

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of)
)
) File No. 961-0106
INSILCO CORPORATION,)
 a corporation.)

AGREEMENT CONTAINING CONSENT ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of the acquisition of the assets of Helima-Helvetion International, Inc. ("Helima"), and of all the capital stock of ARUP Alu-Rohr und Profil GmbH ("ARUP") from Helmut Lingemann GmbH & Co. by Insilco Corporation ("Insilco"), and it now appearing that Insilco, hereinafter sometimes referred to as the "proposed respondent," is willing to enter into an agreement containing an order to divest certain assets, cease and desist from certain acts and practices, and providing for certain other relief:

IT IS HEREBY AGREED by and between the proposed respondent, by its duly authorized officers and attorney, and counsel for the Commission that:

1. Proposed respondent Insilco is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 425 Metro Place N., Dublin, Ohio 43017.
2. The proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.
3. The proposed respondent waives:
 - a. any further procedural steps;
 - b. the requirement that the Commission's decision

contain a statement of findings of fact and conclusions of law;

- c. all rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and
- d. any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by the proposed respondent that the law has been violated as alleged in the draft of complaint here attached or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, 16 C.F.R. § 2.34, the Commission may, without further notice to the proposed respondent, (1) issue its complaint, corresponding in form and substance with the attached draft of complaint, and its decision containing the following Order to divest and to cease and desist in disposition of the proceeding and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect, and may be altered, modified or set aside in the same manner and within the same time as provided by statute for other orders. The Order shall become final upon service. Delivery by U.S. Postal Service of the complaint and decision containing the agreed-to Order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent

waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or this agreement may be used to vary or contradict the terms of the Order.

7. Proposed respondent has read the draft complaint and Order contemplated hereby. Proposed respondent understands that once the Order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the Order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

ORDER

I

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

A. "Respondent" means Insilco Corporation ("Insilco"), its directors, officers, employees, agents, and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Insilco; and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

B. "Lingemann" means Helmut Lingemann GmbH & Co., its directors, officers, employees, agents, and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Lingemann; and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "Maschinenbau" means Helmut Lingemann Maschinenbau GmbH, its directors, officers, employees, agents, and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Maschinenbau; and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

D. "Commission" means the Federal Trade Commission.

E. "Helima Acquisition" means the acquisition of the assets of Helima-Helvetion International, Inc. and of all the capital stock of ARUP Alu-Rohr und Profil GmbH from Lingemann by Insilco.

F. "Thin-Wall Welded-Seam Aluminum Tubes" means welded-seam aluminum heat exchanger tubes with wall thickness less than 0.65 millimeters used in the manufacture of heat exchangers, which are devices that transfer heat from one fluid or gas to another medium, generally air. These heat exchangers generally are used in automotive applications. Thin-Wall Welded-Seam Aluminum Tubes does not include tubes used as spacers between thermal pane windows, condenser headers, or manifolds.

G. "Welded Tube Mill" means a high frequency welding machine capable of producing Thin-Wall Welded-Seam Aluminum Tubes.

H. "Lingemann Mill" means a Welded Tube Mill manufactured by Lingemann and operated by Helima-Helvetion International, Inc., or ARUP Alu-Rohr und Profil GmbH prior to the Helima Acquisition.

I. "Marketability, Viability, and Competitiveness" means that the specified assets, when used in conjunction with the assets of the acquirer, are capable of operating in substantially the same manner, quality, and efficiency employed or achieved by the respondent prior to divestiture.

J. "Non-Aggregated, Customer-Specific Information" means information about a product's cost and/or price that is in such a form that the cost and/or price of a product for an identifiable individual customer can be identified.

K. "Strategies or Policies Related to Competition" means information relating to a company's approach to negotiating with specific customers, targeting specific customers, identifying or in any other manner attempting to win specific customers, retaining specific customers, or risk of loss of specific customers, including, but not limited to, all sales personnel call reports, market studies, forecasts, and surveys which contain such information.

L. "Analyses or Formulas Used to Determine Costs or Prices"

means a method, study, test, program, examination, tool, or other type of logical reasoning used to determine a product's cost and/or price for an identifiable individual customer.

