

***Case No COMP/M.3686 -  
HONEYWELL / NOVAR***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

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Article 6(2) NON-OPPOSITION  
Date: 30/03/2005

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30/03/2005

SG-Greffe(2005) D/201527

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) & 6(2)  
DECISION

**To the notifying party**

Dear Sir/Madam,

**Subject: Case No COMP/M.3686 – HONEYWELL/NOVAR  
Notification of 7.1.2005 pursuant to Article 4 of Council Regulation  
No 139/2004<sup>1</sup>**

1. On 7.1.2005, Honeywell International Inc. (“Honeywell”) notified its intention to acquire Novar plc (“Novar”) within the meaning of Article 3(1)(b) of the Council Regulation (EC) No 139/2004 (“EC Merger Regulation”) by way of a public bid announced on 13.12.2004. On 4.2.2005, the Commission declared the notification incomplete. On 7.2.2005, the notification became complete within the meaning of Article 10(1) of the EC Merger Regulation.
2. In the course of the proceedings, the parties to the concentration submitted undertakings designed to eliminate competition concerns identified by the Commission, in accordance with Article 6(2) of the EC Merger Regulation. After examination of the notification and in the light of these modifications, the Commission has concluded that the operation falls within the scope of the EC Merger Regulation and does not raise serious doubts as to its compatibility with the common market and the EEA agreement.

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<sup>1</sup> OJ L 24, 29.1.2004 p. 1.

## **I. THE PARTIES**

3. Honeywell, a US corporation, is an advanced technology manufacturing company supplying customers world-wide with aerospace products and services, automotive products, electronic materials, specialty materials, performance polymers, transportation and power systems, home and building controls, and industrial controls.
4. Novar is an international group based in the UK focusing on Intelligent Building Systems (IBS), Indalex Aluminum Solutions (IAS) and Security Printing Services (SPS).
5. The proposed transaction involves the building security systems and building control sectors.

## **II. THE OPERATION**

6. On 13 December 2004, Honeywell announced its binding intention to acquire all of the outstanding shares of Novar. Honeywell's offer received a formal recommendation from Novar's Board of Directors. As a result of the transaction the IBS business of Novar will be incorporated in the ACS division of Honeywell.

## **III. CONCENTRATION**

7. Following from the above, the operation constitutes a concentration within the meaning of article 3(1)(b) of the EC Merger Regulation.

## **IV. COMMUNITY DIMENSION**

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion (Honeywell: EUR 20.4 billion, Novar: EUR 2.1 billion). Each of them have a Community-wide turnover in excess of EUR 250 million (Honeywell: EUR [...] million, Novar: EUR [...] million), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

## **V. COMPETITIVE ASSESSMENT**

### **A. Relevant product markets**

9. The parties' activities overlap in relation to commercial building security systems (fire and intrusion alarms), and commercial building control systems. The Commission has previously examined the building control and building security system markets in the M.913 - *Siemens/Elektrowatt* and M.692 - *Elektrowatt/Landis & Gyr* decisions.

#### **1. Relevant product markets related to fire alarms**

10. The purpose of a fire alarm system is to detect a fire and report it to a central location or bring it to the direct attention of those within the vicinity directly through the emission of a loud signal.
11. The main component, which, according to the parties, accounts for approximately 35-50% of the value of the total system, is the *fire detector*. The parties have submitted

that from the point of view of demand, the various detectors are interchangeable. The parties have further submitted that from the point of view of supply, most manufacturers offer or are able to offer a broad range of detectors. The other main component is the *panel*. The function of the panel is to ensure the interconnection of the detectors, provide a central point in which to monitor all components of the fire alarm system, and, set off the sounders (i.e. the alarm) or alert the local fire brigade. The panel generally accounts for approximately 10-20% of the value of the fire alarm system. The remaining value of the fire alarm system is comprised of the *sounders*, *strobe lights* and *call points* as well as *peripheral components* such as annunciators/repeaters, door closers, and power supplies. The value of such components is an additional 30-55% of the system.

12. The parties have submitted that all of the above-described components are designed and manufactured so that they interact and together constitute the fire alarm system. Some components use a proprietary protocol for communicating with other components and will therefore necessarily be sold together as a system. According to the parties, these systems account for the majority of the market.
13. Both Honeywell and Novar sell fire alarm systems. In addition, Honeywell - but not Novar - is active also in relation to the supply of individual components which are then put together in a fire alarm system mainly by panel manufacturers.
14. The fire alarm systems are in turn sold to the end-customers (e.g. building owners) by installers. This activity includes the design, supply, installation and commissioning of the complete fire alarm solution to the end-customer. The installed fire alarm systems are then maintained and serviced (regular checks that it works properly, refurbishing, upgrade and extension).
15. As a result, the following relevant product markets can be identified: (i) the supply of components for fire alarm systems (fire detectors, sounders, call points, etc.), (ii) the supply of packaged fire alarm systems to installers; (iii) the installation of fire alarm systems, including the design, supply, installation and commissioning of complete fire alarm solutions to end customers; and (iv) the servicing and maintenance of fire alarm systems. These markets are all vertically linked.
16. The questions can be left open as to (a) whether the supply of components (market (i)) should be seen as one and the same market or each component constitutes a distinct market (e.g. the supply of fire detectors), (b) whether the installation and the servicing of fire alarm systems should be considered as one or two distinct market and (c) whether the servicing for fire alarms and that for intrusion and other security systems (see §18 below) should be seen as one or two distinct markets. In all cases, the conclusions reached by the Commission remain unaltered irrespective of the precise delineation retained.

## **2. Other relevant product markets**

17. The proposed transaction gives rise to (limited) overlaps in two other series of markets: (i) intrusion and other security systems and (ii) building control systems.

### *Markets related to intrusion and other security systems*

18. Commercial security alarm systems are intended to protect unwanted intrusion onto property or into a building, or to enable someone to control access to a building.

Depending on the degree of security desired, the intrusion/security system can implement one or more of the basic types of security measures, such as door/window contact, break glass detector, motion sensor or CCTV<sup>2</sup>. Access control complements intrusion control and increases ability to control who can enter a building and who cannot. In many cases intrusion alarms will incorporate an element of access control since, generally, it is necessary to allow certain persons access to the building while keeping intruders out.

19. The parties submitted that three vertically-linked product markets can be identified: (i) the supply of equipment and components for intrusion and other security systems, (ii) the supply of intrusion and other security systems and (iii) the servicing for fire alarm and intrusion and other security systems.
20. In the latter case, the parties considered that the servicing for fire alarm services and that for intrusion and other security systems should be seen as being part of one and the same market. However, the precise delineation of the markets related to intrusion and other security systems can be left open as the merger does not raise serious doubts in these markets irrespective of the precise delineation considered.

*Markets related to building control systems*

21. Building control in commercial and large residential buildings includes the measuring, control, regulation and management of heat, ventilation, air-conditioning (together: HVAC) and other technical installations, such as building automation. Building control systems therefore include electronic and electronic data-processing systems and their components (but excludes the heating, ventilation and air-conditioning equipment itself, e.g. the boilers). Building control systems are used for the economic and energy-efficient control and regulation of the operational installations in commercial and residential buildings, including the preparation and commissioning of such building control systems and demonstrating to operators how to use them.
22. Following the Commission decisions in *Siemens/Elektrowatt* and *Elektrowatt/Landis & Gyr*, the parties submitted that a distinction should be made between (i) the market for equipment and components for building control systems, (ii) the market for building control systems including installation, and (iii) the market for servicing the systems.
23. However, the precise delineation of these markets can be left open as the merger does not raise serious doubts in these markets irrespective of the precise delineation considered.

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<sup>2</sup> Close-circuit TV

## **B. Relevant geographic markets**

### **1. Relevant geographic markets related to fire alarms**

24. The parties have submitted that, although traditionally national and characterized by local or national suppliers, the markets for the supply of packaged fire alarm systems have moved towards a European-wide structure. As concerns the markets for the installation of fire alarm systems and servicing, the parties have submitted that the local presence of a supplier is required and, therefore, markets are national in scope. Finally, the parties have submitted that the market for the supply of smoke detectors is at least EEA-wide in scope.
25. The market investigation shows that the scope of the relevant markets for the supply, installation and servicing of fire alarm systems must be considered as national. Although a number of harmonized European standards have been established, national approval requirements remain and, in most cases, the approval given in a country is not recognised in the others. National standards for systems and/or components vary and are stricter in some countries than in the others. By way of example, the investigation shows that while the UK seems to be a rather open market as far as specific certification standards are concerned, Germany and France have strict national standard requirements which the fire alarm system suppliers have to meet. Competitors have indicated that, in general, they cannot easily sell fire alarm systems or components manufactured for a specific national market to another.
26. More importantly, however, the investigation shows that local presence is required for the supply, installation and servicing of fire alarm systems. Manufacturers either supply the markets via their own locally based installation or service organisations or use local third party installers.
27. Furthermore, customers in their replies to the Commission's market investigation have indicated that they would not consider sourcing fire alarm systems on a wider than national basis. Customers have also in general indicated that they are not aware of prices in other countries.
28. Moreover, the investigation shows that the market structure differs significantly from one country to the other. In this respect, the Commission notes that the market positions of the suppliers vary dramatically from one Member State to the other. In addition, the route to the market is very different in various Member States.
29. The investigation appears to support the parties' submission that the supply of smoke detectors is wider than national. However, any attempt to use market power in the upstream level of smoke detectors will ultimately have an effect on the downstream market of fire alarm systems at the national level (there is no horizontal overlap in the supply of smoke detectors). Therefore, for the purposes of this decision, it is necessary to analyse the vertical relationships between the smoke detector supplier and the system provider at the national level.

