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CT-2007-010

COMPETITION TRIBUNAL

IN THE MATTER of the *Competition Act*, R.S.C. 1985, c. C-34, and the *Competition Tribunal Rules*, SOR/94-290;

AND IN THE MATTER of filing and registration of a consent agreement pursuant to section 105 of the *Competition Act*.

BETWEEN:

The Commissioner of Competition

Applicant

- and -

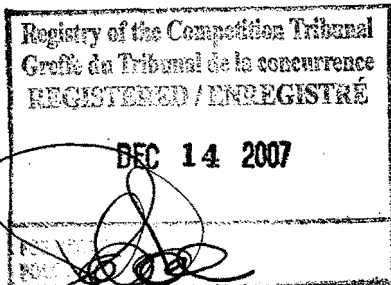
Akzo Nobel N.V.

Respondent

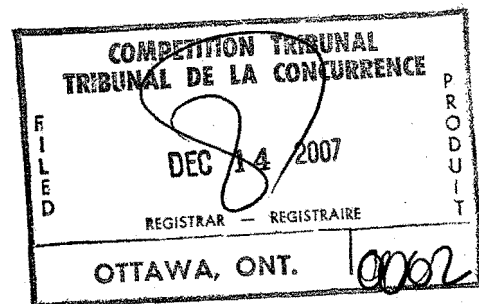
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CONSENT AGREEMENT IN RELATION TO THE ACQUISITION BY AKZO NOBEL  
N.V. OF IMPERIAL CHEMICAL INDUSTRIES PLC

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**WHEREAS** Akzo Nobel N.V. (“Akzo Nobel”) has entered into an agreement to acquire all of the issued and outstanding shares of Imperial Chemical Industries PLC (“ICI”), pursuant to the Implementation Agreement, dated August 13, 2007, between Akzo Nobel and ICI (hereinafter referred to as the “Transaction”);

**AND WHEREAS** the Commissioner of Competition (the “Commissioner”) has concluded that the Transaction is likely to result in a substantial lessening and/or prevention of competition in the wholesale (upstream) supply of Decorative Coatings, as hereinafter defined, in Quebec;

**AND WHEREAS** Akzo Nobel accepts for the purpose of this Consent Agreement (the “Agreement”) and any related applications to the Competition Tribunal or the courts in respect of the Transaction, that the Transaction is likely to result in a substantial lessening and/or prevention of competition in the wholesale (upstream) supply of Decorative Coatings in Quebec;

**AND WHEREAS** the Commissioner is satisfied that the implementation of this Agreement will be sufficient to ensure that any likely substantial lessening and/or prevention of competition would not result from the completion of the Transaction and therefore grounds do not exist to apply to the Competition Tribunal (the “Tribunal”) under section 92 of the *Competition Act* in respect of the Transaction;

**AND WHEREAS** Akzo Nobel consensually attorns to the jurisdiction of the Tribunal for purposes of this Agreement and any proceeding initiated by the Commissioner relating to this Agreement;

**AND WHEREAS** the Commissioner and Akzo Nobel agree to the filing of this Agreement with the Tribunal by the Commissioner for registration;

**AND WHEREAS** nothing in this Agreement is intended to prevent or delay Akzo Nobel from, following the Closing Date (as herein defined), selling to Henkel KGAA (or other purchaser) all assets and liabilities comprising the Adhesives division and Electronics Materials division of ICI, both of which form part of ICI’s National Starch business, including such business carried out in Canada by Nacan Products Limited/Produits Nacan Ltée, as well as any subsequent sale of any remaining assets and liabilities of the National Starch Business;

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NOW THEREFORE Akzo Nobel and the Commissioner have agreed to the terms of this Agreement as follows:

### I. DEFINITIONS

[1] For the purposes of this Agreement, the following capitalized terms have the following meanings:

- (a) “**Act**” means the *Competition Act*, R.S.C., 1985, c. C-34, as amended;
- (b) “**Affiliate**” has the meaning given to it in subsection 2(2) of the Act;
- (c) “**Agreement**” means this Consent Agreement entered into between Akzo Nobel and the Commissioner pursuant to section 105 of the Act;
- (d) “**Akzo Nobel**” means Akzo Nobel N.V. and its Affiliates;
- (e) “**Closing Date**” means the date on which the Transaction is completed;
- (f) “**Commissioner**” means the Commissioner of Competition appointed pursuant to section 7 of the Act;
- (g) “**Confidential Information**” means competitively sensitive or proprietary information of the Para Business and the Crown Diamond Brand not publicly known, including, without limiting the generality of the foregoing, any customer and supplier lists, price lists, confidential Para Intellectual Property, confidential Crown Diamond Intellectual Property, marketing methods or other trade secrets that relate to the Para Business and the Crown Diamond Brand;
- (h) “**Crown Diamond Assets**” means Akzo Nobel’s right, title and interests in and to the following related to the Crown Diamond Brand:
  - (i) all Crown Diamond Intellectual Property;
  - (ii) Crown Diamond Brand domain names and <http://www.peinturecrowndiamond.com>

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<http://www.crowndiamondpaints.com> and any content posted on these domain names as at the date of this Agreement other than links not related to the Crown Diamond Brand;

