



Competition Commission of India
(Combination Registration No. C-2020/03/735)



18th June, 2020

Notice u/s 6 (2) of the Competition Act, 2002 given by Outotec OYJ and Metso OYJ

CORAM:

Mr. Ashok Kumar Gupta
Chairperson

Ms. Sangeeta Verma
Member

Mr. Bhagwant Singh Bishnoi
Member

Order under Section 31(1) of the Competition Act, 2002 (“Order”)

INTRODUCTION

1. On 12th March, 2020, the Competition Commission of India received a notice under Section 6(2) of the Competition Act, 2002 (‘Act’) given by Outotec OYJ (‘Outotec’) and Metso OYJ (‘Metso’) regarding the acquisition of Metso’s mineral business by Outotec. (Hereinafter Outotec and Metso are together referred to as ‘Parties’)

PROPOSED COMBINATION

2. The notice was filed pursuant to execution of a Combination Agreement and a Demerger Plan by and between the Parties on 4th July, 2019, through which Outotec will acquire the mineral business of Metso (**Metso Minerals**).



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3. The Proposed Combination involves a partial demerger of Metso pursuant to the Finnish Companies Act, to the effect that all such assets, rights, debts, and liabilities of Metso that relate to, or primarily serve, its minerals business (comprising mining, aggregates, and recycling businesses) will be acquired by Outotec. In return for the transfer of Metso Minerals to Outotec, the shareholders of Metso will receive newly issued shares in Outotec and hold the majority of the new entity's shares (~78%). Outotec's shareholders will hold the remaining shares (~ 22%). The combined entity will operate under the name Metso Outotec. However, Metso's flow control business, serving the process industries, will continue to exist independently under the name Neles.

PARTIES TO THE COMBINATION

4. Outotec is a public limited liability company incorporated and registered under the laws of Finland. Outotec comprises of three business units:
 - a) Minerals processing – includes grinding; filters; thickeners and clarifiers; flotation; automation & digital solutions; and plant solutions.
 - b) Metals refining - includes hydrometallurgy; smelting; metals & chemical processing; aluminium; and energy & environment.
 - c) Services – includes advisory; maintenance; operations; upgrades; remote services; training; and spare & wear parts.
5. As per the information given in the notice, Outotec is present in India in the supply of equipment for the process(es) of (i) Flotation, (ii) Sedimentation, (iii) Filtration, (iv) Thermal Processing *i.e.* Iron Ore Pelletizing (“**IOP**”), (v) Hydrometallurgy, and (vi) Refining.
6. Metso is a public limited liability company incorporated and registered under the laws of Finland. Metso is comprised of four business units:
 - a) Mining – includes crushers, screens and feeders, grinding mills, hydrocyclones, magnetic separation, flotation and filtration equipment, pyro processing, materials handling equipment, slurry pumps, spare and wear parts, and services.



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- b) Aggregates – includes crushers, screens and feeders, portable plants, Lokotracks, spare and wear parts, and services.
- c) Recycling - includes metal shredders and shears, stationary and mobile units, metal balers and briquettes, N series for the scrap industry, and services.
- d) Valves for process industries – includes valves business which is not a part of the Proposed Combination and will not combine with Outotec.
7. As per the information given in the notice, Metso is present in India in the supply of equipment for the process(es) of (i) Crushers, (ii) Grinding Mills, (iii) Magnetic Separation (iv) Flotation, (v) Filtration, (vi) IOP, (vii) Slurry handling, (viii) Materials handling, (ix) Size control, (x) Aggregates Capital Equipment, (xi) Recycling.
8. In terms of Regulations 14(3) of the Competition Commission of India (Procedure in Regard to the transaction of Business relating to Combinations) Regulations, 2011 (“**Combination Regulations**”), *vide* email dated 19th April, 2020, the Parties were required to provide certain information / document(s). The Parties filed their response on 24th April, 2020 (“**Response**”).
9. Further, in terms of Regulation 19(3) of the Combination Regulations read with Section 36(4) of the Act, the Commission also sought information *inter alia* from the competitors and customers of the Parties *vide* letters dated 20th March, 2020. The Commission received responses from a few of the competitors (“**Competitor Responses**”) and customers (“**Customer Responses**”). In terms of Regulation 19(3) of the Combination Regulations, the time taken in obtaining information from such enterprises, limited to a maximum period of fifteen working days, has also been excluded from the period provided in Regulation 19(1) of the Combination Regulations. The Commission has also excluded the time-period elapsed during which clock remained suspended in view of the Order of the Commission issued on 23rd March, 2020 w.r.t. “Measures in view of threat of CORONAVIRUS / COVID-19 pandemic”.
10. It has been stated that mineral processing value chain can generally be broken down into the following stages:
- Extraction (blasting and drilling);



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- Comminution (size reduction) – It can be further broken down into crushing and grinding;
 - Beneficiation (mostly separation of value minerals from the rock and reduction of moisture content) - It can be further broken down into different stages, including gravimetric separation, flotation, leaching, magnetic separation, dewatering (typically thickening and filtration), and, in certain instances, initial thermal processing steps (such as IOP);
 - Pyro processing;
 - Material handling.
11. As per the submissions made in the notice filed and Response, Parties (directly or indirectly) are engaged in the manufacturing and sale of equipment related to various stages of mineral processing in India and the products/services offered of the Parties exhibit horizontal overlap in the following broad segments/processes/islands:
- a) **Filtration:** is the process through which liquids are removed from a slurry to obtain the solids in a suitable form.
 - b) **Flotation:** is the process through which selected minerals are separated from a water-mineral mix.
 - c) **Iron Ore Pelletizing ('IOP):** is the process through which iron ore fines are agglomerated into “iron ore pellets” suitable for use in an iron-making furnace.
 - d) **Aftersales products and services:** include advisory; maintenance; operations; upgrades; remote services; training; and spare & wear parts and service labour. Parties exhibit overlap in market for aftersales products and services for Grinding, Filtration, Flotation and IOP in India.

