CT- 2002- 003

THE COMPETITION TRIBUNAL

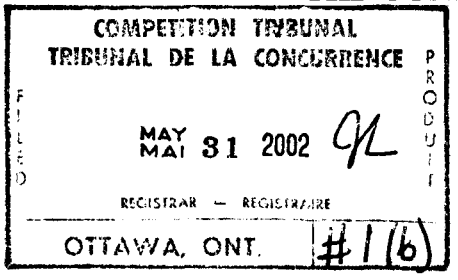
IN THE MATTER OF an application by the Commissioner of Competition for an Order pursuant to sections 92 and 105 of the *Competition Act*, R.S.C. 1985, c.C-34, as amended;

AND IN THE MATTER OF an application by the Commissioner of Competition for an Order pursuant to section 104 of the *Competition Act*;

AND IN THE MATTER OF the acquisition by Bayer AG of all of the shares of Aventis CropScience Holding S.A., constituting the agrochemical business of Aventis S.A. and, in Canada, the indirect acquisition by Bayer AG of all of the shares of Aventis CropScience Canada Co.

BETWEEN:

THE COMMISSIONER OF COMPETITION



Applicant

- and -

BAYER AG
and AVENTIS CROPSCIENCE HOLDING S.A.

Respondents

AFFIDAVIT OF DEAN SHAIKH

I, DEAN SHAIKH, of the City of Ottawa, in the Province of Ontario, Public Servant, **MAKE OATH AND SAY**:

1. I am an acting Senior Competition Law Officer in the Mergers Branch of the Competition Bureau (the "Bureau"), Industry Canada and an authorized representative of the Applicant, the Commissioner of Competition (the "Commissioner").

2. I graduated from Queen's University in May 1997 with a Bachelor of Laws. I am currently attending graduate studies in law at the University of Ottawa leading to the degree of Master of Laws specializing in international law and competition law. I have been an employee of the Bureau since February, 1998 and I have worked in the Mergers Branch since August, 2000. I have been involved in other merger matters which have been the subject of consent orders issued by the Competition Tribunal.

3. I have been assigned to work on an inquiry into the proposed acquisition by Bayer AG ("Bayer") of all of the shares of Aventis CropScience Holding S.A. ("ACS"), and, in Canada, the indirect acquisition by Bayer of all of the shares of Aventis CropScience Canada Co. ("ACS Canada"). As such I have knowledge of the matters hereto deposed and of the information contained in the Statement of Grounds and Material Facts and the Consent Order Impact Statement filed in support of the application by the Commissioner in this matter except that which is obtained upon information and belief, and, where so stated, I verily believe such information to be true.

4. I believe that the Statement of Grounds and Material Facts accurately reflects the findings of the investigation by the Bureau. I further believe that the Consent Order Impact Statement accurately reflects the manner in which the Draft Consent Order ("DCO") will alleviate the competition concerns identified in the Statement of Grounds and Material Facts.

A. THE ACQUISITION

5. Pursuant to definitive stock purchase agreements, signed effective October 2, 2001, among Bayer, Aventis Agriculture and Schering Aktiengesellschaft ("Schering"), and SCIC Holdings LLC ("SCIC"), Bayer intends to acquire all shares in ACS from the vendors, Aventis S.A. and Schering (the "Acquisition"). Currently, the shareholders of ACS are Aventis Agriculture, a wholly-owned subsidiary of Aventis S.A. (47.93%), Hoechst A.G., a 98% owned subsidiary of Aventis (28.07%), Schering (19.83%), and SCIC, a wholly-owned subsidiary of Schering (4.17%). Following the Acquisition, Bayer's crop science activities will be organized as a separate legal entity to be named "Bayer CropScience".

6. The Acquisition involves the purchase by Bayer of ACS' world-wide business of researching, developing, manufacturing and supplying crop protection and crop production products and related chemical products. In Canada, Bayer will indirectly acquire ACS Canada's business activities which include the manufacture and supply of

the following pesticides: insecticides; seed treatments; herbicides; fungicides; and professional-use pesticides.

B. THE EXAMINATION

7. The examination of the Acquisition was commenced by the Bureau in October 2001. On October 17, 2001, the parties filed a notification pursuant to section 114 of the *Competition Act* (the *"Act"*). On January 24, 2002, the Commissioner caused a formal inquiry to be commenced.

