

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:     Robert Pitofsky, Chairman  
                      Mary L. Azcuenaga  
                      Sheila F. Anthony  
                      Mozelle W. Thompson  
                      Orson Swindle

In the Matter of	)	
	)	
<b>INSILCO CORPORATION,</b>	)	Docket No. C-3783
a corporation.	)	DECISION AND ORDER
	)	

The Federal Trade 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 respondent, and the respondent having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon accepted the executed Consent Agreement and placed such Agreement on the public record for a period of sixty (60) days, and having duly considered the comment received, now in further conformity with the procedure described in § 2.34 of its Rules,

the Commission hereby issues its Complaint, makes the following jurisdictional findings and enters the following Order:

1. 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 Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

### ORDER

#### I

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

A. "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.

**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.

**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.

**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.

By the Commission, Commissioner Swindle not participating.

Benjamin I. Berman  
Acting Secretary

SEAL

ISSUED: January 27, 1998