INVESTIGATION UNDER SECTION 29 OF THE ACT

12. The Commission, in its meeting held on 20th May, 2020 through videoconferencing, considered facts & material on record, details provided in the notice, responses, submissions of the Parties from time to time, Competitor Responses and Customer Responses and formed a prima facie opinion that the proposed combination is likely to cause appreciable adverse effect (“AAEC”) on competition in the segment of Iron Ore Pelletizing (“IOP”) in India.



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13. Accordingly, a show cause notice, in terms of sub-section (1) of Section 29 of the Act (“SCN”) dated 22nd May 2020, was issued to the Parties. The Parties were directed to respond, in writing, within thirty days of the receipt of SCN, as to why investigation in respect of the proposed combination should not be conducted.
14. The competition concerns raised in the SCN were primarily based on information provided by the Parties in the notice and Customer Responses and Competitor Responses and information available in public domain. Accordingly, Parties were also informed that the proposed combination could also raise competition concerns in certain other areas, which could be discovered later during the investigation and may have a bearing on the final determination of the relevant market and assessment of competition therein.
15. The response to the SCN was received on 17th June, 2020 (“**Response to SCN**”). Along with the Response to SCN, Parties also submitted voluntary remedies proposal (‘**VRP**’) under regulation 25 (1A) of the Combination Regulations. Response to the SCN and VRP are discussed in subsequent sections.
16. In all other segments i.e. Filtration, Flotation and Aftersales products and services, the Commission did not find competition concerns considering the following:
 - a) Either combined market share of the Parties or incremental market share was not such to raise competition concern; and / or
 - b) Majority of Customer Responses and Competitor Responses indicated presence of a number of domestic / international competitors.

COMPETITION ASSESSMENT FOR IOP

Relevant Product Market

17. The Parties have defined the relevant product market as the market for IOP equipment as a process / island. Pelletizing is the process through which iron ore fines are agglomerated into “iron ore pellets” suitable for use in an iron-making furnace. In terms of the pelletizing



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process, first finely ground iron ore is slightly moistened and mixed with a binder. This mixture is continuously fed to a balling disc or drum that forms spheres from the ore fines, called green pellets. The green pellets are screened for size and either transported to the thermal processing stage or crushed and returned to the first step (if too large or too small). The thermal processing step for iron ore pellets is called Indurating. During the indurating process, the green balls are hardened by baking in an oxidizing atmosphere in a high temperature furnace. The indurated product is called fired pellets. The final process steps include cooling and screening for size. There are two main indurating technologies: Straight Grate and Grate Kiln. There are differences in both the technologies in terms of consistency in product quality, cost, after sales services and maintenance, running costs and type of fuel.

18. With regards to the two technologies, Parties have submitted that:
- a) Customers do not differentiate between the straight grate and grate kiln systems, as they ultimately simply demand pellets of a certain quantity and specific strength.
 - b) The same quality of ore, whether charged in the straight grate or the grate kiln system, will yield the same results.
 - c) Both systems serve the customer's purpose, and it is difficult to estimate which technology is preferred over the other.
 - d) Over a period, certain customers may prefer to continue with the same technology, purely as a matter of convenience.
19. Globally, both Parties offer straight grate and Metso also offers grate kiln equipment. While Metso's product portfolio in India, in general, is identical to its global product portfolio, Metso has not sold grate kilns in India for many years. However, with respect to supply side substitutability, the Parties have submitted that it is not necessary to offer both technologies to establish a market position.
20. The Parties have claimed that the relevant product market should not be further sub-segmented by type or size or pressure etc. but rather be defined as one market. This is *inter alia* due to the reason that from the supplier's point of view the offering does not change based on the scale of the customer. Further, within a complete set up there are various processes involved and these are commonly referred to as process islands (referring to



various steps in a process plant and Request for Quotations (RFQs) floated by private enterprises are usually on a product- or even an island-wise basis).

21. In view of the above and based on the bidding data submitted by the Parties, Customer Responses and Competitor Responses, for the purpose of forming *prima facie* opinion, the separate process / island for IOP equipment may be considered as relevant product market. The Commission also noted that in a mature jurisdiction like European Commission (“EC”)¹, in competition assessment of other industries with similar features, EC analysed and assessed the competitive impact of the transaction based on separate markets for process islands.

Relevant Geographic Market

22. The Parties have submitted that majority of the equipment sold to customers in India is sourced from outside India, as the Parties manufacture very less amount of equipment in India. Further, Parties have also submitted that there are neither any technical or regulatory barriers between different geographies nor are the transportation costs significant. Further, according to submissions, a local physical presence is not required to service a customer. All the key players bidding in the Indian markets are also active in other global markets. It is also submitted that in all the overlapping segments, the Parties face significant competitive constraints from global players and hence it has been submitted that the geographic market is global. However, it is observed that while customers in India are actively involved in buying equipment from across the world, operations of other global players (who are not present in India; or do not intend or are not selling their offerings in India) may not be relevant for the purpose of the Proposed Combination from point of view of assessing any appreciable adverse effects in India. The most important element in the definition of a geographic market is the homogeneity of competition parameters across different geographical areas. In this regard, on the basis of submission by the Parties, the Commission noted that there are significant differences in market shares of Parties and their competitors in different regions of the world. Thus, the conditions for competition as prevailing in India are considered

¹Case No COMP/M.4187 - METSO / AKER KVAERNER



different from conditions prevailing in the rest of the world. Hence, the relevant geographic market for IOP equipment island may be considered as “in India”.