M. "Person" means any natural person, corporate entity, partnership, association, joint venture, or trust.

N. "Independent Agent" means a Person not regularly employed by the company that does not have and will not have direct or indirect responsibility for prices or pricing or the ability to influence prices or pricing or an attorney regularly employed by the company that does not have and will not have direct or indirect responsibility for prices or pricing or the ability to influence prices or pricing.

O. "Assets To Be Divested" include the following:

(a) one (1) fully functioning and operational Lingemann Mill, consisting of a high frequency welder, a rollforming base, a cutoff saw, a finished product drop table, a stock reel decoder, a vacuum coil lifter, and control cabinets, capable of producing Thin-Wall Welded-Seam Aluminum Tubes with a diameter of less than forty (40) millimeters;

(b) one (1) fully functioning and operational Lingemann Mill, consisting of a high frequency welder, a rollforming base, a cutoff saw, a finished product drop table, a stock reel decoder, a vacuum coil lifter, and control cabinets, capable of producing Thin-Wall Welded-Seam Aluminum Tubes with a diameter of greater than seventy-five (75) millimeters; and

(c) one (1) set of tooling capable of operating on both mills.

P. "Technology and Know-How" means all of Respondent's drawings, patents, specifications, tests, and other documentation, and all information contained therein or available to Respondent's personnel relating to the design, and the production methods, processes, and systems used in the production of Thin-Wall Welded-Seam Aluminum Tubes utilizing Lingemann Mills or the operation and maintenance of Lingemann Mills for use in the production of Thin-Wall Welded-Seam Aluminum Tubes.

Technology and Know-How does not include the drawings, patents, specifications, tests, and other documentation, and all information not acquired by Respondent in the Helima Acquisition and not developed by Respondent following the Helima Acquisition specifically relating to the design, and the production methods, processes, and systems used in the production of Thin-Wall Welded-Seam Aluminum Tubes utilizing Lingemann Mills or the operation and maintenance of Lingemann Mills for use in the production of Thin-Wall Welded-Seam Aluminum Tubes.

Q. "Sole Source Replacement Parts" means all parts needed to operate and maintain the Assets To Be Divested that are not readily available from a source other than Respondent.

R. "Helima Assets" means all Welded Tube Mills, including machinery, fixtures, equipment, and tooling used in the maintenance or operation of such mills, acquired by Insilco in its acquisition of the assets of Helima-Helvetion International, Inc., from Lingemann.

II

IT IS FURTHER ORDERED that:

A. Respondent shall divest, absolutely and in good faith, no later than four (4) months after the date on which this Order becomes final, the Assets To Be Divested.

B. The divestiture shall be made to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture is to ensure the continued use of the Assets To Be Divested in the same business in which the Assets To Be Divested are presently engaged, and to remedy the lessening of competition resulting from the Helima Acquisition as alleged in the Commission's complaint.

C. Respondent shall also divest to the acquirer such additional ancillary assets that are not readily available from a source other than Respondent, including, but not limited to, machinery, fixtures, equipment, and software, used in the maintenance or operation of the Assets To Be Divested as are

necessary to assure the Marketability, Viability, and Competitiveness of the Assets To Be Divested.

D. Respondent shall grant to the acquirer a perpetual, non-exclusive royalty-free license of any and all Technology and Know-How necessary to assure the Marketability, Viability, and Competitiveness of the Assets To Be Divested. Such license shall be effective only in connection with the operation of the Assets To Be Divested by the acquirer, any successor to the acquirer, or any subsequent owner of the Lingemann Mills included in the Assets To Be Divested. The acquirer shall also have the right to sublicense the Technology and Know-How encompassed within its license for use on other assets or equipment physically located in North America.

E. A condition of approval by the Commission of the divestiture shall be the submission by the acquirer to the Commission of an acceptable five-year business plan for the Assets To Be Divested demonstrating that the acquirer will establish the Assets To Be Divested as a viable and competitive business in North America.

