Inc. (Akron, Ohio); YXLON International Holding GmbH (Germany); YXLON International A/S (Copenhagen); YXLON International KK

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(Tokyo); and YXLON International CT GmbH (Hattingen), wholly-owned subsidiaries of InVision; and joint ventures, subsidiaries, divisions, groups, and affiliates controlled by such subsidiaries.

- D. “Respondent” means GE, individually, and the Person resulting from the Acquisition.
- E. “Commission” means the Federal Trade Commission.
- F. “Acquirer” means any entity that receives the prior approval of the Commission to acquire the X-Ray NDT Business pursuant to Paragraph II or III of this Order.
- G. “Acquisition” means the proposed acquisition of all of the outstanding stock of InVision by Respondent pursuant to the Agreement and Plan of Merger dated March 15, 2004, by and among InVision, Respondent and Jet Acquisition Sub, Inc.
- H. “Acquisition Date” means the date the Acquisition is consummated.
- I. “Effective Date of Divestiture” means the date on which Respondent (or a Divestiture Trustee) divests to the Acquirer the X-Ray NDT Business completely and as required by Paragraph II or III of the Decision and Order in this matter.
- J. “Held Separate Business” means the X-Ray NDT Business and X-Ray NDT Employees.
- K. “Hold Separate Period” means the time period during which the Hold Separate Order is in effect, which shall begin no later than ten (10) days after the date the Hold Separate Order becomes final and terminate pursuant to Paragraph V. hereof.

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- L. “Material Confidential Information” means competitively sensitive or proprietary information not independently known to a Person from sources other than the Person to which the information pertains, and includes, but is not limited to, all customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets. The Held Separate Business shall be considered a Person separate from Respondent (as defined in this Hold Separate Order and the Decision and Order) for this purpose.
- M. “NDT” means non-destructive testing.
- N. “NDT Product” means any non-destructive testing equipment or system, excluding medical and explosive detection products and systems, used for the examination of materials and components without damaging or destroying them.
- O. “Person” means any individual, partnership, firm, trust, association, corporation, joint venture, unincorporated organization, or other business or governmental entity.
- P. “X-Ray NDT” or “X-Ray NDT Product” means NDT that uses X-Ray (using film-based systems, non-film-based systems and digital imaging systems) or computed radiography as the inspection modality.
- Q. “X-Ray NDT Business” means YXLON, X-Ray NDT Documents, X-Ray NDT Intellectual Property, X-Ray NDT Software, X-Ray NDT Manufacturing Equipment, and all of InVision’s operations and businesses related to X-Ray NDT Products, including, but not limited to the production and manufacturing, inventory, real property, marketing, advertising, promotion, contracts, distribution, sale or after-sales support related to X-Ray NDT Products.
- R. “X-Ray NDT Documents” means all documents (including, but not limited to, computer files, electronic mail, and

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written, recorded, and graphic materials) possessed or owned by InVision related to X-Ray NDT Products, including, but not limited to, the following specified documents: reports relating to the research and development of X-Ray NDT Products or of any materials used in the research, development, manufacture, marketing or sale of X-Ray NDT Products; all market research data and market intelligence reports; customer information; all records relating to employees that accept employment with the Acquirer (excluding any personnel records the transfer of which is prohibited by applicable law); all records, including customer lists, sales force call activity reports, vendor lists, sales data, reimbursement data, manufacturing records, manufacturing processes, and supplier lists; all data contained in laboratory notebooks relating to X-Ray NDT Products; all diagrams and schematics relating to X-Ray NDT Products; all analytical and quality control data; and all correspondence with governmental agencies relating to X-Ray NDT Products, but excluding (i) all tax returns, financial statements, and working papers of InVision relating to Non-NDT Products; and (ii) documents and other information subject to attorney-client privilege relating to Non-NDT Products; *PROVIDED, HOWEVER*, that, if a document required to be produced pursuant to this Paragraph also contains information that is not related to the X-Ray NDT Products, Respondent need not produce that information to the extent it is contained within a discrete segment of the document that otherwise must be produced. *PROVIDED FURTHER*, that the Acquirer shall be allowed access to redacted copies of such documents otherwise excluded by this Paragraph to the extent they relate to X-Ray NDT Products.

- S. “X-Ray NDT Employees” means all of those individuals employed by YXLON or InVision (irrespective of the portion of working time involved) with any responsibility for the research, design, development, engineering, manufacturing, distributing, marketing, sales, or after-sales

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service and support of X-Ray NDT Products worldwide within the eighteen (18) month period immediately prior to the Effective Date of Divestiture.