Competition Assessment

23. For market of IOP equipment island in India, the Parties have submitted information on estimates of the size of this market and of their sales and market shares as well as of their top competitors. It is submitted that the market share estimates relied upon in the notice are primarily based on two data sources: (i) Estimates² for sales to mining customers, and (ii) the pooled bidding data.
24. In the market for IOP equipment island in India, the Parties have carried out the assessment based on market shares in terms of value of sales (from 2014-2019) and the estimates of Herfindahl - Hirschman Index (**HHI**) (based on market shares from 2014-2018). The Parties have also provided pooled bidding dataset with outcome of various bids from 2010-2019.
25. The Parties have claimed that, based on their actual sales, Outotec’s and Metso’s market shares are 20-25% and 15-20% respectively. From the information provided, it appears that the Parties are the largest players in the market and the next player identified is VT Corp, which is a distant player with an estimated market share of only 5-10% as against the combined market share of 35-40% of the Parties.
26. The HHI Index, based on above information on market shares comes to [4500-4600] post combination with a delta of [500-600].
27. The Parties have further submitted that procurement of mineral processing equipment is primarily carried out through bids/tenders. The markets for mineral processing equipment are bidding markets, in which several suppliers are invited to tender and the final bid is awarded after bilateral negotiations with the respective bidders. In relation to the bidding markets, it is noted that in addition to the market share analysis, it is important to examine the competitive constraints faced by the players at the time of submission of bids. An analysis of bidding data may also provide valuable information with regard to the

²Commissioned by the Parties for the purpose of the Proposed Combination



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competitive constraint exerted by the parties on each other. The Commission noted from the information provided by customers and competitors that system of referencing works in pelletizing business also acts as barrier to entry for new players due to lack of proven references.

28. In the pooled bidding dataset³, the Parties have claimed that the data suffers from the limitation of being regional and incomplete either due to non-participation by the Parties or due to placement of bids privately between Parties' competitors and customers. However, the bid data analysis may demonstrate willingness of suppliers to submit competitive bids, availability of alternate suppliers, and/or closeness of competition between the parties entering into the bidding process. The Commission carried out bid data analysis involving (i) Frequency analysis, (ii) Win-loss analysis and (iii) Runner-up analysis. In the bid market for iron-ore pelletizing equipment, the frequency analysis shows that the Parties have bid for the same tenders in more than half of the number of competitive tenders (during 2010-19). The win-loss analysis shows that Metso lost 5 times when Outotec participated while it did not lose even once when Outotec did not participate. In a similar fashion, the number of times Outotec lost when Metso participated is double the number of times when Metso did not participate. Thus, the number of losses for the Parties was higher when the other party participated than when the other party did not participate. At the outset, it would be pertinent to note, that the pooled bidding data does not provide the exact position of the runner-up participant while contesting for a bid. However, it can be observed that each of the parties were runner up significantly when the other party won the bid. For instance, Metso was runner up in more than half the bids when Outotec won and vice-versa. Thus, the runner-up analysis shows that the Parties were runner up in a sufficiently high number of bids when the other Party won indicating that the parties are close competitors. Thus, the two Parties appear to be close competitors based on all three types of bid analysis.
29. Based on the bid data submitted, it is further seen that, in terms of value of Request for Proposals (RFPs), the Parties together won more than 50% of the total bids. In [.....] bids where both Metso and Outotec participated, they together won [.....] bids, which is more than [.....]. Since the number of losses for both Metso and Outotec were higher when the

³It was informed by the Parties during the PFC meetings that pooled bidding data set represents accuracy / confidence level of [.....].



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- other party participated than when the other party did not participate, it also leads to the conclusion that Parties provide strong competitive constraints to each other and are close competitors in this market.
30. Although the Parties have submitted that the pooled bidding data presented by the Parties is imperfect and may not present an accurate assessment of the Parties' market position in terms of market shares, and is likely to be incomplete. However, in this regard, the Commission noted that during the PFC meetings, Parties submitted that pooled bidding data set represents accuracy / confidence level of [.....]⁴.
31. It is stated by the Parties that with regards to tendering by private players, customers typically send requests for proposals to potential suppliers. There is generally no open tender process whereby the request for proposals would be published to the public (e.g., via a specialized magazine or the internet) as would be the case for public procurement. It is stated that "customers typically purchase equipment through competitive tenders to which the Parties are not always invited". Converse may also hold that in some bids only Metso and Outotec or only one of them was invited. Similarly, it is stated that in some cases Parties may not be invited simply because the customer has historical preference for other OEMs. Again, converse may also hold that Parties, in general, enjoy strong consumer preferences based on their past relationships. Further, as mentioned by the Parties that the equipment are tailored as per customers' requirements and not "off the shelf", the prices are determined on case to case basis. Based on non-standardized, non-transparent pricing in the market and historical relationships, the Parties appear to be in a position to command some degree of market power viz-a-viz its competitors, as even in the worst case scenario also, they have together installed [.....] of the total installed capacity for pellet production in India.
32. The Commission noted that as of 2019, the total installed capacity related to pellet production in India is ~ 90 million tonnes. The Parties have claimed [.....] of the total capacity has been manufactured/supplied by them or manufactured *inter alia* based on their licenses/drawings/patents.

⁴This was also mentioned in SCN issued to Parties, but Parties have not refuted the same.