8. An investigative team comprised of three additional Competition Law Officers, an Enforcement Support Officer and an Economist from the Competition Policy Branch at the Bureau was assembled to conduct the competition analysis of the Acquisition. Legal counsel from the Competition Law Division of the Department of Justice was also assigned to this matter. Thereafter, two industry experts and an economic expert were retained to assist in the further review of the Acquisition.

9. The business activities of the Respondents are conducted internationally and the Acquisition has been subject to regulatory approval in other jurisdictions. For these reasons, contact with the Federal Trade Commission of the United States (the "FTC")

and the Competition Directorate-General of the European Commission (the "European Commission") was initiated at an early stage in the investigation. The Respondents provided waivers of confidentiality that permitted an exchange of information among the Bureau, the FTC and the European Commission.

10. The investigation encompassed the following:

i. review of information provided by Bayer and ACS Canada pursuant to section 114 of the *Act*;

ii. review of information provided voluntarily by Bayer and ACS Canada;

iii. meetings with counsel and representatives of Bayer and ACS Canada;

iv. telephone and in-person interviews with competitors and customers of Bayer and ACS Canada and other industry participants, including manufacturers, distributors, retailers, and growers;

v. telephone discussions with federal government officials of the Pest Management Regulatory Agency (the "PMRA") regarding the process involved in the registration of pesticide products and related chemical compounds;

vi. telephone discussions with federal government officials of the Canadian Intellectual Property Office regarding patent protection in the pesticide industry;

vii. review of information obtained pursuant to orders of the Federal Court of Canada issued under section 11 of the *Act* to the following: Bayer; ACS Canada; Gustafson Partnership (a joint venture between Bayer and Crompton Corporation); five competitors; and, the PMRA;

viii. consultation with economic, industry and intellectual property experts and a review of their research and reports;

ix. telephone discussions with representatives of the FTC and the European Commission, as well as a review of documents, including transcripts of depositions, provided to the Bureau by the FTC; and

x. meetings with the FTC and an exchange of draft documents.

11. During the course of the investigation outlined above, I have conducted an examination of the effects of the Acquisition on competition in Canada. After consultation with other members of the investigative team as well as industry and economic experts, I have defined the relevant product and geographic markets and examined other evaluative criteria as described in the Statement of Grounds and Material Facts.

C. SUBSTANTIAL LESSENING OR PREVENTION OF COMPETITION

12. In mid-March 2002, the Bureau informed the parties of its findings, in particular, that the Acquisition would likely result in a substantial lessening or prevention of competition in the following markets: (a) insecticides for certain fruit and vegetable crops in Canada; (b) seed treatments for canola in Canada; (c) seed treatments for cereals in Canada; and, (d) grassy weed herbicides for spring wheat in Western Canada.

13. The Statement of Grounds and Material Facts provides a competitive analysis of the Acquisition and the Consent Order Impact Statement describes the anticipated effects of the remedies proposed in the DCO.

D. PROPOSED REMEDIES

14. The DCO provides that Bayer will, with certain exclusions: divest acetamiprid (an active ingredient in insecticides and insecticide seed treatments) and certain other assets related to the worldwide insecticide and canola seed treatment business of ACS; license iprodione (an active ingredient in fungicide seed treatments for canola); divest triticonazole (an active ingredient in fungicide seed treatments) and certain other assets pertaining to the Canadian cereal seed treatment business of ACS; and divest flucarbazone (an active ingredient in herbicides) and certain other assets related to Bayer's worldwide wheat grass herbicide business. The divestiture of certain additional

assets is required in the event that Bayer is unable to divest acetamiprid, license iprodione or divest flucarbazone. As explained in the Consent Order Impact Statement, these remedies are intended to preserve competition which would likely otherwise have been substantially lessened or prevented in the relevant markets as a result of the Acquisition.

15. Throughout the examination, the Bureau maintained regular communications with the FTC and the European Commission to ensure that proposed remedies for Canada were consistent with those being contemplated in these other jurisdictions.

16. On April 17, 2002, the European Commission announced its approval of the remedies proposed by the Respondents to alleviate competition concerns in Europe. These remedies, referred to as the "European Commitments", are set out in the document attached and marked as Confidential Exhibit "A".