### **2. Other relevant geographic markets**

30. In line with the Commission's decision in *Siemens/Elektrowatt*, the parties have submitted that the markets for intrusion and other security systems are national.

However, the precise delineation of these markets can be left open as the merger does not raise serious doubts in these markets irrespective of the precise delineation considered.

31. As regards the market for equipment and components for building control systems and the market for building control systems, the parties have submitted in line with the Commission's decision in *Siemens/Elektrowatt* that these markets are at least EEA-wide. As regards the market for servicing of building control systems, the parties have submitted that the geographic scope of the market is national. The precise delineation of these markets can, however, be left open as the merger does not raise serious doubts irrespective of the precise delineation considered.

**C. Assessment**

**1. Assessment of the horizontal relations in the markets related to fire alarms**

***(a) Supply of Fire detectors***

32. Only Honeywell sells fire detectors on the market. Therefore, the market for fire detectors is not horizontally affected.

***(b) Supply of packaged Fire alarm systems to installers***

33. As regards the markets for fire alarm systems, the member states horizontally affected by the contemplated merger are the following: the UK, Spain, Portugal, Ireland, The Netherlands, Italy and Germany. The related market shares are shown in the table below.

Country	Market shares		
	Honeywell	Novar	Combined
Italy	[30-40]%	[10-20]%	[50-60]%
Germany	[0-10]%	[20-30]%	[20-30]%
Netherlands	[10-20]%	[10-20]%	[20-30]%
Spain	[20-30]%	[0-10]%	[30-40]%
Ireland	[10-20]%	[0-10]%	[10-20]%
UK	[0-10]%	[10-20]%	[10-20]%
Portugal	[10-20]%	[0-10]%	[10-20]%

Source: the Commission's investigation, year 2003

34. In Portugal, the overlap is very limited since Honeywell holds only a [0-10] market share, and the combined market share ([10-20]%) is small as compared with those of the remaining competitors, such as Siemens ([20%-30%]) or GFE ([20%-30%]).

35. The situation is similar in the UK and in Ireland where the combined market shares are very limited and the merged entity will still be constrained by the remaining competitors: for instance, Tyco ([30%-40%]) in the UK and Siemens ([10%-20%]), C-TEC ([10%-20%]) and Cooper ([10%-20%]) in Ireland.
36. In Spain, the Netherlands and Germany, the market share of the combined entity would be a bit higher (in the range of [30-40]%) but the market investigation carried out by the Commission has not raised any serious doubt either. In Spain, the overlap is small and the remaining players appear to be sufficient to maintain competition, in particular GE ([10%-20%]), Siemens ([10%-20%]) along with numerous smaller competitors. In the Netherlands, the merged entity would become one of the leading players with a limited market share ([20-30]%) but would have to face competition from strong international players such as Siemens ([20%-30%]), GE ([10%-20%]) and Kidde ([10%-20%]).
37. In Germany, the merged entity would hold a [20%-30%] market share. However, the overlap is very limited ([0%-10%]%) and the merged entity would still have to compete with other players such as Siemens ([30%-40%]), the Swiss company Securitas ([20%-30%]) or Bosch ([0%-10%]). A third party has argued that *“with such an important market share, Honeywell will certainly not remain the ‘maverick’ anymore. On the contrary, Honeywell will put an end to competition with the leader (Novar) and make sure it can increase its market position and profit margin”*<sup>3</sup>. However, this explanation and reasoning is based on estimated market shares which have not been confirmed by the investigation: the complaining third party attributes a market share as high as [30-40]% to the combined entity and one as low as [20-30]% for Siemens, while the actual market shares are respectively [20-30]% for the combined entity and [30%-40%] for Siemens. In addition, no convincing evidence has been found to support the contention that Honeywell would be a maverick in the German market whose disappearance would significantly impede effective competition.

#### *Italy*

38. The parties have estimated that their combined market share would be [30-40]% in Italy (Honeywell: [30-40]%, Novar: [0-10]%). The largest competitors according to the parties are the Italian supplier Sanco ([10-20]%), Siemens ([10-20]%), Bosch ([0-10]%), GE ([0-10]%), Kidde ([0-10]%) and Tyco ([0-10]%).
39. The parties have submitted that concerns would not arise in Italy because there is a large number of competitors with an established track record of supplying Italian customers. The parties also have submitted that the barriers to entry in the Italian market are low and that it is possible to sell equipment manufactured in one Member State in Italy without seeking domestic Italian certification. Moreover, according to the parties the installers have significant buyer power and are able to play off the manufacturers against each other to increase the pressure on prices. Finally, the parties have submitted that competitive safeguards are underpinned by the extensive use of bidding procedures in the market for the installation of fire alarm systems. At a later

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<sup>3</sup> Submission by [confidential] on 03.02.2005.



stage of the procedure<sup>4</sup>, the parties have also come with the argument that the market for the supply of fire alarm systems to installers would also be a bidding market.

40. These submissions have not been confirmed by the investigation.
41. The market investigation and the sales figures collected from competitors show that the parties' position would be significantly higher than what they submitted and would be in the range of [50-60]% (Honeywell: [30-40]%, Novar: [10-20]%). Based on the information gathered by the Commission, Sanco is all but absent from the market (less than [0-10]% market share). Siemens has a [20%-30%] market share, Kidde [0%-10%], GE [0%-10%] and Schrack [0%-10%]. The merged entity would therefore hold half of the market in Italy and be more than twice as large as the second largest player.
42. This difference can be explained by the difference in the overall size of the market. The parties have submitted that the total value of the Italian market in 2003 was approximately € 100 million. According to industry analysis, however, the Italian market is estimated to amount to a total value of € 76.3 million. The sales figures obtained from competitors and the market reconstruction deriving therefrom support the smaller total market value and, hence, a higher market share for the parties.
43. The parties submitted that the market for the installation of fire alarm systems to end-customers, i.e. the market downstream the supply of fire alarm systems to installers, was a bidding market. As supporting evidence they exhibited a few requests for quotes by end-customers and the quotes sent by the merging parties. However, even for these few examples, the merging parties have not been in a position to show that these requests for quotes were actually genuine tendering procedures. The installers' replies to the Commission's requests for information show that informal negotiations are also commonly used. In addition, it is noteworthy that, when bidding procedures are used, they occur in the downstream market (fire alarm installation) and may not be reflected in the market under scrutiny, i.e. the sales of fire alarm systems to the installers/VARs. Indeed, respondents confirmed that the market for the supply of fire alarm system was not a bidding market: prices are set for a given period of time (based on price lists) and can be renegotiated from time to time. Only for very large projects does it happen that the installer comes back to the fire alarm system manufacturer and ask for a specific discount.
44. As for new entry, all major players are already present in Italy but with notably lower market shares compared to those that they may hold in other countries (e.g. Siemens, Bosch, Tyco) and to the merged entity. It is therefore doubtful that the presence of these players will be sufficient to constrain the merged entity.
45. In view of the foregoing elements, the Commission came to the conclusion that the contemplated merger, as notified, raises serious doubts as to its compatibility with a substantial part of the common market, as it may significantly impede effective competition in Italy as a result of the creation of a dominant position.

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<sup>4</sup> Information provided on 28.02.2005

***(c) Installation and servicing of fire alarm systems***

46. In the markets for installation and servicing of fire alarm systems, the merger does not lead to horizontally affected markets irrespective of the geographic scope of the markets (national or EEA-wide) or of whether installation and servicing are considered as one and the same product market or two separate product markets.