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33. The Commission also considered the responses of Competitors and Customers in terms of their submissions regarding Entry Barriers (Technical, Regulatory etc.), position of Parties, countervailing buying power, possession of IPRs & drawing including designs, competitive advantage etc. Following are the responses of Competitors and Customers:

- a) **Customers' response** - Many customers have stated that IPRs are critical for a new entrant and that new suppliers are rare and can enter the market only through acquisition since technology is developed through long years of study with trial and error. There has been no new entrant in the last 5 years which can affect the dominating position of the established players. These main players are raising the benchmark by making equipment more efficient thereby making it difficult for new entrants. Outotec and Metso own IP for critical equipment of indurating machine, which is critical for performance of the plant. Further, complete critical equipment portfolio (Indurating Machine) and process technology capability creates huge entry barrier. Some responses also indicate that Metso and Outotec control significant market share in India and Proposed Combination will increase their monopoly in India as there won't be any company as big in size as them. Further, there will not be anyone who will be having equal number of mineral processing equipment/solutions and technology to match Metso-Outotec combined. It has also been stated in some of the responses that other competitors' technologies, are normally not accepted / preferred by Indian Steel Manufacturers.
- b) **Competitor's response** -It has been *inter alia* stated that there is no regulatory barrier but there exists high technical and IPR entry barrier, along with medium financial barrier since only large companies are able to get reference installation. Government controlled projects require certain experience, technological and financial criteria to be fulfilled. Private sector does not have fixed barriers outside of local regulation; however, they may have company-specific preferred suppliers. There has been no new entrant in the pellet technology in the last 20 years (except China suppliers for small size plants). This is due to the vast technical knowhow required for such plant and experience from existing installation. Pelletizing plants are technologically advanced and need prior knowledge of processing the ore and experience from reference plants.



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It has also been submitted that Proposed Combination of Metso and Outotec would result in significant global market share in Pelletizing and in terms of installed capacity; Parties are clear market leader in India holding substantial installed capacity.

34. The Commission is also of the opinion that the Parties enjoy incumbency or early-mover advantage that enables them to have detailed knowledge of the customers. Parties are at an advantage compared to other new bidders such as in responding to offers for renewals, in subsequent negotiations and references. In this regard, the Commission noted that Competitors of the Parties have mentioned that there are barriers to entry for potential suppliers to enter pelletizing business due to lack of proven references or customers may have company-specific preferred suppliers. In this regard, Parties have submitted that customers do tend to look for a track record when selecting an IOP supplier and track record means a list of relatively recent reference projects with customers. As stated above, while Metso and Outotec have a large combined installed base in the industry, established OEM suppliers such as Sinosteel, Uralmash and Kobelco also have solid track records.
35. The Commission observes that portfolio efficiencies would potentially arise post the combination as a result of Metso and Outotec being able to provide integrated solutions to customers, the only other integrated player is FLSmidth. However, in this regard, competitors have stated that these efficiencies may potentially be achieved at the cost of price increase and a reduced repertoire of suppliers for customers to select from. It is to be noted that a merger of close competitors can generate horizontal anti-competitive effects, whether coordinated or non-coordinated, if the combined entity significantly constrains the behaviour of other firms active in the market.
36. The Commission considered the Response to SCN given by the Parties and was of the view that the Proposed Combination is an integration of two strong and close competitors in the market for IOP equipment island in India and appears to:
- a) limit the number of suppliers available to customers in this market in India
 - b) reduce the intensity of innovation in the technology for pelletizing technology and equipment



- c) perpetuate the substantial market position of the Parties in the market; and reduce or eliminate the competitive pressure that would prevail in the absence of the Proposed Combination
- d) reduce the extent of countervailing bargaining power that the customers enjoy on account of the competition exerted by independent presence of Metso and Outotec
- e) increase the cost of the entrants and rivals to compete and increase their presence in the market given that there is no likelihood of a timely and sufficient entry that could act as a competitive constraint to the combined entity
- f) result in creation of a strong integrated player

VOLUNTARY REMEDY PROPOSAL TO ADDRESS THE AAEC CONCERN('VRP')

- 37. In response to the SCN, the Parties have submitted voluntary remedy proposal under Regulation 25 (1A) of the Combination Regulations.
- 38. The Commission notes that the VRP submitted effectively eliminates the overlap between the Parties in the IOP segment in India and would effectively transfer Metso Minerals's Indian Straight Grate (SG) IOP capital equipment business to a suitable buyer, thereby preserving the competition. Thus, the Commission considers such divestment to be proportional to address the competition concerns that would result otherwise from the Proposed Combination. (Hereinafter, 'Indian SG IOP capital equipment business' and 'Indian Divestment Business' is used interchangeably)
- 39. The divestment of Indian SG IOP capital equipment business essentially involves transferring a right to fully use and exploit the SG IOP capital equipment drawings, including the related registered IP by way of an exclusive and irrevocable license, subject to a lump sum upfront payment and no ongoing royalties. VRP will allow the emergence of a new competitor, thus resolving any concerns whatsoever in relation to this segment.
- 40. The corresponding transfer agreement would provide the potential divestiture buyer all the rights that it needs, the divestiture buyer would be able to manufacture / outsource



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manufacturing of the identified IOP equipment and exert competitive pressure on the merged entity.

41. The proposed VRP Package is intended to provide all the relevant and key know-how required by the potential divestiture buyer. The VRP package comprises all that is needed to replicate Metso Minerals's SG IOP products sold in India, namely: (i) Metso Minerals's SG IOP capital equipment (of various capacities); and (ii) Metso Minerals's SG IOP spare parts, including but not limited to grate cars, castings, shafts, bearings, and rollers. The divestiture will consist of an effective transfer of Metso Minerals's SG IOP business in India by way of an exclusive and irrevocable license of the technology in India, which shall include:
- a. A copy of, and exclusive license to SG IOP capital equipment technology, know-how, drawings, designs⁵ and records for all the IOP projects of various capacities (whatever is available) installed in India;
 - b. All related registered patents / IPRs
 - c. A copy of a list of approved key component suppliers
 - d. Access to the related know-how by transferring copies of the pertinent documentation
 - e. Providing, to the best of the Parties' abilities, transitional engineering support services for a period as agreed with the Divestiture Buyer (as per its requirements) in detail. The Parties will specify this particular aspect in its confidential information memorandum (CIM) or other similar documents inviting suitable bidders for transferring Metso Minerals's Indian SG IOP capital equipment business.
 - f. Freedom to the Divestiture Buyer to state that it has acquired the technology from Metso Minerals, on its website and while bidding for the projects in India.
 - g. Freedom to the Divestiture Buyer to carry out his own R&D in relation to the technology acquired from Metso Minerals.

