

Complaint

IN THE MATTER OF

**CARPENTER TECHNOLOGY CORPORATION
AND
LATROBE SPECIALTY METALS, INC.**

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

*Docket No. C-4349; File No. 111 0207
Complaint, February 28, 2012 – Decision, April 12, 2012*

This consent order addresses the \$410 million acquisition by Carpenter Technology Corporation of certain assets of Latrobe Specialty Metals, Inc. The complaint alleges that the acquisition, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act in the markets for each of the specialty alloys: (1) MP159 and (2) MP35N used in aerospace applications. The consent order requires Carpenter to divest assets related to the manufacture and sale of the MP Alloys to Eramet S.A.

Participants

For the *Commission*: Marc Alvarez, Monica Castillo, Janet Kim, David Morris, Scott Reiter, Kristian Rogers, Danielle Sims, and David Von Nirschl.

For the *Respondents*: Barbara Sicalides, Pepper Hamilton LLPTom D. Smith, Jones Day.

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act, and its authority thereunder, the Federal Trade Commission (“Commission”), having reason to believe that Respondent Carpenter Technology Corporation (“Carpenter”), a corporation subject to the jurisdiction of the Commission, has agreed to acquire Respondent Latrobe Specialty Metals, Inc. (“Latrobe”), a corporation subject to the jurisdiction of the Commission (collectively, “Respondents”), 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, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in

Complaint

respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENTS

1. Respondent Carpenter is a Delaware corporation, headquartered at 2 Meridian Boulevard, Wyomissing, Pennsylvania 19610-3202.

2. Respondent Latrobe is a Delaware Corporation, headquartered at 2626 Ligonier Street, Latrobe, Pennsylvania 15650. HHEP-Latrobe, L.P., the ultimate parent entity of Latrobe Specialty Metals, Inc., has its headquarters at 100 Crescent Court, Suite 1200, Dallas, Texas 75201.

3. Respondents are corporations who are engaged in, among other activities, the production and sale of specialty alloys, including, but not limited to, multiphase nickel-cobalt alloys MP159, and MP35N used in aerospace applications (“Aerospace MP35N”).

4. Respondents are corporations and at all times relevant herein have been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and are corporations whose business is in, or affects commerce, as “commerce” is defined under Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

II. THE PROPOSED ACQUISITION

5. Pursuant to the June 20, 2011 Agreement and Plan of Merger (“Merger Agreement”), Carpenter announced its intention to purchase all of Latrobe’s approximately 8.1 million voting securities for approximately \$410 million (“Acquisition”).

III. THE RELEVANT MARKET

6. For purposes of this Complaint, the relevant lines of commerce in which to analyze the Acquisition are: (1) MP159; and (2) Aerospace MP35N.

7. For purposes of this Complaint, the relevant geographic area in which to analyze the effects of the Acquisition on the

Complaint

MP159 and Aerospace MP35N markets, respectively, is the United States plus foreign countries approved by the United States Congress to supply materials for military purposes under the Defense Federal Acquisition Regulation System (“DFARS”), as amended, 48 C.F.R. § 225-7012.

8. Foreign countries approved under DFARS are: Australia, Belgium, Canada, Denmark, Egypt, Federal Republic of Germany, France, Greece, Israel, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, and the United Kingdom of Great Britain and Northern Ireland. Under DFARS, companies manufacturing products in Austria and Finland may also supply materials for military purposes, provided that they receive waivers exempting their sale of materials from the Buy American Act and Balance of Payments programs.

IV. MARKET STRUCTURE

9. The market for MP159 is highly concentrated, as measured by the Herfindahl-Hirschman Index (“HHI”). The Acquisition would consolidate the only MP159 manufacturers. Post-Acquisition, Respondents will have 100 percent market share. The post-Acquisition HHI will be 10,000, with a 4,668 HHI increase. This market concentration level far exceeds the *Horizontal Merger Guidelines* thresholds, and thus, supports the presumption that the Acquisition will create or enhance market power.

10. The market for Aerospace MP35N is highly concentrated, as measured by the HHI. The Acquisition would consolidate the only Aerospace MP35N manufacturers. Post-Acquisition, Respondents will have 100 percent market share. The post-Acquisition HHI will be 10,000, with a 4,928 HHI increase. This market concentration level far exceeds the *Horizontal Merger Guidelines* thresholds, and thus, supports the presumption that the Acquisition will create or enhance market power.

V. ENTRY CONDITIONS

11. Entry into the market for MP159 or Aerospace MP35N, respectively, would not be timely, likely, or sufficient to deter the likely anticompetitive effects of the Acquisition. The time and

Complaint

costs required to obtain the physical assets and expertise necessary for the manufacture of MP159 and Aerospace MP35N are substantial. Before supplying the alloys to customers, MP159 and Aerospace MP35N manufacturers must also invest significant amounts of time and money to receive customer and end-user qualifications. Finally, these two markets are small, which further deters firms from making the investments required to compete effectively in these markets.

VI. EFFECTS OF THE ACQUISITION

12. The effects of the Acquisition, if consummated, may be to substantially lessen competition, and to tend to create a monopoly, in the markets for MP159 and Aerospace MP35N, respectively, 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, as amended, 15 U.S.C. § 45, in the following ways, among others:

- a. by eliminating actual, direct, and substantial competition between Respondents Carpenter and Latrobe; and
- b. by increasing the likelihood that Respondent Carpenter would unilaterally exercise market power in the MP159 and Aerospace MP35N markets.

VII. VIOLATIONS CHARGED

13. The allegations contained in Paragraphs 1 through 12 above are hereby incorporated by reference as though fully set forth here.

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

15. The Acquisition described in Paragraph 5, if consummated, would constitute a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

Order to Maintain Assets

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

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-eighth day of February, 2012, issues its complaint against said Respondents.

By the Commission.

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Carpenter Technology Corporation (“Carpenter”) of 100 percent of the outstanding voting securities of Respondent Latrobe Specialty Metals, Inc. (“Latrobe”) from HHEP-Latrobe, L.P., and Respondents 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 that, if issued by the Commission, would charge Respondents 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

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents 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 Respondents 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

Order to Maintain Assets

The Commission having thereafter considered the matter and having determined to accept the executed Consent Agreement and to place 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 issues its Complaint, makes the following jurisdictional findings and issues this Order to Maintain Assets:

1. Respondent Carpenter Technology Corporation is a corporation organized, existing and doing business under and by virtue of the laws of State of Delaware, with its headquarters address located at 101 West Bern Street, Reading, Pennsylvania 19601.
2. Respondent Latrobe Specialty Metals, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its headquarters address at 2626 Ligonier Street, Latrobe, Pennsylvania 15650. HHEP-Latrobe, L.P., the ultimate parent entity of Latrobe Specialty Metals, Inc., has its headquarters address at 100 Crescent Court, Suite 1200, Dallas, Texas 75201. "Latrobe" also includes HHEP-Latrobe, L.P., the ultimate parent entity of Latrobe Specialty Metals, Inc.
3. The Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER**I.**

IT IS ORDERED that, as used in this Order to Maintain Assets, the following definitions and the definitions used in the Consent Agreement and the proposed Decision and Order (and when made final and effective, the Decision and Order), which are incorporated herein by reference and made a part hereof, shall apply:

Order to Maintain Assets

- A. “Carpenter” means Carpenter Technology Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Carpenter (including, but not limited to, Hawke Acquisition Corp.) and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition, Carpenter shall include Latrobe.
- B. “Latrobe” means Latrobe Specialty Metals, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Latrobe, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Respondents” mean Carpenter and Latrobe, individually and collectively.
- D. “Decision and Order” means the:
 - 1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance of a final Decision and Order by the Commission; and
 - 2. Final Decision and Order issued by the Commission following the issuance and service of a final Decision and Order by the Commission.
- E. “Interim Monitor” means any monitor appointed pursuant to Paragraph III of this Order to Maintain Assets or Paragraph III of the Decision and Order.
- F. “Orders” means the Decision and Order and this Order to Maintain Assets.
- G. “Commission” means the Federal Trade Commission.

Order to Maintain Assets

- H. “Specialty Metals Product Business(es)” means Respondent Latrobe’s business throughout the United States of America related to all of the Specialty Metals Products, including the research, Development, manufacture, distribution, marketing, and sale of each Specialty Metals Product and the assets related to such business, including, but not limited to, the Specialty Metals Product Assets.
- I. “Pre-Acquisition Marketing Plan” means any marketing or sales plan that was planned or implemented within the period immediately prior to the Acquisition and without consideration of the influence of the pending Acquisition for the Specialty Metals Product Business.

II.

IT IS FURTHER ORDERED that from the date this Order to Maintain Assets becomes final and effective:

- A. Until Respondents fully deliver the Specialty Metals Product Assets to the Acquirer, Respondents shall take such actions as are necessary to maintain the full economic viability, marketability and competitiveness of the Specialty Metals Product Business, to minimize any risk of loss of competitive potential for the Specialty Metals Product Business, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Specialty Metals Product Business except for ordinary wear and tear. Respondents shall not sell, transfer, encumber or otherwise impair the Specialty Metals Product Assets (other than in the manner prescribed in the Decision and Order) nor take any action that lessens the full economic viability, marketability or competitiveness of the Specialty Metals Product Business.
- B. Prior to the Acquisition Date and as a condition precedent to the consummation of the Acquisition, Respondents shall secure all consents and waivers from all Third Parties that are necessary to permit

Order to Maintain Assets

Respondents to divest the Specialty Metals Product Assets required to be divested pursuant to the Decision and Order to the Acquirer, and/or to permit such Acquirer to continue the research, Development, manufacture, sale, marketing or distribution of the Specialty Metals Products;

provided, however, Respondents may satisfy this requirement by certifying that the Acquirer has executed all such agreements directly with each of the relevant Third Parties.