**2. Assessment of the vertical relations in the markets related to fire alarms**

47. Vertical relations arise in Austria, Norway, Denmark, Sweden and Finland. In Austria, Honeywell supplies smoke detectors to Labor Strauss, which competes with Novar in the supply for fire alarm systems. In Norway, Denmark, Sweden and Finland, Honeywell supplies smoke detectors to ESMI, a subsidiary of Schneider, which is in turn competing with Novar on the market for fire alarm systems. Following the transaction, in these countries, the main upstream component supplier will become a competitor on the market for systems downstream.
48. It has been argued during the Commission's investigation that the transaction would lead to competition concerns on these markets through the installed base of the two parties. More precisely, it has been argued that the installed base of proprietary protocols is strategic, because it allows the company to extract high margins vis-à-vis captive customers for servicing. The investigation shows that servicing of fire alarm systems accounts for some 50% of the business for an installer. It has been argued that the parties' increased installed base would allow them to benefit from the high margins stemming from the servicing activities while decreasing their prices on new projects, thereby winning new business and further expanding their installed base and evicting competitors on new installations.
49. More particularly, it has been argued that the transaction is likely to change Honeywell's approach to the markets, since by acquiring Novar it will become vertically integrated all the way from components to system solutions. It has been argued that the new entity will have the possibility and incentive to squeeze out of the market those system suppliers, who depend on the new entity on their component supplies. It has been argued that Honeywell could achieve this by increasing the price of detectors, thereby raising the rival's cost, or not supplying detectors according to the contract. It has been argued that it is difficult for the system competitor to switch detector supplier. It has been argued that it takes roughly a year to change detector manufacturer, as development work and new authorisations are necessary. Moreover, if the system manufacturer has to change supplier, it would lose its installed base and all the servicing revenues stemming from it.
50. The Commission has assessed carefully the structure of the market in Norway, Denmark, Finland, Sweden and Austria and concludes that the above presented scenario is unlikely to happen.
51. As concerns Austria, the Commission notes that the panel that Labor Strauss uses for the smoke detectors supplied by Honeywell are dual-use panels and can work also with Apollo smoke detectors. Therefore, should Honeywell increase prices of the smoke detectors or in any other way attempt to use its market power, the Commission notes that Labor Strauss could readily switch to using Apollo fire detectors.

52. As concerns Finland, Norway, Denmark and Sweden, Honeywell supplies fire detectors to Schneider's subsidiary ESMI. ESMI's control panels are specifically designed to be used solely with Honeywell's smoke detectors. The question therefore is whether Honeywell could use, post-merger, its market position to engage in anticompetitive practices in order to squeeze ESMI and, ultimately, force it to exit the market.
53. First, as a general remark, the Commission notes that the scenario put forward above - by which Honeywell would increase its prices of smoke detectors towards ESMI and at the same time decrease the prices on its new projects in order to win new business - may harm ESMI but leads to lower prices in the short run both on the markets for fire alarm installation and servicing. The Commission has not received convincing evidence that ESMI would exit the market, should Honeywell engage in such practices.
54. Second, the Commission considers that it is likely that a significant increase of the prices of fire detectors sold to ESMI by Honeywell would be unprofitable for the merged entity, given the structure of each national market concerned and the fact that the market investigation does not indicate that ESMI and Novar would be the closest substitutes.
55. In Finland, Novar has according to the parties' own estimation [0-10]% market share. Honeywell is not selling systems on the market but sells fire detectors to ESMI, who has [40-50]% market share on the total systems market. Other competitors include Siemens ([10-20]%) and Autronica (Kidde) ([10-20]%). According to the Commission's own calculations, however, ESMI has only [25%-35%] of the market, Novar has [0%-10%], and Autronica (Kidde) and Siemens each [15-25%].
56. If considering the hypothesis that Honeywell raises the price of detectors it supplies to ESMI, two scenarios may be envisaged: first, ESMI does not pass on the price increase and there is thus no short-term effect on the market for fire alarm systems, or second, ESMI does pass a part of the price increase and ESMI will lose thus some sales. In the latter scenario, it may be assumed that Honeywell will capture part of ESMI's lost sales via Novar and, at the same time, make more profit from the higher prices it makes with the fire detectors it sells to ESMI.
57. However, given the fact that Novar's market share is relatively small in Finland ([0%-10%]), it is likely that a large part of ESMI's market share would in fact be captured by Siemens and Autronica (Kidde), who are in a much stronger position in the Finnish market than Novar. Furthermore, the Commission also notes that as concerns servicing of ESMI's installed base, Honeywell would be dependent on ESMI for the access to ESMI's panel in order to extend and retrofit the installed base. Therefore, the Commission considers it unlikely that the strategy outlined [...] would be either in the interest of Honeywell or detrimental to competition on the market.
58. As regards Norway, according to the parties' estimates Novar has [20-30]% of the total market for systems. Autronica (Kidde) is the market leader with [30-40]% of the market, while ESMI and Siemens each have [10-20]%. Tyco, GE and NOBY have [0-10]% of the market each. The Commission's own calculations show, however, that Autronica's (Kidde) position is even stronger on the Norwegian market: [40%-50%]. Novar has [20%-30%] of the market, ESMI and Siemens [5%-15%] each and Tyco, Siemens and NOBY [0%-10%] or less each. It is noteworthy that, even if ESMI were

not present (or would have exited the market (quod non)), there are enough credible competitors to maintain competitive constraints on the merged entity.

59. In view of the fact that ESMI has no more than [5%-15%] of the market and that Autronica's (Kidde) market position is very strong, the Commission considers that the incentive of Honeywell to squeeze ESMI is low because ESMI's market share is very low and, in any case, the majority of ESMI's lost sales would be most likely be captured by the market leader Autronica (Kidde) and not Novar.
60. In Denmark, the situation is similar to that in Norway: according to the parties' own figures, Novar holds a [0-10]% market share while ESMI has [20-30]%, Siemens [20-30]%, Autronica [10-20]% and Tyco [10-20]%. The Commission's own calculations have led to the following market shares: Novar: [5%-15%]; ESMI: [5%-15%]; Siemens: [30%-40%]; Autronica: [5%-15%] and Tyco: [10%-20%]. Given Novar's and ESMI's low market shares it is very unlikely that that significant price increases by Honeywell to ESMI either could be profitable to Honeywell or have a significant impact on the market.
61. The same reasoning applies to Sweden, where ESMI holds a [10%-20%] market share and Novar only [0%-10%]%. Interestingly enough, Honeywell is also present in Sweden on the market for fire alarm systems, holding a [0%-10%] market share. This shows that, when Honeywell (or the contemplated merged entity) has low market shares, it may make economic sense for Honeywell to rely on two routes to the markets (directly under the brand Honeywell and via ESMI) to increase its sales. Increasing the prices to ESMI would most likely make customers switch to other competitors such as Siemens (which has a [20%-30%] market share) or Consilium ([10%-20%]).
62. Finally, it is to be noted that the panel manufacturers can and indeed do change fire detector suppliers. The confidential examples in the Commission's file show that a switch to a new protocol, the development of a new panel and the launch of products to the market can be done only in some one and a half year. The Commission does not consider the switching costs to be prohibitive. As regards installers, the investigation shows that most installers by definition work on several systems. They have indicated that if a supplier were to switch to a new system, the supplier would provide support training to the installer.
63. Therefore, given the present market structure in Finland, Denmark, Sweden and Norway, the Commission considers it unlikely that Honeywell would have incentives to behave vis-à-vis ESMI in such a way that effective competition would be impeded in those countries in the near future. As regard the unlikely scenario of ESMI exiting the market (which has never been supported by convincing evidence), Commission considers it more likely that ESMI would rather switch its fire detector supplier rather than exit the market.

### **3. Assessment of the impact of the merger in the other relevant markets**

#### *Markets related to intrusion and other security systems*

64. The contemplated merger will lead to very limited overlaps in some countries. The market share of the merged entity will be in excess of 15% in only two markets: the supply of equipment and components for intrusion and other security systems in the Netherlands (Honeywell: [10-20]%, Novar: [0-10%]) and in Spain (Honeywell: [20-

30]%, Novar: [0-10]%). However, given the very small size of the overlap and the presence of other significant competitors, no serious doubt has been raised on these markets.

#### *Markets related to building control systems*

65. In the market for the supply of equipment and components for building control systems, the merger would hold a [10-20]% market share in the EEA (Honeywell: [10-20]%, Novar: [0-10]%). Apart from the limited size of the overlap, the merged entity will keep facing other competitors such as Siemens ([20%-30%]), Johnson Controls ([10%-20%]), Sauter ([0%-10%]), Invensys ([0%-10%]) or Schneider ([0%-10%]).
66. In the markets for the supply of building control systems and the servicing thereof, Novar is active only in the UK and to a very limited extent. As a result, the operation does not lead to affected markets in this respect.