F. On reasonable notice to Respondent from the acquirer of the Assets To Be Divested, Respondent shall provide assistance and training to the acquirer to enable the acquirer to design, manufacture, and produce Thin-Wall Welded-Seam Aluminum Tubes at a comparable cost in substantially the same manner and quality employed or achieved by the respondent with the Assets To Be Divested prior to divestiture. Such assistance and training shall include, without limitation, consultation with employees of Insilco knowledgeable about Lingemann Mills and training at the North American manufacturing facilities of Insilco utilizing Lingemann Mills. If training at the North American manufacturing facilities of Insilco utilizing Lingemann Mills is not possible, Respondent shall provide training at any manufacturing facility of Insilco utilizing Lingemann Mills. Respondent shall charge no more than its own direct costs incurred in providing such assistance and training, including reimbursement (commensurate with the salary and benefits of Insilco personnel involved) for the time plus expenses of Insilco personnel providing assistance and training. Respondent shall continue to provide such assistance and training until the acquirer of the Assets To Be Divested is satisfied in its reasonable business judgement that

it is capable of producing Thin-Wall Welded-Seam Aluminum Tubes utilizing the Assets To Be Divested at a comparable cost in substantially the same manner and quality achieved by Respondent prior to divestiture with the Assets To Be Divested; provided, however, Respondent shall not be required to continue providing such technical assistance and training for more than one (1) year after the date on which the divestiture required by this Order is made if the acquirer of the Assets To Be Divested is a manufacturer of Thin-Wall Welded-Seam Aluminum Tubes with sales of Thin-Wall Welded-Seam Aluminum Tubes greater than one million dollars (\$1,000,000) in the fiscal year prior to the date of divestiture. If the acquirer of the Assets To Be Divested is not a manufacturer of Thin-Wall Welded-Seam Aluminum Tubes with sales of Thin-Wall Welded-Seam Aluminum Tubes greater than one million dollars (\$1,000,000) in the fiscal year prior to the date of divestiture, Respondent shall be required to provide such technical assistance and training for a period not longer than three (3) years after the date on which the divestiture required by this Order is made.

G. On reasonable notice to Respondent from the acquirer of the Assets To Be Divested, Respondent shall provide Sole Source Replacement Parts to the acquirer. Respondent shall charge no more than its own direct costs incurred in providing such Sole Source Replacement Parts. Respondent shall not be required to continue providing such Sole Source Replacement Parts for more than two (2) years after the date on which the divestiture required by this Order is made.

H. The Assets To Be Divested shall be supplied as completely wired and piped systems, requiring only the placement and bolting together of the sub-bases, the reconnection of the electrical wires at numbered terminal block junctions, and the connection of the piping to the union joints.

I. Qualification, performance, and the acquirer's acceptance of the Assets To Be Divested shall be performed at the facility of the acquirer in a manner to ensure that the Assets To Be Divested are capable of producing Thin-Wall Welded-Seam Aluminum Tubes in substantially the same manner and quality employed or achieved by the respondent with the Assets To Be Divested prior to divestiture.

J. On reasonable notice to Respondent by a customer, Respondent shall provide the approved acquirer tooling owned by, assigned to, or licensed to the Respondent, which was produced prior to the date this Order becomes final and not included in the Assets To Be Divested, and which was manufactured specifically for and used solely for that customer's products. Respondent may charge the reasonable costs incurred in the manufacture of the tooling.

K. Pending divestiture of the Assets To Be Divested, Respondent shall take such actions as are reasonably necessary to maintain the Marketability, Viability, and Competitiveness of the Assets To Be Divested and to prevent the destruction, removal, wasting, deterioration, or impairment of the Assets To Be Divested.

L. Pending divestiture of the Assets To Be Divested, Respondent shall take such actions as are reasonably necessary to maintain the Marketability, Viability, and Competitiveness of the Helima Assets to prevent the destruction, removal, wasting, deterioration, or impairment of the Helima Assets.

III

IT IS FURTHER ORDERED that:

A. If Respondent has not divested, absolutely and in good faith and with the Commission's prior approval, the Assets To Be Divested within four (4) months of the date this Order becomes final, then the Commission may appoint a trustee to divest the Helima Assets and effect such additional arrangements as are necessary, in order to assure the Marketability, Viability, and Competitiveness of the Helima Assets. In the event the Commission or the Attorney General brings an action pursuant to Section 5(1) of the Federal Trade Commission Act, 15 U.S.C. § 45(1), or any other statute enforced by the Commission, Respondent shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief (including, but not limited to, a court-appointed trustee) pursuant to the Federal Trade Commission

Act or any other statute, for any failure by the Respondent to comply with this Order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III(A) of this Order, Respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent has not opposed, in writing, including the reasons for opposition, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed trustee, Respondent shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Helima Assets and effect such additional arrangements as are necessary, in order to assure the Marketability, Viability, and Competitiveness of the Helima Assets.