- C. Until Respondents fully deliver the Specialty Metals Product Assets to the Acquirer, Respondents shall maintain the operations of the Specialty Metals Product Business in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance of the assets of such Business) and/or as may be necessary to preserve the marketability, viability, and competitiveness of the Specialty Metals Product Business and shall use their best efforts to preserve the existing relationships with the following: suppliers; vendors and distributors, including, but not limited to, the High Volume Accounts; customers; Agencies; employees; and others having business relations with the Specialty Metals Product Business. Respondents' responsibilities shall include, but are not limited to, the following:
1. Respondents shall provide the Specialty Metals Product Business with sufficient working capital to operate at least at current rates of operation, to meet all capital calls with respect to such Business and to carry on, at least at their scheduled pace, all capital projects, business plans and promotional activities for the Specialty Metals Product Business;
 2. Respondents shall continue, at least at their scheduled pace, any additional expenditures for the Specialty Metals Product Business authorized prior

Order to Maintain Assets

to the date the Consent Agreement was signed by Respondents including, but not limited to, all research, Development, manufacture, distribution, marketing and sales expenditures;

3. Respondents shall provide such resources as may be necessary to respond to competition against the Specialty Metals Products and/or to prevent any diminution in sales of the Specialty Metals Products during and after the Acquisition process and prior to divestiture of the related Specialty Metals Product Assets;
 4. Respondents shall provide such resources as may be necessary to maintain the competitive strength and positioning of the Specialty Metals Products at the High Volume Accounts;
 5. Respondents shall make available for use by the Specialty Metals Product Business funds sufficient to perform all routine maintenance and all other maintenance as may be necessary to, and all replacements of, the assets related to such business, including the Specialty Metals Product Assets;
 6. Respondents shall provide the Specialty Metals Product Business with such funds as are necessary to maintain the full economic viability, marketability and competitiveness of the Specialty Metals Product Business; and
 7. Respondents shall provide such support services to the Specialty Metals Product Business as were being provided to these Business by Respondents as of the date the Consent Agreement was signed by Respondents.
- D. Until Respondents fully deliver the Specialty Metals Product Assets to the Acquirer, Respondents shall maintain a work force at least as equivalent in size, training, and expertise to what has been associated

Order to Maintain Assets

with the Specialty Metals Products for the relevant Specialty Metals Product's most recent Pre-Acquisition Marketing Plan.

- E. Respondents shall, during the Specialty Metals Product Employee Access Period, not interfere with the hiring or employing by the Acquirer of Specialty Metals Product Core Employees, and shall remove any impediments within the control of Respondents that may deter these employees from accepting employment with such Acquirer, including, but not limited to, any non-compete or non-disclosure provisions of employment or other contracts with Respondents that would affect the ability or incentive of those individuals to be employed by such Acquirer. In addition, Respondents shall not make any counteroffer to a Specialty Metals Product Core Employee who receives a written offer of employment from the Acquirer;

provided, however, subject to the conditions of continued employment prescribed in this Order, this Paragraph II.E. shall not prohibit Respondents from continuing to employ any Specialty Metals Product Core Employee under the terms of such employee's employment with Respondents prior to the date of the written offer of employment from the Acquirer to such employee.

- F. Respondents shall adhere to and abide by the Remedial Agreements (which agreements shall not limit or contradict, or be construed to limit or contradict, the terms of the Orders, it being understood that nothing in the Orders shall be construed to reduce any obligations of Respondents under such agreement(s)), which are incorporated by reference into this Order to Maintain Assets and made a part hereof.
- G. The purpose of this Order to Maintain Assets is to maintain the full economic viability, marketability and competitiveness of the Specialty Metals Product Business through its full and complete delivery to the

Order to Maintain Assets

Acquirer, to minimize any risk of loss of competitive potential for the Specialty Metals Product Business, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Specialty Metals Product Assets except for ordinary wear and tear.

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

- A. At any time after Respondents sign the Consent Agreement in this matter, the Commission may appoint an Interim Monitor to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by the Orders and the Remedial Agreements. The Commission may appoint one or more Interim Monitors to assure Respondents' compliance with the requirements of the Orders, and the related Remedial Agreements.
- B. The Commission shall select the Interim Monitor, subject to the consent of Respondent Carpenter, which consent shall not be unreasonably withheld. If Respondent Carpenter has not opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondent Carpenter of the identity of any proposed Interim Monitor, Respondents shall be deemed to have consented to the selection of the proposed Interim Monitor.
- C. Not later than ten (10) days after the appointment of the Interim Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondents' compliance with the relevant requirements of the Orders in a manner consistent with the purposes of the Orders.

Order to Maintain Assets

- D. If one or more Interim Monitors are appointed pursuant to this Paragraph or pursuant to the relevant provisions of the Decision and Order in this matter, Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of each Interim Monitor:
1. The Interim Monitor shall have the power and authority to monitor Respondents' compliance with the divestiture and asset maintenance obligations and related requirements of the Orders, and shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner consistent with the purposes of the Orders and in consultation with the Commission;
 2. The Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission; and
 3. The Interim Monitor shall serve until, the latter of:
 - a. the date of completion by Respondents of the divestiture of all Specialty Metal Product Assets and the delivery of the Manufacturing Technology and Product Intellectual Property in a manner that fully satisfies the requirements of this Order; and
 - b. with respect to each Specialty Metal Product, the date the Acquirer has obtained or achieved all Product Approvals and Specifications necessary to manufacture, market, import, export, and sell such Specialty Metal Product for use for aerospace applications and is able to manufacture such Specialty Metal Product in commercial quantities independently of Respondents;

provided, however, that the Interim Monitor's service shall not exceed five (5) years from the date the Decision and Order is issued;

Order to Maintain Assets

provided further, that the Commission may shorten or extend this period as may be necessary or appropriate to accomplish the purposes of the Orders.

- E. Subject to any demonstrated legally recognized privilege, the Interim Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to Respondents' compliance with their obligations under the Orders, including, but not limited to, their obligations related to the relevant assets. Respondents shall cooperate with any reasonable request of the Interim Monitor and shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondents' compliance with the Orders.
- F. The Interim Monitor shall serve, without bond or other security, at the expense of Respondents on such reasonable and customary terms and conditions as the Commission may set. The Interim Monitor shall have authority to employ, at the expense of the Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.
- G. Respondents shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations 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 gross negligence, willful or wanton acts, or bad faith by the Interim Monitor.

Order to Maintain Assets

- H. Respondent shall report to the Interim Monitor in accordance with the requirements of this Order to Maintain Assets and/or as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by Respondent, and any reports submitted by the Acquirer with respect to the performance of Respondent's obligations under the Orders or the Remedial Agreement(s). Within thirty (30) days from the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning performance by Respondent of its obligations under the Orders; *provided, however*, beginning ninety (90) days after Respondent has filed its final report pursuant to Paragraph VI.B. of the Decision and Order, and every ninety (90) days thereafter, the Interim Monitor shall report in writing to the Commission concerning progress by the Acquirer toward:
1. obtaining all of the relevant Product Approvals and Specifications necessary to manufacture in commercial quantities, the Specialty Metals Products independently of Respondents and;
 2. to secure sources of supply of the raw materials, inputs and components for the Specialty Metals Products from entities other than Respondents.
- I. Respondents may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement;
- provided, however*, that such agreement shall not restrict the Interim Monitor from providing any information to the Commission.
- J. The Commission may, among other things, require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate

Order to Maintain Assets

confidentiality agreement related to Commission materials and information received in connection with the performance of the Interim Monitor's duties.

- K. If the Commission determines that the Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided in this Paragraph or the relevant provisions of the Decision and Order in this matter.
- L. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders.
- M. The Interim Monitor appointed pursuant to this Order to Maintain Assets or the relevant provisions of the Decision and Order in this matter may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of the Decision and Order.

IV.

IT IS FURTHER ORDERED that within thirty (30) days after the date this Order to Maintain Assets is issued, and every thirty (30) days thereafter until Respondents have fully complied with their obligations under Paragraphs II.A., II.B., II.C. II.D., II.E., II.F. and II.H. of the Decision and Order, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order to Maintain Assets and the Decision and Order; *provided, however*, that, after the Decision and Order becomes final and effective, the reports due under this Order to Maintain Assets shall be consolidated with, and submitted to the Commission at the same time as, the reports required to be submitted by Respondents pursuant to Paragraph V of the Decision and Order.

Order to Maintain Assets

V.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to:

- A. any proposed dissolution of any Respondent;
- B. any proposed acquisition, merger or consolidation of any Respondent; or
- C. any other change in any Respondent including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order to Maintain Assets.

VI.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order to Maintain Assets, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to any Respondent made to its principal United States offices, registered office of its United States subsidiary, or its headquarters address, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. access, during business office hours of such 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 such Respondent related to compliance with this Order to Maintain Assets, which copying services shall be provided by such Respondent at the request of the authorized representative(s) of the Commission and at the expense of the Respondent; and
- B. to interview officers, directors, or employees of such Respondent, who may have counsel present, regarding such matters.

Decision and Order

VII.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate on the earlier of:

- A. Three (3) 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 latter of:
 - 1. the day after the divestiture of all of the Specialty Metals Product Assets, as required by and described in the Decision and Order, has been completed and each Interim Monitor, in consultation with Commission staff and the Acquirer, notifies the Commission that all assignments, conveyances, deliveries, grants, licenses, transactions, transfers and other transitions related to such divestitures are complete, or the Commission otherwise directs that this Order to Maintain Assets is terminated; or
 - 2. the day after the day the Decision and Order becomes final and effective.

By the Commission.

DECISION AND ORDER
[Redacted Public Version]

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Carpenter Technology Corporation (“Carpenter”) of 100 percent of the outstanding voting securities of Respondent Latrobe Specialty Metals, Inc. (“Latrobe”) from HHEP-Latrobe,

Decision and Order

L.P., and Respondents 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 that, if issued by the Commission, would charge Respondents 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

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders ("Consent Agreement"), containing an admission by Respondents 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 Respondents 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 Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Maintain Assets, 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, 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 the following Decision and Order ("Order"):

1. Respondent Carpenter Technology Corporation is a corporation organized, existing and doing business under and by virtue of the laws of State of Delaware, with its headquarters address located at 101 West Bern Street, Reading, Pennsylvania 19601.
2. Respondent Latrobe Specialty Metals, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its headquarters address at 2626

Decision and Order

Ligonier Street, Latrobe, Pennsylvania 15650. HHEP-Latrobe, L.P., the ultimate parent entity of Latrobe Specialty Metals, Inc., has its headquarters address at 100 Crescent Court, Suite 1200, Dallas, Texas 75201.

