

**ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDERS
TO AID PUBLIC COMMENT**

In the Matter of General Electric Company, File No. 031 0097

I. Introduction

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) from General Electric Company (“GE”), which is designed to remedy the anticompetitive effects resulting from GE’s acquisition of the nondestructive testing (“NDT”) business group of Agfa-Gevaert N.V. (“Agfa”). Under the terms of the Consent Agreement, GE will be required to divest its Panametrics ultrasonic NDT business to R/D Tech, Inc. (“R/D Tech”). The divestiture will take place no later than twenty (20) days from the date GE consummates its acquisition of the Agfa NDT business. The Consent Agreement also includes an Order to Maintain Assets that requires GE to preserve the Panametrics ultrasonic NDT business as a viable, competitive and ongoing operation until the divestiture is achieved.

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

Pursuant to a stock and asset purchase agreement dated January 17, 2003, and amended September 19, 2003, GE proposes to acquire Agfa’s NDT business group (“Proposed Acquisition”). The total value of the Proposed Acquisition is approximately \$437 million. The Commission’s Complaint alleges that the Proposed Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by lessening competition in the U.S. markets for the research, development, manufacture, and sale of certain types of ultrasonic NDT equipment, specifically: (1) portable flaw detectors, (2) corrosion thickness gages, and (3) precision thickness gages.

II. The Parties

GE is a diversified technology and services company headquartered in Fairfield, CT. GE is made up of a broad range of primary business units, each with its own number of divisions. GE Aircraft Engines, the business unit that proposes to acquire Agfa’s NDT assets, is the world’s leading manufacturer of jet engines for military and civil aircraft. Another business unit of GE, GE Power Systems, offers NDT equipment through the NDT Division of Panametrics, Inc. With its headquarters and manufacturing operations in Waltham, MA, Panametrics researches, designs, manufactures, and sells ultrasonic NDT equipment and systems.

Headquartered in Mortsel, Belgium, Agfa is one of the world's leading imaging companies. Agfa researches, develops, produces, and sells a wide variety of NDT equipment through its Krautkramer, Pantak, Seifert, and RADView subsidiaries. Agfa offers a complete range of ultrasonic NDT equipment, including portable and stationary instruments, customized testing machines and accessories, as well as application solutions, training and service.

III. Ultrasonic NDT Equipment

GE, through its Panametrics subsidiary, and Agfa, through its Krautkramer subsidiary, are the two largest suppliers of ultrasonic NDT equipment in the United States. Ultrasonic NDT equipment includes, among other products: (1) portable flaw detectors; (2) corrosion thickness gages; and (3) precision thickness gages. Ultrasonic NDT equipment is used to inspect the structure and tolerance of materials without damaging the materials or impairing their future usefulness. Manufacturers and end users in a variety of industries use ultrasonic NDT equipment for quality control and safety purposes. Customers of these products purchase the type of ultrasonic NDT equipment that is best-suited for the inspection they need to conduct and, because of the unique performance characteristics of each type of equipment, there is little opportunity to switch to alternative equipment. In fact, even a price increase of five to ten percent for portable flaw detectors, corrosion thickness gages or precision thickness gages would not likely cause a significant number of customers for these products to switch to any alternative product.

The United States is the appropriate geographic market for portable flaw detectors, corrosion thickness gages and precision thickness gages in which to analyze the competitive effects of the Proposed Acquisition. Because ultrasonic NDT equipment frequently needs to be calibrated and repaired to ensure accuracy, customers prefer to purchase from suppliers with local service and support. Furthermore, customers tend to purchase from companies with a proven reputation for accurate and reliable equipment, and are reluctant to switch to a new company that does not have a proven track record for providing accurate and reliable equipment. Foreign suppliers that have not established the necessary service and support networks, brand reputation, and customer acceptance in the U.S. are not effective competitors for U.S. customers and would not be able to constrain a price increase for portable flaw detectors, corrosion thickness gages or precision thickness gages in the U.S.

The U.S. markets for portable flaw detectors, corrosion thickness gages, and precision thickness gages are all highly concentrated. If the Proposed Acquisition is consummated, GE's market share would exceed 70 percent in each of the U.S. markets for: (1) portable flaw detectors; (2) corrosion thickness gages; and (3) precision thickness gages. In each of these markets, GE and Agfa are the two largest suppliers. For many customers, GE and Agfa are the two top choices when considering a supplier of portable flaw detectors, corrosion thickness gages and precision thickness gages. By eliminating competition between these two leading suppliers, the Proposed Acquisition would allow GE to exercise market power unilaterally, thereby increasing the likelihood that purchasers of portable flaw detectors, corrosion thickness gages and precision thickness gages would be forced to pay higher prices and that innovation in

these markets would decrease.