3. Within ten (10) days after appointment of the trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission (and, in the case of a court-appointed trustee, of the court), transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture of the Helima Assets and effect such additional arrangements as are necessary to assure the Marketability, Viability, and Competitiveness of the Helima Assets, in order to expeditiously accomplish the remedial purposes of this Order.

4. The trustee shall have twelve (12) months to accomplish the divestiture required by this Order, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the

divestiture period may be extended by the Commission (or, in the case of a court-appointed trustee, by the court); provided, however, the Commission may extend this period for no more than two (2) additional times.

5. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the Helima Assets or to any other relevant information necessary to permit the trustee to effect the divestiture of the Helima Assets, as the trustee may request. Respondent shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by the Respondent shall extend the time for divestiture under this Paragraph III in an amount equal to the delay, as determined by the Commission (or, in the case of a court-appointed trustee, by the court).

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner, and to the acquirer or acquirers, as set out in Paragraph II of this Order; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission approves more than one such acquiring entity, then the trustee shall divest to the acquiring entity or entities selected by Respondent from among those approved by the Commission.

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

of a court-appointed trustee, by the court), of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Respondent and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's accomplishing the divestiture required by this Order.

8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, recklessness, willful or wanton acts, or bad faith by the trustee or his or her agent or representative.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III(A) of this Order.

10. The Commission (or, in the case of a court-appointed trustee, the court) may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

11. The trustee shall have no obligation or authority to operate or maintain the Helima Assets.

12. The trustee shall report in writing to Respondent and the Commission every thirty (30) days concerning the trustee's efforts to accomplish the divestiture.

IV

IT IS FURTHER ORDERED that Respondent shall not enforce beyond one (1) year any contract for the sale of Thin-Wall Welded-Seam Aluminum Tubes with a term greater than one (1) year

entered into after the consummation of the Helima Acquisition and prior to the divestiture of the Assets To Be Divested.

V

IT IS FURTHER ORDERED that:

A. For a period of twenty (20) years from the date this Order becomes final, Respondent shall not, in any proposed acquisition of stock, share of capital, or production assets of any person that is a competitor of Respondent in the design, manufacture, or sale of Thin-Wall Welded-Seam Aluminum Tubes, to which Respondent is a party, prior to consummating the acquisition, obtain, seek, provide, or agree to obtain, seek, or provide the following types of information with respect to Thin-Wall Welded-Seam Aluminum Tubes except to the extent that such information is publicly available: (1) current or future Non-Aggregated, Customer-Specific Information; (2) current or future pricing plans; (3) current or future Strategies or Policies Related to Competition; and (4) Analyses or Formulas Used to Determine Costs or Prices.

B. For a period of ten (10) years from the date this Order becomes final, Respondent shall not, in any proposed acquisition of stock, share of capital, or production assets of any person that is a competitor of Respondent in the design, manufacture, or sale of any product or service, to which Respondent is a party, prior to consummating the acquisition, obtain, seek, provide, or agree to obtain, seek, or provide the following types of information with respect to any competing product or service except to the extent that such information is publicly available: (1) current or future Non-Aggregated, Customer-Specific Information; (2) current or future pricing plans; (3) current or future Strategies or Policies Related to Competition; and (4) Analyses or Formulas Used to Determine Costs or Prices.

C. Nothing contained in Paragraphs V(A) or V(B) of this Order shall prohibit respondent or any other person from obtaining, seeking or providing, or agreeing to obtain, seek or provide (1) current or future Non-Aggregated, Customer-Specific Information; (2) current or future pricing plans; (3) current or future Strategies or Policies Related to Competition; and (4) Analyses or Formulas Used to Determine Costs or Prices, if such

information is provided to an Independent Agent. Information received by an Independent Agent pursuant to Paragraph V of this Order may be provided to Respondent or any other person by such Independent Agent if such information is converted into a form that would not be in violation of Paragraph V of this Order.