17. The proposed remedies for Canada relating to the Triticonazole Business and parts of the Iprodione Canola Seed Treatment Business in Canada (as these terms are defined in the Draft Consent Order), are consistent with the remedies required by the European Commission as set out in paragraphs 129, 145 and 148 of the European Commitments.

18. In mid-April, the Bureau met with the FTC to discuss the remedies that would be proposed in both Canada and the United States. Following this, the Bureau attended negotiations between the FTC and the Respondents. The remedies approved by the FTC

to alleviate the competition concerns in the United States are set out in the FTC's "Decision and Order", attached and marked as Exhibit "B".

19. The proposed remedies for Canada relating to the Acetamiprid Business and the Flucarbazone Business (as these terms are defined in the DCO) are identical to the remedies required by the FTC as set out in Parts II, IV, XI and XII of the FTC's Decision and Order. Common language is considered necessary to prevent conflict between the remedies proposed in each jurisdiction.

20. In addition to the above-noted divestitures, Bayer is also required to provide the acetamiprid acquirer with a licence to iprodione (an active ingredient in seed treatments for canola). In this case, a licence and supply agreement are sufficient and a divestiture is not required because, unlike the previously mentioned assets, iprodione is off-patent and Bayer will retain rights to iprodione for other uses.

21. The proposed remedies involve the divestiture of significant intellectual property. The language in the DCO as well as the FTC's Decision and Order is intended to provide the acquirers of the divested assets with assurances that all intellectual property necessary to continue to develop, manufacture and sell the relevant products will be divested or licensed. For greater certainty, the DCO also provides the acquirers with protection against claims of infringement by Bayer.

22. The framework for the divestiture of intellectual property in the DCO is the same as that in the FTC's Decision and Order. This approach was adopted for two reasons: (1) to ensure consistency between the two orders; and (2) to rely on the expertise of the FTC in light of their prior experience with divestitures of intellectual property in the crop protection industry.

E. THE PROPOSED INTERIM CONSENT ORDER

23. To permit the Respondents to close the Acquisition, the Commissioner proposes an interim order for the purpose of maintaining the Hold Separate Businesses (as the term is defined in the Draft Consent Interim Order) as independent businesses, separate from the Respondents' other operations, pending the determination of the Commissioner's application.

24. Under the proposed interim order, the Hold Separate Businesses will be managed by independent managers, under the supervision of an independent monitor. The independent managers will be Mr. Wolfgang Bieber, Mr. Vincent Turriès, Mr. Stan Prokopchuk, Mr. Garry Van Den Bussche, Mr. Leo Blydorp and Mr. Bryan Bowden. The independent monitor will be Mr. Richard Gilmore. Attached and marked as Confidential Exhibits C-1, C-2, C-3, C-4, C-5, C-6 and C-7 are copies of the curriculum vitae for each of the independent managers and independent monitor.

25. To preserve the integrity of the Hold Separate Businesses and to ensure consistency with the other jurisdictions, Messrs. Gilmore, Bieber and Turriès will oversee all businesses that are required to be held separate in Canada, the United States and Europe pending the required divestiture of assets in all three jurisdictions.

26. The Respondents have consented to the interim order proposed by the Commissioner.

27. I believe that without the interim order, there will be irreparable harm to competition in at least the following respects:

(a) The Respondent, Bayer, would be free to integrate the Hold Separate Businesses with its other operations and would be able to exercise the market power the Commissioner alleges will arise if the Respondent, Bayer, acquires certain assets within the Hold Separate Businesses; and

(b) The Respondent, Bayer, would have access to pricing, customers lists and other confidential information pertaining to those assets within the Hold Separate Businesses.

28. I believe that the interim order is necessary to preserve the divestiture of certain assets that are part of the Hold Separate Businesses as an effective remedy in this case. I believe that the form of the interim order proposed by the Commissioner will achieve that purpose.

SWORN BEFORE ME, at the City of Gatineau, in the Province of Québec, this 31st day of May, 2002.

A Commissioner, etc.