- (iii) all applicable licenses, permits and authorizations;
- (iv) all applicable contracts, commitments and customer orders;
- (v) all inventories; and
- (vi) all books, records and files, including customer lists, and sales and pricing data that are specific to the Crown Diamond Brand (for greater certainty, to the extent that there are any books, records and files, including customer lists, and sales and pricing data that are common to the Crown Diamond Brand and to Akzo Nobel's ongoing businesses, Akzo Nobel shall extract the relevant portions of the books, records and files, including customer lists, and sales and pricing data that are specific to the Crown Diamond Brand provided that, having regard to this context, the Divestiture Monitor shall have the authority to require that the Purchaser has sufficient information from the documentation above to allow it to carry on the Crown Diamond Brand business in the ordinary course);

for greater certainty, back office systems, and services, rights and assets used in connection with Akzo Nobel's other businesses are not included as Crown Diamond Assets;

- (i) **“Crown Diamond Brand”** means the business of marketing and selling Decorative Coatings under the Crown Diamond brand and all related sub-brands,

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Crown Diamond Perfection, Crown Diamond Privilège, Crown Diamond Sélection and Crown Diamond Stains, as well as the Personnel;

- (j) **“Crown Diamond Intellectual Property”** means the following related to the Crown Diamond Brand, excluding any rights described in **Confidential Schedule “A”**:
- (i) copyrights relating to trade dress, packaging and sales and marketing materials;
  - (ii) trademarks; and
  - (iii) rights to sue and recover damages or obtain injunctive relief for infringement, dilution, misappropriation, violation or breach of any of the foregoing;

The Divestiture Monitor shall have the authority to require Akzo Nobel to provide all Crown Diamond intellectual property rights reasonably required for the sale of the Crown Diamond Brand to a Purchaser. For greater certainty, however, the Divestiture Monitor shall not require that Akzo Nobel include as Crown Diamond Brand any assets, tangible or intangible, or rights excluded pursuant to the definition of the Crown Diamond Assets.

- (k) **“Decorative Coatings”** means decorative or architectural coatings, which include interior and exterior house paints, primers, sealers, varnishes and stains;
- (l) **“Direct Costs”** means the cost of (i) raw materials and packaging (plus 5% to account for anticipated waste), (ii) direct labour, (iii) reasonably allocated factory overhead (fixed and variable) in manufacturing and supplying Decorative Coatings, and (iv) 10% of the total cost of items (i) through (iii) for technical support, management and administrative costs;
- (m) **“Divest”** means to implement any Divestiture pursuant to this Agreement;

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- (n) “**Divestiture**” means the sale, transfer, assignment, or other disposal of the Divestiture Assets such that Akzo Nobel will have no further direct or indirect interest in the Divestiture Assets, except as permitted herein or upon the consent of the Commissioner;
- (o) “**Divestiture Agreement**” means any agreement between Akzo Nobel and a Purchaser or, if necessary, between the Divestiture Trustee and a Purchaser, in each case to accomplish the Divestiture contemplated by this Agreement;
- (p) “**Divestiture Assets**” means the Crown Diamond Assets and the Para Assets;
- (q) “**Divestiture Monitor**” means the Person appointed under paragraph 3 of this Agreement, and any employees, agents or other persons acting for or on behalf of the Divestiture Monitor;
- (r) “**Divestiture Trustee**” means the Person appointed at paragraph 44 of this Agreement, if necessary, and any employees, agents or other persons acting for or on behalf of the Divestiture Trustee;
- (s) “**Divestiture Trustee Sale**” means a Divestiture to be conducted by the Divestiture Trustee pursuant to Part VII of this Agreement;
- (t) **ICI**” means Imperial Chemical Industries PLC and its Affiliates;
- (u) “**Implementation Agreement**” means the Implementation Agreement between Akzo Nobel and ICI dated August 13, 2007;
- (v) “**Initial Sale Period**” means the period set out in **Confidential Schedule “B”** to this Agreement;
- (w) “**Para Assets**” means Akzo Nobel’s right, title and interests in and to the following assets related to the Para Business:
  - (i) all Para Intellectual Property;

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- (ii) Para Business domain name <http://www.para.com> and any content posted on this domain name as at the date of this Agreement other than links not related to the Para Business;
- (iii) all applicable licenses, permits and authorizations;
- (iv) all applicable contracts, commitments and customer orders;
- (v) all inventories;
- (vi) the Etobicoke production facility located in Toronto, Ontario (former City of Etobicoke, Ontario);
- (vii) leased distribution centre located in Brampton, Ontario, and equipment therein, including the sales office located onsite;
- (viii) leased Railside Avenue service centre in Toronto, Ontario, and equipment therein; and
- (ix) all books, records and files, including customer lists, and sales and pricing data that are specific to the Para Business (for greater certainty, to the extent that there are any books, records and files, including customer lists, and sales and pricing data that are common to the Para Business and to Akzo Nobel's ongoing businesses, Akzo Nobel shall extract the relevant portions of the books, records and files, including customer lists, and sales and pricing data that are specific to the Para Business provided that, having regard to this context, the Divestiture Monitor shall have the authority to require that the Purchaser has sufficient information from the documentation above to allow it to carry on the Para Business in the ordinary course);

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In the event that the Divestiture Monitor is of the opinion that Akzo Nobel has not included assets related to the Para Business that are required for the viable operation of the Para Business by a Purchaser, the Divestiture Monitor may require Akzo Nobel to include such assets as part of the Para Assets. Notwithstanding the foregoing, nothing in this Agreement shall require Akzo Nobel to include within the Para Assets: (a) the back office systems, services and assets used in connection with Akzo Nobel's other businesses, (b) any equipment, inventory, intellectual property, contracts, commitments and customer orders, and applicable licenses, permits and authorizations related to Akzo Nobel's colourants business or related to the manufacture of the Synteko line of coatings that are currently manufactured in the Etobicoke facility noted in sub-paragraph (vi) above, and (c) any production facility, distribution centre or service centre not identified in sub-paragraphs (vi), (vii) or (viii) above;