⁵In relation to drawings and designs, the Parties will provide hard copies and in the electronic format as is available with them.



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- h. At the option of the potential Divestiture Buyer, the Parties will provide details of their approved supplier base, which the potential Divestiture Buyer can utilize to fabricate various components.
 - i. In relation to R&D conducted by Metso Minerals, provide all R&D (as on the date of Commission's Order) in relation to SG IOP plants and technology.
 - j. If needed and feasible, information on recent customer contacts.
 - k. At the option of the potential Divestiture Buyer, as per its requirements (for the period as agreed with the Divestiture Buyer), to obtain support that it may require to execute projects with the transferred technology. The Parties will specify this particular aspect in its CIM or other similar documents inviting suitable bidders for transferring Metso Minerals' SG IOP capital equipment business.
 - l. Parties to offer engineering support themselves, subject to appropriate confidentiality arrangements or alternatively Metso Minerals will provide the contact details of an ex-employee with in-depth knowledge of the business, who retired from Metso Minerals in 2018, and who currently works as an independent consultant to Metso Minerals. Minerals will ensure that this consultant is in no way restricted from working with the Divestiture Buyer.
42. Other relevant details of the VRP are given in Annexure-A to this Order.
43. The Divestiture Buyer would be allowed to fully exploit the drawings, registered IP, and copies of the documents for capital equipment and aftermarket sales within India, but not outside India. However, following the completion of [.....] from the closing of the technology transfer, the Divestiture Buyer will be free to operate, using Metso Minerals SG technology, outside India as well. It is further noted that during the [.....], Metso Minerals will not license its SG technology to anyone else either directly or indirectly for servicing the Indian market. However, after the completion of the [.....], Metso Outotec will be free to use its technology in India, and will be free to license the same to any other legal entity.



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44. It is noted that whilst Metso Minerals has Grate Kiln technology, Outotec does not (so there is no overlap). It has not been used and deployed by Metso Minerals in India for many years. In this regard, as a part of the VRP, Parties have submitted that similar to the transitional support solution, the Parties and the proposed Divestiture Buyer will mutually agree, if any restrictions (and the duration of such restrictions) on marketing of this technology in India are required to be imposed on Parties / Metso Minerals. The Parties will specify this particular aspect in its CIM or other similar documents inviting suitable bidders for transferring Metso Minerals' Indian SG IOP capital equipment business. The Parties will specify that they are willing to restrict the marketing/licensing/sale of the Grate Kiln technology in India for a given period based on mutual agreement with the Divestiture Buyer, if so desired by it in the CIM or other similar documents inviting suitable bidders for the transferring Metso Minerals' Indian SG IOP capital equipment business.

Preservation of Economic Viability, Marketability and Competitiveness

45. Until the Divestiture of Indian Divestment Business to an approved purchaser is complete, the Parties shall take such steps as are necessary to maintain viability, marketability and competitiveness of the Metso Minerals' Indian SG IOP capital equipment business, minimize the loss of competitive potential of SG IOP capital equipment business and shall prevent the destruction, deterioration, transfer (including creation of encumbrance) or impairment of the Drawing, designs, patents (IPR), know-how, documentation and R&D related to the SG IOP capital equipment business (As stated above in paras 37-42 of this Order).
46. Until the Divestiture of Indian Divestment Business to an approved purchaser is complete, the Parties shall use their best efforts to preserve the existing relationships with suppliers, vendors, customers, agencies, and other Third Parties having business related to the SG IOP capital equipment business.
47. In circumstances, when an employee of the Parties terminates his or her employment with the Parties, because of the reason of accepting employment with the Approved Purchaser, the Parties shall remove any impediments that may deter him/her including, but not limited



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to any non-compete or confidentiality provision of the employment or other contracts with the employee that would affect the ability of the employee(s) to be employed by the Approved Purchaser.

Monitoring Agency:

48. The Commission shall appoint an independent agency as Monitoring Agency for the purpose of, *inter-alia*, supervision of the VRP proposed by the Parties and accepted by the Commission.
49. The Monitoring Agency, under Regulation 27 of the Combination Regulations, shall undertake such functions as may be directed by the Commission, which shall include, *inter-alia*, the following functions:
- a. Overseeing and ensuring viability & marketability and monitoring compliance by the Parties with the modification to the combination provided in the Order.
 - b. Take reasonable efforts to ensure that all the know-how, IPRs, drawings, designs and documents related to the SG IOP capital equipment business (In hard and electronic form) are identified and forms part of the transaction documents including but not limited to license agreement, Sale & Purchase Agreement (including any ancillary agreement);
 - c. Propose to Parties such measures as the Monitoring Agency considers necessary to ensure Parties' compliance with the Order;
 - d. Review and assess potential purchasers as well as the progress of the Divestiture process and verify that at each stage of the Divestiture process, potential purchasers receive sufficient information relating to the Indian Divestment Business in particular by reviewing the relevant documentation, information memorandum and due diligence process and that the potential purchasers are granted reasonable access to the personnel;



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- e. Act as a contact point for any requests by third parties, in particular potential purchasers, in relation to the Order;
 - f. Submit to the Commission a written report within ten days after the end of every month, which shall cover the progress of the Divestiture process as well as potential purchasers. A non-confidential copy of the said report will be provided to the Parties;
 - g. The Monitoring Agency shall report immediately in writing to the Commission of any failure on part of the Parties to comply with the Order;
 - h. Submit to the Commission a written report containing its recommendations as regards (i) the suitability of the purchaser proposed by the Parties; (ii) whether the Divestiture is being carried in accordance with the Order; and
 - i. Assume the other functions assigned to the Monitoring Agency under the Monitoring Agency Agreement.
50. A copy of the Monitoring Agency Agreement shall be provided to the Parties and they shall use their best efforts to facilitate the Monitoring Agency in performance of its duties and obligations provided in the Monitoring Agency Agreement. Any failure by the Parties in such facilitation may be deemed to be a contravention of the Order.