## **VI. MODIFICATION TO THE ORIGINAL CONCENTRATION**

67. In order to remove the serious doubts raised by the proposed concentration the parties have submitted undertakings pursuant to Article 6(2) of the EC Merger Regulation, which are intended to remove the competitive concerns identified above. The undertakings are attached to this decision and form an integral part thereof.
68. In order to address the competition concerns raised by the Commission, Honeywell has undertaken to divest the entire Italian fire alarm systems business of ESSER Italia. The divestment essentially includes:
  - the transfer of ESSER Italia fire alarm business, comprising the key personnel, the existing commercial relationships between the divested business and its distributors and customers, and all tangible and intangible assets;
  - an exclusive license to the use of the ESSER trademark for fire alarm products to be sold solely in Italy for a duration of [...]. During this period and for an additional period of [...] years, Honeywell will be prohibited from marketing any fire alarm systems under the ESSER trademark in Italy;
  - a license to all the technology necessary to manufacture the fire alarm products currently sold in Italy by ESSER Italia;
  - a transitional supply contract up to [...] years, whereby Honeywell would offer to supply the purchaser with some or all of the fire alarm systems components currently sold in Italy under the ESSER brand; and
  - a non-compete clause so that the purchaser would not face competition in Italy from Honeywell, using the current ESSER Italia trademarks, products or technology, for a transitional period of up to [...] years.
69. Based on the outcome of the market test and the related minor modifications brought about to the remedies subsequently, the Commission considers that the undertakings are sufficient to restore competitive conditions in the fire alarm systems market in Italy by removing the entire overlap between the parties' activities in Italy.
70. In order to ensure that Honeywell complies with these undertakings, the Commission attaches conditions and obligations to this decision. The undertakings set out in

sections B through E of the commitments annexed to the present decision constitute conditions, since only by fulfilling them may the structural change on the relevant markets be achieved. The other undertakings constitute obligations, since they concern the implementing steps necessary to achieve the structural change intended.

## **VII. CONCLUSION**

71. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement, subject to the condition of full compliance with sections B through E of the commitments annexed to the present decision and to the obligation of full compliance with the other sections of the said commitments. This decision is adopted in application of Articles 6(1)(b) and 6(2) of Council Regulation (EC) No 139/2004.

For the Commission

(signed)

Stavros DIMAS

Member of the Commission

## Case M. 3686 – Honeywell / Novar

## COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EEC) No. 139/2004 (the “**Merger Regulation**”), Honeywell International Inc. (“**Honeywell**”) hereby provides the following commitments, as a package, (the “**Commitments**”) in order to enable the European Commission (the “**Commission**”) to declare the acquisition of the sole control of Novar Plc (“**Novar**”) compatible with the common market and the EEA Agreement by its decision pursuant to Article 6(1)(b) of the Merger Regulation (the “**Decision**”).

The Commitments shall take effect upon the date of adoption of the Decision.

This text shall be interpreted in the light of the Decision to the extent that the Commitments are attached as conditions and obligations, in the general framework of Community law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable.

**Section A. Definitions**

For the purpose of the Commitments, the following terms shall have the following meaning:

**Affiliated Undertakings:** undertakings controlled by Honeywell, whereby the notion of control shall be interpreted pursuant to Article 3 Merger Regulation and in the light of the Commission Notice on the concept of concentration under Council Regulation (EEC) No 4064/89.

**Agreements:** the Sale and Purchase Agreement, the Trademark License Agreement, the Technology License Agreement and the Supply Agreement.

**Closing:** the transfer of the legal title of the Divestment Business to the Purchaser.

**Commitments:** the commitments as defined in Sections B to F and the Schedules I to IV that Honeywell provides as a package in order to enable the European Commission to declare the acquisition of the sole control of Novar compatible with the common market and the EEA Agreement by its decision pursuant to Article 6(1)(b) of the Merger Regulation.

**Cost:** the direct cost of material + the direct cost of labor + X% to cover overhead (to be negotiated and agreed with the Purchaser and included in the Supply Contract).

**Divestment Business:** the business as defined in Paragraph 5 and Schedule I that Honeywell commits to divest to the Purchaser.

**Divestiture Trustee:** one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by Honeywell and who has received from Honeywell [...] the exclusive Trustee Mandate to sell the Divestment Business [...].

**Effective Date:** the date of adoption of the Decision.

**Excluded Personnel:** the personnel currently employed by Novar in Italy who are exclusively dedicated to businesses unrelated to the Divestment Business and who will be excluded from the Divestment Business.

**First Divestiture Period:** [...].

**Hold Separate Manager:** the person appointed by Honeywell to manage the day-to-day business of Novar Italia srl (including the Divestment Business) from the Effective Date until Closing under the supervision of the Monitoring Trustee.

**Key Personnel:** all personnel necessary to maintain the viability and competitiveness of the Divestment Business, as listed in Schedule I.

**Licensed Technology:** the technology licensed by Honeywell to the Purchaser/Licensee as defined in Paragraph 17.

**Monitoring Trustee:** one or more natural or legal person(s), independent from the Parties, who is (are) approved by the Commission and appointed by Honeywell, and who has the duty to monitor Honeywell's compliance with the conditions and obligations attached to the Decision.

**Parties:** parties to the present merger: Honeywell and Novar.

**Personnel:** all personnel currently employed by Novar in Italy, including Key Personnel, listed in the Schedule I, except the Excluded Personnel.

**Purchaser:** the entity, including any of its "affiliated undertakings" within the meaning of Article 3 of the Merger Regulation and of the Commission Notice on the concept of concentration under Council Regulation (EEC) No 4064/89, approved by the Commission in accordance with the criteria set out in Section G, as:

- acquirer of the Divestment Business,
- licensee of the Trademark License,
- licensee of the Technology License, and
- purchaser of the Supplied Products.

**Sale and Purchase Agreement:** the agreement by which Honeywell divests the Divestment Business to the Purchaser.

**Supplied Products:** the products as defined in Paragraph 24 and Schedule IV that Honeywell commits to supply to the Purchaser under the Supply Agreement.

**Supply Agreement:** the agreement by which Honeywell supplies the Supplied Products to the Purchaser, as defined in Paragraph 24 and Schedule IV.

**Technology License:** the license granted by Honeywell to the Purchaser of the Licensed Technology as defined in Paragraph 17 and Schedule III.

**Technology License Agreement:** the agreement by which Honeywell licenses the Technology License to the Purchaser as defined in Paragraph 17 and Schedule III.

**Trademark License:** the license as defined in Paragraph 15 and Schedule II that Honeywell commits to grant to the Purchaser.

**Trademark License Agreement:** the agreement by which Honeywell licenses the Trademark License to the Purchaser as defined in Paragraph 15 and Schedule II.

**Trademark License Period and the Black-Out Period:** periods as defined in Paragraphs 12 and 13.

**Trustee(s):** the Monitoring Trustee and the Divestiture Trustee.

**Trustee Divestiture Period:** [...].



## **Section B. Commitment on the Divestment Business**

### Commitment to divest

1. In order to restore effective competition, Honeywell commits to divest, or procure the divestiture of the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in Paragraph 37. To carry out the divestiture, Honeywell commits to find a purchaser and to enter into a final binding Sale and Purchase Agreement of the Divestment Business within [...].
2. Honeywell shall be deemed to have complied with this commitment if, by the end of the Trustee Divestiture Period, Honeywell has entered into a final binding Sale and Purchase Agreement, if the Commission approves the Purchaser and the terms in accordance with the procedure described in Paragraph 37 and if the closing of the sale of the Divestment Business takes place within a period not exceeding [...] after the approval of the purchaser and the terms of sale by the Commission.
3. In order to maintain the structural effect of the Commitments, Honeywell (including any of its “affiliated undertakings” within the meaning of Article 3 of the Merger Regulation and of the Commission Notice on the concept of concentration under Council Regulation (EEC) No 4064/89) shall, not acquire direct or indirect influence over the whole or part of the Divestment Business, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the common market.

### Structure and definition of the Divestment Business

4. The Divestment Business consists of Novar fire alarm systems business in Italy (herebelow “ESSER ITALIA”).
5. The Divestment Business, described in more detail in Schedule I, includes all ESSER ITALIA’s assets and personnel *except* the current assets of and personnel currently employed by ESSER ITALIA dealing exclusively with businesses unrelated to the fire alarm business in Italy and which can be carved out without affecting the viability of ESSER ITALIA (as listed in Schedule I). The assets and personnel of the Divestment Business should enable the Purchaser to sell the fire alarm systems in question, to meet the customer-required standards, and to be a competitive force in the market for fire alarm systems in Italy.
6. The assets and personnel to be transferred are:
  - (a) all tangible and intangible assets of ESSER ITALIA, except the ones exclusively dedicated to businesses unrelated to the Divestment Business;
  - (b) all existing contracts, agreements, commitments and understandings, and goodwill between ESSER ITALIA and its distributors and customers, except the ones exclusively dedicated to businesses unrelated to the Divestment Business. Honeywell acknowledges that the transfer of these existing agreements, commitments and understandings, and goodwill with third parties is not subject to their acceptance;
  - (c) the whole customer list of ESSER ITALIA, except the customers exclusively dedicated to businesses unrelated to the Divestment Business;

- (d) the customer base of ESSER ITALIA, except the one exclusively dedicated to businesses unrelated to the Divestment Business; and

(items (a) to (d), together referred to as the “**Assets**”, which for the sake of clarity include all assets of ESSER ITALIA, except the ones exclusively dedicated to businesses unrelated to the Divestment Business);

- (e) the Personnel, as defined in Section A.