Commissaire à l'assermentation
JOSÉE BRUNET
96 746
District Judiciaire de Hull, QC

DEAN SHAIKH

THIS IS EXHIBIT "A" TO THE
AFFIDAVIT OF
Dean Shaikh
SWORN BEFORE ME THIS 31st DAY
OF May 20 02
Josée Brunet
COMMISSIONER FOR OATHS

Commissaire à l'assermentation
JOSÉE BRUNET
96 746
District Judiciaire de Hull QC

EXHIBIT "A"

(CONFIDENTIAL)

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Timothy J. Muris, Chairman**
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary

THIS IS EXHIBIT "B" TO THE AFFIDAVIT OF Dan Shaulich
SWORN BEFORE ME THIS 31st DAY OF May 20 02
Josée Brunet
COMMISSIONER FOR OATHS

Commissaire à l'assermentation
JOSÉE BRUNET
96746
District Judiciaire de Hull, QC

In the matter of	)	
Bayer AG, a corporation, and	)	Docket No. C-
Aventis S.A., a corporation.	)	

DECISION AND ORDER

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition by Respondent Bayer AG of the stock of Aventis CropScience Holding S.A. ("ACS") from Respondent Aventis S.A. and Respondents having been furnished thereafter with a copy of the draft of the Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders ("Consent Agreement"), an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of the Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and its Order to Hold

Separate and Maintain Assets and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

1. Respondent Bayer AG, is a German Aktiengesellschaft organized, existing, and doing business under, and by virtue of, the laws of Germany, with its office and principal place of business located at Werk Leverkusen, 51368, Leverkusen, Germany.

2. Respondent Aventis S.A., is a French societe anonyme organized, existing, and doing business under, and by virtue of, the laws of France, with its office and principal place of business located at Avenue de l'Europe, Espace Europeen de l'Enterprise, Schiltigheim, France.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents and the proceeding is in the public interest.

ORDER

I.

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

A. "Bayer" means Bayer AG, its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Bayer AG, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

B. "Aventis" means Aventis S.A., its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Aventis S.A., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "ACS" means Aventis CropScience Holding S.A., its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Aventis CropScience Holding S.A., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

D. "Commission" means the Federal Trade Commission.

E. "Acetamiprid" means the chemical compound (E)-N^1-[(6-chloro-3-pyridyl) methyl]-N^2-cyano-N^1-methylacetamidine.

F. "Acetamiprid Assets" means Aventis' right, title, and interest in and to all assets, tangible or intangible, relating to the Acetamiprid Business, including, but not limited to:

1. All real property (together with appurtenances, licenses, and permits) owned, leased or otherwise held by Aventis;

2. All personal property owned, leased, or otherwise held by Aventis;

3. All inventories, stores, and supplies held by, or under the control of Aventis;

4. All Intellectual Property relating primarily to the Acetamiprid Business owned by or licensed to Aventis, including, but not limited to, that identified in Confidential Appendix A;

5. All rights of Aventis under any contract (other than multi-product contracts), including but not limited to licenses, leases, customer contracts, supply agreements, and procurement contracts;

6. All pending and issued governmental approvals, registrations, consents, licenses, permits, waivers, or other authorizations held by Aventis, including foreign equivalents;

7. All rights of Aventis under any warranty and guarantee, express or implied;

8. All items of prepaid expense owned by Aventis; and

9. All separately maintained, and all relevant portions of not separately maintained, books, records, and files held by, or under the control of, Aventis.

Provided, however, that the Acetamiprid Assets shall not include Aventis' right, title, and interest in and to (i) any real property (together with appurtenances, licenses and permits) owned, leased, or otherwise held by Respondents; (ii) office space, fixtures, production equipment, vehicles, storage equipment, handling equipment, packaging equipment, office equipment, inventory equipment or systems, or furniture; (iii) personal property related exclusively to the administration, sales, and distribution operations of Aventis; (iv) management information systems, computer systems, or software that does not relate exclusively to the Acetamiprid Business; and (v) any of the Excepted Acetamiprid Assets that Respondents retain as permitted in Paragraph II.B. of this Order.

G. "Acetamiprid Business" means Respondent Aventis' business of researching, developing, registering, formulating, manufacturing, licensing, distributing, marketing, and selling all products containing Acetamiprid, including products in development, in any market anywhere in the world, prior to the Acquisition Date (and such business as conducted by Bayer after the Acquisition Date pursuant to this Order and the Order to Hold Separate); provided, however, that if Respondents retain any of the Excepted Acetamiprid Assets as permitted in Paragraph II.B. of this Order, the Acetamiprid Business shall not include the business described in this Paragraph I.G. relating exclusively to any market in Mexico, South America, Central America, or Africa.