VI

IT IS FURTHER ORDERED that, for a period of ten (10) years from the date this Order becomes final, Respondent shall not, without prior notification to the Commission:

(a) directly or indirectly acquire any production assets of Maschinenbau if the cumulative value of all such acquisitions in the prior twelve (12) months exceeds \$1 million; and

(b) directly or indirectly acquire any stock, share of capital, or production assets, other than assets acquired in the ordinary course of business, of any person engaged in the design, manufacture, or sale of Welded Tube Mills or any person engaged in the design, manufacture, or sale of Thin-Wall Welded-Seam Aluminum Tubes in North America; provided, however, that an acquisition of securities will be exempt from the requirements of this paragraph if, after such acquisition of securities, Respondent will hold no more than five (5) percent of the outstanding shares of any class of securities of such person and provided further that an acquisition of assets will be exempt from the requirements of this paragraph if the acquisition price is less than one (1) million dollars.

VII

IT IS FURTHER ORDERED that the prior notifications required by Paragraph VI of this Order shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "The Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only

of Respondent and not of any other party to the transaction. Respondent shall provide The Notification to the Commission at least thirty days prior to consummating any such transaction (hereinafter referred to as the "First Waiting Period"). If, within the First Waiting Period, representatives of the Commission make a written request for additional information, Respondent shall not consummate the transaction until twenty days after substantially complying with such request for additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition.

Provided, however, that prior notification shall not be required by Paragraph VI of this Order for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

VIII

IT IS FURTHER ORDERED that within thirty (30) days after the date this Order becomes final, and every thirty (30) days thereafter until Respondent has fully complied with the provisions of Paragraphs II and III of this Order, Respondent shall submit to the Commission verified written reports setting forth in detail the manner and form in which Respondent intends to comply, is complying, and has complied with Paragraphs II and III of this Order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II and III of the Order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties that have contacted Respondent or that have been contacted by Respondent. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

IX

IT IS FURTHER ORDERED that one (1) year from the date this Order becomes final, annually for the next nine (9) years on the anniversary of the date this Order becomes final, and at such

other times as the Commission may require, Respondent 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 Paragraphs IV, V, VI, and VII of this Order.

X

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondent that may affect compliance obligations arising out of the Order, such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries.

XI

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, Respondent shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Respondent relating to any matters contained in this Order; and

B. Upon five (5) days' notice to Respondent, and without restraint or interference, to interview officers, employees, or agents of Respondent.

Signed this ____ day of June, 1997.

FEDERAL TRADE COMMISSION

By:

Casey R. Triggs
Deputy Assistant Director

Nicholas R. Koberstein
Attorney

Katherine I. Funk
Attorney

Approved:

Ann Malester
Assistant Director

Mark D. Whitener
Deputy Director

William J. Baer
Director
Bureau of Competition

INSILCO CORPORATION

By:

Robert L. Smialek
President and Chief Executive
Officer

Linda R. Blumkin
Fried, Frank, Harris, Shriver &
Jacobson
Counsel for Insilco Corporation

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

_____)
In the Matter of)
)
INSILCO CORPORATION,) Docket No.
)
a corporation.)
_____)

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent Insilco Corporation ("Insilco"), a corporation subject to the jurisdiction of the Federal Trade Commission, has acquired certain assets of Helmut Lingemann, GmbH, ("Lingemann") in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45; and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. DEFINITIONS

For purposes of this Complaint the following definitions apply:

1. "Welded Aluminum Tubes", including welded aluminum tubes with diameters of 50 millimeters or greater ("Large Welded Aluminum Tubes") and welded aluminum tubes with diameters less than 50 millimeters ("Small Welded Aluminum Tubes"), means thin wall welded-seam aluminum tubes used in the manufacture of heat exchangers, which are devices that transfer heat from one fluid or gas to another medium, generally air.

2. "Non-Aggregated, Customer-Specific Information" means information about a product's cost and/or price that is in such a form that the cost and/or price of a product for an identifiable individual customer can be identified.