3. The Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER**I.**

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

- A. “Carpenter” means Carpenter Technology Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Carpenter (including, but not limited to, Hawke Acquisition Corp.) and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition, Carpenter shall include Latrobe.
- B. “Latrobe” means Latrobe Specialty Metals, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Latrobe, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. “Latrobe” also includes HHEP-Latrobe, L.P., the ultimate parent entity of Latrobe Specialty Metals, Inc.
- C. “Respondents” mean Carpenter and Latrobe, individually and collectively.
- D. “Commission” means the Federal Trade Commission.

Decision and Order

- E. “Acquirer” means the following:
1. a Person specified by name in this Order to acquire particular assets or rights that Respondents are required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order and that has been approved by the Commission to accomplish the requirements of this Order in connection with the Commission’s determination to make this Order final and effective; or
 2. a Person approved by the Commission to acquire particular assets or rights that Respondents are required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order.
- F. “Acquisition” means Respondent Carpenter’s acquisition of fifty percent (50%) or more of the voting securities of Respondent Latrobe. The Acquisition is contemplated by the Agreement and Plan of Merger, as amended, by and among Latrobe Specialty Metals, Inc., Carpenter Technology Corporation, Hawke Acquisition Corp., HHEP-Latrobe, L.P., and Watermill-Toolrock Partners, L.P. dated as of June 20, 2011, submitted to the Commission, pursuant to which Carpenter plans to acquire 100% of the outstanding voting securities of Latrobe from HHEP-Latrobe, L.P., with the transaction to be structured as the merger of Hawke Acquisition Corp., a wholly-owned subsidiary of Carpenter, with and into Latrobe, with Latrobe as the surviving entity.
- G. “Acquisition Date” means the day on which the Acquisition occurs.
- H. “Agency(ies)” means any government regulatory authority or authorities in the world responsible for granting approval(s), specifications(s), clearance(s), qualification(s), license(s), or permit(s) for any aspect of the research, Development, manufacture, marketing,

Decision and Order

distribution, or sale of a Specialty Metals Product. The term “Agency” includes, with out limitation, the United States Department of Defense.

- I. “Closing Date” means the date on which Respondent(s) (or a Divestiture Trustee) consummates a transaction to assign, grant, license, divest, transfer, deliver, or otherwise convey the Specialty Metal Product Assets and grants the Specialty Metal Product License to an Acquirer pursuant to this Order.
- J. “Confidential Business Information” means all information owned by, or in the possession or control of, Respondent Latrobe that is not in the public domain and that is directly related to the research, Development, manufacture, marketing, commercialization, importation, exportation, cost, supply, sales, sales support, or use of the Specialty Metal Product(s). The term “Confidential Business Information” *excludes* (i) information that is protected by the attorney work product, attorney-client, joint defense or other privilege prepared in connection with the Acquisition and relating to any United States, state, or foreign antitrust or competition Laws and (ii) information relating to Respondent Latrobe’s general business strategies or practices relating to research, Development, manufacture, marketing or sales of products that does not discuss with particularity the Specialty Metal Product(s).
- K. “Contract Manufacture” means:
 - 1. to manufacture, or to cause to be manufactured, a Contract Manufacture Product on behalf of an Acquirer; and/or
 - 2. to provide, or to cause to be provided, any part of the manufacturing process of a Contract Manufacture Product on behalf of an Acquirer.
- L. “Contract Manufacture Product(s)” means all raw materials, inputs, and components of a Specialty Metal

Decision and Order

Product, and/or any finished goods that are provided for resale as Specialty Metal Products.

- M. “Copyrights” means rights to all original works of authorship of any kind directly related to the Specialty Metal Product(s) and any registrations and applications for registrations thereof, including, but not limited to, the following: all such rights with respect to all promotional, marketing and advertising materials, educational and training materials for the sales force, and sales forecasting models; copyrights in all process development data and reports relating to the research and Development of the Specialty Metal Product(s) or of any materials used in the research, Development, manufacture, marketing or sale of the Specialty Metal Product(s), including copyrights in all raw data, statistical programs developed (or modified in a manner material to the use or function thereof (other than through user preferences)) to analyze research data, market research data, market intelligence reports and statistical programs (if any) used for marketing and sales research; all copyrights in customer information; all records relating to employees who accept employment with the Acquirer (excluding any personnel records the transfer of which is prohibited by applicable Law); all copyrights in records, including customer lists, sales force call activity reports, vendor lists, sales data, manufacturing records, manufacturing processes, and supplier lists; all copyrights in data contained in laboratory notebooks relating to the Specialty Metal Product(s); all copyrights in analytical and quality control data; and all correspondence with Agencies.
- N. “Current Operating Condition” means that, as of the date of delivery to the Acquirer, the equipment meets or exceeds all current operational, functional, productive and manufacturing capabilities required to manufacture the Specialty Metals Product and meets or exceeds all current U.S. Agency-approved

Decision and Order

protective workplace safety standards for the operation of such equipment by workers.

- O. “Development” means all research and development activities, including, without limitation, the following: test method development; formulation, including without limitation, customized formulation for a particular customer(s); mechanical properties testing; performance testing; safety testing; composition measurements; process development; manufacturing scale-up; development-stage manufacturing; quality assurance/quality control development; statistical analysis and report writing; and conducting experiments and other activities for the purpose of obtaining or achieving any and all Product Approvals and Specifications. “Develop” means to engage in Development.
- P. “Direct Cost” means a cost not to exceed the cost of labor, material, travel and other expenditures to the extent the costs are directly incurred to provide the relevant assistance or service. “Direct Cost” to the Acquirer for its use of any of Respondents’ employees’ labor shall not exceed the average hourly wage rate for such employee; *provided, however*, in each instance where: (1) an agreement to divest relevant assets is specifically referenced and attached to this Order, and (2) such agreement becomes a Remedial Agreement for a Specialty Metal Product, “Direct Cost” means such cost as is provided in such Remedial Agreement for that Specialty Metal Product.
- Q. “Divestiture Trustee” means the trustee appointed by the Commission pursuant to the relevant provisions of this Order.
- R. “Employee Information” means the following, for each Specialty Metal Product Core Employee, as and to the extent permitted by the Law:
 - 1. a complete and accurate list containing the name of each relevant employee (including former

Decision and Order

employees who were employed by Respondent Latrobe within ninety (90) days of the execution date of any Remedial Agreement); and

2. with respect to each such employee, the following information:
 - a. the date of hire and effective service date;
 - b. job title or position held;
 - c. a specific description of the employee's responsibilities related to the relevant Specialty Metal Product;
 - d. the base salary or current wages;
 - e. the most recent bonus paid, aggregate annual compensation for Respondents' last fiscal year and current target or guaranteed bonus, if any;
 - f. employment status (*i.e.*, active or on leave or disability; full-time or part-time); and
 - g. any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees.
- S. "Eramet" means Eramet, S.A., a corporation organized, existing, and doing business under and by virtue of the laws of the French Republic, with its offices and principal place of business located at 33 avenue du Maine, 75015 Paris France. Eramet is a group of companies that includes Aubert & Duval, Erasteel Company, and Brown Europe.
- T. "Government Entity" means any Federal, state, local or non-U.S. government, or any court, legislature, government agency, or government commission, or any judicial or regulatory authority of any government.

Decision and Order

- U. “High Volume Account(s)” means any customer of Respondent Latrobe whose annual and/or projected annual aggregate purchase amounts (on a company-wide level), in units or in dollars, of a Specialty Metal Product from Respondent Latrobe was, is, or is projected to be, among the top ten highest of such purchase amounts by Respondent Latrobe’s customers on each of the following dates: (1) the end of the last quarter that immediately preceded the date of the public announcement of the proposed Acquisition, *i.e.*, June 20, 2011; (2) the end of the last year that immediately preceded the Acquisition Date; (3) the end of the last quarter that immediately preceded the Closing Date for the Specialty Metal Product Assets; or 4) the end of the last quarter following the Acquisition and/or the Closing Date.
- V. “Interim Monitor” means any monitor appointed pursuant to Paragraph III of this Order or Paragraph III of the related Order to Maintain Assets.
- W. “Law” means all laws, statutes, rules, regulations, ordinances, and other pronouncements by any Government Entity having the effect of law.
- X. “Manufacturing Employees” means all salaried or skilled-labor employees of Respondent Latrobe who have directly participated in the planning, design, implementation, use, or operational management of the Manufacturing Technology (irrespective of the portion of working time involved unless such participation consisted solely of oversight of legal, accounting, tax or financial compliance) within the five (5) year period immediately prior to the Closing Date; *provided, however*, in each instance where: (i) an agreement to divest relevant assets is specifically referenced and attached to this Order, and (ii) such agreement becomes a Remedial Agreement for the Specialty Metal Products, “Manufacturing Employees” means the specific individuals identified as “Manufacturing Employees” in such Remedial Agreement.