Divestiture Agency:

51. In the event, the Parties are unable to complete the implementation of the VRP within the timeframe⁶ of First Divestiture Period, the Commission may appoint a Divestiture Trustee / Agency to supervise and implement the VRP.

⁶Please refer Annexure A.



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52. Upon receipt of the notice of the Commission regarding the appointment of Divestiture Agency, the Parties must, within the period prescribed by the Commission, execute a comprehensive power of attorney in favour of the Divestiture Agency to effect the VRP and all actions and declarations which the Divestiture Agency considers necessary or appropriate for achieving the sale of Indian Divestment Business, including the power to appoint advisors to assist with the sale process.
53. During this Divestiture Period, the Divestiture Agency shall have the sole authority to sell the SG IOP capital equipment business at no minimum price to an Approved Purchaser. Further, Divestiture Agency shall have the discretion as to the manner in which it sells the Indian Divestment Business. Upon request of the Divestiture Agency, the Parties shall cause the documents required for effecting the divestiture / sale and the Closing to be executed.
54. The Divestiture Agency shall include in the Transaction documents including but not limited to license agreement, sale & purchase agreement, or any other arrangement, (as well as in any ancillary agreements) (a) such terms and conditions as it considers appropriate for an expedient divestiture in the Second Divestiture Period; and (b) such customary representations and warranties and indemnities as are reasonably required to affect the sale.
55. The Divestiture Agency shall protect the legitimate commercial interests of the Parties, subject to the Parties' unconditional obligation to divest at no minimum price in the Second Divestiture Period.
56. The Divestiture shall not be effected by the Divestiture Agency unless and until the Commission has approved the terms of Transaction Documents including but not limited to license agreement, sale & purchase agreement (including any ancillary agreement) and the purchaser proposed by the Divestiture Agency.
57. If the Monitoring Agency and the Divestiture Agency are not the same legal or natural persons, the Monitoring Agency and the Divestiture Agency shall cooperate with each other to facilitate each other's tasks.



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58. A copy of the Divestiture Agency Agreement shall be provided to the Parties and they shall use their best efforts to facilitate the Divestiture Agency in performance of its duties and obligations provided in the Divestiture Agency Agreement. Any failure by the Parties in such facilitation may be deemed to be a contravention of the Order.
59. During the Second Divestiture Period, the Divestiture Agency shall provide the Commission with a comprehensive monthly (or otherwise at the Commission's request) report on the progress of the Divestiture process. The monthly reports shall be submitted within ten days after the end of every month with a simultaneous copy to the Monitoring Agency and a non-confidential copy to the Parties.

Duties and obligations of the Parties:

60. The Parties shall provide and shall cause their advisors to provide the Monitoring Agency and Divestiture Agency with such co-operation, assistance and information as the Monitoring Agency and/or Divestiture Agency may reasonably require for performing its tasks. The Monitoring Agency and Divestiture Agency shall have full and complete access to any of the SG IOP capital equipment business, books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Order. The Parties shall provide the Monitoring Agency and Divestiture Agency upon request with copies of any document required by the Monitoring Agency or the Divestiture Agency, as the case may be. The Parties shall make available to the Monitoring Agency and Divestiture Agency one or more offices on their premises.
61. The Parties shall provide the Monitoring Agency with the administrative support that it may reasonably request in relation to its duties under the Order for the divestment of the Indian Divestment Business. The Parties shall provide and shall cause its advisors to provide the Monitoring Agency, on request, with the information submitted to potential purchasers, for reviewing the relevant documentation, information memorandum and due diligence process in particular give the Monitoring Agency access to all other information granted to potential purchasers in the due diligence procedure. The Parties shall inform the Monitoring Agency on potential purchasers, submit lists of all potential purchasers at each stage of the selection



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- process, including the offers made by potential purchasers at those stages, and keep the Monitoring Agency informed of all developments in the Divestiture process.
62. The Parties shall indemnify the Monitoring Agency, its employees and agents and Divestiture Agency and its employees and agents (each an “**Indemnified Party**”) and hold each Indemnified Party harmless against any liabilities arising directly out of the performance of the Monitoring Agency’s duties under the Order, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Indemnified Party.
63. The Commission may share confidential information of the Parties and the Divestment Business with the Monitoring Agency and Divestiture Agency (as the case may be), without seeking any approval from the Parties.
64. The Parties shall secure all consents and waivers from all Third Parties that may be required by the Approved Purchaser in relation to the SG IOP capital equipment business well in advance of divestiture of Indian Divestment Business. Provided, however, that the Parties may satisfy this requirement by certifying that the Approved Purchaser has, to the Approved Purchaser’s satisfaction, either (i) executed such agreements directly with each of the relevant Third Parties, or (ii) secured a similar contract with similar terms from the customers or from supplier(s) supplying such product or service.
65. The Commission may, at any time, request information from the Parties that is reasonably necessary for the effective implementation of the Order.
66. The Parties shall notify the Commission at least thirty days prior to any proposed change in the corporate structure of the Parties that may adversely affect the compliance obligations of the Parties.

Purchaser Requirements:

67. The purchaser proposed by the Parties, in order to be approved by the Commission, must, fulfil *inter alia* the following criteria:



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- i. Be independent of and with no connection whatsoever with the Parties or their Affiliates;
- ii. Not be either a past or present employee or director (or spouse or child of such employee or director)
- iii. Have the financial resources, expertise and incentive to maintain and develop the Divestment Business as a viable and active competitor to the Parties in the relevant market;
- iv. Not have any structural or financial links (whether directly or indirectly) with any manufacturer in the relevant market; and
- v. Be neither likely to create, in the light of the information available to the Commission prima facie competition concerns, nor give rise to a risk that the implementation of the Order will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition and operation of the Divestment Business.