II. THE RESPONDENT

3. Respondent Insilco is a corporation organized, existing, and doing business under and by virtue of the laws of

the State of Delaware, with its principal place of business at 425 Metro Place N, Box 7196, Dublin, Ohio, 43017.

4. Insilco is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

III. THE ACQUIRED COMPANY

5. Helima-Helvetion, Inc. ("Helima") was a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal place of business having been located at Duncan, South Carolina.

6. Helima, at all times relevant herein, was engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and was a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

IV. THE ACQUISITIONS

7. On or about July 10, 1996, Insilco purchased from Lingemann for \$12.8 million the assets of Helima ("Helima Acquisition"); for \$17 million, the stock of Lingemann's European manufacturer of welded aluminum heat exchanger tubes, ARUP Alu-Rohr und Profil, GmbH; and the option to purchase Maschinenbau, GmbH, a Lingemann subsidiary in Germany that manufactures mills used in the production of aluminum tubes (together, the "Acquisitions").

8. Prior to the consummation of the Acquisitions, Insilco requested and received from Lingemann Non-Aggregated, Customer-Specific Information all of which is the type of information that would likely have been detrimental to competition in the relevant markets if the Acquisition had not been consummated.

9. The Non-Aggregated, Customer-Specific Information transferred from Helima to Insilco included descriptions of prior customer negotiations; detailed customer-by-customer price quotes; current pricing policies and strategies; and detailed, customer-by-customer future pricing strategies.

V. THE RELEVANT MARKETS

10. For purposes of this Complaint, a relevant line of commerce in which to analyze the Helima Acquisition is the market for Large Welded Aluminum Tubes.

11. For purposes of this Complaint, a relevant line of commerce in which to analyze the Helima Acquisition is the market for Small Welded Aluminum Tubes.

12. For purposes of this Complaint, the relevant geographic market for both relevant lines of commerce is North America.

13. Each of the relevant markets is highly concentrated. As a result of the Helima Acquisition, Insilco is currently the only supplier of Large Welded Aluminum Tubes with 100% of the market, and one of only two suppliers of Small Welded Aluminum Tubes, with a market share of over 90%.

14. There has been no entry into the market for Large Welded Aluminum Tubes since the time of the Acquisitions, and the threat of entry has not deterred anticompetitive effects resulting from the Helima Acquisition. Because the cost of entering and producing Large Welded Aluminum Tubes is relatively high compared to the limited potential sales revenues available to an entrant, entry into this market is not likely to be profitable. Consequently, entry into the Large Welded Aluminum Tube market is not likely to occur in a timely manner and counteract the additional anticompetitive effects likely to result from the Helima Acquisition. Entry into this relevant market is difficult and unlikely.

15. There has been no entry into the market for Small Welded Aluminum Tubes since the time of the Acquisitions, and the threat of entry has not deterred anticompetitive effects resulting from the Helima Acquisition. Additional anticompetitive effects resulting from the Helima Acquisition are likely and will continue until such time as actual and sufficient entry occurs .

16. Prior to the Acquisitions, Insilco and Helima were actual competitors in the relevant markets.

VI. EFFECTS OF THE ACQUISITION

17. The Acquisitions have substantially lessened or may substantially lessen competition in the following ways:

- a. they have eliminated Helima as a substantial independent competitor in the relevant markets;
- b. they have eliminated actual, direct, and substantial competition between Insilco and Helima in the relevant markets;
- c. they have increased the level of concentration in the already highly concentrated relevant markets;
- d. they have led, or may lead, to increases in prices in the relevant markets;
- e. they have led, or may lead, to a reduction in service in the relevant markets;
- f. they have led, or may lead, to the reduction in quality in the relevant markets;
- g. they have led, or may lead, to a reduction in technological improvements in the relevant markets;
- h. they have increased barriers to entry into the relevant markets; and
- i. they have given Insilco market power in the relevant markets.

VII. EFFECTS OF INFORMATION TRANSFER

18. Insilco received from Lingemann competitively sensitive information prior to the consummation of the Acquisitions, that, but for the consummation of the Acquisitions, may have detrimentally affected competition in the relevant markets.