Decision and Order

- Y. “Manufacturing Technology” means all technology, trade secrets, know-how, and proprietary information (whether patented, patentable or otherwise) used at any time within the five (5) year period immediately preceding the Closing Date by Respondent Latrobe to manufacture each Specialty Metal Product, including, but not limited to, the following:
1. product specifications, including without limitation, the exact combination and proportion of metals, other agents, reactive diluents and other components that achieves a particular set of application and end-use characteristics (*e.g.*, shear strength, tensile strength, yield strength) in a final Specialty Metals Product;
 2. processes, including without limitation, aging, annealing, bump pressing, cold drawing, cutting, grinding, pickling, quenching, shot blasting, solutionizing, and swaging;
 3. standard operating procedures;
 4. product designs and design protocols;
 5. plans, ideas, and concepts;
 6. repair and performance records related to the Specialty Metal Product Equipment for the two (2) year period immediately preceding the Closing Date;
 7. records related to the protective workplace safety standards related to the Specialty Metal Product Equipment for the two (2) year period immediately preceding the Closing Date;
 8. safety procedures for handling of materials and substances;
 9. flow diagrams;
 10. quality assurance and control procedures;

Decision and Order

11. research records;
12. annual product reviews;
13. manuals and technical information provided to employees, customers, suppliers, agents or licensees including, without limitation, manufacturing, equipment, and engineering manuals and drawings;
14. audits of manufacturing methods for Specialty Metal Products conducted by all of the following:
 - a. applicable United States' Agencies;
 - b. non-governmental Persons that provide audits and certifications of management systems and/or manufacturing processes and product assessments and certifications related to the use of metals or metal alloys for applications in the aerospace industry (*e.g.*, National Aerospace and Defense Contractors Accreditation Program, Performance Review Institute, and American Society for Testing Materials);
 - c. direct purchasers of Specialty Metal Products that use the Specialty Metal Products to manufacture products (*e.g.*, aerospace fasteners) for aerospace applications; and
 - d. end-users of products for aerospace applications that are made from Specialty Metal Products (*e.g.*, manufacturers of United States' military aircraft and components, jet aircraft, jet aircraft landing gear, or jet engines);
15. control history;
16. labeling;
17. supplier lists;

Decision and Order

18. chemical descriptions and specifications of, all raw materials inputs, components, and ingredients related to the Specialty Metal Products; and
 19. all other information related to the manufacturing process.
- Z. “Marketing and Business Development Employees” means all management-level employees of Respondent Latrobe who directly have participated (irrespective of the portion of working time involved) in the marketing, contracting, pricing or promotion of the Specialty Metal Products to customers within the two (2) year period immediately prior to the Closing Date. These employees include, without limitation, all management-level employees having any responsibilities in the areas of sales management, brand management, sales training, market research, business development, and specialty metal alloy markets for use in Aerospace applications, but *excludes* administrative assistants; *provided, however*, in each instance where: (i) an agreement to divest relevant assets is specifically referenced and attached to this Order, and (ii) such agreement becomes a Remedial Agreement for the Specialty Metal Products, “Marketing and Business Development Employees” means the specific individuals identified as “Marketing and Business Development Employees” in such Remedial Agreement.
- AA. “Marketing Materials” means all marketing materials used specifically in the marketing or sale of a Specialty Metal Product(s) prior to and as of the Closing Date, including, without limitation, all advertising materials, training materials, product data, mailing lists, sales materials (*e.g.*, sales call reports, vendor lists, sales data), marketing information (*e.g.*, competitor information, research data, market intelligence reports, statistical programs (if any) used for marketing and sales research), customer information (including customer net purchases information to be provided on the basis of either

Decision and Order

dollars and/or units for each month, quarter or year), sales forecasting models, educational materials, and advertising and display materials, speaker lists, promotional and marketing materials, Website content and advertising and display materials, video masters and other similar materials related to the Specialty Metal Product(s). The term “Marketing Materials” *excludes* documents relating to the Respondents’ general business strategies or practices relating to the marketing or sales of specialty metal alloys, where such documents do not discuss with particularity the Specialty Metal Products.

- BB. “MP35N Product(s)” means an alloy with a nominal chemical composition of 35 percent Nickel, 35 percent Cobalt, 20 percent Chromium, and 10 percent Molybdenum and that meets the following Aerospace Materials Specifications: AMS 5758 (solution heat treated and centerless ground bars); AMS 5844 (solution heat treated and cold drawn bars); AMS 5845 (solution heat treated, cold drawn and aged bars); and/or, AMS 7468 (bolts, screws, forged head, roll threaded after aging).
- CC. “MP 159 Product(s)” means an alloy with a nominal chemical composition of 25.5 percent Nickel, 35.7 percent Cobalt, 19.0 percent Chromium, 9.0 percent Iron, 7.0 percent Molybdenum, 3.0 percent Titanium, 0.6 percent Columbium (Niobium), and 0.2 percent Aluminum and that meets the following Aerospace Materials Specifications: AMS 5841, AMS 5842; and/or AMS 5843.
- DD. “Order Date” means the date on which this Decision and Order becomes final and effective.
- EE. “Order to Maintain Assets” means the Order to Maintain Assets incorporated into and made a part of the Agreement Containing Consent Orders.
- FF. “Patents” means all patents, patent applications, including provisional patent applications, invention

Decision and Order

disclosures, certificates of invention and applications for certificates of invention and statutory invention registrations, in each case existing as of the Closing Date (*except* where this Order specifies a different time), and includes all reissues, additions, divisions, continuations, continuations-in-part, supplementary protection certificates, extensions and reexaminations thereof, all inventions disclosed therein, and all rights therein provided by international treaties and conventions, related to any product of or owned by Respondents as of the Closing Date (*except* where this Order specifies a different time).

- GG. “Person” means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, or other business or Government Entity, and any subsidiaries, divisions, groups or affiliates thereof.
- HH. “Product Approval(s) and Specification(s)” means the approvals, specifications, certifications, registrations, permits, licenses, consents, authorizations, and other approvals, and pending applications and requests therefor, related to the research, Development, manufacture, distribution, finishing, packaging, marketing, sale, storage or transport of the Specialty Metals Products that have been adopted or required as of the Closing Date by the following:
1. applicable Agencies;
 2. non-governmental Persons that provide audits and certifications of management systems and/or manufacturing processes and product assessments and certifications related to the use of metals or metal alloys for applications in the aerospace industry (*e.g.*, National Aerospace and Defense Contractors Accreditation Program, Performance Review Institute, and American Society for Testing Materials);

Decision and Order

3. direct purchasers of Specialty Metal Products that use the Specialty Metal Products to manufacture products (*e.g.*, aerospace fasteners) for aerospace applications; and
 4. end-users of products for aerospace applications that are made from Specialty Metal Products (*e.g.*, manufacturers of United States military aircraft and components, jet aircraft, jet aircraft landing gear, or jet engines).
- II. “Product Assumed Contracts” means all of the following contracts or agreements (copies of each such contract to be provided to the Acquirer on or before the Closing Date and segregated in a manner that clearly identifies the purpose(s) of each such contract):
1. that make specific reference to any Specialty Metal Product and pursuant to which any Third Party purchases, or has the option to purchase, any Specialty Metal Product from Respondent Latrobe;
 2. relating to any experiments, audits, or scientific studies involving any Specialty Metal Product;
 3. with universities or other research institutions for the use of any Specialty Metal Product in scientific research;
 4. relating to the particularized marketing of any Specialty Metal Product or educational matters relating solely to any Specialty Metal Product;
 5. pursuant to which a Third Party provides the Manufacturing Technology related to any Specialty Metal Product to Respondent Latrobe;
 6. pursuant to which a Third Party is licensed by Respondent Latrobe to use the Manufacturing Technology;

Decision and Order

7. constituting confidentiality agreements involving any Specialty Metal Product;
8. involving any royalty, licensing, or similar arrangement involving any Specialty Metal Product;
9. pursuant to which a Third Party provides any specialized services necessary to the research, Development, manufacture or distribution of the Specialty Metal Products to Respondent Latrobe including, but not limited to, consultation arrangements;
10. pursuant to which any Third Party collaborates with Respondent Latrobe in the performance of research, Development, marketing, distribution or selling of any Specialty Metal Product or the business associated with the Specialty Metal Products; and/or

provided, however, that where any such contract or agreement also relates to a Retained Product(s), Respondent Latrobe shall assign the Acquirer all such rights under the contract or agreement as are related to the Specialty Metal Product(s), but concurrently may retain similar rights for the purposes of the Retained Product(s).

JJ. “Product Intellectual Property” means all of the following related to each Specialty Metal Product:

1. Patents;
2. Copyrights;
3. Software;
4. trade secrets, know-how, utility models, design rights, techniques, data, inventions, practices, recipes, raw material specifications, process descriptions, quality control methods in process

Decision and Order

and in final Specialty Metal Products, protocols, methods and other confidential or proprietary technical, business, research, Development and other information, and all rights in any jurisdiction to limit the use or disclosure thereof;

5. rights to obtain and file for patents and copyrights and registrations thereof; and
6. rights to sue and recover damages or obtain injunctive relief for infringement, dilution, misappropriation, violation or breach of any of the foregoing;

provided, however, Product Intellectual Property expressly includes all customer specific product formulations for Specialty Metal Products that are owned, licensed, or in the possession of, Respondent Latrobe, licenses from customers related to the manufacture of products for that specific customer, and all proprietary and/or trade secret information related to a particular customer that are owned, licensed, or in the possession of, Respondent Latrobe;

provided further, however, “Product Intellectual Property” *excludes* Product Trademarks.

- KK. “Product Trademark(s)” means all proprietary names or designations, trademarks, service marks, trade names, and brand names, including registrations and applications for registration therefor (and all renewals, modifications, and extensions thereof) and all common law rights, and the goodwill symbolized thereby and associated therewith, for the Specialty Metal Product(s);

provided, however, “Product Trademark(s)” does not include the corporate names or corporate trade dress of “Carpenter” or “Latrobe” or the related corporate logos thereof, or the corporate names or corporate trade dress of any other corporations or companies owned or controlled by the Respondents or the related

Decision and Order

corporate logos thereof, or general registered images or symbols by which either Carpenter or Latrobe can be identified or defined.