(The aforementioned criteria for the purchaser hereafter referred to as the “**Purchaser Requirements**”).

Approval of Transaction Documents and Purchaser:

68. The final binding Transaction documents including but not limited to license agreement, sale & purchase agreement (as well as ancillary agreements including transitional / technical support agreement(s)), relating to the Divestiture of the Divestment Business shall be conditional on the Commission’s approval. Within the timelines given in the Annexure A, the Parties shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), to the Commission and the Monitoring Agency. The Parties must be able to demonstrate to the Commission that the purchaser proposed by the Parties, fulfils the Purchaser Requirements and that the Divestment Business is being divested in a manner consistent with the Order.
69. The Commission may approve the Divestiture of the Divestment Business without one or more Assets, or by substituting one or more Assets or Personnel with one or more different



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assets, if this does not affect the viability and competitiveness of the Divestment Business after the Divestiture, taking account of the requirement of the Approved Purchaser.

Due diligence:

70. In order to enable potential purchasers to carry out a reasonable due diligence of the Indian Divestment Business, the Parties shall, subject to customary confidentiality assurances and depending on the stage of the Divestiture process provide to potential purchasers sufficient information as regards the Divestment Business; and allow them reasonable access to the Key Personnel and Personnel.

Nodal Officer:

71. Within 15 days, following the receipt of this order, the parties will appoint an officer of the company who will act as single point of contact (**Nodal Officer**) to supervise the implementation of the proposed remedy. The Nodal Officer shall ensure that the Commission is kept fully informed about the process and progress made in relation to implementation of the VRP until the Monitoring Agency is appointed. After the selection of Monitoring Agency, Nodal officer shall inform about the progress made in relation to implementation of the VRP to the Monitoring Agency only.

72. The Parties shall provide the Commission with a monthly written report on the status and progress of Divestment Transaction. The period during which Monitoring Agency is not selected; Parties shall submit the monthly reports by the 10th day of every month to the Commission until such time the proposed remedy is not implemented. After the selection of Monitoring Agency, the Nodal officer shall inform about the progress made in relation to implementation of the VRP to the Monitoring Agency only.

73. All Appendices, Annexures and Schedules annexed to the Order shall form an integral part of the Order.



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74. Considering the material on record including the details provided in the Notice and the assessment of the Proposed Combination based on the factors stated in Section 20(4) of the Act after taking in account the voluntary commitments offered by the Parties, the Commission is of the opinion that the proposed combination is not likely to have an appreciable adverse effect on competition in India and therefore, the Commission hereby approves the same under sub-section (1) of Section 31 of the Act subject to compliance of VRP.
75. In case the Parties fail to comply with the VRP, as given in the Order, Annexure A and Schedule I to this Order, the Proposed Combination would be deemed to have caused appreciable adverse effect on competition in India and the concerned Parties shall render themselves liable for being proceeded under the relevant provisions of the Act.
76. In carrying out the aforesaid VRP, the Parties shall comply with the provisions of the Act, the Combination Regulations and the Competition Commission of India (General Regulations), 2009.
77. This order shall stand revoked if, at any time, the information provided by the Parties is found to be incorrect.
78. The information provided by the Parties is confidential at this stage in terms of and subject to provisions of Section 57 of the Act.
79. The Secretary is directed to communicate to the Parties accordingly.



ANNEXURE A

Details of Voluntary Remedy Proposal ('VRP')

I. Engineering Package

- 1) The Divestiture Package will consist of an effective transfer of Metso Minerals's SG IOP business in India by way of an exclusive license to the pertinent technology along with relevant intellectual property and documentation, such as details of sizing procedures, relevant suppliers, relevant consultants and engineers, material testing facilities, *etc.* The Divestiture Buyer will also receive a list of documents, which will include proprietary drawings, specifications, standards, *etc.*, *i.e.*, mechanical, electrical, hydraulic, and process drawings developed by Metso Minerals personnel in the normal course of business. This list would include both the documents that are submitted to customers for assembly & maintenance, and the proprietary IP that is used by Metso Minerals to manufacture the equipment deliverables.
- 2) The Divestiture Buyer will receive the following, to enable it to effectively compete in the IOP market (subject where relevant to third party, in particular customers, consent):
 - a. List of all relevant Indian contracts since 2012 (all drawings prior to 2012, whatever is available with Metso Minerals, will also be provided);
 - b. Copies of and a license to all the drawings for the plants since 2012 (all drawings prior to 2012, whatever is available with Metso Minerals, will also be provided);
 - c. A copy of (and license to) the typical list of documents (including details of drawings, specifications, standards, *etc.*) for Metso equipment. This list would include



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both the documents that are submitted to customers for assembly & maintenance, and the proprietary IP that is used by Metso Minerals to manufacture the equipment deliverables. The Divestiture Buyer will be free to use the proprietary intellectual property for use in India. However, following the completion of [.....] of the technology transfer, the Divestiture Buyer will be free to bid for projects outside India using Metso Minerals's technology;

d. Details of sizing procedures including calculations sheets;

e. Names and addresses of material testing facilities;

f. Reference request for quotations, test reports, and other relevant documents from/for testing facilities;

g. Names and contact information for the consultants for process engineering, field services, etc. Metso Minerals will use all reasonable endeavours to facilitate consultancy arrangements between the consultants and the Divestiture Buyer.

h. Names and contact information for suppliers;

i. Reference proposal/bid documentation;

j. Reference project schedules;

k. Reference project reporting;

l. Reference procurement contracts;

m. Reference Inspection Test Plan's and inspection reports for manufactured components;

n. Reference packing lists;



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o. Reference Installation, Operation, & Maintenance manuals, field inspection reports, alignment forms, inspection checklists, commissioning checklists, etc.;

and

p. Reference internal project management reports including project financial analysis.