VIII. VIOLATIONS CHARGED

19. The effects of the Acquisitions may be substantially to lessen competition or tend to create a monopoly in violation of

Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act, 15 U.S.C. § 45.

20. Insilco, through the Acquisitions, has engaged in unfair methods of competition in or affecting commerce in violation of Section 5 of the FTC Act, 15 U.S.C. § 45.

21. Prior to the Acquisitions, Insilco requested and received from Lingemann Non-Aggregated, Customer-Specific Information about customers for which they both competed in the relevant product markets in violation of Section 5 of the FTC Act, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this ____ day of _____, 1997, issues its Complaint against said respondent.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this Complaint to be signed by the Secretary and its official seal to be affixed, at Washington, D.C. this ____ day of _____, 1997.

By direction of the Commission.

SEAL

Donald S. Clark
Secretary

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

The Federal Trade Commission (the "Commission") has accepted for public comment an agreement containing a proposed Consent Order from Insilco Corporation ("Insilco"). The proposed Consent Order contains a number of provisions designed to remedy the anticompetitive effects that have resulted, and that are likely to continue to occur, because of Insilco's acquisition of the assets of Helima-Helvetion, Inc. ("Helima") from Helima's German parent company, Helmut Lingemann & Co. GmbH ("Lingemann").

THE TRANSACTION

Pursuant to a purchase agreement dated July 10, 1996, Insilco acquired from Lingemann the assets of Helima, a New York corporation with its only plant in Duncan, South Carolina, and the stock of ARUP Alu-Rohr und Profil GmbH, Lingemann's German subsidiary engaged in the production and supply of welded-seam aluminum tubes.

THE COMPLAINT

The proposed complaint alleges that the consummated acquisition of Helima violates 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 two relevant markets: (1) the market for welded-seam aluminum tubes with diameters of 50 millimeters or greater; and (2) the market for welded-seam aluminum tubes with diameters less than 50 millimeters. Welded-seam aluminum tubes with diameters of 50 millimeters or greater are generally used in charged air coolers ("CAC") installed on heavy-weight trucks,¹ whereas welded-seam aluminum tubes with diameters less than 50 millimeters are generally used in radiators. In both CAC and radiators, the welded-seam aluminum tubes act as the heat exchange component, which is a device that transfers heat from one fluid or gas to another medium, generally air.

¹ Heavy-weight truck is the designation given to a truck over 19,000 lbs. The Department of Transportation categorizes such trucks as either Class 6,7, or 8 vehicles.

The complaint alleges that Insilco's acquisition of Helima gave it a virtual monopoly or near-monopoly in these two types of welded-seam aluminum tubes. This acquisition thereby increased the likelihood that consumers would be forced to pay higher prices for welded-seam aluminum CAC and radiator tubes.

A. The Welded-Seam Aluminum CAC Tube Market

In the market for welded-seam aluminum CAC tubes, Insilco's post-acquisition market share is 100%. Currently, there is no foreign supplier of welded-seam aluminum CAC tubes shipping product into North America, and it is unlikely that there will be such a supplier in the next two years, or at any time in the foreseeable future. Because the cost of entering and producing welded-seam aluminum CAC tubes is relatively high compared to the limited potential sales revenues available to an entrant, entry into this market is not likely to be profitable, and is therefore not likely to occur in a timely manner to counteract the additional anticompetitive effects likely to result from the Helima acquisition. Indeed, there has been no entry into the market for welded-seam aluminum CAC tubes since the acquisition of Helima nearly a year ago, nor has the threat of entry deterred any of the actual anticompetitive effects resulting from the acquisition.

B. The Welded-Seam Aluminum Radiator Tube Market

In the merchant market for welded-seam aluminum radiator tubes, Insilco's post-acquisition market share increased to about 90%. Although there is one foreign supplier of welded-seam aluminum radiator tubes shipping product into North America, that supplier has limited sales. It is highly unlikely that this supplier's market share will significantly expand within the next two years because of import duties, shipping costs and time, and customer concerns about the accessibility of the supplier.

Entry sufficient to avert the anticompetitive effects of this acquisition is unlikely. Indeed, there has been no entry into the market for welded-seam aluminum radiator tubes since the time of the Helima acquisition, and the threat of entry has not

deterred anticompetitive effects resulting from the Helima acquisition.