- LL. “Proposed Acquirer” means an entity proposed by Respondents (or a Divestiture Trustee) to the Commission and submitted for the approval of the Commission to become the Acquirer of particular assets required to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed by Respondents pursuant to this Order.
- MM. “Remedial Agreement(s)” means the following:
1. any agreement between Respondents and an Acquirer that is specifically referenced and attached to this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets or rights to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and that has been approved by the Commission to accomplish the requirements of the Order in connection with the Commission’s determination to make this Order final and effective;
 2. any agreement between Respondents and a Third Party to effect the assignment of assets or rights of Respondents related to a Specialty Metal Product to the benefit of an Acquirer that is specifically referenced and attached to this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, that has been approved by the Commission to accomplish the requirements of the Order in connection with the Commission’s determination to make this Order final and effective;
 3. any agreement between Respondents and an Acquirer (or between a Divestiture Trustee and an Acquirer) that has been approved by the Commission to accomplish the requirements of this

Decision and Order

Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets or rights to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and that has been approved by the Commission to accomplish the requirements of this Order; and/or

4. any agreement between Respondents and a Third Party to effect the assignment of assets or rights of Respondents related to a Specialty Metal Product to the benefit of an Acquirer that has been approved by the Commission to accomplish the requirements of this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto.

NN. “Research and Development Employees” means all salaried or skilled-labor employees of Respondent Latrobe who directly have participated in the research, Development, or process to obtain or achieve Product Approvals and Specifications for the Specialty Metal Products (irrespective of the portion of working time involved, unless such participation consisted solely of oversight of legal, accounting, tax or financial compliance) within the five (5) year period immediately prior to the Closing Date; *provided, however*, in each instance where: (i) an agreement to divest relevant assets is specifically referenced and attached to this Order, and (ii) such agreement becomes a Remedial Agreement for the Specialty Metal Products, “Research and Development Employees” means the specific individuals identified as “Research and Development Employees” in such Remedial Agreement.

OO. “Research and Development Records” means all research and development records relating to Specialty Metal Products including, but not limited to:

1. inventory of research and development records, research history, research efforts, research

Decision and Order

notebooks, research reports, technical service reports, testing methods, invention disclosures, and know how related to the Specialty Metal Products;

2. all correspondence, submissions, notifications, communications, registrations or other filings made to, received from or otherwise conducted with (i) Agencies and (ii) non-governmental Persons that provide audits and certifications of management systems and/or manufacturing processes and product assessments and certifications (e.g., National Aerospace and Defense Contractors Accreditation Program, Performance Review Institute, and American Society for Testing Materials) relating to Product Approval(s) and Specification(s) submitted by, on behalf of, or acquired by, Respondent Latrobe related to the Specialty Metal Products;
3. designs of experiments, and the results of successful and unsuccessful designs and experiments;
4. annual and periodic reports (both internal and external) related to the above-described Product Approval(s) and Specification(s);
5. currently used product usage instructions related to the Specialty Metal Products;
6. reports relating to the protection of human safety and health related to the manufacture or use of the Specialty Metal Products;
7. reports relating to the protection of the environment related to the manufacture or use of the Specialty Metal Products;
8. summary of performance reports, safety reports, and product complaints from customers related to the Specialty Metal Products; and

Decision and Order

9. product recall reports filed with any Agency related to the Specialty Metal Products.
- PP. “Retained Product(s)” means any product(s) that is not a Specialty Metals Product.
- QQ. “Sales Employee(s)” means all employees of Respondent Latrobe who directly have participated (irrespective of the portion of working time involved) in the marketing or promotion of the Specialty Metal Product(s) directly to customers within the three (3) year period immediately prior to the Closing Date. This includes employees trained to perform such sales activity for a Specialty Metal Product within the three (3) year period immediately prior to the Closing Date, *provided, however*, in each instance where: (i) an agreement to divest relevant assets is specifically referenced and attached to this Order, and (ii) such agreement becomes a Remedial Agreement for the Specialty Metal Products, “Sales Employees” means the specific individuals identified as “Sales Employees” in such Remedial Agreement.
- RR. “Software” means computer programs related to the Specialty Metal Product(s), 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 of the foregoing and the content and information contained on any Website; *provided, however*, that “Software” does not include software that is readily purchasable or licensable from sources other than the Respondents and which has not been modified in a manner material to the use or function thereof (other than through user preference settings).
- SS. “Specialty Metal Products” means the MP35N Products and the MP159 Products Developed, in Development, researched, manufactured, marketed or

Decision and Order

sold by Respondent Latrobe for use in aerospace applications at any time prior to the Acquisition.

TT. “Specialty Metal Product Assets” means all of Respondent Latrobe’s rights, title and interest in and to all assets related to Respondent Latrobe’s business within the United States of America related to each of the Specialty Metal Products to the extent legally transferable, including the research, Development, manufacture, distribution, marketing, and sale of each Specialty Metal Product, including, without limitation, the following:

1. copies of all Research and Development Records;
2. at the Acquirer’s option, all Product Assumed Contracts related to the Specialty Metal Product(s) (copies to be provided to the Acquirer on or before the Closing Date);
3. a list of all customers and/or targeted customers for the Specialty Metal Product(s) and the net sales (in either units or dollars) of the Specialty Metal Products to such customers on either an annual, quarterly, or monthly basis including, but not limited to, a separate list specifying the above-described information for the High Volume Accounts and including the name of the employee(s) for each High Volume Account that is or has been responsible for the purchase of the Specialty Metal Products on behalf of the High Volume Account and his or her business contact information;
4. at the Acquirer’s option and to the extent approved by the Commission in the relevant Remedial Agreement, all inventory in existence as of the Closing Date, including, but not limited to, raw materials, supplies, operating materials, work-in-process, and finished goods, and other items of inventory related to the Specialty Metal Product(s);

Decision and Order

5. copies of all unfilled customer purchase orders for the Specialty Metal Product(s) as of the Closing Date, to be provided to the Acquirer not later than two (2) days after the Closing Date;
6. at the Acquirer's option, subject to any rights of the customer, all unfilled customer purchase orders for the Specialty Metal Products;
7. the Specialty Metal Product Equipment; and
8. copies of all of the Respondent Latrobe's books and records, customer files, customer lists and records, vendor files, vendor lists and records, cost files and records, credit information, distribution records, business records and plans, studies, surveys, and files related to the foregoing or to the Specialty Metal Product(s);

provided however, "Specialty Metal Product Assets" *excludes* (1) documents relating to the Respondent Latrobe's general business strategies or practices relating to research, Development, manufacture, marketing or sales of specialty metal alloys, where such documents do not discuss with particularity the Specialty Metal Products; (2) administrative, financial, and accounting records; (3) quality control records that are determined not to be material to the manufacture of the Specialty Metal Products by the Interim Monitor or the Acquirer of the Specialty Metal Products; and (4) any real estate and the buildings and other permanent structures located on such real estate.

- UU. "Specialty Metal Product Core Employees" means the Manufacturing Employees, Marketing and Business Development Employees, the Research and Development Employees, and the Sales Employees.
- VV. "Specialty Metal Product Divestiture Agreements" means the following agreements:

Decision and Order

1. “Product Line Purchase Agreement” by and between Carpenter Technology Corporation, Latrobe Specialty Metals, and Eramet, S.A., dated as of February 16, 2012, and all amendments, exhibits, attachments, agreements, and schedules thereto;
2. “Supply Agreement” by and between Carpenter Technology Corporation, Latrobe Specialty Metals, and Eramet, S.A., dated as of February 16, 2012, and all amendments, exhibits, attachments, agreements, and schedules thereto; and
3. “Consulting Agreement” by and between Carpenter Technology Corporation, Latrobe Specialty Metals, and Eramet, S.A., dated as of February 16, 2012, and all amendments, exhibits, attachments, agreements, and schedules thereto;

each related to the Specialty Metal Product Assets that have been approved by the Commission to accomplish the requirements of this Order. The Specialty Metal Product Divestiture Agreements are attached to this Order and contained in non-public Appendix A.

- WW. “Specialty Metal Product Equipment” means all equipment listed as “Purchased Assets” in the “Specialty Metal Product Divestiture Agreements” in Non-Public Appendix A, including, without limitation, draw benches, dies and other ancillary finishing equipment.
- XX. “Specialty Metal Product License” means a perpetual, non-exclusive, fully paid-up and royalty-free license(s) with rights to sublicense to all of Respondent Latrobe’s rights, title and interest in, the following:
1. all Product Intellectual Property related to the Specialty Metal Product(s);
 2. all Product Approvals and Specifications related to the Specialty Metal Product(s);

Decision and Order

3. all Manufacturing Technology related to the Specialty Metal Product(s);
4. all Marketing Materials related to the Specialty Metal Product(s); and
5. all Product Development Reports related to the Specialty Metal Product(s);

to the extent legally transferable by license, and, including, without limitation, rights to copies of all of the Respondent Latrobe's books and records related to the foregoing.

YY. "Specialty Metal Product Releasee(s)" means the Acquirer or any entity controlled by or under common control with the Acquirer, or any licensees, sublicensees, manufacturers, suppliers, distributors, and customers of the Acquirer, or of the Acquirer-affiliated entities.

ZZ. "Supply Cost" means a cost not to exceed the manufacturer's average direct per unit cost in United States dollars of manufacturing the Specialty Metal Product, or raw material or ingredients related to a Specialty Metal Product, for the twelve (12) month period immediately preceding the Acquisition Date. "Supply Cost" shall expressly exclude any intracompany business transfer profit; *provided, however*, that in each instance where: (1) an agreement to Contract Manufacture is specifically referenced and attached to this Order, and (2) such agreement becomes a Remedial Agreement for a Specialty Metal Product, "Supply Cost" means the cost as specified in such Remedial Agreement for that Specialty Metal Product.

AAA. "Third Party(ies)" means any non-governmental Person other than the following: the Respondent; or, the Acquirer of particular assets or rights pursuant to this Order.