H. "Acetamiprid Agreements" means all agreements between Nippon Soda and Aventis relating to the Acetamiprid Business.

I. "Acetamiprid Licensed Intellectual Property" means all Intellectual Property relating (but not relating primarily) to the Acetamiprid Business as of the date of divestiture of the Acetamiprid Assets.

J. "Acquirer" means any Person that acquires any of the Pesticide Assets pursuant to this Order.

K. "Acquisition" means the proposed acquisition described in (i) the Stock Purchase Agreement dated as of October 2, 2001, among Aventis Agriculture, Hoechst Aktiengesellschaft, and Bayer AG, and (ii) the Stock Purchase Agreement dated as of October 2, 2001, among Schering Aktiengesellschaft, SCIC Holdings LLC, and Bayer AG.

L. "Acquisition Date" means the date of consummation of the Acquisition.

M. "Additional Flucarbazone Assets" means Bayer's right, title, and interest in and to all assets, tangible or intangible, relating to the Olympus Business, including, but not limited to:

1. All real property (together with appurtenances, licenses, and permits) owned, leased or otherwise held by Bayer;

2. All personal property owned, leased, or otherwise held by Bayer;

3. The Kansas City Production Assets;

4. All inventories, stores, and supplies held by, or under the control of Bayer;

5. All Intellectual Property owned by or licensed to Bayer;

6. All rights of Bayer under any contract (other than multi-product contracts), including, but not limited to, licenses, leases, customer contracts, supply agreements, and procurement contracts;

7. All pending and issued governmental approvals, registrations, consents, licenses, permits, waivers, or other authorizations held by Bayer, including foreign equivalents;

8. All rights of Bayer under any warranty and guarantee, express or implied;

9. All items of prepaid expense owned by Bayer; and

10. All separately maintained, and all relevant portions of not separately maintained, books, records, and files held by, or under the control of, Bayer.

Provided, however, that the Additional Flucarbazone Assets shall not include Bayer's right, title, and interest in and to (i) any real property (together with appurtenances, licenses, and permits) owned, leased, or otherwise held by Respondents other than the Kansas City Production Assets; (ii) office space, fixtures, vehicles, storage equipment, handling equipment, packaging equipment, office equipment, inventory equipment or systems, or furniture other than that included in the Kansas City Production Assets; (iii) personal property related exclusively to the administration, sales, and distribution operations of Bayer; and (iv) management information systems, computer systems, or software that does not relate exclusively to the Olympus Business and Flucarbazone Business (collectively).

N. "Amvac Acquisition Agreement" means the Asset Purchase Agreement (including all related agreements, schedules, exhibits, and appendices) between Bayer and Amvac Chemical Corporation, dated April 18, 2002, as amended.

O. "Amvac Corporation" means Amvac Chemical Corporation, a corporation organized, existing, and doing business under and by virtue of the laws of California, with its office and principal place of business located at 4695 MacArthur Court, Suite 1250, Newport Beach, California.

P. "Animal Health Uses" means all uses of pharmaceutical, biological and medicinal products, including in-feed products, intended to enhance the health or performance of any and all species of animals, including livestock and companion animals, excluding humans, but to exclude (i) any product with a different intended utility, (ii) nutritional additives, (iii) chemical intermediates, and (iv) the inhalational anaesthetics Isoflurane, Halothene, Sevoflurane, and Desoflurane, as defined in the Merial Agreements.

Q. "Consent Agreement" means the Agreement Containing Consent Orders executed by Respondents and the Commission in this matter.

R. "Direct Cost" means (i) if in connection with Paragraphs IV.E. of this Order, the actual cost of raw materials, direct labor, and reasonably allocated factory overhead in manufacturing an item, or (ii) if in connection with Paragraphs II.F., III.G., IV.F., and V.F. of this Order, the cost of direct material and labor used to provide the relevant service.

S. "Divestiture Agreement" means any of the acquisition agreements referenced in Paragraphs II.A., III.A., IV.A., and V.A. (or V.C.) of this Order, or any acquisition agreement entered into by the Divestiture Trustee pursuant to Paragraph X of this Order.