C. The Pre-Consummation Transfer Of Competitively-Sensitive Information

The proposed complaint also alleges that Lingemann, at Insilco's request, gave Insilco comprehensive competitively-sensitive information before consummation of the acquisitions. In particular, Helima gave Insilco customer-specific price information, current and future pricing plans, competition strategies, price formulas, and price strategies. This information transfer was particularly harmful because Insilco and Helima competed against each other in two highly concentrated markets (duopolies) and the information concerned products that are relatively fungible. This transfer had the potential to harm competition in the interim pre-consummation period and in the event the acquisitions were delayed, modified, or abandoned, may have led to even greater and more long-lasting harm. The complaint thus alleges that the transfer of such competitively-sensitive information in such highly concentrated markets violates Section 5.

THE CONSENT ORDER

The proposed Consent Order requires Insilco to divest two welded-seam aluminum tube mills (out of the assets acquired from Lingemann) within four months of the date on which the proposed Consent Order becomes final. The proposed Consent Order also prohibits Insilco from engaging in the pre-consummation transfer of competitively-sensitive information.

A. Divestiture Provisions

Under the proposed Consent Order, Insilco is required to divest two welded-seam aluminum tube mills from the former Helima Duncan, South Carolina facility. One of the mills to be divested must be capable of producing welded-seam aluminum CAC tubes, and one must be capable of producing radiator tubes. In addition, the package of assets to be divested includes one set of tooling that is capable of being used on both mills, as well as additional ancillary assets such as machinery, fixtures,

equipment, and software used in the maintenance and operation of the assets to be divested. Further, Insilco must provide the acquirer access to Insilco employees with knowledge of the Helima mills for the purposes of training, and must sell to the acquirer sole-source spare and replacement parts. Pursuant to a customer's request, Insilco would be required to divest to the acquirer the tooling used to make that customer's tubes. If Insilco fails to divest the package of assets within four months after the date on which the proposed Consent Order becomes final, the Commission may appoint a trustee to divest all five of the mills located at the former Helima plant in Duncan, South Carolina.

To help ensure that the acquirer has access to customers, the proposed Consent Order includes a provision prohibiting Insilco's enforcement of any supply contracts that were entered into after the acquisition and that are operative for a period greater than one year. Further, the proposed Consent Order requires Commission approval of the acquirer, and requires a potential acquirer to submit a five year business plan showing how it will use the divested assets, how it will compete in the markets, and that the divested assets will remain and be competitive in North America. The purpose of the divestiture is to ensure the reinstatement of a viable, ongoing competitor to Insilco in the markets for welded-seam aluminum CAC tubes and welded-seam aluminum radiator tubes.

The proposed Consent Order also requires Insilco to provide the Commission a report of compliance with the divestiture provisions of the Consent Order within 30 days following the date the proposed Consent Order becomes final, and every 30 days thereafter until Insilco has completed the required divestiture.

Finally, Insilco will be required to provide prior notification to the Commission for certain acquisitions involving tube mills or tube producers.

B. Bar on Information Transfer

The proposed Consent Order prohibits Insilco from obtaining, or providing, prior to the consummation of an acquisition or sale of an interest in any of its businesses, customer-specific price and cost information, current or future pricing plans, current or

future strategies or policies relating to competition, and analyses or formulas used to determine costs or prices. The proposed Consent Order thus prohibits the exchange of specific types of information that would likely harm competition in any market. The proposed Consent Order does, however, acknowledge that a situation might arise wherein Insilco, or a future acquisition partner, may benefit from having access to competitively-sensitive information in order to assess a proposed acquisition. In such a case, the party possessing such information would be allowed under the proposed Consent Order to transfer the information to an independent agent who will mask the customer-specific and/or competitor-specific nature of the information before providing it to its acquisition partner. Transferring this type of information through an independent agent permits the benefits of the information transfer while avoiding the potential for injury to competition.

PUBLIC COMMENT

The proposed Consent Order has been placed on the record for 60 days for reception of comments by interested persons . Comments received during this period will become part of the public record. After 60 days, the Commission will again review the agreement and the comments received, and will decide whether to withdraw from the agreement or make final the agreement's proposed Order.

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