Decision and Order

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

- A. Not later than the earlier of: (i) ten (10) days after the Acquisition Date or (ii) ten (10) days after the Order Date, Respondents shall divest the Specialty Metal Product Assets and grant the Specialty Metal Product License, absolutely and in good faith, to Eramet pursuant to, and in accordance with, the Specialty Metal Product Divestiture Agreements (which agreements shall not limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that this Order shall not be construed to reduce any rights or benefits of Eramet or to reduce any obligations of Respondents under such agreements), and each such agreement, if it becomes a Remedial Agreement related to the Specialty Metal Product Assets, is incorporated by reference into this Order and made a part hereof;

provided, however, that if Respondents have divested the Specialty Metal Product Assets and granted the Special Metal Product License to Eramet prior to the Order Date, and if, at the time the Commission determines to make this Order final and effective, the Commission notifies Respondents that Eramet is not an acceptable purchaser of the Specialty Metal Product Assets then Respondents shall immediately rescind the transaction with Eramet, in whole or in part, as directed by the Commission, and shall divest the Specialty Metal Product Assets and grant the Specialty Metal Product License, within one hundred eighty (180) days from the Order Date, absolutely and in good faith, at no minimum price, to an Acquirer and only in a manner that receives the prior approval of the Commission;

provided further, that if Respondents have divested the Specialty Metal Product Assets and granted the Specialty Metal Product License to Eramet prior to the Order Date, and if, at the time the Commission

Decision and Order

determines to make this Order final and effective, the Commission notifies Respondents that the manner in which the divestiture or grant of license was accomplished is not acceptable, the Commission may direct Respondents, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture of the Specialty Metal Product Assets or grant of the Specialty Metal Product License to Eramet (including, but not limited to, entering into additional agreements or arrangements) as the Commission may determine are necessary to satisfy the requirements of this Order.

- B. Prior to the Acquisition Date, and as a condition precedent to the consummation of the Acquisition, Respondents shall secure all consents and waivers from all Third Parties that are necessary to permit Respondents to divest the Specialty Metal Product Assets and grant the Specialty Metals Product License to the Acquirer, and/or to permit the Acquirer to continue the research, Development, manufacture, sale, marketing or distribution of the Specialty Metal Products;

provided, however, Respondents may satisfy this requirement by certifying that the Acquirer has executed all such agreements directly with each of the relevant Third Parties.

- C. Respondents shall:
1. deliver the Specialty Metals Product Equipment to the Acquirer in Current Operating Condition; *provided however,* that, subject to the consent of the Acquirer on a piece-by-piece basis, Respondents, at Respondents' own expense, may substitute equipment in Current Operating Condition that:
 - a. is suitable for the same use as the particular piece of Specialty Metals Product Equipment

Decision and Order

that is the subject of the proposed substitution;
and

b. meets or exceeds the operational, functional, productive and manufacturing capabilities of the particular piece of the Specialty Metals Product Equipment that is the subject of the proposed substitution; and

2. at the Acquirer's option, provide such technical assistance as is necessary to integrate the Specialty Metals Product Equipment (or any equipment substituted pursuant to Paragraph II.C.1) into the Acquirer's facility for use in the manufacture of Specialty Metals Products.

D. Respondents shall provide the Manufacturing Technology to the Acquirer in an organized, comprehensive, complete, useful, timely, and meaningful manner. Respondents shall, *inter alia*:

1. designate employees of Respondents knowledgeable with respect to such Manufacturing Technology to a committee for the purposes of communicating directly with the Acquirer and the Interim Monitor (if any has been appointed) for the purposes of effecting such delivery;
2. prepare technology transfer protocols and transfer acceptance criteria for both the processes and analytical methods related to the Specialty Metal Products, such protocols and acceptance criteria to be subject to the approval of the Acquirer;
3. prepare and implement a detailed technological transfer plan that contains, *inter alia*, the delivery of all relevant information, all appropriate documentation, all other materials, and projected time lines for the delivery of all Manufacturing Technology to the Acquirer; and

Decision and Order

4. upon reasonable written notice and request from the Acquirer to Respondents, provide in a timely manner, at no greater than Direct Cost, assistance and advice to enable the Acquirer to:
 - a. manufacture the Specialty Metal Products in the same quality achieved by Respondent Latrobe and in commercial quantities;
 - b. obtain or achieve any Product Approvals and Specifications necessary for the Acquirer to manufacture, sell, market or distribute the Specialty Metal Products; and
 - c. receive, integrate, and use such Manufacturing Technology.

E. Respondents shall:

1. Contract Manufacture and deliver to the Acquirer, in a timely manner and under reasonable terms and conditions, a supply of each of the Contract Manufacture Products at Respondents' Supply Cost, for a period of time sufficient to allow the Acquirer to:
 - a. obtain or achieve all of the relevant Product Approvals and Specifications necessary to manufacture and sell in commercial quantities, the Contract Manufacture Products independently of Respondents; and
 - b. to secure sources of supply of the raw materials, inputs and components for the Contract Manufacture Products from entities other than Respondents;
2. make representations and warranties to the Acquirer that the Contract Manufacture Product(s) supplied through Contract Manufacture pursuant to a Remedial Agreement meets the relevant

Decision and Order

Aerospace Material Specifications and the relevant customer specifications for Aerospace use;

3. for the Contract Manufacture Products supplied by Respondents, Respondents shall agree to indemnify, defend and hold the Acquirer harmless from any and all suits, claims, actions, demands, liabilities, expenses or losses alleged to result from the failure of the Contract Manufacture Products supplied by Respondents to the Acquirer to meet all relevant Product Approvals and Specifications. This obligation may be made contingent upon the Acquirer giving Respondents prompt, adequate notice of such claim and cooperating fully in the defense of such claim. The Remedial Agreement to Contract Manufacture shall be consistent with the obligations assumed by Respondents under this Order; *provided, however*, that Respondents may reserve the right to control the defense of any such litigation, including the right to settle the litigation, so long as such settlement is consistent with Respondents' responsibilities to supply the Contract Manufacture Products in the manner required by this Order; *provided further*, that this obligation shall not require Respondents to be liable for any negligent act or omission of the Acquirer or for any representations and warranties, express or implied, made by the Acquirer that exceed the representations and warranties made by Respondents to the Acquirer;
4. make representations and warranties to the Acquirer that Respondents shall hold harmless and indemnify the Acquirer for any liabilities or loss of profits resulting from the failure by Respondents to deliver the Contract Manufacture Products in a timely manner as required by the Remedial Agreement to Contract Manufacture unless Respondents can demonstrate that their failure was entirely beyond the control of Respondents and in

Decision and Order

no part the result of negligence or willful misconduct by Respondents;

5. during the term of the Remedial Agreement to Contract Manufacture, upon request of the Acquirer or Interim Monitor (if any has been appointed), make available to the Acquirer and the Interim Monitor (if any has been appointed) all records that relate to the manufacture, storage, or transport of the Contract Manufacture Products that are generated or created after the Closing Date;
6. during the term of the Remedial Agreement to Contract Manufacture, maintain manufacturing facilities necessary to manufacture each of the Contract Manufacture Products; and
7. during the term of the Remedial Agreement to Contract Manufacture, provide consultation with knowledgeable employees of Respondents and training, at the request of the Acquirer and at a facility chosen by the Acquirer, for the purposes of enabling the Acquirer to obtain or achieve all Product Approvals and Specifications to manufacture Specialty Metal Products in the same quality achieved by the Respondent Latrobe and in commercial quantities, and in a manner consistent with the relevant customer specifications for Aerospace use, independently of Respondents, and sufficient to satisfy management of the Acquirer that its personnel are adequately trained in the manufacture of Specialty Metal Products.

The foregoing provisions, II.E.1. - 7., shall remain in effect with respect to each Contract Manufacture Product until the earliest of the following dates: (i) the date eighteen (18) months from the date that the Respondent completes delivery of all pieces of the Specialty Metals Product Equipment to the Acquirer in a manner consistent with this Order; or (ii) the date three (3) years from the Order Date.

Decision and Order

- F. Respondents shall:
1. submit to the Acquirer, at Respondents' expense, copies of all Confidential Business Information;
 2. deliver copies of the Confidential Business Information as follows:
 - a. in good faith;
 - b. in a timely manner, *i.e.*, as soon as practicable, avoiding any delays in transmission of the respective information; and
 - c. in a manner that ensures its completeness and accuracy and that fully preserves its usefulness; and
 3. pending complete delivery of copies of all Confidential Business Information to the Acquirer, provide the Acquirer and the Interim Monitor (if any has been appointed) with access to all such Confidential Business Information and employees who possess or are able to locate such information for the purposes of identifying the books, records, and files directly related to the Specialty Metal Products that contain such Confidential Business Information and facilitating the delivery in a manner consistent with this Order.
- G. Respondents shall not enforce any agreement against a Third Party or the Acquirer to the extent that such agreement may limit or otherwise impair the ability of the Acquirer to acquire the Manufacturing Technology, Product Intellectual Property or Product Trademarks, related to the relevant Specialty Metal Product(s) from the Third Party. Such agreements include, but are not limited to, agreements with respect to the disclosure of Confidential Business Information related to such Manufacturing Technology or Product Intellectual Property.

Decision and Order

- H. Not later than ten (10) days after the Closing Date, Respondents shall grant a release to each Third Party that is subject to an agreement as described in Paragraph II.G. that allows the Third Party to provide the relevant Manufacturing Technology or Product Intellectual Property to the Acquirer. Within five (5) days of the execution of each such release, Respondents shall provide a copy of the release to the Acquirer for the relevant assets.
- I. Respondents shall:
1. for each Specialty Metal Product, for a period of at least eighteen (18) months from the Closing Date, provide the Acquirer with the opportunity to enter into employment contracts with the Specialty Metal Product Core Employees. Each of these periods is hereinafter referred to as the “Specialty Metal Product Core Employee Access Period(s)”;
 2. not later than the earlier of the following dates: (1) ten (10) days after notice by staff of the Commission to Respondents to provide the Product Employee Information; or (2) ten (10) days after the Closing Date, provide the Acquirer or the Proposed Acquirer with the Product Employee Information related to the Specialty Metal Product Core Employees. Failure by Respondents to provide the Product Employee Information for any Specialty Metal Product Core Employee within the time provided herein shall extend the Specialty Metal Product Core Employee Access Period(s) with respect to that employee in an amount equal to the delay; and
 3. during the Specialty Metal Product Core Employee Access Period(s), not interfere with the hiring or employing by the Acquirer of the Specialty Metal Product Core Employees related to the particular Specialty Metal Products and assets acquired by the Acquirer, and remove any impediments within the control of Respondents that may deter these

Decision and Order

employees from accepting employment with the Acquirer, including, but not limited to, any noncompete or nondisclosure provision of employment with respect to a Specialty Metal Product or other contracts with Respondents that would affect the ability or incentive of those individuals to be employed by the Acquirer. In addition, Respondents shall not make any counteroffer to such a Specialty Metal Product Core Employee who has received a written offer of employment from the Acquirer;

provided, however, that, subject to the conditions of continued employment prescribed in this Order, this Paragraph II.I.3. shall not prohibit Respondents from continuing to employ any Specialty Metal Product Core Employee under the terms of such employee's employment with Respondents prior to the date of the written offer of employment from the Acquirer to such employee.