- (x) **"Para Business"** means the business of manufacturing, marketing and selling Decorative Coatings under the Para brand and all related sub-brands, Para Design Elements, Para Elite, Para Premium, Paratech, PrimeTech, Para Professional, Para Professional Precision, Para Timbercare, Para Ultra and Para Woodcare, as well as the Personnel;
- (y) **"Para Intellectual Property"** means all of the following related to the Para Business:
  - (i) copyrights relating to trade dress, packaging and sales and marketing materials;
  - (ii) trademarks;
  - (iii) trade secrets, know-how, techniques, data, formulations and recipes used by the Para Business, and all rights in any jurisdiction to limit the use or disclosure thereof; and



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- (iv) rights to sue and recover damages or obtain injunctive relief for infringement, dilution, misappropriation, violation or breach of any of the foregoing.

The Divestiture Monitor shall have the authority to require Akzo Nobel to provide all Para intellectual property rights reasonably required for the viable operation of the Para Business by a Purchaser. For greater certainty, however, the Divestiture Monitor shall not require that Akzo Nobel include as Para Intellectual Property any assets, tangible or intangible, or rights excluded pursuant to the definition of the Para Assets;

- (z) “**Permitted Person**” means any Person employed by KPMG, the external auditors of Akzo Nobel, and any accountant, legal counsel, business valuator or investment banker employed or retained by Akzo Nobel;
- (aa) “**Person**” means any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity, whether acting alone or in concert with another Person;
- (bb) “**Personnel**” means any individual identified pursuant to paragraph 17;
- (cc) “**Purchaser**” means the Person that acquires the Divestiture Assets pursuant to this Agreement;
- (dd) “**Sico**” means Sico Inc., an indirect, wholly-owned subsidiary of Akzo Nobel;
- (ee) “**Transaction**” means the proposed acquisition by Akzo Nobel of all of the issued and outstanding shares of ICI, pursuant to the terms of the Implementation Agreement;
- (ff) “**Tribunal**” means the Competition Tribunal established by the *Competition Tribunal Act*, R.S.C. 1985, c.19 (2<sup>nd</sup> Supp.), as amended; and

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- (gg) “**Trustee Sale Period**” means the period following the expiration of the Initial Sale Period and ending 120 days after the Divestiture Trustee is empowered to sell the Divestiture Assets or such longer period as directed by the Commissioner;

All other terms defined in this Agreement have the meanings established elsewhere in this Agreement.

## **II. APPLICATION**

[2] The provisions of this Agreement apply to:

- (a) Akzo Nobel;
- (b) each officer, director, employee, agent or other Person acting for or on behalf of Akzo Nobel and any successors or assigns of Akzo Nobel;
- (c) all other Persons acting in concert or participating with one or more of those listed in (a) or (b);
- (d) the Commissioner;
- (e) the Divestiture Monitor;
- (f) the Divestiture Trustee; and
- (g) the Purchaser and the Purchaser’s successors and assigns.

## **III. DIVESTITURE MONITOR**

[3] The Commissioner shall appoint a Divestiture Monitor who shall be responsible for monitoring the compliance of Akzo Nobel with this Agreement. Akzo Nobel shall be responsible for all reasonable fees and expenses charged or incurred by the Divestiture Monitor or any replacement Divestiture Monitor appointed pursuant to this Agreement. If the Divestiture Monitor ceases to act or fails to act diligently and consistently with the purposes of this Agreement, the Commissioner may appoint a substitute Divestiture Monitor.

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[4] Akzo Nobel shall pay all invoices submitted by the Divestiture Monitor on a monthly basis. Any outstanding monies owed to the Divestiture Monitor by Akzo Nobel shall be paid out from any proceeds of the Divestiture.

[5] The Divestiture Monitor shall have full and complete access to all Personnel, records, documents and facilities of the Divestiture Assets or any other relevant information that the Divestiture Monitor requests; Akzo Nobel shall assist the Divestiture Monitor and shall not interfere with the Divestiture Monitor's execution of its obligations herein.

[6] The Divestiture Monitor shall serve without bond or other security, at the expense of Akzo Nobel, on such reasonable and customary terms and conditions as the Commissioner may determine. The Divestiture Monitor shall have the authority to engage, at the reasonable cost and expense of Akzo Nobel, such consultants, accountants, lawyers, and other representatives and assistants as are reasonably necessary to carry out the Divestiture Monitor's duties and responsibilities under this Agreement. The Divestiture Monitor shall account for all expenses incurred, including fees for his services.

[7] Akzo Nobel shall indemnify the Divestiture Monitor and hold him harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the duties of the Divestiture Monitor, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defence of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims or expenses result from malfeasance, gross negligence or bad faith by the Divestiture Monitor.

[8] The Divestiture Monitor shall report on Akzo Nobel's compliance with this Agreement, in writing, to the Commissioner (i) no later than thirty (30) days after being appointed and every thirty (30) days thereafter until the Divestiture is completed, (ii) no later than thirty (30) days after completion of the Divestiture and (iii) at any other time prior to the completion of the Divestiture as requested by the Commissioner or her staff . The Divestiture Monitor shall provide each such report forthwith. Akzo Nobel shall, during the pendency of the obligations set forth in Part IX of this Agreement, provide forthwith, as requested from time to time by the Commissioner or her staff in respect of a particular period, a statutory declaration of a senior

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officer of its Canadian business that Akzo Nobel has complied in all respects with the obligations set forth in Part IX of this Agreement.