T. "Divestiture Trustee" means the Divestiture Trustee appointed pursuant to Paragraph X of this Order.

U. "Elbeuf Production Facility" means the Fipronil active ingredient-related production assets located at Elbeuf, France, including, but not limited to, Building 111 and all fixtures, machinery, and equipment located in that building, and all fixtures, machinery, and equipment located in Building 121 dedicated to the production of Fipronil, and rights to shared services (such as utilities, water, and security) necessary for the production of Fipronil.

V. "Excepted Acetamiprid Assets" means that part of the Acetamiprid Assets relating exclusively to Respondent Aventis' business of researching, developing, registering, formulating, manufacturing, licensing, distributing, marketing, and selling all products containing Acetamiprid, including products in development, in any market in Mexico, South America, Central America, or Africa, prior to the Acquisition Date (and such business activities as conducted by Bayer after the Acquisition Date pursuant to this Order and the Order to Hold Separate).

W. "Europe" means the geographical area comprising all EU Member States and Norway, Iceland, Liechtenstein, Cyprus, the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Malta, Poland, Slovakia, and Slovenia.

X. "Fipronil" means the chemical compound (±)-5-amino-1-(2,6-dicloro-a, a, a,- trifluoro-p-tolyl)-4-trifluoro-methyl sulfinylpyrazole-3-carbonitrile.

Y. "Fipronil Acquirer" means the Person that acquires the Fipronil Assets pursuant to this Order.

Z. "Fipronil Assets" means Aventis' right, title, and interest in and to all assets, tangible or intangible, relating to the Fipronil Business, including, but not limited to:

1. All real property (together with appurtenances, licenses, and permits) owned, leased, or otherwise held by Aventis;

2. All personal property owned, leased, or otherwise held by Aventis;

3. The Elbeuf Production Facility;

4. All inventories, stores, and supplies held by, or under the control of Aventis;

5. All Intellectual Property relating primarily to the Fipronil Business owned by or licensed to Aventis, including, but not limited to, that identified in Confidential Appendix B;

6. All rights of Aventis under any contract (other than multi-product contracts), including, but not limited to, licenses, leases, customer contracts, supply agreements, and procurement contracts;

7. All governmental approvals, registrations, consents, licenses, permits, waivers, or other authorizations held by Aventis, including foreign equivalents (except for a co-ownership right in Bayer in the Fipronil technical registration and the underlying data packages to the extent necessary to satisfy Bayer's obligations under the Merial Agreements);

8. All rights of Aventis under any warranty and guarantee, express or implied;

9. All items of prepaid expense owned by Aventis; and

10. All separately maintained, and all relevant portions of not separately maintained, books, records, and files held by, or under the control of, Aventis.

Provided, however, that the Fipronil Assets shall not include Aventis' right, title, and interest in and to (i) any real property (together with appurtenances, licenses, and permits) owned, leased, or otherwise held by Respondents other than the Elbeuf Production Facility; (ii) office space, fixtures, formulation equipment, vehicles, storage equipment, handling equipment, packaging equipment, office equipment, inventory equipment or systems, or furniture other than that included in the Elbeuf Production Facility; (iii) personal property related exclusively to the administration, sales, and distribution operations of Aventis; (iv) management information systems, computer systems, or software that does not relate exclusively to the Fipronil Business; (v) the participation of Aventis in the Hangzhou Fipronil Production Joint Venture; (vi) the trademarks Chipco Choice, TopChoice, and, at the option of the Fipronil Acquirer, Firestar; (vii) the Maxforce business, including the trademark Maxforce.

AA. "Fipronil Business" means Respondent Aventis' business of researching, developing, registering, formulating, manufacturing, licensing, distributing, marketing, and selling all products containing Fipronil, including products in development, in any market anywhere in the world, prior to the Acquisition Date (and such business as conducted by Bayer after the Acquisition Date

pursuant to this Order and the Order to Hold Separate), subject to Merial's rights relating to Animal Health Uses under the Merial Agreements.

BB. "Fipronil Licensed Intellectual Property" means all Intellectual Property relating (but not relating primarily) to the Fipronil Business as of the date of divestiture of the Fipronil Assets.

CC. "Flucarbazone" means the chemical compound 4,5-dihydro-3-methoxy-4-methyl- 5-oxo-N-[2-(trifluoromethoxy)phenylsulfonyl]-1H-1,2,4-triazole-1-carboxamide.