- T. “X-Ray NDT Intellectual Property” means all of the following possessed or owned by InVision related to X-Ray NDT:
1. X-Ray NDT Patents;
 2. X-Ray NDT Trademarks;
 3. X-Ray NDT Trade Dress;
 4. X-Ray NDT Manufacturing Technology;
 5. X-Ray NDT Scientific and Regulatory Material; and
 6. rights to sue and recover damages or obtain injunctive relief for infringement, dilution, misappropriation, violation or breach of any of the foregoing.
- U. “X-Ray NDT Manufacturing Equipment” means all of YXLON’s and InVision’s rights and ownership in equipment, machines, and computers, and all parts, information, files, diagrams, schematics, instructions, software, and hardware related thereto, used in the manufacture, quality assurance and quality control, and packaging of X-Ray NDT.
- V. “X-Ray NDT Manufacturing Technology” means all technology, trade secrets, know-how, diagrams, schematics, software, calibrations, inventions, practices, proprietary algorithms, testing techniques, methods and other confidential or proprietary information related to the manufacture, quality assurance and quality control, and packaging of X-Ray NDT Products owned or used by InVision, including, but not limited to, manufacturing

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records, sampling records, standard operating procedures and batch records related to the manufacturing process, and supplier lists.

- W. “X-Ray NDT Patents” means all patents, patent applications and statutory invention registrations, in each case possessed or owned by InVision relating to X-Ray NDT Products, including all reissues, divisions, continuations, continuations-in-part, supplementary protection certificates, extensions and reexaminations thereof, all inventions disclosed therein, all rights therein provided by international treaties and conventions, and all rights to obtain and file for patents and registrations thereto in the world, related to the manufacture, use, sale, service, research or development of X-Ray NDT Products.
- X. “X-Ray NDT Scientific and Regulatory Material” means all technological, scientific, chemical, and electrical materials and information related to X-Ray NDT owned or used by InVision, and all rights thereto, in any and all jurisdictions.
- Y. “X-Ray NDT Software” means computer programs, including all software implementations of algorithms, models, and methodologies whether in source code or object code form, databases and compilations, including any and all data and collections of data, all documentation, including user manuals and training materials, related to any X-Ray NDT Products distributed, marketed, or sold by or on behalf of InVision; *PROVIDED, HOWEVER*, that “X-Ray NDT Software” does not include software that is readily purchasable or licensable and which has not been modified in a manner material to the use or function thereof (other than through user preference settings).
- Z. “X-Ray NDT Trade Dress” means all trade dress of X-Ray NDT Products distributed, marketed, or sold by or on behalf of InVision, including, but not limited to, domain names

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and internet sites, product packaging associated with the sale of X-Ray NDT Products worldwide and the lettering of such X-Ray NDT trade names or brand names.

- AA. “X-Ray NDT Trademarks” means all trademarks, trade names and brand names including registrations and applications for registration thereof (and all renewals, modifications, and extensions thereof) and all common law rights, and the goodwill symbolized thereby and associated therewith, for X-Ray NDT researched, developed, distributed, marketed, or sold by or on behalf of InVision.

II.

IT IS FURTHER ORDERED that:

- A. During the Hold Separate Period, Respondent shall hold the Held Separate Business separate, apart, and independent as required by this Hold Separate Order and shall vest the Held Separate Business with all rights, powers, and authority necessary to conduct its business; Respondent shall not exercise direction or control over, or influence directly or indirectly, the Held Separate Business or any of its operations, or the Hold Separate Trustee, except to the extent that Respondent must exercise direction and control over the Held Separate Business as is necessary to assure compliance with this Hold Separate Order, the Consent Agreement, and with all applicable laws, including, in consultation with the Hold Separate Trustee, continued oversight of the Held Separate Business’s compliance with policies and standards concerning the safety, health, and environmental aspects of its operations and the integrity of its financial controls; and Respondent shall have the right to defend any legal claims, investigations or enforcement actions threatened or brought against any Held Separate Business.