[9] Akzo Nobel shall not attempt to influence, direct or control the Divestiture Monitor.

[10] This Agreement does not provide the Divestiture Monitor with ownership of the Divestiture Assets.

[11] The Divestiture Monitor shall execute a confidentiality agreement in the form required by the Commissioner in which the Divestiture Monitor will undertake not to disclose any competitively sensitive or proprietary information, including any Confidential Information, acquired in the performance of the Divestiture Monitor's duties to any person except to the Commissioner.

[12] If the Divestiture Monitor considers that Akzo Nobel is in default of any of the terms of this Agreement, the Divestiture Monitor shall immediately notify the Commissioner of the breach, who shall forthwith give notice to Akzo Nobel setting out the particulars of the default and allowing Akzo Nobel an opportunity to provide an explanation and, where appropriate, take any appropriate corrective action.

## **IV. PRESERVATION OF THE DIVESTITURE ASSETS**

[13] Pending the Divestiture, Akzo Nobel shall:

- (a) continue to be responsible for the management and operation of the Para Business and the Crown Diamond Brand; and
- (b) provide resources to the Para Business and the Crown Diamond Brand sufficient to maintain sales, marketing and business plans existing at the date of the Implementation Agreement relating to the Para Business and the Crown Diamond Brand, including as set forth in **Confidential Schedule "C"**, except as stated in **Confidential Schedule A**.

[14] Akzo Nobel shall take all necessary steps to maintain the competitive viability of the Para Business and the Crown Diamond Brand, including:

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- (a) operating the Para Business and the Crown Diamond Brand in compliance with all applicable laws;
- (b) maintaining all material licences, registrations, permits and approvals necessary for the operation of the Para Business and the Crown Diamond Brand;
- (c) using commercially reasonable efforts to maintain and enhance the competitiveness and the customer base of the Para Business and the Crown Diamond Brand, and, in particular, to continue to solicit business;
- (d) maintaining and holding the assets that comprise the Para Business and the Crown Diamond Brand in good condition and repair, normal wear and tear excepted, and to standards at least equal to those maintained prior to the date of the Implementation Agreement;
- (e) taking all commercially reasonable steps to honour all customer contracts and to maintain quality and service standards for customers of the Para Business and the Crown Diamond Brand;
- (f) maintaining all material contracts of the Para Business and the Crown Diamond Brand except with the consent of the Divestiture Monitor;
- (g) not communicating any Confidential Information outside of Akzo Nobel, other than to Permitted Persons, the Divestiture Monitor, the Commissioner or to a potential Purchaser to the extent that such is necessary for due diligence;
- (h) not knowingly taking or allowing to be taken any action that adversely affects the competitiveness, operations or financial status of the Para Business or the Crown Diamond Brand;
- (i) not curtailing marketing, sales, promotional or other activities of the Para Business and the Crown Diamond Brand in connection with the solicitation of existing or prospective customers;

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- (j) not altering, or causing to be altered, the direct management of the Para Business or the Crown Diamond Brand as they existed prior to the date of the Implementation Agreement, except as may be necessary to comply with the terms of this Agreement or to replace employees that may resign, all subject to the consent of the Commissioner; and
- (k) not terminating or altering any current employment, salary or benefit agreements for any Personnel.

In determining whether Akzo Nobel has fulfilled its obligations under this paragraph 14, the Divestiture Monitor shall take into account (i) any changed business circumstances resulting from Akzo Nobel's obligations under Part IX of this Agreement, and (ii) any declines in volumes, revenues or profitability in the Para Business or the Crown Diamond Brand that are consistent with general declines in industry volumes, revenues or profitability.

[15] In addition to the foregoing, Akzo Nobel shall provide sufficient financial resources to:

- (a) operate the Para Business and the Crown Diamond Brand at least at current rates of operation and to carry on, at least at their scheduled pace, all capital projects, business plans and promotional activities contemplated by Sico's most recent budget prior to the date of this Agreement in respect of the Para Business and the Crown Diamond Brand, except as stated in **Confidential Schedule A**;
- (b) subject to sub-paragraph (a) above, continue, at least at their scheduled pace, any additional expenditures for the Para Business and the Crown Diamond Brand authorized prior to the date of the Implementation Agreement;
- (c) maintain the viability and marketability of the Para Business and the Crown Diamond Brand at the level they were at prior to the date of the Implementation Agreement; and

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- (d) perform all maintenance to the assets referred to in sub-paragraphs (vi), (vii) and (viii) of paragraph 1(w) to a level at least as great as of the date of the Implementation Agreement.

[16] For greater certainty, nothing in this Agreement shall prevent Akzo Nobel from undertaking the activity identified in **Confidential Schedule “A”**.

[17] Akzo Nobel shall staff the Para Business and the Crown Diamond Brand with sufficient employees to maintain their viability, competitiveness and marketability. Employees of Akzo Nobel who spend more than fifty (50) percent of their time in respect of the Para Business and the Crown Diamond Brand shall constitute “Personnel” for the purposes of this Agreement. A list of Personnel by location and job description is provided at **Confidential Schedule “D”**. To the extent that any Personnel leaves or has left employment with respect to the Para Business and the Crown Diamond Brand prior to the end of the period covered by this Agreement, Akzo Nobel shall replace any such departing or departed Personnel with persons who have similar experience and expertise, or determine not to replace any such departing or departed Personnel with the prior approval of the Commissioner. The Commissioner shall not make public at any time the list of Personnel.