DD. "Flucarbazone Acquirer" means the Person that acquires the Flucarbazone Assets (and Additional Flucarbazone Assets, if divested) pursuant to this Order.

EE. "Flucarbazone Assets" means Bayer's right, title, and interest in and to all assets, tangible or intangible, relating to the Flucarbazone Business, including, but not limited to:

1. All real property (together with appurtenances, licenses, and permits) owned, leased, or otherwise held by Bayer;

2. All personal property owned, leased, or otherwise held by Bayer;

3. All inventories, stores, and supplies held by, or under the control of Bayer;

4. All Intellectual Property relating primarily to the Flucarbazone Business owned by or licensed to Bayer, including, but not limited to, that described in Confidential Appendix C;

5. All rights of Bayer under any contract (other than multi-product contracts), including but not limited to licenses, leases, customer contracts, supply agreements, and procurement contracts;

6. All pending and issued governmental approvals, registrations, consents, licenses, permits, waivers, or other authorizations held by Bayer, including foreign equivalents;

7. All rights of Bayer under any warranty and guarantee, express or implied;

8. All items of prepaid expense owned by Bayer; and

9. All separately maintained, and all relevant portions of not separately maintained, books, records, and files held by, or under the control of, Bayer.

Provided, however, that the Flucarbazone Assets shall not include Bayer's right, title, and interest in and to (i) any real property (together with appurtenances, licenses, and permits) owned, leased, or otherwise held by Respondents; (ii) office space, fixtures, production equipment, vehicles, storage equipment, handling equipment, packaging equipment, office equipment, inventory equipment or systems, or furniture; (iii) personal property related exclusively to the administration, sales, and distribution operations of Bayer; and (iv) management information systems, computer systems, or software that does not relate exclusively to the Flucarbazone Business.

FF. "Flucarbazone Business" means Respondent Bayer's business of researching, developing, registering, formulating, manufacturing, licensing, distributing, marketing, and selling all products containing Flucarbazone, including products in development, in any market anywhere in the world.

GG. "Flucarbazone Licensed Intellectual Property" means all Intellectual Property relating (but not relating primarily) to the Flucarbazone Business as of the date of divestiture of the Flucarbazone Assets.

HH. "Folex Acquirer" means the Person that acquires the Folex Assets pursuant to this Order.

II. "Folex Assets" means Aventis' right, title, and interest in and to all assets, tangible or intangible, relating to the Folex Business, including, but not limited to:

1. All real property (together with appurtenances, licenses, and permits) owned, leased, or otherwise held by Aventis;

2. All personal property owned, leased, or otherwise held by Aventis;

3. All inventories, stores, and supplies held by, or under the control of Aventis;

4. All Intellectual Property relating primarily to the Folex Business owned by or licensed to Aventis, including, but not limited to, that described in Confidential Appendix D;

5. All rights of Aventis under any contract (other than multi-product contracts), including, but not limited to, licenses, leases, customer contracts, supply agreements, and procurement contracts;

6. All pending and issued governmental approvals, registrations, consents, licenses, permits, waivers, or other authorizations held by Aventis, including foreign equivalents;

7. All rights of Aventis under any warranty and guarantee, express or implied;

8. All items of prepaid expense owned by Aventis; and

9. All separately maintained, and all relevant portions of not separately maintained, books, records, and files held by, or under the control of, Aventis.

Provided, however, that the Folex Assets shall not include Aventis' right, title, and interest to (i) any real property (together with appurtenances, licenses, and permits) owned, leased, or otherwise held by Respondents; (ii) office space, fixtures, production equipment, vehicles, storage equipment, handling equipment, packaging equipment, office equipment, inventory equipment or systems, or furniture; (iii) personal property related exclusively to the administration, sales, and distribution operations of Aventis; and (iv) management information systems, computer systems, or software that does not relate exclusively to the Folex Business.

JJ. "Folex Business" means Respondent Aventis' business of researching, developing, registering, formulating, manufacturing, licensing, distributing, marketing, and selling all products containing Tribufos, including products in development, in any market in the United States, prior to the Acquisition Date (and such business as conducted by Bayer after the Acquisition Date pursuant to this Order and the Order to Hold Separate).

KK. "Folex Licensed Intellectual Property" means all Intellectual Property relating (but not relating primarily) to the Folex Business as of the date of divestiture of the Folex Assets.