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- B. Until the Effective Date of Divestiture, Respondent shall take such actions as are necessary to maintain the viability and marketability of the Held Separate Business to prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets, except for ordinary wear and tear.
- C. The purposes of this Hold Separate Order are to: (1) preserve the Held Separate Business as a viable, competitive, and ongoing business independent of Respondent until the divestiture required by the Decision and Order is achieved; (2) assure that no Material Confidential Information is exchanged between Respondent and the Held Separate Business, except in accordance with the provisions of this Hold Separate Order; (3) prevent interim harm to competition pending the relevant divestitures and other relief; and (4) help remedy any anticompetitive effects of the proposed Acquisition.
- D. Respondent shall hold the Held Separate Business separate, apart, and independent on the following terms and conditions:
 - 1. Mr. Hartmut G. Grossmann shall serve as Hold Separate Trustee, pursuant to the agreement executed by the Hold Separate Trustee and Respondent and attached as Confidential Appendix A ("Trustee Agreement").
 - a. The Trustee Agreement shall require that, no later than one (1) day after the Acquisition Date, Respondent transfer to the Hold Separate Trustee all rights, powers, and authorities necessary to permit the Hold Separate Trustee to perform his/her duties and responsibilities, pursuant to this Hold Separate Order and consistent with the purposes of the Decision and Order.

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- b. No later than one (1) day after the Acquisition Date, Respondent shall, pursuant to the Trustee Agreement, transfer to the Hold Separate Trustee all rights, powers, and authorities necessary to permit the Hold Separate Trustee to perform his/her duties and responsibilities, pursuant to this Hold Separate Order and consistent with the purposes of the Decision and Order.
- c. The Hold Separate Trustee shall have the responsibility, consistent with the terms of this Hold Separate Order and the Decision and Order, for monitoring the organization of the Held Separate Business; for managing the Held Separate Business through the Manager; for maintaining the independence of the Held Separate Business; and for monitoring Respondent's compliance with its obligations pursuant to this Hold Separate Order and the Decision and Order.
- d. The Hold Separate Trustee shall have full and complete access to all personnel, books, records, documents and facilities of the Held Separate Business or to any other relevant information as the Hold Separate Trustee may reasonably request including, but not limited to, all documents and records kept by Respondent in the ordinary course of business that relate to the Held Separate Business. Respondent shall develop such financial or other information as the Hold Separate Trustee may request and shall cooperate with the Hold Separate Trustee. Respondent shall take no action to interfere with or impede the Hold Separate Trustee's ability to monitor Respondent's compliance with this Hold Separate Order and the Consent Agreement or otherwise to perform his/her duties and responsibilities consistent with the terms of this Hold Separate.

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- e. The Hold Separate Trustee shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Hold Separate Trustee's duties and responsibilities.
- f. The Commission may require the Hold Separate Trustee to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with performance of the Hold Separate Trustee's duties.
- g. Respondent may require the Hold Separate Trustee to sign a confidentiality agreement prohibiting the disclosure of any Material Confidential Information gained as a result of his or her role as Hold Separate Trustee to anyone other than the Commission.
- h. Thirty (30) days after the Hold Separate Order becomes final, and every thirty (30) days thereafter until the Hold Separate Order terminates, the Hold Separate Trustee shall report in writing to the Commission concerning the efforts to accomplish the purposes of this Hold Separate Order. Included within that report shall be the Hold Separate Trustee's assessment of the extent to which the businesses comprising the Held Separate Business are meeting (or exceeding) their projected goals as are reflected in operating plans, budgets, projections or any other regularly prepared financial statements.
- i. If the Hold Separate Trustee ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate Order, the Commission may appoint a substitute Hold Separate Trustee consistent with the terms of this paragraph, subject to the consent of Respondent, which consent shall not be unreasonably

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withheld. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of the substitute Hold Separate Trustee within five (5) days after notice by the staff of the Commission to Respondent of the identity of any substitute Hold Separate Trustee, Respondent shall be deemed to have consented to the selection of the proposed substitute trustee. Respondent and the substitute Hold Separate Trustee shall execute a Trustee Agreement, subject to the approval of the Commission, consistent with this paragraph.