## **V. DIVESTITURE PROCEDURE**

[18] The Divestiture shall be completed on the following general terms:

- (a) by sale, assignment, transfer or other disposition necessary to ensure that, by completion of the Divestiture, Akzo Nobel has, directly or indirectly, no remaining title, right or interest in the Divestiture Assets divested pursuant to this Agreement;
- (b) by way of disposition as a going concern; and
- (c) to a Purchaser who is at arm’s length and who:

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- (i) shall effect the purchase with a demonstrated commitment to carrying on the business and competing effectively in the Decorative Coatings business in Ontario and Quebec;
- (ii) shall have the managerial, operational and financial capability to compete effectively in the Decorative Coatings business in Ontario and Quebec; and
- (iii) shall have proven expertise in the production, marketing and sale of Decorative Coatings.

The compliance of the Divestiture with these foregoing terms shall be considered and approved solely by the Commissioner. In addition, the Commissioner may also take into account the likely impact of the Divestiture on competition in exercising her discretion as to whether or not to approve the Divestiture. The decision of the Commissioner as to whether to approve the Divestiture shall be in writing.

[19] The Divestiture Assets shall be Divested to the same Purchaser unless the Commissioner otherwise agrees.

[20] Any Person making a *bona fide* inquiry of Akzo Nobel or the Divestiture Trustee, as the case may be, regarding the possible purchase by that Person or its principal of the Divestiture Assets pursuant to this Agreement shall be notified that the sale is being made pursuant to this Agreement and shall be provided with a copy of this Agreement, with the exception of the provisions that continue to be confidential at that time.

[21] Akzo Nobel shall provide reasonable and ordinary commercial representations and warranties to the Purchaser; however, nothing in this paragraph nor in this Agreement shall require Akzo Nobel to covenant or otherwise agree not to compete with the Para Business or the Crown Diamond Brand for any period of time in respect of the sale of any products, including Decorative Coatings.

[22] Akzo Nobel shall allow the Purchaser an opportunity to employ the Personnel.



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**[23]** Akzo Nobel shall:

- (a) not offer any incentive to any Personnel to decline employment with the Purchaser;
- (b) waive any impediments in contracts with Personnel, such as covenants not to compete, that may deter any such employment;
- (c) not interfere with Purchaser's employment of any Personnel; and
- (d) continue employee benefits offered to the Personnel until the Divestiture has been completed.

**[24]** Akzo Nobel shall protect pension benefits for any Personnel who accepts an offer of employment from the Purchaser.

**[25]** For a period of one year following completion of the Divestiture, Akzo Nobel shall not employ or make offers of employment to any Personnel who have accepted offers of employment with the Purchaser unless the individual employee has been terminated by the Purchaser.

**[26]** Akzo Nobel shall not bring any action against the Purchaser for infringement of the Para Intellectual Property included within the Para Assets or the Crown Diamond Intellectual Property included within the Crown Diamond Assets for conduct that takes place following the Divestiture.

**[27]** To determine or secure compliance with this Agreement, the Commissioner has the right, on two (2) business days' notice to Akzo Nobel:

- (a) to access all records of Akzo Nobel relating to compliance with this Agreement; and
- (b) to interview employees and officers of Akzo Nobel on matters relating to compliance with this Agreement.

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[28] Akzo Nobel shall not disclose any Confidential Information, save and except as permitted herein. Notwithstanding anything in this paragraph, nothing in this Agreement shall preclude Akzo Nobel from retaining and using any Confidential Information that is also used by Akzo Nobel in its ongoing business and operations and nothing in this Agreement shall preclude Akzo Nobel from making Confidential Information available to Permitted Persons for the purposes of complying with this Agreement, preparing standard financial and regulatory reports, tax returns and benefits administration and complying with applicable law and governmental authorities in Canada, the United States, The Netherlands and the United Kingdom.

[29] Akzo Nobel shall only disclose Confidential Information to a Person who requires such information for the purposes permitted under this Agreement, and who executes a confidentiality agreement in advance.

[30] Akzo Nobel shall enforce the terms of this Part as to any Person and take such action as is necessary to cause each such Person to comply with the terms of this Part.

## **V. TRANSITIONAL SUPPLY ARRANGEMENT FOR THE CROWN DIAMOND BRAND**

[31] Upon the request of the Purchaser made at the time of entering into the Divestiture Agreement under this Agreement, and subject to the terms immediately below, Akzo Nobel shall, for a period not to exceed eight (8) months from the date Akzo Nobel Divests the Crown Diamond Assets, provide a supply of branded Crown Diamond decorative coatings to the Purchaser (hereinafter for the purposes of this Part V “Crown Diamond Products”) in accordance with the following terms:

- (a) Akzo Nobel shall provide quantities of Crown Diamond Products sufficient to enable the Purchaser to satisfy customer demand in the ordinary course of business;
- (b) Akzo Nobel shall manufacture Crown Diamond Products that are of the same quality as the Crown Diamond Products manufactured prior to the Implementation Agreement;

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- (c) the purchase price to be paid by the Purchaser for the Crown Diamond Products shall be the Direct Costs, plus all applicable taxes;
- (d) such other terms of supply as are customary in the Decorative Coatings business; and
- (e) Purchaser and Akzo Nobel shall agree to a dispute resolution mechanism whereby the Purchaser and Akzo Nobel will submit to non-binding mediation for thirty (30) days and thereafter all disputes arising out of or in connection with this provision, or in respect of any legal relationship associated with or derived from this provision, shall be arbitrated and finally resolved, with absolutely no right of appeal even on questions of law, pursuant to the National Arbitration Rules of the ADR Institute of Canada Inc. Unless otherwise agreed, there shall be three (3) arbitrators. Akzo Nobel and the Purchaser shall appoint one arbitrator and the two arbitrators shall then jointly appoint the third arbitrator who shall act as chair of the arbitral tribunal. The arbitration shall take place in the City of Toronto, in the Province of Ontario, and shall be governed by the laws of the Province of Ontario. The language of the arbitration shall be English.