#### Preservation of Viability, Marketability and Competitiveness

7. From the Effective Date until Closing, Honeywell shall preserve the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimize as far as possible any risk of loss of competitive potential of the Divestment Business. In particular Honeywell undertakes:
  - (a) not to carry out any act upon its own authority that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;
  - (b) to make available sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans;
  - (c) to take all reasonable steps, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business.

#### Hold-separate obligations of Honeywell

8. Honeywell commits, from the Effective Date until Closing, to keep Novar Italia Srl separate from the combined Honeywell/Novar group businesses and to ensure that Key Personnel of Novar Italia Srl – including the Hold Separate Manager – have no involvement in any business of the combined Honeywell/Novar group and vice versa. Honeywell shall also ensure that the Personnel do not report to any individual outside Novar Italia Srl.
9. As soon as after the Effective Date, Honeywell shall appoint a Hold Separate Manager who shall be responsible for the management of Novar Italia Srl (including the Divestment Business), under the supervision of the Monitoring Trustee. The Hold Separate Manager shall manage Novar Italia Srl (including the Divestment Business) independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the combined Honeywell/Novar group. From appointment until Closing, Honeywell shall assist the Monitoring Trustee in ensuring that the Divestment Business as well as the rest of the non-Divestment Business is managed as a distinct and disposable entity separate from the combined Honeywell/Novar group.

#### Ring-fencing

10. Honeywell shall implement all necessary measures to ensure that, after the Effective Date, it does not obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business. Honeywell may obtain information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or whose disclosure to Honeywell is required by law.

### Non-solicitation clause

11. Subject to customary limitations, Honeywell undertakes not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of [...] years after Closing.

### **Section C. Trademark License Commitment**

#### License Period / Co-Branding / Black-Out Period

12. Honeywell commits to grant the Purchaser a royalty-free exclusive license for the use of the ESSER trademark for the sale of components of fire alarm systems for use solely in Italy (the “**Trademark License**”). The Trademark License is granted to the Purchaser/Licensee for a period of [...] years after Closing (“**Trademark License Period**”). [...]. The Trademark License would permit the Licensee to use of the ESSER trademark alone or together with the Purchaser’s own trademark (“**Co-branding**”) during the Trademark License Period. The Licensee would be allowed to change from Co-branding to the Purchaser’s/Licensee’s own trademark at any time before the end of the Trademark License Period.
13. During the Trademark License Period and for an additional period of [...] years after the expiry of the Trademark License Period (“**Black-Out Period**”), Honeywell will be prohibited from marketing any products in Italy under the trademark ESSER.
14. During the Trademark License Period, the Purchaser/Licensee must sell the products sold with the ESSER trademark without modifying the ESSER logo design, or damage the overall value of the ESSER trademark, or violate any necessary security norms and administrative permits and authorizations. Should Honeywell realize that any of these events occur, it will immediately require from the Purchaser/Licensee, by registered letter with acknowledgement of receipt, to remedy this situation. Honeywell will also inform the Monitoring Trustee who will address the matter. Should Honeywell and the Purchaser/Licensee disagree with the Monitoring Trustee’s decision, they will refer the matter to an (ad hoc) arbitration proceeding, which will rule on the matter expeditiously. The arbitration clause will be standard and expanded in the Trademark License Agreement.

#### Scope of Trademark License / Trademark License Territory

15. The ESSER trademark, as defined in Schedule II, is licensed to the Purchaser/Licensee for all business categories which are, in total, fire alarm systems.
16. The Trademark License is granted for use solely in Italy (“ the Trademark License Territory”).

### **Section D. Technology Transfer License Commitment**

17. Honeywell also commits to grant a royalty-free Technology License necessary for the Purchaser/Licensee to manufacture the fire alarm products, including the Novar Protocol, which have been manufactured by Novar and sold in Italy by ESSER ITALIA up to the Effective Date (the “**Licensed Technology**”). For avoidance of doubt, any fire alarm product already developed by Novar at the Effective Date and scheduled to be launched within one (1) year after the Effective Date is included in the Licensed Technology. This license is limited to the sales of the products exclusively in Italy regardless of whether these products would be sold under the licensed ESSER brand during the Trademark License Period or under any brand owned by the Purchaser/Licensee. The Technology License does not restrict the Purchaser from manufacturing the products outside of Italy as long as the Products are for sale and use in Italy only.

18. The Technology License is intended to be comprehensive and will permit the Purchaser/Licensee not only to replicate the manufacturing of ESSER products but also to use the Licensed Technology to modify and enhance the Purchaser/Licensee's own existing fire alarm products so as to be interoperable with and technologically equivalent to ESSER's fire alarm systems.
19. As set out in Schedule III, this license would cover all of the current technologies relating to fire alarm products manufactured by Novar and sold by ESSER ITALIA in Italy, but not any subsequent improvements of technology carried out by Honeywell after the Effective Date. However, to the extent that Honeywell carries out up-dates of the technology in the first [...] years after the Effective Date due to technology flaws, these up-dates will also be made available to the Purchaser. The Purchaser/Licensee would be free to carry out its own improvement of the Licensed Technology and would remain the owner of any intellectual property right arising out of such new developments. The Licensed Technology and any further improvements of it can only be used for sale of the products in Italy.
20. The Technology License would be granted to the Purchaser/Licensee for the exclusive use by the Licensee of the Licensed Technology in Italy for ten (10) years [...]. During this period, Honeywell will be prohibited from marketing under any Honeywell trademark the fire alarm system or the components of fire alarm systems which have been manufactured by Novar and sold in Italy up to the Effective Date.
21. After this period, the Technology License would be granted to the Purchaser/Licensee permanently for use solely in Italy under a non-exclusive basis. Non-exclusive means that after the initial exclusive license period, Honeywell will be free to market in Italy the fire alarm system or components of fire alarm systems, which have been manufactured by Novar and sold in Italy under the ESSER trademark up to the Effective Date, but will not be allowed to grant the Technology License to any third party.
22. Honeywell will provide the Purchaser all support necessary to obtain regulatory approval or required to obtain regulatory approval based on a "modification procedure". Honeywell will not charge any fee for this assistance, but any out-of-pocket expenses incurred by Honeywell in order to support the Purchaser (such as fees, product samples or travel expenses) shall be reimbursed by the Purchaser.
23. The Purchaser/Licensee shall indemnify Honeywell for any legal claims arising from the Purchaser's/Licensee's use, sale, or other disposition of the Licensed Technology. Honeywell shall indemnify the Purchaser/Licensee for any claims arising from failure or malfunction of the Licensed Technology incurred by the Purchaser/Licensee. Should Honeywell and the Purchaser/Licensee disagree on the matter, they will refer the matter to an (ad hoc) arbitration proceeding, which will rule on the matter expeditiously. The arbitration clause will be standard and expanded in the Trademark License Agreement.

## Section E. Supply Commitment

24. At the time of Closing and to the extent required by the Purchaser, Honeywell would also commence deliveries under a supply agreement (the "Supply Contract"), entered into with the Purchaser at the same time as the conclusion of the Sale and Purchase Agreement, for the supply of all or some of the fire alarm systems components, which have been sold in Italy under the ESSER brand up to the Effective Date (the "**Supplied Products**"). The Purchaser would be restricted to sell the Supplied Products only in Italy.
25. For a period of [...] years, the Supplied Product would be sold to the Purchaser either at Cost, or, for the products not currently manufactured by Novar and sold in Italy under the ESSER brand, at Novar's purchasing cost. Cost will be calculated on the basis of an objective formula (which will include the direct cost of material + the direct cost of labor + X% to cover overheads) to be negotiated with the Purchaser and included in the Supply Contract. These costs will not include any profit margin. The exact application of the formula will be audited by an independent auditor of Honeywell's choice and cross-checked by the Trustee
26. After the expiry of the [...] year period described in paragraph 24 above, Honeywell, if so requested by the Purchaser, would continue to guarantee the supply of the Supplied Products for a further period of [...] years, on the best terms and conditions offered to any OEM customer of Honeywell for fire alarm products (including Notifier). These terms and conditions will be negotiated with the Purchaser and included in the Supply Contract. The terms and conditions will be audited by an independent auditor of Honeywell's choice and cross-checked by the Trustee.
27. Honeywell will guarantee the supply of spare parts, at normal dealer terms, for a period exceeding the period set out above in paragraph 25 but not exceeding the period in which Honeywell manufactures the product. The terms and conditions, including the period of the supply commitment, will be negotiated with the Purchaser and included in the Supply Contract.
28. At the request of the Purchaser, Honeywell will supply, at reasonable terms and conditions negotiated with the Purchaser and included in the Supply Contract, components necessary to manufacture finished fire alarm products currently sold by Novar in Italy. These components shall include: specific components, testing tools, related software and similar.
29. At the request of the Purchaser, Honeywell will supply, at reasonable terms and conditions negotiated with the Purchaser and included in the Supply Contract, Novar non-fire products which are currently sold in Italy as part of an integrated security system together with fire alarm products (the "Non Fire Products"). Honeywell shall provide the Purchaser with the necessary interface information to allow for interoperability and shall not itself integrate the Novar Non Fire Products in Honeywell's fire alarm systems in Italy for a period of [...] years [...]. The Purchaser would be restricted to sell the Non Fire Products only in Italy and only as part of an "integrated security solution" offered together with fire alarm products.
30. Terms for delivery under the supply contract shall be negotiated with the Purchaser but in any event should be made at not less than the standard terms of Honeywell's fire business. Should the Purchaser suffer any loss resulting from a delay caused by Honeywell, the Purchaser shall be entitled to demand an indemnity which will be negotiated with the Purchaser and included in the Supply Contract, but in any event not be less than an indemnity for each full week of delay equivalent to 1% on the whole, not exceeding 10%, of the value of that part of the full delivery that, because of the delay, cannot be or cannot in time be used according to the Agreement.