2. No later than one (1) day after the Acquisition Date, Respondent shall enter into a management agreement with, and transfer all rights, powers, and authorities necessary to manage and maintain the Held Separate Business, to Joseph M. Kosanetzky, Ph.D., the current Chief Executive of YXLON International X-Ray GmbH (“Manager”).
 - a. In the event that Dr. Kosanetzky ceases to act as Manager, then Respondent shall select a substitute Manager, subject to the approval of the Commission, and transfer to the substitute Manager all rights, powers and authorities necessary to permit the substitute Manager to perform his/her duties and responsibilities, pursuant to this Hold Separate Order.
 - b. The Manager shall report directly and exclusively to the Hold Separate Trustee and shall manage the Held Separate Business independently of the management of Respondent. The Manager shall not be involved, in any way, in the operations of the other businesses of Respondent during the term of this Hold Separate Order.
 - c. The Manager shall have no financial interests affected by Respondent’s revenues, profits or profit margins,

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except that the Manager's compensation for managing the Held Separate Business may include economic incentives dependent on the financial performance of the Held Separate Business if there are also sufficient incentives for the Manager to operate the Held Separate Business at no less than current rates of operation (including, but not limited to, current rates of production and sales) and to achieve the objectives of this Hold Separate Order.

- d. The Manager shall make no material changes in the present operation of the Held Separate Business except with the approval of the Hold Separate Trustee, in consultation with the Commission staff.
- e. The Manager shall have the authority, with the approval of the Hold Separate Trustee, to remove X-Ray NDT Employees and replace them with others of similar experience or skills. If any person ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate Order, the Manager, in consultation with the Hold Separate Trustee, may request Respondent to, and Respondent shall, appoint a substitute person, which person the Manager shall have the right to approve.
- f. In addition to those X-Ray NDT Employees within the Held Separate Business, the Manager may employ such Persons as are reasonably necessary to assist the Manager in managing the Held Separate Business.
- g. The Hold Separate Trustee shall be permitted, in consultation with the Commission staff, to remove the Manager for cause. Within fifteen (15) days after such removal of the Manager, Respondent shall appoint a replacement Manager, subject to the approval of the

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Commission, on the same terms and conditions as provided in Paragraph II.D.2 of this Hold Separate Order.

3. The Held Separate Business shall be staffed with sufficient employees to maintain the viability and competitiveness of the Held Separate Business. To the extent that any X-Ray NDT Employees leave or have left the Held Separate Business prior to the Effective Date of Divestiture, the Manager, with the approval of the Hold Separate Trustee, may replace departing or departed employees with persons who have similar experience and expertise or determine not to replace such departing or departed employees.
4. In connection with support services or products not included within the Held Separate Business, Respondent and InVision shall continue to provide, or offer to provide, the same support services to the Held Separate Business as are being provided to such business interest by Respondent and InVision as of the date the Consent Agreement is signed by Respondent. For any services or products that Respondent and InVision may provide to the Held Separate Business, Respondent may charge no more than the same price they charge others for the same services or products. Respondent's or InVision's personnel providing such services or products must retain and maintain all Material Confidential Information of the Held Separate Business on a confidential basis, and, except as is permitted by this Hold Separate Order, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any person whose employment involves any of Respondent's or InVision's businesses, other than the Held Separate Business. Such personnel shall also execute confidentiality agreements prohibiting the disclosure of any Material Confidential Information of the Held Separate Business.

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- a. Respondent and InVision shall offer to the Held Separate Business any services and products that Respondent or InVision provided to their other businesses directly or through third party contracts, or that they have provided directly or through third party contracts to the businesses constituting the Held Separate Business at any time since January 1, 2003. The Held Separate Business may, at the option of the Manager with the approval of the Hold Separate Trustee, obtain such services and products from Respondent or InVision. The services and products that Respondent or InVision shall offer the Held Separate Business shall include, but shall not be limited to, the following:
- (1) Human resources administrative services, including but not limited to payroll processing, labor relations support, pension administration, and health benefits;
 - (2) Environmental health and safety services, which are used to develop corporate policies and insure compliance with federal and state regulations and corporate policies;
 - (3) Preparation of tax returns;
 - (4) Audit services;
 - (5) Information systems, which constructs, maintains, and supports all computer systems;
 - (6) Processing of accounts payable;
 - (7) Technical support;
 - (8) Finance and financial accounting services;

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- (9) Procurement of supplies;
 - (10) Procurement of goods and services utilized in the ordinary course of business by the Held Separate Business; and
 - (11) Legal services;
- b. the Held Separate Business shall have, at the option of the Manager with the approval of the Hold Separate Trustee, the ability to acquire services and products from third parties unaffiliated with Respondent or InVision.
- 5. Respondent shall cause the Hold Separate Trustee, the Manager, and each X-Ray NDT Employee having access to Material Confidential Information to submit to the Commission a signed statement that the individual will maintain the confidentiality required by the terms and conditions of this Hold Separate Order. These individuals must retain and maintain all Material Confidential Information relating to the Held Separate Business on a confidential basis and, except as is permitted by this Hold Separate Order, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any of Respondent's businesses other than the Held Separate Business. These persons shall not be involved in any way in the management, production, distribution, sale, marketing, or financial operations of the competing products of Respondent.
 - 6. No later than five (5) days after the Acquisition Date, Respondent shall establish written procedures, subject to the approval of the Hold Separate Trustee, covering the management, maintenance, and independence of the Held

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Separate Business consistent with the provisions of this Hold Separate Order.