[32] Notwithstanding the foregoing, Akzo Nobel shall not be required to supply the Crown Diamond Products to a Purchaser pursuant to paragraph 31 above where the conditions in **Confidential Schedule “A”** have been met.

## VI. DIVESTITURE OF THE ASSETS (INITIAL SALE PERIOD)

[33] The Initial Sale Period commences on the Closing Date and ends at the time prescribed in the **Confidential Schedule “B”**.

[34] During the Initial Sale Period, Akzo Nobel shall use all reasonable commercial efforts to Divest the Divestiture Assets absolutely and in good faith by the end of the Initial Sale Period to a Person approved by the Commissioner, and pursuant to an agreement approved by the Commissioner.

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[35] Akzo Nobel shall notify the Commissioner forthwith of any material change in the value of the Divestiture Assets, or any change in the status of the Divestiture Assets that could materially affect their market value or saleability.

[36] Akzo Nobel shall create a process whereby Persons who have a *bona fide* interest in purchasing the Divestiture Assets shall be provided with:

- (a) all pertinent information regarding the Divestiture Assets;
- (b) an opportunity to make a reasonable inspection of the Divestiture Assets in question and of all financial, operational or other non-privileged documents and information which may be relevant to the Divestiture, except for any documents which at the time of request for the inspection of such documents the Commissioner has agreed not be disclosed or such documents that have been made the subject of a Tribunal order on confidentiality; and
- (c) full and complete access as is reasonable in the circumstances to the management Personnel relating to the Divestiture Assets.

In assessing who shall be provided with (a), (b) and (c) above, Akzo Nobel can take into account paragraph 18 of this Agreement. For greater certainty, nothing in this paragraph derogates from the Commissioner's sole authority to approve a Divestiture based upon the criteria in paragraph 18 of this Agreement.

[37] Akzo Nobel shall provide the Commissioner with progress reports regarding the Divestiture every two (2) weeks and shall, within three (3) business days, respond to any further requests from the Commissioner for additional information regarding the Divestiture. In addition, Akzo Nobel shall notify the Commissioner forthwith, subject to paragraph 38 below, of any negotiations with a prospective Purchaser that may lead to a sale and to forward copies to the Commissioner of any agreement that it signs with a prospective Purchaser, including a non-binding expression of interest.

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[38] Akzo Nobel shall notify the Commissioner of any proposed Divestiture no less than fifteen (15) days prior to the date upon which any binding offer by a proposed Purchaser expires, unless the Commissioner otherwise agrees.

[39] Within ten (10) days of the receipt of the notice described in the immediately preceding paragraph, the Commissioner may request additional information concerning the proposed Divestiture. If further additional information is requested by the Commissioner, it will be requested within five (5) days of all of the information received from the prior request.

[40] The Commissioner shall notify Akzo Nobel within five (5) days of the receipt of all of the required additional information requested, as referred to in the immediately preceding paragraph, of the approval of, or the objection to, the proposed Divestiture.

[41] If the Commissioner does not require additional information as a result of the notification of Akzo Nobel referred to in paragraph 38, the Commissioner shall notify Akzo Nobel within fifteen (15) days of the approval of, or the objection to, the proposed Divestiture.

[42] Akzo Nobel shall offer the Divestiture Assets for sale by way of a public tender, bidding, auction or other procedure approved by the Commissioner that allows for one or more *bona fide* prospective Purchasers to offer to acquire the Divestiture Assets pursuant to this Agreement.

[43] If the Divestiture is not completed during the Initial Sale Period, the Divestiture shall be carried out by the Divestiture Trustee.

## **VII. DIVESTITURE TRUSTEE SALE**

[44] The Commissioner may appoint the Divestiture Trustee in the manner set out in **Confidential Schedule “E”**. The Divestiture Trustee shall have no authority to offer the Divestiture Assets for sale until the Initial Sale Period has expired. Akzo Nobel shall be responsible for all reasonable fees and expenses charged or incurred by the Divestiture Trustee.

[45] Upon appointment of the Divestiture Trustee, Akzo Nobel shall, subject to the requirements of paragraph 46 below, provide complete access to the Divestiture Trustee to all information relating to the Divestiture Assets then in its possession or control. The

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Commissioner's appointment of the Divestiture Trustee shall be on the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

- (a) The Divestiture Trustee will be a Person with experience and expertise in acquisitions and divestitures and may be the same Person as the Divestiture Monitor. For greater certainty, if the Divestiture Trustee is the same Person as the Divestiture Monitor, the Divestiture Monitor shall continue with its obligations under this Agreement;
- (b) Subject to the exclusive oversight and approval by, and in consultation with, the Commissioner, the Divestiture Trustee shall have the exclusive authority to control the Divestiture Process as described in Part VII of this Agreement by whatever procedure the Divestiture Trustee believes, in its sole discretion, is suitable to effect the Divestiture in the time allotted under the conditions in this Agreement;
- (c) The Divestiture shall be by way of a public tender, bidding, auction or other procedure to allow a fair opportunity, within the constraints of this Agreement including mandated timeframes for divestiture, for one or more *bona fide* prospective Purchasers to obtain notice of the Divestiture and to offer to acquire the Divestiture Assets; and
- (d) The Divestiture Trustee's obligations and powers under this Agreement shall not expire until the Divestiture is completed.