31. In accordance with the provisions of the Trademark License Agreement set out in paragraph 13 above, the Purchaser will only be allowed to sell the Supplied Products in Italy under the ESSER brand for a period of [...] years after Closing.
32. Honeywell will give the Trustee, and the Trustee will not disclose, all information necessary to verify the exactness of the calculation of the transfer prices, as defined in Paragraphs 25 and 25.

#### **Section F. Related commitments**

##### Due Diligence

33. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, Honeywell shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:
  - (a) provide to potential purchasers sufficient information as regards the Divestment Business;
  - (b) provide to potential purchasers sufficient information relating to Personnel and allow them reasonable access to the Personnel.

##### Reporting

34. Honeywell shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request).
35. Honeywell shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of an information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

#### **Section G. The Purchaser**

36. In order to ensure the immediate restoration of effective competition, the Purchaser, in order to be approved by the Commission, must:
  - (a) be independent of and unconnected to the Parties;
  - (b) have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in Italy in competition with Honeywell and other competitors;
  - (c) already be manufacturing or selling fire alarm systems on the Italian market or any other EC national market for fire alarm systems with its own branded products; and
  - (d) neither be likely to create, in the light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.

(the before-mentioned criteria for the purchaser hereafter the "**Purchaser Requirements**").

37. The Agreements shall be conditional on the Commission's approval. When Honeywell has reached the Agreements with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreements, to the Commission and the Monitoring Trustee. Honeywell must be able to demonstrate to the Commission that the Purchaser meets the Purchaser Requirements and that the Divestment Business, the Trademark License, the Licensed Technology and the Supplied Products will respectively be sold, licensed, transferred and supplied to the Purchaser in a manner consistent with the Commitments. For the approval, the Commission shall verify that the Purchaser fulfils the Purchaser Requirements and that the Divestment Business, the Trademark License, the Licensed Technology and the Supplied Products will respectively be sold, licensed, transferred and supplied to the Purchaser in a manner consistent with the Commitments.
38. The Commission may approve the sale of the Divestment Business without
- one or more Assets or parts of the Personnel, and/or
  - the supply of the Supplied Products.

if this does not affect the viability and competitiveness of the Divestment Business taking account of the proposed Purchaser.

## **Section H. Trustee**

### **I. Appointment Procedure**

39. Honeywell shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee. [...] Honeywell shall appoint a Divestiture Trustee to carry out the functions specified in the Commitments for a Divestiture Trustee. [...]
40. The Trustee shall be independent of the Parties, possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The Trustee shall be remunerated by Honeywell in a way that does not impede the independent and effective fulfillment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, the fee shall also be linked to a divestiture within the Trustee Divestiture Period.

#### *Proposal by Honeywell*

41. No later than one week after the Effective Date, Honeywell shall submit a list of one or more persons whom Honeywell proposes to appoint as the Monitoring Trustee to the Commission for approval. [...] Honeywell shall submit a list of one or more persons whom Honeywell proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out in Paragraph 40 and shall include:
- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfill its duties under these Commitments;
  - (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;
  - (c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

#### *Approval or rejection by the Commission*

42. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfill its obligations. If only one name is approved, Honeywell shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Honeywell shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

*New proposal by Honeywell*

43. If all the proposed Trustees are rejected, Honeywell shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in Paragraphs 39 and 42.

*Trustee nominated by the Commission*

44. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom Honeywell shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

45. The Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or Honeywell, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

*Duties and obligations of the Monitoring Trustee*

46. The Monitoring Trustee shall:
- (a) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.
  - (b) oversee the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by Honeywell with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
    - (i) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by Honeywell, in accordance with Paragraphs 7 and 8 of the Commitments;
    - (ii) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with Paragraph 9 of the Commitments.
  - (c) in consultation with Honeywell,
    - (i) determine all necessary measures to ensure that Honeywell does not after the effective date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business without compromising the viability of the Divestment Business, and



- (ii) decide whether such information may be disclosed to Honeywell as the disclosure is reasonably necessary to allow Honeywell to carry out the divestiture or as the disclosure is required by law.
- (d) monitor the splitting of Assets and the allocation of Personnel between the Divestment Business and/or Affiliated Undertakings, and, in particular, monitor the splitting between, on the one hand, the personnel employed at the date of Closing by the Divestment Business and dealing exclusively with businesses related with the fire alarm business and who must be divested together with the Divestment Business, and, on the other hand, the personnel employed at the date of Closing by the Divestment Business and dealing exclusively with businesses unrelated with the fire alarm business and who will be retained by Honeywell;
- (e) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision, in particular:
  - (i) review the compatibility of the terms and conditions of the Agreements with the conditions and obligations attached to the Decision, taking into consideration the identity of the proposed purchaser; and
  - (ii) cross-checking the calculation of the transfer price of the Supplied Products provided in the Supply Agreement, which will have been previously audited by an independent auditor of Honeywell's choice.
- (f) receive any complaint from Honeywell showing that the products sold with the ESSER trademark modify the ESSER logo design or damage the overall value of the ESSER trademark or violate any necessary security norms and administrative permits and authorizations, and take a decision, subject to arbitration, on the matter after hearing Honeywell and the Licensee;
- (g) propose to Honeywell such measures as the Monitoring Trustee considers necessary to ensure Honeywell's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;
- (h) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process,
  - (i) potential purchasers receive sufficient information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and
  - (ii) potential purchasers are granted reasonable access to the Personnel;
- (i) provide to the Commission, sending Honeywell a non-confidential copy at the same time, a written report within 15 days after the end of every month. The report shall cover the operation and management of the Divestment Business so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending Honeywell a non-confidential copy at the same time, if it concludes on reasonable grounds that Honeywell is failing to comply with these Commitments;

- (j) within one week after receipt of the documented proposal referred to in Paragraph 37, submit to the Commission a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser.

*Duties and obligations of the Divestiture Trustee*

47. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell [...] the Divestment Business to a purchaser, provided that the Commission has approved both the purchaser and the final agreement in accordance with the procedure laid down in Paragraph 37. The Divestiture Trustee shall include in the final agreement such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the agreement such customary representations and warranties and indemnities as are reasonably required to effect the divestiture. The Divestiture Trustee shall protect the legitimate financial interests of Honeywell [...].
48. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to Honeywell.

III. Duties and obligations of Honeywell

49. Honeywell shall provide and shall cause its advisors to provide the Trustee with all such cooperation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of Honeywell's or the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and Honeywell and the Divestment Business shall provide the Trustee upon request with copies of any document. Honeywell and the Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.
50. Honeywell shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business. Honeywell shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. Honeywell shall inform the Monitoring Trustee on possible purchasers, submit a list of potential purchasers, and keep the Monitoring Trustee informed of all developments in the divestiture process.
51. Honeywell shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to affect the sale, the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, Honeywell shall cause the documents required for affecting the sale and the Closing to be duly executed.

52. Honeywell shall indemnify the Trustee and its employees and agents (each an “*Indemnified Party*”) and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Honeywell for any liabilities arising out of the performance of the Trustee’s duties under the Commitments, except to the extent that such liabilities result from the fulfill default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.
53. At the expense of Honeywell, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Honeywell’s approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should Honeywell refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard Honeywell. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 50 shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served Honeywell during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

IV. Replacement, discharge and reappointment of the Trustee

54. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a conflict of interest:
- (a) the Commission may, after hearing the Trustee, require Honeywell to replace the Trustee; or
  - (b) Honeywell, with the prior approval of the Commission, may replace the Trustee.
55. If the Trustee is removed according to Paragraph 54, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in Paragraphs 39 to 44.
56. Beside the removal according to Paragraph 54, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

**Section I. The Review Clause**

57. The Commission may, where appropriate, in response to a request from Honeywell showing good cause and accompanied by a report from the Monitoring Trustee:
- (a) grant an extension of the time periods foreseen in the Commitments, or
  - (b) waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments.
58. Where Honeywell seeks an extension of a time period, it shall submit a request to the Commission no later than one month before the expiry of that period, showing good cause. Only in exceptional circumstances shall Honeywell be entitled to request an extension within the last month of any period.