7. No later than five (5) days after the date this Hold Separate Order becomes final, Respondent shall circulate to employees of the Held Separate Business and to Respondent's employees who are responsible for the development, manufacture and sale of NDT products, a notice of this Hold Separate Order and the Consent Agreement.
8. The Hold Separate Trustee and the Manager shall serve, without bond or other security, at the cost and expense of Respondent, on reasonable and customary terms commensurate with the person's experience and responsibilities.
9. Respondent shall indemnify the Hold Separate Trustee and Manager and hold each harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Hold Separate Trustee's or the Manager's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Hold Separate Trustee or the Manager.
10. Respondent shall provide the Held Separate Business with sufficient financial resources:
 - a. as are appropriate in the judgment of the Hold Separate Trustee to operate the Held Separate Business as it is currently operated;

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- b. to perform all maintenance to, and replacements of, the assets of the Held Separate Business;
- c. to carry on existing and planned capital projects and business plans; and
- d. to maintain the viability, competitive vigor, and marketability of the Held Separate Business.

Such financial resources to be provided to the Held Separate Business shall include, but shall not be limited to, (i) general funds, (ii) capital, (iii) working capital, and (iv) reimbursement for any operating losses, capital losses, or other losses; *PROVIDED, HOWEVER*, that, consistent with the purposes of the Decision and Order, the Manager may reduce in scale or pace any capital or research and development project, or substitute any capital or research and development project for another of the same cost.

11. Respondent shall not, during the Hold Separate Period, offer X-Ray NDT Employees positions with Respondent. The Acquirer shall have the option of offering employment to any X-Ray NDT Employees. Respondent shall not interfere with the employment, by the Acquirer of such employees; shall not offer any incentive to such employees to decline employment with the Acquirer or to accept other employment with the Respondent; and shall remove any impediments that may deter such employees from accepting employment with the Acquirer including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts that would affect the ability of such employees to be employed by the Acquirer, and the payment, or the transfer for the account of the employee, of all current and accrued bonuses, pensions and other current and accrued benefits to which such employees would

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otherwise have been entitled had they remained in the employment of the Respondent.

12. For a period of two (2) years commencing on the Effective Date of Divestiture, Respondent shall not employ or make offers of employment to X-Ray NDT Employees who have accepted offers of employment with the Acquirer unless the individual's employment has been terminated by the Acquirer.
13. Except for the Manager, X-Ray NDT Employees, and support services employees involved in providing services to the Held Separate Business pursuant to Paragraph II.D.4., and except to the extent provided in Paragraph II.A., Respondent shall not permit any other of its employees, officers, or directors to be involved in the operations of the Held Separate Business.
14. Respondent shall assure that X-Ray NDT Employees receive, during the Hold Separate Period, their salaries, all current and accrued bonuses, pensions and other current and accrued benefits to which those employees would otherwise have been entitled.
15. Respondent's employees (excluding support services employees involved in providing support to the Held Separate Business pursuant to Paragraph II.D.4.) shall not receive, or have access to, or use or continue to use any Material Confidential Information of the Held Separate Business not in the public domain except:
 - a. as required by law;
 - b. to the extent that necessary information is exchanged in the course of consummating the Acquisition;

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- c. in negotiating agreements to divest assets pursuant to the Consent Agreement and engaging in related due diligence;
- d. in complying with this Hold Separate Order or the Consent Agreement;
- e. in overseeing compliance with policies and standards concerning the safety, health and environmental aspects of the operations of the Held Separate Business and the integrity of the Held Separate Business's financial controls;
- f. in defending legal claims, investigations or enforcement actions threatened or brought against or related to the Held Separate Business; or
- g. in obtaining legal advice.

Nor shall the Manager or X-Ray NDT Employees receive or have access to, or use or continue to use, any Material Confidential Information not in the public domain about Respondent and relating to Respondent's businesses, except such information as is necessary to maintain and operate the Held Separate Business. Respondent may receive aggregate financial and operational information relating to the Held Separate Business only to the extent necessary to allow Respondent to comply with the requirements and obligations of the laws of the United States and other countries, and to prepare consolidated financial reports, tax returns, reports required by securities laws, and personnel reports. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph.