[46] The Divestiture Trustee shall execute a confidentiality agreement in the form required by the Commissioner and shall refrain from communicating any Confidential Information to anyone except to the extent reasonably required to effect the Divestiture.

[47] The Divestiture Trustee shall not disclose any competitively sensitive or proprietary information, including any Confidential Information, to any prospective Purchaser until such prospective Purchaser has executed a confidentiality agreement in the form stipulated by the Commissioner.

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[48] The Divestiture Trustee shall have up to the entire Trustee Sale Period to accomplish the Divestiture. The Trustee Sale Period may be extended at the sole discretion of the Commissioner.

[49] The Divestiture Trustee shall offer for sale the Divestiture Assets.

[50] The Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities related to the Divestiture Assets or to any other information deemed relevant by the Divestiture Trustee to effect the Divestiture. Akzo Nobel shall take all necessary steps to assist the Divestiture Trustee in its accomplishment of the Divestiture.

[51] Akzo Nobel shall fully and promptly respond to all requests from the Divestiture Trustee and shall provide all information the Divestiture Trustee may request. Upon the appointment of the Divestiture Trustee, Akzo Nobel shall identify a person responsible for responding to such requests from the Divestiture Trustee.

[52] The Divestiture Trustee shall follow the obligations set forth in **Confidential Schedule “F”**.

[53] The Divestiture Trustee shall have the sole authority to determine and to impose all reasonable and ordinary commercial representations and warranties for the purpose of effecting the Divestiture. The Divestiture Trustee shall not, however, covenant or otherwise agree to any term in the Divestiture Agreement whereby Akzo Nobel would be prohibited from competing, directly or indirectly, with the Para Business or the Crown Diamond Brand for any period of time in respect of the sale of any products, including Decorative Coatings

[54] The Divestiture Trustee shall serve, without bond or other security, at the reasonable cost and expense of Akzo Nobel on such reasonable and customary terms and conditions as the Commissioner may determine.

[55] The Divestiture Trustee shall have the authority to engage, at reasonable cost and expense to be borne by Akzo Nobel, such consultants, accountants, lawyers, investment bankers, business brokers, appraisers, and other representatives and assistants as are reasonably necessary to carry out the Divestiture Trustee's duties and responsibilities.

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**[56]** Akzo Nobel will not be included in the Divestiture Trustee Sale process, including negotiations, nor will Akzo Nobel have contact with prospective Purchasers, unless such contact is approved by the Commissioner. However the Divestiture Trustee may consult with Akzo Nobel, where the Divestiture Trustee considers such consultation to be of assistance.

**[57]** Akzo Nobel shall pay all invoices submitted by the Divestiture Trustee on a monthly basis. Any outstanding monies owed to the Divestiture Trustee by Akzo Nobel shall be paid out from any proceeds of the Divestiture.

**[58]** Akzo Nobel shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defence of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from malfeasance, gross negligence or bad faith by the Divestiture Trustee.

**[59]** If the Divestiture Trustee ceases to act or fails to act diligently or otherwise in accordance with this Agreement or any agreement between the Commissioner and the Divestiture Trustee, the Commissioner may appoint a substitute Divestiture Trustee in the same manner as provided for in this Part for appointment of the initial Divestiture Trustee.

**[60]** The Divestiture Trustee shall have no obligation or authority to operate or maintain the assets to be divested by the Divestiture Trustee.

**[61]** The Divestiture Trustee shall report in writing to the Commissioner every thirty (30) days, and upon the Commissioner's request within three (3) days, concerning the Divestiture Trustee's efforts to accomplish the Divestiture. Such reports shall contain reasonable detail on the steps being taken by the Divestiture Trustee to effect the divestiture, including but not limited to, the identity of prospective Purchasers, the status of negotiations with such prospective Purchasers, and any additional information requested by the Commissioner.



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**[62]** The Divestiture Trustee shall promptly notify the Commissioner in writing, of any proposed Divestiture. Such notice shall include:

- (a) the identity of the proposed Purchaser
- (b) the details of the proposed transaction; and
- (c) information concerning whether, in the view of the Divestiture Trustee, the proposed Purchaser would satisfy the terms of this Agreement.

**[63]** Once the Commissioner has notified the Divestiture Trustee that she has approved a proposed Divestiture, the Divestiture Trustee shall forthwith notify Akzo Nobel, in writing, of such proposed Divestiture. Such notice shall include:

- (a) the identity of the proposed Purchaser; and
- (b) the details of the proposed transaction.

**[64]** Within ten (10) days of the receipt of the notice described in paragraph 62, the Commissioner may request additional information concerning the proposed Divestiture.

**[65]** The Commissioner shall notify the Divestiture Trustee within five (5) days of the receipt of all of the required additional information requested, as referred to in the immediately preceding paragraph, of the approval of, or objection to, the proposed Divestiture.

**[66]** If the Commissioner does not require additional information as a result of the notification of the Divestiture Trustee referred to in paragraph 62, the Commissioner shall notify the Divestiture Trustee within twenty (20) days of the acceptance of, or objection to, the proposed Divestiture.

**[67]** As the Divestiture Trustee's primary obligation is to divest the Divestiture Assets to a Person approved by the Commissioner, Akzo Nobel may not object to, or challenge, the Divestiture Trustee Sale on any grounds other than malfeasance, gross negligence or bad faith on the part of the Divestiture Trustee in fulfilling its obligations hereunder. If Akzo Nobel objects to the terms and conditions of a Divestiture that have been proposed by the Divestiture Trustee

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on the grounds of malfeasance, gross negligence or bad faith by the Divestiture Trustee, Akzo Nobel or the Commissioner may apply to the Tribunal for directions.