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Date: March, 18, 2004

duly authorized for and on behalf of Honeywell

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Gary Zanfagna  
Chief Antitrust Counsel, Honeywell International Inc.

## SCHEDULE I - DIVESTMENT BUSINESS

1. Following Paragraph 4 of these Commitments, the Divestment Business includes all Assets and Personnel of ESSER ITALIA, which include:
  - (a) Promotion, Presales, Sales, Commissioning, Field service, repair and hot line support for fire detection solutions (this concerns all products currently sold by ESSER ITALIA in Italy, whether produced or traded)
  - (b) Implementation of software tools to integrate the fire alarm systems with security or building management systems (group or external solutions).
  
2. All Assets and Personnel will be transferred, except the ones which are not relevant to ESSER ITALIA. These Assets and Personnel should enable the Purchaser to sell the fire alarm systems in question and to meet the customer-required standards. They include:
  - (a) all tangible assets, used in connection with the Divestments Business. In particular, the following assets are transferred as required by the Purchaser:
    - i. Four (4) leased sales offices in Milan (750 sqm), Rome (100 sqm), Bari (160sqm), and Bologna (250 sqm) (all leased, until 03/08, 03/09 and 12/09, except Roma which is a short term lease)
    - ii. Warehouse in Milan (750 sqm) (in the same building and under the same lease of the Milan sales office)
    - iii. Showroom Display
    - iv. Office Furniture
    - v. Vehicles (rented)
    - vi. Product literature and sales material related to the fire alarm system business
    - vii. IT equipment
    - viii. Inventories of fire alarm products
  
  - (b) all intangible assets, used in connection with the Divestments Business;
    - i. Goodwill
    - ii. Technical information
    - iii. Know-how
    - iv. Computer software
  
  - (c) all contracts, agreements, commitments, and understandings, goodwill between the ESSER ITALIA and its distributors, agents and customers, which are relevant to the Divestment Business and which should enable the Purchaser to sell the fire alarm systems in question in Italy and to meet the customer-required standards. In particular, the following contracts, agreements, commitments, and understandings, goodwill are transferred as required by the Purchaser:
    - i. contracts, agreements, and understandings, goodwill with the [5-15] agents:
      - [...]All agreements are agency contract as per Italian law for geographical area and/or customer lists.
  
    - ii. Commitments and understandings, goodwill with the main distributors or installers:
      - [...]

All commitments and understandings are verbal, based on long term relationships, and provide preferred conditions. No exclusivity is granted.

- (d) the customer base for the Licensed Products in Italy includes a customer list of about [700-750] customers.
- (e) all Key Personnel and Personnel pertaining to the Divestment Business, and to the extent that it is currently employed by ESSER ITALIA for its fire alarm system business in Italy, as listed in the chart below. The [40-50] people concerned are either dedicated to the sale and marketing of fire alarm systems or to ESSER ITALIA's administration. Administration people are currently shared between all the business lines within ESSER ITALIA, but, unless otherwise desired by the Purchaser, Honeywell proposes to include all of them in the Divestment Business. These people are listed in the list below:

**Table omitted - [...]**

ESSER ITALIA is structured as illustrated in the following chart:

**Table omitted - [...]**

3. The Divestment Business shall not:

- (a) concern any main licenses, permits and authorizations since none are used in connection with the Divestments Business;
- (b) concern any lease between the Divestment Business and its distributors or agents, since there is no such lease in connection with the Divestments Business;
- (c) concern any contracts, agreements, leases, commitments and understandings, goodwill with ESSER ITALIA's customers, since there is no such contracts, agreements, leases, commitments and understandings, goodwill with any customers in connection with the Divestments Business;
- (d) include the assets and personnel employed at the dated of Closing by ESSER ITALIA who are dealing *exclusively* with businesses unrelated with the Divestment Business. This concerns [...]. The assets and personnel which will be excluded from the divestment without affecting the viability of the Divestment Business are:
  - i. IT equipment of the personnel dealing exclusively with businesses exclusively unrelated with the fire alarm business;
  - ii. Goodwill related to [...];
  - iii. Technical information and know-how used in connection with the businesses exclusively unrelated with the fire alarm business;
  - iv. Contracts, agreements, commitments and understandings with the main distributors, installers and customers that deal exclusively with the business not related with the fire alarm business; and
  - v. Personnel: the following [...] people exclusively deal with businesses unrelated with the fire alarm business; they are not part of the Divestment Business ("the Excluded Personnel"):

**Table omitted - [...]**

- (e) grant any right to the Purchaser to use the ESSER trademark in countries other than Italy or for any period going beyond the ones indicated in the Trademark License Agreement;
- (f) grant any right of the Purchaser to use the ESSER trademark in other categories than those which are specified in the Trademark License Agreement;
- (g) authorize the Purchaser to use the NOTIFIER brand, as a single word trademark or in combination with any other word(s);
- (h) authorize the Purchaser to attack any European Community trademark of Honeywell or any of its Affiliated Undertakings based on the ESSER trademark; and
- (i) allow the Purchaser/Licensee to modify the ESSER logo design, or damage the overall value of the ESSER trademark, or violate any necessary security norms and administrative permits and authorizations.

SCHEDULE II - TRADEMARK LICENSE

1. Following Paragraph 12 of these Commitments, the Trademark License is a royalty-free exclusive license for the use of the ESSER trademark for the sale of components of fire alarm systems for use solely in Italy. The Trademark License is granted for a period of [...] years after Closing (“Trademark License Period”) [...].
2. During the Trademark License Period, the Licensee/Purchaser would be allowed to use the ESSER trademark alone or together with its own trademark (“**Co-branding**”) and may change from Co-branding to the Purchaser’s/Licensee’s own trademark at any time
3. Following Paragraphs 13 and 14 of these Commitments, Honeywell will be prohibited from marketing any products in Italy under the trademark ESSER during a total period of ten (10) years from Closing.
4. The details of this trademark are:

<b>Trademark</b>	<b>Own Number</b>	<b>Application Number</b>	<b>Application Date</b>	<b>Registration Number</b>	<b>Registration Date</b>
KLAUS ESSER (Logo)	14.881b	498 556	06.09.1985	498.556	06.09.1985
ESSER (Word)	14.884b	498 558	06.09.1985	498.558	06.09.1985
essertronic (Logo)	14.882b	498 557	06.09.1985	498.557	06.09.1985
esserbus (Word)	19.992b	A1455/92	04.06.1992	587.840	04.06.1992
ESSER (Word)	38.297b	A4142/03	18.09.2003	811.873	18.09.2003
IQ8QUAD (Word)	38.848b	A1634/04	08.04.2004	825.515	08.04.2004
IQ8control (Word)	38.854b	A2093/04	13.05.2004	831.879	13.05.2004
IQ8lumivox (Word)	38.855b	A2431/04	03.06.2004	832.205	03.06.2004

5. The Trademark License shall not:
  - (a) grant any right to the Purchaser to use the ESSER trademark in countries other than Italy or for any period going beyond the ones indicated in the Trademark License Agreement;
  - (b) grant any right of the Purchaser to use the ESSER trademark in other categories than those which are specified in the Trademark License Agreement;
  - (c) authorize the Purchaser to use the NOTIFIER brand, as a single word trademark or in combination with any other word(s);
  - (d) the Purchaser to attack any European Community trademark of Honeywell or any of its Affiliated Undertakings based on the ESSER trademark; and
  - (e) allow the Purchaser/Licensee to modify the ESSER logo design, or damage the overall value of the ESSER trademark, or violate any necessary security norms and administrative permits and authorizations. Should Honeywell realize that any of these events occur, it will immediately require from the Purchaser/Licensee by registered letter with acknowledgement of receipt to remedy this situation. Honeywell will also inform the Trustee who will address the matter. Should Honeywell and the Purchaser/Licensee disagree with the Trustee’s decision, they will refer the matter to an (ad hoc) arbitration proceeding, which will rule on the matter expeditiously. The arbitration clause will be standard and expanded in the Trademark License Agreement.