16. Respondent and the Held Separate Business shall jointly implement, and at all times during the Hold Separate Period maintain in operation, a system, as

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approved by the Hold Separate Trustee, of access and data controls to prevent unauthorized access to or dissemination of Material Confidential Information of the Held Separate Business, including, but not limited to, the opportunity by the Hold Separate Trustee, on terms and conditions agreed to with Respondent, to audit Respondent's networks and systems to verify compliance with this Hold Separate Order.

III.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any proposed (1) dissolution of the Respondent, (2) acquisition, merger or consolidation of Respondent, or (3) any other change in the Respondent that may affect compliance obligations arising out of this Hold Separate Order, including but not limited to assignment and the creation or dissolution of subsidiaries.

IV.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Hold Separate Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondent made to their principal United States offices, Respondent shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of Respondent and in the presence of counsel, to all facilities, and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondent relating to any matters contained in this Hold Separate Order; and
- B. Upon five (5) days' notice to Respondent and without restraint or interference from Respondent, to interview

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officers, directors, or employees of Respondent, who may have counsel present, regarding any such matters.

V.

IT IS FURTHER ORDERED that this Hold Separate Order shall terminate at the earlier of:

- A. three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. the day after the Effective Date of Divestiture required by the Consent Agreement.

CONFIDENTIAL APPENDIX A

HOLD SEPARATE TRUSTEE AGREEMENT

**[Public Record Version, With Confidential Exhibits C and D
Redacted, But Incorporated By Reference]**

Analysis

**Analysis of Agreement Containing Consent Orders to Aid
Public Comment****I. Introduction**

The Federal Trade Commission has accepted, subject to final approval, an Agreement Containing Consent Orders from General Electric Company, which is designed to remedy the anticompetitive effects resulting from GE's acquisition of InVision Technologies, Inc. Under the terms of the Consent Agreement, GE will be required to divest InVision's nondestructive testing ("NDT") business, including InVision's YXLON NDT subsidiaries, within six months after the date GE signed the Consent Agreement. The Consent Agreement also includes an Order to Hold Separate and Maintain Assets that requires GE to preserve the YXLON NDT business as a viable, competitive, and ongoing operation until the divestiture is achieved.

The proposed Consent Agreement has been placed on the public record for thirty (30) days to solicit comments from interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement and the comments received and will decide whether it should withdraw from the proposed Consent Agreement or make it final.

Pursuant to a stock purchase agreement dated March 15, 2004, GE proposes to acquire InVision ("Proposed Acquisition"). The total value of the Proposed Acquisition is approximately \$900 million. The Commission's Complaint alleges that the Proposed Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by lessening competition in the U.S. market for the research, development, manufacture, and sale of certain types of x-ray NDT and inspection equipment, specifically: (1) standard x-ray cabinets, (2) x-ray NDT and inspection systems equipped with

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automated defect recognition software (“ADR-capable x-ray systems”), and (3) x-ray generators capable of producing energy levels higher than 350 kilovolts (“high-energy x-ray generators”).

II. The Parties

GE is a diversified technology and services company headquartered in Fairfield, Connecticut. GE is made up of a broad range of primary business units, each with its own divisions. GE Infrastructure, the business unit that proposes to acquire InVision, oversees the operations of GE’s security and sensing, water technologies, and automation enterprises. Another business unit of GE, GE Inspection Technologies, designs, manufactures, and sells various NDT and inspection equipment, including x-ray, ultrasound and eddy current equipment under the Seifert, Pantak, Krautkramer and Hocking brand names. GE Inspection Technologies is headquartered in Hürth, Germany. The company’s NDT and inspection products serve customers in the aerospace, energy, petrochemical and automotive industries.

Headquartered in Newark, California, InVision is the leading supplier of explosive detection systems (“EDS”) to the U.S. government for civil aviation security. InVision’s EDS devices are used at airports for screening checked passenger baggage. InVision also offers industrial NDT and inspection equipment through its YXLON subsidiary. YXLON, headquartered in Hamburg, Germany, was acquired by InVision in 2003. YXLON designs, manufactures and sells x-ray NDT and inspection equipment for use in a wide range of industries, including the aerospace, automotive, and security industries.