Significant impediments to new entry exist in each of the U.S. markets for portable flaw detectors, corrosion thickness gages and precision thickness gages. First, a new entrant would need to devote significant time and expense to researching and developing a product. Second, a new entrant must undertake the lengthy and costly process of establishing a track record of reliability and accuracy for its product. This track record is critical to customers because ultrasonic NDT equipment is relied upon to ensure the quality and performance of their products. Finally, a new supplier of portable flaw detectors, corrosion thickness gages or precision thickness gages must spend a great deal of time and money to develop a broad service and support network that customers depend upon. For these reasons, new entry into the markets for portable flaw detectors, corrosion thickness gages and precision thickness gages would not be accomplished in a timely manner even if prices increased substantially after the Proposed Acquisition. Additionally, new entry into the markets for portable flaw detectors, corrosion thickness gages, and precision thickness gages is unlikely to occur because the costs of entering the markets are high relative to the limited sales opportunities available to new entrants.

IV. The Consent Agreement

The Consent Agreement effectively remedies the acquisition's anticompetitive effects in the U.S. markets for the research, development, manufacture, and sale of portable flaw detectors, corrosion thickness gages, and precision thickness gages by requiring GE to divest its worldwide Panametrics ultrasonic NDT business. Pursuant to the Consent Agreement, the Panametrics ultrasonic NDT business will be divested to R/D Tech. The divestiture will take place no later than twenty (20) days from the date GE consummates its acquisition. If the Commission determines that R/D Tech is not an acceptable buyer or that the manner of the divestiture is not acceptable, GE must unwind the sale and divest the Panametrics ultrasonic NDT business to a Commission-approved buyer within ninety (90) days. Should GE fail to accomplish the divestiture within the time and in the manner required by the Consent Agreement, the Commission may appoint a trustee to divest the Panametrics ultrasonic NDT business subject to Commission approval. The trustee will have the exclusive power and authority to accomplish the divestiture within twelve (12) months of being appointed, subject to any necessary extensions by the Commission.

The Commission's goal in evaluating possible purchasers of divested assets is to maintain the competitive environment that existed prior to the acquisition. A proposed buyer of divested assets must not itself present competitive problems. The Commission is satisfied that R/D Tech is a well-qualified acquirer of the divested assets. R/D Tech, a private corporation headquartered in Quebec, Canada, researches, designs, manufactures and sells eddy current, acoustic emission, and phased array instruments for manual and automated NDT inspections. With U.S. offices located in Massachusetts, North Carolina, Pennsylvania, and Texas, R/D Tech has the resources, related experience and capabilities to ensure that it will become an effective competitor in the markets for portable flaw detectors, corrosion thickness gages and precision thickness gages. R/D Tech has the necessary industry expertise to replace the competition that

existed prior to the Proposed Acquisition. Furthermore, R/D Tech does not pose separate competitive issues as the acquirer of the divested assets because R/D Tech does not produce, or is not a major supplier of, any of the product lines being acquired.

The Consent Agreement contains several provisions designed to ensure that the divestiture of the Panametrics NDT business is successful. For a period of one (1) year from the date the divestiture of the business is accomplished, GE is prohibited from soliciting or inducing any employees or agents of the ultrasonic NDT equipment business involved in the divestiture to terminate their employment with R/D Tech. The Consent Agreement also requires that, post-divestiture, any remaining GE employees with access to confidential business information related to the Panametrics ultrasonic NDT business sign a confidentiality agreement. Pursuant to this agreement, employees will be required to maintain confidential business information as strictly confidential, including the nondisclosure of such confidential information to other GE employees. Finally, the Decision and Order allows the Commission to appoint an Interim Monitor, if necessary, to assure that GE complies with all of its obligations and performs all of its responsibilities as required by the Consent Agreement.

The Consent Agreement also contains an Order to Maintain Assets. This will serve to protect the viability, marketability and competitiveness of the Panametrics ultrasonic NDT business until it is divested to R/D Tech. The Order to Maintain Assets became effective upon the date the Commission accepted the Consent Agreement for placement on the public record and will remain in effect until GE successfully divests the Panametrics ultrasonic NDT business according to the terms of the Decision and Order.

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

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