### SCHEDULE III - TECHNOLOGY TRANSFER COMMITMENT

1. Following Paragraph 17 of these Commitments, Honeywell also commits to grant a royalty-free Technology License necessary for the Purchaser/Licensee to manufacture and/or use the fire alarm products, including the Novar Protocol, which have been manufactured by Novar and sold in Italy under the ESSER brand up to the Effective Date.
2. This Technology License Agreement shall provides the following:
  - (a) the license would cover all of the current technologies relating to products manufactured by Novar and sold by ESSER Italia in Italy but not any subsequent improvements of technology carried out by Honeywell after Closing. The most important technologies are:

Ref.No	Title	Pat.No.	Country	Day of registration	Allocation	Status	Description
38,644	MCP II	10 2004 018 269.8-34	DE	4/15/2004		Test request posed	
39,092	MCP III ( Typ A- Single Action)	10 2004 042 573.6	DE	9/2/2004		Test request posed	
35,207	Mehrkriterienmelder	19405/BE/98	IT	9/3/1991	2/18/1998	Patent granted	Combination of optical / ionization detector
35,215	Meldeadressier-u.- lokalisierverfahren	0 485 878	IT	11/5/1991	2/4/1998	Patent granted	Automatic installation of detectors on a loop. Automatic allocation of short addresses of detectors.
38,704	Streulichtbrandmelder O2T	1 022 700	IT	1/13/2000	3/3/2004	Patent granted	New optical detector, which measures smoke under two different angles
37,535	Streulichtprüfkörper	102 27 614.5-32	DE	6/20/2002		Test request posed	Automatic sensivity setting of an optical smoke detector without using a smoke tunnel
37,928	Streulichtrauchmelder X2T	102 46 756.0-32	DE	10/7/2002		Test request posed	New optical detector, which measures smoke under two different angles and with two different wavelengths
37,857	Automatischer Brandmelder*	402 05 657.4	DE	7/4/2002	9/11/2002	Patent granted	
37,690	Druckknopfmelder*	402 01 203.8	DE	2/7/2002	5/28/2002	Patent granted	

(\*) Trade mark

Honeywell also commits to offer the Purchaser/Licensee all necessary drawings and technology assistance necessary for the utilization or otherwise the exploitation of the Licensed Technology. This assistance would be provided free of charge.

- (b) To the extent that Honeywell up-dates the products during the first [...] after closing due to technical flaws, the up-date will be made available to the Purchaser.
- (c) Honeywell commits to offer the Purchaser/Licensee assistance necessary to obtain regulatory approval or required in order to benefit from a faster “modification” procedure. Honeywell will not charge any fee for this assistance, but any out-of-pocket expenses incurred by Honeywell in order to support the Purchaser (such as fees, product samples or travel expenses) shall be reimbursed by the Purchaser.
- (d) The Purchaser/Licensee would be free to carry out its own improvement of the Licensed Technology and would remain the owner of any intellectual property right arising out of such new developments.
- (e) The Licensed Technology and any further improvements of it can only be used for sale of the products in Italy;

- (f) The Technology License would be granted to the Purchaser/Licensee for the exclusive use by the Licensee of the Licensed Technology in Italy for ten (10) years [...]. During this period, Honeywell will be prohibited from marketing under any Honeywell trademark the components for fire alarm systems, which have been manufactured by Novar and have been sold in Italy up to the Effective Date.
- (g) After this period, the Purchaser/Licensee will own the Licensed Technology under a non-exclusive basis for use solely in Italy. Non-exclusive means that after the initial period of exclusivity, Honeywell will be free to market under any Honeywell trademark (including ESSER Trademark) any fire alarm system or any component of fire alarm systems, which have been manufactured by Novar and sold in Italy under the ESSER trademark up to the Effective Date, but will not be allowed to grant the Technology License to any third party.
- (h) The Purchaser/Licensee shall indemnify Honeywell for any legal claims arising from the Purchaser's/Licensee's use, sale, or other disposition of the Licensed Technology. Honeywell shall indemnify the Purchaser/Licensee for any claims arising from failure or malfunction of the Licensed Technology incurred by the Purchaser/Licensee. Should Honeywell and the Purchaser/Licensee disagree on the matter, they will refer the matter to an (ad hoc) arbitration proceeding, which will rule on the matter expeditiously. The arbitration clause will be standard and expanded in the Trademark License Agreement.
- (i) The other terms and conditions will be at arm's length.

3. The Technology License Agreement shall not:

- (a) cover any subsequent improvements of the technology carried out by Honeywell;
- (b) grant any right to the Purchaser to use the ESSER trademark in countries other than Italy or for any period going beyond the ones indicated in the Trademark License Agreement;
- (c) grant any right of the Purchaser to use the ESSER trademark in other categories than those which are specified in the Trademark License Agreement;
- (d) authorize the Purchaser to use the NOTIFIER brand, as a single word trademark or in combination with any other word(s);
- (e) authorize the Purchaser to attack any European Community trademark of Honeywell or any of its Affiliated Undertakings based on the ESSER trademark; and
- (f) allow the Purchaser/Licensee to modify the ESSER logo design, or damage the overall value of the ESSER trademark, or violate any necessary security norms and administrative permits and authorizations.

#### SCHEDULE IV - SUPPLY COMMITMENT

1. Following Paragraph 24 of these Commitments, Honeywell also commits to enter into a supply agreement for the Supplied Products at the time of Closing and to the extent required by the Purchaser.
2. This Supply Agreement shall provides the following:
  - (a) the agreement will cover the Supplied Products;
  - (b) the Purchaser would be restricted to sell the Supplied Products only in Italy;
  - (c) For a period of [...] years, the Supplied Product would be sold to the Purchaser either at Cost, or, for the products not currently manufactured by Novar but sold in Italy under the ESSER brand, at Novar's purchasing cost. Cost will be calculated on the basis of an objective formula, which is audited by an independent auditor and cross-checked by the Trustee. These costs will not include any profit margin. The final formula for the calculation of Cost will be negotiated with the Purchaser and included in the Supply Contract.
  - (d) After the expiry of the [...] year period, Honeywell would continue to guarantee the supply of the Supplied Products, if so requested by the Purchaser, for a further period of [...] years, on the best terms and conditions offered to any OEM customer of Honeywell for fire alarm products (including Notifier). These terms and conditions will be negotiated with the Purchaser and included in the Supply Contract. Honeywell will give the Trustee, and the Trustee will not disclose, all information necessary to verify the exactness of the calculation of the transfer prices, as well as whether the Purchaser will indeed receive the best terms and conditions offered to Honeywell's OEM customer.
  - (e) In accordance with the provisions of the Trademark License Agreement set out in paragraph 13 above and Schedule II, the Purchaser will only be allowed to sell the Supplied Products in Italy under the ESSER brand for a period of [...] years after Closing.
  - (f) The Purchaser must sell the Supplied Products solely in Italy;
  - (g) Delivery of the products will be made according to a pre-defined delivery schedule. Delivery periods of [...] weeks should never be exceeded.
  - (h) Should the Purchaser suffer any loss resulting from a delay caused by Honeywell, the Purchaser shall be entitled to demand an indemnity to be negotiated with the Purchaser and included in the Supply Contract which in any event would not be less than an indemnity for each full week of delay equivalent to 1% on the whole not exceeding 10%, of the value of that part of the full delivery that, because of the delay, cannot be or cannot in time be used according to the Agreement.
  - (i) Honeywell will guarantee the supply of spare parts, at normal dealer terms, for a period exceeding the period set out above in paragraph 25 but not exceeding the period in which Honeywell manufactures the product. The terms and conditions, including the period of the supply commitment, will be negotiated with the Purchaser and included in the Supply Contract.
  - (j) At the request of the Purchaser, Honeywell will supply, at reasonable terms and conditions to be negotiated with the Purchaser and included in the Supply Contract, components necessary to manufacture finished fire alarm products currently sold by

Novar in Italy. These components shall include: specific components, testing tools, related software and similar.

- (k) At the request of the Purchaser, Honeywell will supply, at reasonable terms and conditions to be negotiated with the Purchaser and included in the Supply Contract, Novar non-fire products which are currently sold in Italy as part of an integrated security system together with fire alarm products (the “Non Fire Products”). Honeywell shall provide the Purchaser with the necessary interface information to allow for interoperability and shall not itself integrate the Novar Non Fire Products in Honeywell’s fire alarm systems in Italy for a period of [...] years [...]. The Purchaser would be restricted to sell the Non Fire Products only in Italy and only as part of an “integrated security solution” offered together with fire alarm products.
- (l) The other terms and conditions will be at arm’s length.

3. The Supply Agreement shall not:

- (a) grant any right to the Purchaser to use the ESSER trademark in countries other than Italy or for any period going beyond the ones indicated in the Trademark License Agreement;
- (b) grant any right of the Purchaser to use the ESSER trademark in other categories than those which are specified in the Trademark License Agreement;
- (c) authorize the Purchaser to use the NOTIFIER brand, as a single word trademark or in combination with any other word(s);
- (d) authorize the Purchaser to attack any European Community trademark of Honeywell or any of its Affiliated Undertakings based on the ESSER trademark; and
- (e) allow the Purchaser/Licensee to modify the ESSER logo design, or damage the overall value of the ESSER trademark, or violate any necessary security norms and administrative permits and authorizations.