III. X-Ray NDT and Inspection Equipment

GE and InVision, through its YXLON subsidiary, are the two largest suppliers of x-ray NDT and inspection equipment in the United States. X-ray NDT and inspection equipment includes, among other products: (1) standard x-ray cabinets; (2) ADR-capable x-ray systems; and (3) high-energy x-ray generators. X-

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ray NDT and inspection equipment is used to inspect the structure and tolerance of materials, or identify objects inside materials, without damaging the materials or impairing their future usefulness.

Standard x-ray cabinets are x-ray NDT and inspection systems with generic configurations and uniform prices. Standard x-ray cabinets are multi-purpose inspection systems, as opposed to customized systems that are designed for particular customer needs, or application-specific x-ray systems utilized for specific tasks such as tire or airbag inspection. A single standard x-ray cabinet is capable of inspecting a variety of products as diverse as, for example, metal die-castings, turbine engine parts, steel components, plastics and ceramics.

ADR-capable x-ray systems are inspection systems that utilize automated defect recognition, or ADR, software that completely automates the inspection process. Unlike traditional x-ray NDT and inspection systems that require a manual operator, ADR-capable x-ray systems eliminate the need to make subjective human decisions regarding the objects being inspected. The benefits of ADR-capable x-ray systems for customers are improved inspection quality, increased throughput and decreased labor costs.

High-energy x-ray generators are components of x-ray NDT and inspection systems that generate the power needed to produce an x-ray beam and display an x-ray image. There are different categories of x-ray generators that are distinguished by the amount of power they can produce. High-energy x-ray generators produce levels of power sufficient for x-rays to penetrate dense materials, such as steel, that other types of x-ray generators cannot produce.

Manufacturers and end users in a variety of industries use standard x-ray cabinets, ADR-capable x-ray systems, and high-energy x-ray generators for quality control and safety purposes. Purchasers of these products purchase the type of x-ray NDT and

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inspection equipment that is best-suited for their application and, because of the unique performance characteristics of each type of equipment, there is little opportunity to switch to alternative equipment. In fact, even a price increase of five to ten percent for standard x-ray cabinets, ADR-capable x-ray systems, or high-energy x-ray generators would not likely cause a significant number of customers for these products to switch to any alternative product.

The United States is the appropriate geographic market for standard x-ray cabinets, ADR-capable x-ray systems, and high-energy x-ray generators in which to analyze the competitive effects of the Proposed Acquisition. Because x-ray NDT and inspection equipment frequently needs to be serviced and repaired to ensure proper operation, customers purchase from suppliers with local service and support networks. Furthermore, customers purchase from companies with a proven reputation for accurate and reliable equipment, and are reluctant to switch to a new company that does not have a proven track record for providing such service and support. Foreign suppliers that have not established the necessary service and support networks, brand reputation, and customer acceptance in the United States are not effective competitors for U.S. customers and would not be able to constrain a price increase for standard x-ray cabinets, ADR-capable x-ray systems, or high-energy x-ray generators in the United States.

The U.S. markets for standard x-ray cabinets, ADR-capable x-ray systems, and high-energy x-ray generators are all highly concentrated. GE and InVision are the two largest suppliers in each of these markets. If the Proposed Acquisition is consummated, GE would become the dominant supplier in each of these markets. For many customers, GE and InVision are the top two choices when considering a supplier of standard x-ray cabinets, ADR-capable x-ray systems, or high-energy x-ray generators. By eliminating competition between these two leading suppliers, the Proposed Acquisition would allow GE to unilaterally exercise market power, thereby increasing the

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likelihood that purchasers of standard x-ray cabinets, ADR-capable x-ray systems, and high-energy x-ray generators would be forced to pay higher prices and that innovation in these markets would decrease.

Significant impediments to new entry exist in the U.S. markets for x-ray NDT and inspection equipment. First, a new entrant would need to devote significant time and expense researching and developing a product. Second, a new entrant must undertake the lengthy and costly process of establishing a track record of reliability for its product. This track record is critical to customers because x-ray NDT and inspection equipment is relied upon to ensure the quality, performance, and safety of their products. Finally, a new supplier of standard x-ray cabinets, ADR-capable x-ray systems, and high-energy x-ray generators would have to spend a great deal of time and money to develop a broad service and support network upon which customers can rely. For these reasons, new entry into the markets for standard x-ray cabinets, ADR-capable x-ray systems, and high-energy x-ray generators is not likely to occur in a timely manner even if prices increased substantially after the Proposed Acquisition. Additionally, new entry into these markets is unlikely because the costs of entering these markets are too high relative to the limited sales opportunities available to new entrants.