3) The divestiture buyer will receive a license to Metso Minerals’ SG IOP patents/IP rights for use in India only, as set out below:

IP Type	Country	Case Status	Earliest Priority Date	Application No.	Registration Date	Registration No.	Expiration Date
MCTP-0155 Extended life Traveling Grate Side Plate							
Patent	United States	Registered	2000-03-23	US 09803784	2002-07-02	US 6412429	2021-03-12
Patent	Chile	Registered	2000-03-23	CL 66112001	2006-12-06	43018	2021-12-06
MCTP-0381 Refractory Based Sidewall Member For Pallet Car							
Patent	United States	Registered	2016-05-03	15/145,038	2019-09-16	10,415,885	2036-05-02
Patent	PCT	Pending	2016-05-03	PCT/US2017/028804			
Patent	Brazil	Pending	2016-05-03	BR 11 2018 072332 0			
Patent	Canada	Pending	2016-05-03	3,020,989			
Patent	India	Pending	2016-05-03	2018170381 60			

4) The Parties shall license patents and related registered IPR held by Metso only in relation to SG pelletizing technology, which may also be verified by the Divestiture Buyer.



II. Divestiture Timeline

5) **First Divestiture Period:** The parties will carry out the divestiture as per VRP and in compliance of the requirements of the Order, within [.....] from the date of receipt of Order (or such extended period as may be agreed by the Commission). During this period, the parties will be required to complete the following::

- a. Identifying the potential Divestiture Buyer;
- b. Negotiating the transfer agreement and the terms thereof (in compliance to the requirement of the Order);
- c. Closing of the transfer arrangement



Schedule I

Glossary of Terms used in the Modification to the Proposed Combination

Term	Definition
Approved Purchaser	The entity approved by the Commission as acquirer of the Metso Minerals' Indian SG IOP capital equipment business in accordance with the criteria set out in Para67 of the Order
Closing	The transfer of the legal title of the Indian Divestment Business to the Approved Purchaser.
Closing of the Proposed Transaction	Any time but not later than one year after the Commission approves the Proposed Transaction.
Confidential Information	Any business secrets, know-how, commercial information, or any other Information of a proprietary nature relating to the Indian Divestment Business that is not available in public domain.
Divestiture Buyer	The entity approved by the Commission as the purchaser of the Engineering Package (given in Annexure A and Order) in relation to Metso Minerals' Indian SG IOP capital equipment business.
Divestiture Buyer Requirements	As given in Para 67 of the Order.
Divestment Transaction	The transaction by way of which Metso Minerals will transfer the Engineering Package (given in Annexure A and the Order) relating to Metso Minerals' Indian Divestment Business to an approved Divestiture Buyer.
Engineering Package	The Engineering Package as described in the Voluntary Remedy Proposal (Given in Annexure A and the Order), which is limited to India. The Engineering Package shall not include: (a) any manufacturing facilities of the Parties, either in India or



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	<p>globally;</p> <p>(b) the right to exploit the drawings, registered IP, and copies of the documents for capital equipment and aftermarket sales outside India for a period of [.....];;</p> <p>(c) intellectual property (including drawings, designs, knowhow, patents, <i>etc.</i>) which does not contribute to the current operations and/or is not necessary or relevant to Metso’s Indian Indian Divestment Business;</p> <p>(d) any rights to brands either in India or globally;</p> <p>(e) Sales offices or other physical plants of Metso and Outotec; and</p> <p>(f) Employees of Metso and Outotec.</p>
Effective Date	The date of the receipt of the conditional approval order of the Commission under Section 31 of the Competition Act.
Timing	<p>First Divestiture Period:The Parties are required to complete the transfer of the Engineering Package relating to Metso Minerals’ Indian Divestment Business within[.....] from the Effective Date (or such extended period as may be agreed by the Commission).</p> <p>Second Divestiture Period: The period from the end of the First Divestiture Period i.e. [.....] from the Effective Date (or such extended period as may be agreed by the Commission) until the sale of the Indian Divestment Business.</p>
Monthly Reporting	The Parties shall provide the Commission with a monthly written report ⁷ on the status and progress of Divestment Transaction. The monthly reports shall be submitted by the 10 th day of every month until such time the proposed remedy is

⁷Please refer Para 68 of the Order.



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	not implemented.
Monitoring Agency	One or more natural or legal person(s), independent from the Parties, who is appointed by the Commission, and who has the duty to monitor the Parties' compliance of the Order. The Monitoring Agency may be appointed as the Divestiture Agency by the Commission.
Monitoring Agency Agreement	The agreement executed by and between the Commission and the Monitoring Agency regarding the monitoring of compliance of the VRP to the combination as provided in the Order.
Nodal Officer	Means an individual with experience in the management, sales, marketing, or financial operations of the Divestment Business, who is nominated / appointed by the Parties to act as single point of contact to supervise the implementation of the VRP till the Closing Date.
Order	Final order of the Commission approving the proposed combination under the relevant provisions of Section 31 of the Act.
Parties	Outotec Oyj and the minerals business of Metso Oyj (<i>Metso Minerals</i>) (collectively).
Third Party(ies)	Any entity other than the Parties and the Approved Purchaser.
Transaction Document	Any agreement (s) (including but not limited to license agreement or other ancillary documents, entered into and between Parties and proposed Divestiture buyer), which has been duly approved by the Commission.
Transitional Support Agreement	The agreement that will be entered into and between Parties / Metso Minerals and the Divestiture Buyer, for transitional support and services that will be provided by Metso Minerals as may be required by the Divestiture Buyer to effectively implement the Divestment Transaction.
Voluntary Remedy Proposal	Voluntary remedy offered by the Parties on 17 th June 2020, to address the Commission's <i>prima facie</i> concerns with regard to



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	the IOP segment.
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