- J. Until Respondents complete the divestiture and grant of license required by Paragraph II.A., deliver the Specialty Metals Product Equipment to the Acquirer and provide the Manufacturing Technology to the Acquirer,
1. Respondents shall take such actions as are necessary to:
 - a. maintain the full economic viability and marketability of the businesses associated with each Specialty Metal Product;
 - b. minimize any risk of loss of competitive potential for such business;
 - c. prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets related to each Specialty Metal Product;

Decision and Order

- d. ensure the Specialty Metal Product Assets are delivered to the Acquirer in a manner without disruption, delay, or impairment of the Product Approval and Specification processes related to the business associated with each Specialty Metal Product;
 - e. ensure the completeness of the delivery of the Manufacturing Technology; and
2. Respondents shall not sell, transfer, encumber or otherwise impair the Specialty Metal Product Assets (other than in the manner prescribed in this Order) nor take any action that lessens the full economic viability, marketability, or competitiveness of the businesses associated with each Specialty Metal Product.
- K. Respondents shall not join, file, prosecute or maintain any suit, in law or equity, against the Acquirer or the Specialty Metal Product Releasee(s) for the research, Development, manufacture, use, import, export, distribution, or sale of the Specialty Metal Product(s) under the following:
1. any Patent owned or licensed by Respondents as of the Acquisition Date that claims a method of making, using, or a composition of matter, relating to a Specialty Metal Product;
 2. any Patent owned or licensed at any time after the Acquisition Date by Respondents that claim any aspect of the research, Development, manufacture, use, import, export, distribution, or sale of a Specialty Metal Product, other than such Patents that claim inventions conceived by and reduced to practice after the Acquisition Date;
- if such suit would have the potential to interfere with the Acquirer's freedom to practice the following: (1) the research, Development, or manufacture of a particular Specialty Metal Product; or (2) the use

Decision and Order

within, import into, export from, or the supply, distribution, or sale within, the United States of a particular Specialty Metal Product. Respondents shall also covenant to the Acquirer that as a condition of any assignment, transfer, or license to a Third Party of the above-described Patents, the Third Party shall agree to provide a covenant whereby the Third Party covenants not to sue the Acquirer or the related Specialty Metal Product Releasee(s) under such Patents, if the suit would have the potential to interfere with the Acquirer's freedom to practice the following: (1) the research, Development, or manufacture of a particular Specialty Metal Product; or (2) the use within, import into, export from, or the supply, distribution, or sale within, the United States of a particular Specialty Metal Product.

- L. Upon reasonable written notice and request from an Acquirer to Respondent, Respondent shall provide, in a timely manner, at no greater than Direct Cost, assistance of knowledgeable employees of Respondent to assist that Acquirer to defend against, respond to, or otherwise participate in any litigation related to the Product Intellectual Property related to any of the Specialty Metal Products, if such litigation would have the potential to interfere with the Acquirer's freedom to practice the following: (1) the research, Development, or manufacture of the Specialty Metal Products; or (2) the use within, import into, export from, or the supply, distribution, or sale within the United States.
- M. Within eighteen (18) months of the Closing Date, Respondents shall either license or assign any and all intellectual property to the Acquirer that constitutes Product Intellectual Property that the Acquirer, with the concurrence of the Interim Monitor, identifies as being necessary to the conduct of the business associated with the Specialty Metal Product (as such business had been conducted by Respondent Latrobe prior to the Acquisition Date) and that was not listed

Decision and Order

and/or included in the intellectual property that was licensed or assigned to the Acquirer pursuant to the Remedial Agreements previously submitted by Respondents to the Commission.

- N. Respondents shall not seek, directly or indirectly, pursuant to any dispute resolution mechanism incorporated in any Remedial Agreement, or in any agreement related to any of the Specialty Metal Products a decision the result of which would be inconsistent with the terms of this Order and/or the remedial purposes thereof.
- O. No provision of this Order shall be interpreted to restrict the Respondents' use of the Manufacturing Technology, Product Intellectual Property, or Confidential Business Information for the purposes of the research, Development, manufacture, marketing or sales of any of Respondents's own products, including MP 35N Products or MP 159 Products.
- P. The purpose of the divestiture of the Specialty Metal Product Assets, the grant of the Specialty Metals Product License, the provision of the Manufacturing Technology and the related obligations imposed on the Respondents by this Order is:
 - 1. to ensure the continued use of the Specialty Metal Product Assets in the research, Development, manufacture, use, import, export, distribution, and sale of each of the respective Specialty Metal Products;
 - 2. to provide for the future use of the Specialty Metal Product Assets for the research, Development, manufacture, use, import, export, distribution, and sale of each of the respective Specialty Metal Products;
 - 3. to create a viable and effective competitor, who is independent of the Respondents in the research, Development, manufacture, use, import, export,

Decision and Order

distribution, or sale of each of the respective Specialty Metal Products; and

4. to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint in a timely and sufficient manner.

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

- A. At any time after Respondents sign the Consent Agreement in this matter, the Commission may appoint a monitor ("Interim Monitor") to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order, the Order to Maintain Assets, and the Remedial Agreements.
- B. The Commission shall select the Interim Monitor, subject to the consent of Respondent Carpenter, which consent shall not be unreasonably withheld. If Respondent Carpenter has not opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondent Carpenter of the identity of any proposed Interim Monitor, Respondents shall be deemed to have consented to the selection of the proposed Interim Monitor.
- C. Not later than ten (10) days after the appointment of the Interim Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondents' compliance with the relevant requirements of the Order in a manner consistent with the purposes of the Order.

Decision and Order

- D. If an Interim Monitor is appointed, Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Interim Monitor:
1. the Interim Monitor shall have the power and authority to monitor Respondents' compliance with the divestiture and asset maintenance obligations and related requirements of the Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner consistent with the purposes of the Order and in consultation with the Commission;
 2. the Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission; and
 3. the Interim Monitor shall serve until, the latter of:
 - a. the date of completion by Respondents of the divestiture of all Specialty Metal Product Assets and the delivery of the Manufacturing Technology and Product Intellectual Property in a manner that fully satisfies the requirements of this Order; and
 - b. with respect to each Specialty Metal Product, the date the Acquirer has obtained or achieved all Product Approvals and Specifications necessary to manufacture, market, import, export, and sell such Specialty Metal Product for use for aerospace applications and able to manufacture such Specialty Metal Product in commercial quantities independently of Respondents;

provided, however, that the Interim Monitor's service shall not exceed five (5) years from the Order Date;

Decision and Order

provided further, that the Commission may shorten or extend this period as may be necessary or appropriate to accomplish the purposes of the Orders.

- E. Subject to any demonstrated legally recognized privilege, the Interim Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to Respondents' compliance with their obligations under the Order, including, but not limited to, their obligations related to the relevant assets. Respondents shall cooperate with any reasonable request of the Interim Monitor and shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondents' compliance with the Order.
- F. The Interim Monitor shall serve, without bond or other security, at the expense of Respondent, on such reasonable and customary terms and conditions as the Commission may set. The Interim Monitor shall have authority to employ, at the expense of Respondent, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.
- G. Respondents shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations 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 gross negligence, willful or wanton acts, or bad faith by the Interim Monitor.

Decision and Order

- H. Respondent shall report to the Interim Monitor in accordance with the requirements of this Order and/or as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by Respondent, and any reports submitted by the Acquirer with respect to the performance of Respondent's obligations under the Order or the Remedial Agreement(s). Within thirty (30) days from the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning performance by Respondent of its obligations under the Order; *provided, however*, beginning ninety (90) days after Respondent has filed its final report pursuant to Paragraph V.B., and every ninety (90) days thereafter, the Interim Monitor shall report in writing to the Commission concerning progress by the Acquirer toward:
1. obtaining or achieved all of the relevant Product Approvals and Specifications necessary to manufacture in commercial quantities, the Specialty Metal Products independently of Respondents; and
 2. securing sources of supply of the raw materials, inputs and components for the Specialty Metal Products from entities other than Respondents.
- I. Respondents may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Interim Monitor from providing any information to the Commission.
- J. The Commission may, among other things, require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission

Decision and Order

materials and information received in connection with the performance of the Interim Monitor's duties.

- K. If the Commission determines that the Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided in this Paragraph.
- L. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Order.
- M. The Interim Monitor appointed pursuant to this Order may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of this Order.

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

- A. If Respondents have not fully complied with the obligations to assign, grant, license, divest, transfer, deliver or otherwise convey the Specialty Metal Product Assets as required by this Order, the Commission may appoint a trustee ("Divestiture Trustee") to assign, grant, license, divest, transfer, deliver or otherwise convey these assets in a manner that satisfies the requirements of this Order. 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 assign, grant, license, divest, transfer, deliver or otherwise convey these assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief

Decision and Order

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 Respondents to comply with this Order.