IV. The Consent Agreement

The Consent Agreement effectively remedies the Proposed Acquisition's anticompetitive effects in the U.S. markets for the research, development, manufacture, and sale of standard x-ray cabinets, ADR-capable x-ray systems, and high-energy x-ray generators by requiring GE to divest InVision's YXLON NDT business. Pursuant to the Consent Agreement, GE is required to divest the YXLON NDT business, including the YXLON NDT subsidiaries, to a buyer, at no minimum price, within six (6) months from the date GE signed the Consent Agreement. The acquirer of the YXLON NDT business must receive the prior approval of the Commission. The Commission's goal in

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evaluating possible purchasers of divested assets is to ensure that the competitive environment that existed prior to the acquisition is maintained. A proposed acquirer of divested assets must not itself present competitive problems.

Should GE fail to accomplish the divestiture within the time and in the manner required by the Consent Agreement, the Commission may appoint a trustee to divest these assets. If approved, the trustee would have the exclusive power and authority to accomplish the divestiture within six (6) months of being appointed, subject to any necessary extensions by the Commission. The Consent Agreement requires GE to provide the trustee with access to information related to the YXLON NDT business as necessary to fulfill his or her obligations.

The Order to Hold Separate and Maintain Assets that is included in the Consent Agreement requires that GE hold separate and maintain the viability of the YXLON NDT business as a competitive operation until the business is transferred to the Commission-approved acquirer. Furthermore, it contains measures designed to ensure that no material confidential information is exchanged between GE and the YXLON NDT business (except as otherwise provided in the Consent Agreement) and provisions designed to prevent interim harm to competition in each x-ray NDT and inspection equipment market pending divestiture. The Order to Hold Separate and Maintain Assets provides that the Commission may appoint a Hold Separate Trustee who is charged with the duty of monitoring GE's compliance with the Consent Agreement. Pursuant to that Order, the Commission has appointed Hartmut G. Grossmann of H. Grossmann Consulting LLC as Hold Separate Trustee to oversee the YXLON NDT business prior to its divestiture and to ensure that GE complies with its obligations under the Consent Agreement. Mr. Grossmann, who holds law degrees from both the United States and Germany, has more than 25 years of experience advising and managing companies both inside and outside of Germany. He has held several key management positions, including chief counsel, managing director, and chief

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operating officer, and during his professional career has developed experience related to corporate governance, litigation, business integration and restructuring, and regulatory compliance matters.

In order to ensure that the Commission remains informed about the status of the YXLON NDT business pending divestiture, and about the efforts being made to accomplish the divestiture, the Consent Agreement requires GE to file periodic reports with the Commission until the divestiture is accomplished.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and is not intended to constitute an official interpretation of the proposed Decision and Order or the Order to Maintain Assets, or to modify their terms in any way.

Complaint

IN THE MATTER OF

ENTERPRISE PRODUCTS PARTNERS L.P., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE
COMMISSION ACT

Docket C-4123; File No. 0410039

Complaint, September 29, 2004--Decision, November 23, 2004

This consent order, among other things, requires Respondent Enterprise Products Partners L.P. – a publicly traded limited partnership that provides midstream energy services to customers throughout the Southeastern and Midwestern United States – and Respondent Dan L. Duncan, the ultimate parent entity of Enterprise to divest their interest in one of two competing pipelines (the Stingray/Triton pipeline system or the High Island Offshore System and its East Breaks lateral) that transport natural gas from the West Central Deepwater region of the Gulf of Mexico, in which water depths exceed 1,000 feet. The order also requires the respondents to divest their interest in one of two competing underground propane storage and terminaling facilities serving the Dixie Pipeline in Hattiesburg, Mississippi. An accompanying Order to Hold Separate and Maintain Assets requires the respondents to ensure the continuing viability, marketability, and competitiveness of the foregoing assets - and to ensure that they operate independently from Enterprise and GulfTerra - until the required divestitures are effected.

Participants

For the Commission: *Frank Lipson, Marc Schneider, Elizabeth D. Kaiser, Natasha Allen, John V. Lacci, Phillip L. Broyles, Daniel P. Ducore, Mark Williams, Peter Gulyan, Jeffrey H. Fischer and Mark Frankena.*

For the Respondents: *Neil Imus.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Respondent Enterprise Products Partners L.P., and Respondent Dan L. Duncan entered into a series of agreements