[68] Where Akzo Nobel objects to a proposed Divestiture Trustee Sale pursuant to the previous paragraph, it shall not be completed without the approval of the Tribunal.

### **VIII. FAILURE OF DIVESTITURE TRUSTEE SALE**

[69] If the Divestiture Assets have not been divested within the Trustee Sale Period (including any extensions), the Commissioner may apply to the Tribunal for such order as is necessary to effect the Divestiture, including an order that other asset(s) be offered for sale or additional steps be taken, to effect the Divestiture.

[70] Akzo Nobel will submit to the Tribunal's jurisdiction to grant such relief required to effect the Divestiture.

[71] Nothing in this Agreement shall in any way preclude the Tribunal from hearing any submission it considers appropriate from the Commissioner or Akzo Nobel.

### **IX. BEHAVIOURAL COMMITMENT**

[72] Akzo Nobel shall, for a period of five (5) years from the Closing Date, terminate all existing and cease offering discounts, promotions, rebates or similar programs to retailer customers in the Province of Quebec that are based on either exclusivity or the number of Akzo Nobel Decorative Coatings brands they purchase. Thus, Akzo Nobel shall not require, as a condition of supplying a specific brand to a customer, that the customer deal only with Akzo or acquire other brands from Akzo in the Province of Quebec. For greater certainty, nothing in this Agreement shall prevent or limit Akzo Nobel's right or ability to offer its retailer customers in the Province of Quebec (or elsewhere) other discounts, promotions, rebates or similar programs, including those based on volume of purchases. To the extent of any inconsistency between this paragraph and any other provision of this Agreement, this paragraph shall prevail.

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**X. NOTIFICATION**

[73] Akzo Nobel shall provide a copy of this Agreement to each of its officers, employees, or agents having managerial responsibility for any obligations under this Agreement.

[74] Notices, reports and other communications required or permitted pursuant to any of the terms of this Agreement, shall be in writing and shall be considered to be given if dispatched by personal delivery, registered mail or facsimile transmission to the parties.

(a) If to the Commissioner:

Commissioner of Competition  
Competition Bureau  
Industry Canada  
Place du Portage, 21st Floor  
50 Victoria Street, Phase I  
Gatineau, Quebec K1A 0C9  
Attention: Melanie L. Aitken, Senior Deputy Commissioner of Competition  
(Mergers)  
Fax: (819) 954-0998

With a copy to:

Director and Senior General Counsel  
Competition Law Division  
Department of Justice  
Place du Portage, 22nd Floor  
50 Victoria Street, Phase I  
Gatineau, Quebec K1A 0C9  
Attention: Jeff Richstone  
Fax: (613) 954-0964

(b) If to Akzo Nobel:

Senior Vice-President and General Counsel  
Akzo Nobel Inc.  
120 White Plains Road  
Suite 300  
Tarrytown, New York, 10591-5522  
U.S.A.  
Attention: Steven J. Miller  
Fax: (914) 366-4098

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With a copy to:

Blake, Cassels & Graydon LLP  
Commerce Court West  
199 Bay Street, 28<sup>th</sup> Floor  
Toronto, Ontario, M5L 1A9  
Attention: Calvin S. Goldman, Q.C., Jason Gudofsky and Micah Wood  
Fax: (416) 863-2653

### XI. DURATION

[75] Akzo Nobel shall be bound by this Agreement until a Divestiture of the Divestiture Assets is effected and all other obligations discharged in accordance with this Agreement or further order of the Tribunal.

[76] The Divestiture contemplated by this Agreement is complete when all right, title and interest in the Divestiture Assets have been conveyed pursuant to this Agreement.

### XII. GENERAL

[77] With the exception of the information in **Confidential Schedules A, C and D**, which information shall remain confidential at all times during and following the duration of this Agreement, Confidential terms in this Agreement shall be made public when the Trustee Sale Period commences, or when the Divestiture has been completed, whichever is first. Akzo Nobel agrees to the registration of this Agreement with the Tribunal.

[78] The Commissioner may agree to extend any of the time periods contemplated within the Consent Agreement. Akzo Nobel and the Commissioner may mutually agree to amend the Consent Agreement in any manner pursuant to subsection 106(1) of the Act.

[79] Computation of time periods contemplated by this Agreement shall be in accordance with the *Interpretation Act*, R.S.C. 1985, c. I-21. For the purpose of this Agreement, the definition of “holiday” in the *Interpretation Act* shall be deemed to include Saturday.

[80] This Agreement constitutes the entire agreement between the Commissioner and Akzo Nobel and supersedes all prior agreements with respect to the subject matter hereof.

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**[81]** Nothing in this Agreement abrogates the notification obligations set out in Part IX of the Act.

**[82]** Any dispute as to the interpretation, application or implementation of this Agreement may be resolved by application to the Tribunal.

**[83]** This Agreement may be executed in counterparts.

DATED this \_\_\_[13<sup>TH</sup>]\_\_\_ day of December, 2007.

[Original signed by “Jonathan Chaplan”, counsel to the Commissioner of Competition]

\_\_\_\_\_  
Commissioner of Competition

Per: Jonathan Chaplan, counsel to the Commissioner of Competition

[Original signed by “Steven J. Miller”]

\_\_\_\_\_  
Akzo Nobel N.V.

FILED AND REGISTERED BY THE TRIBUNAL, THIS \_\_\_\_\_ DAY OF DECEMBER, 2007.

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**CONFIDENTIAL SCHEDULE "A"**

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**CONFIDENTIAL SCHEDULE "B"**

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