- B. The Commission shall select the Divestiture Trustee, subject to the consent of the Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a Person with experience and expertise in acquisitions and divestitures. If the Respondents have 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 Respondents of the identity of any proposed Divestiture Trustee, Respondents 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, Respondents shall execute a trust agreement that, subject to the prior approval of the 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, Respondents 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 assign, grant, license, divest, transfer, deliver or otherwise convey the assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed.
 - 2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust

Decision and Order

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 the Commission 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 assigned, granted, licensed, divested, delivered or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.
4. The Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' 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

Decision and Order

one acquiring Person, and if the Commission determines to approve more than one such acquiring Person, the Divestiture Trustee shall divest to the acquiring Person selected by Respondents from among those approved by the Commission; *provided further, however*, that Respondents shall select such Person 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 Respondents, 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 Respondents, 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 Respondents, and the Divestiture 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. Respondents 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

Decision and Order

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 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; *provided, however*, that the Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Interim Monitor pursuant to the relevant provisions of this Order or the Order to Maintain Assets in this matter.
 8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
 9. Respondents 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.
- 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.

Decision and Order

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

- A. Within five (5) days of the Acquisition Date, Respondents shall submit to the Commission a letter certifying the date on which the Acquisition occurred.
- B. Within thirty (30) days after the date this Order is issued, and every sixty (60) days thereafter until Respondents have fully complied with the following:
 - 1. Paragraphs II.A , II.B., II.C., II.D., II.E., II.F., and II.H.; and
 - 2. all of their responsibilities to render transitional services to the Acquirer as provided by this Order and the Remedial Agreement(s);

Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order. Respondents shall submit at the same time a copy of their report concerning compliance with this Order to the Interim Monitor, if any Interim Monitor has been appointed. Respondents shall include in their 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 full description of all substantive contacts or negotiations related to the divestiture of the relevant assets and the identity of all Persons contacted, including copies of all written communications to and from such Persons, all internal memoranda, and all reports and recommendations concerning completing the obligations.

- C. One (1) year after the date this Order is issued, annually for the next four (4) years on the anniversary of the date this Order is issued, and at other times as the Commission may require, Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with the Order.

Decision and Order

VI.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to:

- A. any proposed dissolution of Respondents;
- B. any proposed acquisition, merger or consolidation of Respondents; or
- C. any other change in Respondents, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

VII.

IT IS FURTHER ORDERED that:

- A. Any Remedial Agreement shall be deemed incorporated into this Order.
- B. Any failure by Respondents to comply with any term of such Remedial Agreement shall constitute a failure to comply with this Order.
- C. Respondents shall include in each Remedial Agreement related to each of the Specialty Metal Products a specific reference to this Order, the remedial purposes thereof, and provisions to reflect the full scope and breadth of Respondents' obligations to the Acquirer pursuant to this Order.
- D. Respondents shall also include in each Remedial Agreement a representation from the Acquirer that the Acquirer shall use commercially reasonable efforts to obtain or achieve the Product Approvals and Specifications necessary to manufacture and sell, in commercial quantities, each such Specialty Metal Product and to have any such manufacture and sale to be independent of Respondents, all as soon as reasonably practicable.

Decision and Order

- E. Respondents shall not modify or amend any of the terms of any Remedial Agreement without the prior approval of the Commission.

VIII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to any Respondent made to its principal United States offices, registered office of its United States subsidiary, or its headquarters address, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. access, during business office hours of such 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 such Respondent related to compliance with this Order, which copying services shall be provided by such Respondent at the request of the authorized representative(s) of the Commission and at the expense of the Respondent; and
- B. to interview officers, directors, or employees of such Respondent, who may have counsel present, regarding such matters.

IX.

IT IS FURTHER ORDERED that this Order shall terminate on April 12, 2022.

By the Commission, Commissioner Ohlhausen not participating.

Analysis to Aid Public Comment

NON-PUBLIC APPENDIX A

**SPECIALTY METAL PRODUCT
DIVESTITURE AGREEMENTS**

**[Redacted From the Public Record Version, But Incorporated
By Reference]**

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC
COMMENT**

I. Introduction

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) with Carpenter Technology Corporation (“Carpenter”), Latrobe Specialty Metals, Inc. (“Latrobe”), and HHEP-Latrobe, L.P., which is designed to remedy the anticompetitive effects of Carpenter’s proposed acquisition of Latrobe.

Pursuant to an Agreement and Plan of Merger dated June 20, 2011, Carpenter intends to acquire all of Latrobe’s voting securities for approximately \$410 million. Carpenter and Latrobe compete in the sale of specialty alloys used in the aerospace, energy, and other industries. The proposed acquisition would result in a merger to monopoly in the market for two of these specialty alloys: (1) MP159 and (2) MP35N used in aerospace applications (“Aerospace MP35N,” and collectively, the “MP Alloys”). 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, in the markets for each of the MP Alloys.

The proposed Consent Agreement remedies the alleged violations by replacing the lost competition in the relevant

Analysis to Aid Public Comment

markets that would result from the acquisition. Under the terms of the Consent Agreement, Carpenter is required to divest assets related to the manufacture and sale of the MP Alloys to Eramet S.A. (“Eramet”). The Consent Agreement requires Carpenter to provide Eramet with all of the relevant equipment, licenses, and technical information necessary for Eramet to replace Latrobe as a competitor in the markets for the MP alloys. In addition, the Consent Agreement requires Carpenter to contract manufacture the MP Alloys for Eramet at cost until Eramet is able to produce and commercially sell these products on its own.

The proposed Consent Agreement has been placed on the public record for thirty days, and comments from interested persons have been requested. Comments received during this period will become part of the public record. After thirty 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, modify it, or make final the accompanying Decision and Order.

II. The Products and Structure of the Markets

The MP Alloys have unique physical characteristics that make them well suited for use in aerospace applications, and especially in aerospace engine fasteners. Purchasers of the MP Alloys are generally willing to consider overseas suppliers, although to avoid the cost of dual inventories for commercial and military customers, they typically require that suppliers be located in countries approved by Congress to supply materials for military purposes. For these reasons, the relevant markets in which to analyze the competitive effects of the proposed acquisition are the markets for MP159 and Aerospace MP35N manufactured in the United States and in foreign countries approved to supply materials for military purposes under the Defense Federal Acquisition Regulation System (“DFARS”). In these markets, Carpenter and Latrobe are the only options for U.S. consumers, and the proposed transaction would create a monopoly in both relevant markets.

Analysis to Aid Public Comment

III. Entry

Entry or expansion by other specialty alloy manufacturers is not likely to avert the anticompetitive impact of Carpenter's acquisition of Latrobe. The time and cost required to obtain the physical assets, expertise, and qualifications necessary to produce the MP Alloys are substantial, and far outweigh the potential profits from entry into these small markets.

IV. Effects of the Acquisition

The proposed acquisition likely would result in significant anticompetitive harm in the highly-concentrated relevant markets for each of the MP Alloys. Carpenter and Latrobe are the only competitors in these highly-concentrated markets. The acquisition will eliminate actual, direct, and substantial competition between Carpenter and Latrobe, and likely result in higher prices for both of the MP Alloys.

V. The Consent Agreement

The proposed Consent Agreement remedies the competitive concerns raised by the transaction by requiring the parties to divest assets related to the manufacture of the MP Alloys to Eramet. The terms required by the Consent Agreement will enable Eramet to effectively replace the competition in the MP Alloys markets lost as a result of the proposed acquisition.

Eramet is a global supplier of specialty alloys with an established sales and marketing network in the United States that will allow it to be immediately competitive in the relevant MP Alloys markets. Eramet is based in France, which is an approved foreign source country for U.S. military operations under DFARS. The proposed Consent Agreement requires Carpenter to provide Eramet with product licenses and the manufacturing technology necessary to manufacture the MP Alloys. This includes technical assistance from current Latrobe company designees, and confidential business information directly related to the manufacture of the MP Alloys. In addition, the Consent Agreement requires Carpenter to contract manufacture the MP Alloys for Eramet at cost until Eramet is able to produce and commercially sell these products on its own. The Commission

Analysis to Aid Public Comment

has appointed James R. Bucci, who has over 35 years of experience in the specialty alloy industry, as the interim monitor to oversee the divestiture.

If after the public comment period the Commission determines that Eramet is not an acceptable acquirer of the assets to be divested, or that the manner of the divestitures is not acceptable, Carpenter must unwind the divestiture and divest the assets within 180 days of the date the Order becomes final to another Commission-approved acquirer. If Carpenter fails to divest the assets within the 180 days, the Commission may appoint a trustee to divest the relevant assets.

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

Complaint

IN THE MATTER OF

**OSF HEALTHCARE SYSTEM
AND
ROCKFORD HEALTH SYSTEM****COMPLAINT AND FINAL ORDER IN REGARD TO ALLEGED
VIOLATIONS OF SECTION 5 OF THE FEDERAL TRADE COMMISSION
ACT AND SECTION 7 OF THE CLAYTON ACT***Docket No. 9349; File No. 111 0102**Complaint, November 17, 2011 – Decision, April 13, 2012*

This case addresses the \$218.7 million acquisition by OSF Healthcare System of Rockford Health System. The complaint alleges that the acquisition, if consummated, would violate Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act by significantly reducing competition in the markets for general acute-care inpatient hospital services and primary care physician services in Winnebago and Boone counties and the northeast portion of Ogle County, Illinois. The order dismisses the Administrative Complaint without prejudice because Respondents have announced that they are abandoning the proposed affiliation, and have withdrawn the Hart-Scott-Rodino Notification and Report Forms filed for the proposed transaction.

Participants

For the *Commission*: Katherine Ambroggi, Richard Cunningham, Ken Field, Jeremy Morrison, Paul Nolan, Nancy Park, Kaj Rozga, Samuel Sheinberg, and Sarah Swain.

For the *Respondents*: Alan Greene, Hinshaw & Culbertson LLP; Jeffrey Brennan and David Marx, McDermott, Will & Emery.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by the Act, the Federal Trade Commission (“Commission”), having reason to believe that Respondents OSF Healthcare System (“OSF”) and Rockford Health System (“RHS”), having executed an affiliation agreement (the “Acquisition”) which if consummated would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and it appearing to the Commission that a proceeding by it in