LL. "Intellectual Property" means, worldwide as of the date of the divestiture of the applicable Pesticide Assets without limitation, (i) all trade names, registered and unregistered trademarks, service marks and applications, domain names, trade dress, copyrights, copyright registrations and applications, in both published works and unpublished works; (ii) all patents, patent applications, and inventions and discoveries that may be patentable; and (iii) all know-how, trade secrets, confidential information, customer lists, software, technical information, data, registrations, applications for governmental approvals, processes and inventions, formulae, recipes, methods, and product and packaging specifications. For purposes of Paragraphs II.E., III.D.1., IV.D., and V.E. of this Order, "Intellectual Property" shall not include any trade names, registered and unregistered trademarks, service marks and applications, domain names, and trade dress.

MM. "Kansas City Production Assets" means the Flucarbazone and Propoxycarbazone active ingredient-related production assets located at Kansas City, including but not limited to, the building housing the Bayer MKH plant, and all fixtures, machinery, and equipment located in that building, dedicated to the production of Flucarbazone and Propoxycarbazone, and rights to all shared services (such as utilities, water, and security) necessary for the production of Flucarbazone and Propoxycarbazone.

NN. "Merial" means Merial, Limited, a corporation organized, existing, and doing business under and by virtue of the laws of England and Wales, with its office and principal place of business located at Merial Ltd., Harlow Business Park, Harlow Essex CM 195 TG, England.

OO. "Merial Agreements" means, as amended, (i) the Fipronil and Existing Products License Agreement between ACS and Merial dated 23 May, 1997; (ii) the Fipronil Supply Agreement between ACS and Merial dated 23 May, 1997; and (iii) the Research and License Agreement for Future Products between ACS SA and Merial dated 23 May, 1997.

PP. "Monitor" means the Monitor appointed pursuant to Paragraph IX of this Order.

QQ. "Nippon Soda" means Nippon Soda Co. Ltd., a company organized and existing under the laws of Japan and having its principal place of business at 2-1, Ohtemachi 2 chome, Chiyoda-ku, Tokyo, Japan.

RR. "Non-Agricultural Use" means the use of a product that is represented, sold, used, or intended to be used to prevent, destroy, repel, or mitigate a pest on structures, structural materials, or the environment (other than land used for professional agriculture) including, but not limited to, use in turf and ornamental, home and garden, professional pest control, vector control, locust control, forestry, public health, and industrial vegetation management.

SS. "Non-Public Pesticide Information" means any information relating to the Pesticide Assets or the Pesticide Businesses obtained in any manner by Respondents, except for any information that Respondents demonstrate (i) was or becomes generally available to the public other than as a result of a disclosure by Respondents or (ii) was available, or becomes available, to Respondents on a non-confidential basis, but only if, to the knowledge of Respondents, the source of such information is not in breach of a contractual, legal, fiduciary, or other obligation to maintain the confidentiality of the information.

TT. "Olympus Business" means Respondent Bayer's business of researching, developing, registering, formulating, manufacturing, licensing, distributing, marketing, and selling all products containing Propoxycarbazone, including products in development, in any market anywhere in the world, except for Europe.

UU. "Olympus Licensed Intellectual Property" means all Intellectual Property relating (but not relating primarily) to the Olympus Business as of the date of divestiture of the Additional Flucarbazone Assets.

VV. "Order to Hold Separate" means the Order to Hold Separate and Maintain Assets issued by the Commission in this matter.

WW. "Person" means any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity.

XX. "Pesticide Assets" means the Acetamiprid Assets, Fipronil Assets, Flucarbazone Assets, and Folex Assets, and if divested by the Divestiture Trustee pursuant to Paragraphs X, XI, or XII of this Order, the Thiacloprid Assets and Additional Flucarbazone Assets.

YY. "Pesticide Businesses" means the Acetamiprid Business, Fipronil Business, Flucarbazone Business, and Folex Business, and if divested by the Divestiture Trustee pursuant to Paragraphs X, XI, or XII of this Order, the Thiacloprid Business and Olympus Business.

ZZ. "Pesticide Licensed Intellectual Property" means the Acetamiprid Licensed Intellectual Property, Fipronil Licensed Intellectual Property, Flucarbazone Licensed Intellectual Property, and Folex Licensed Intellectual Property, and if divested by the Divestiture Trustee pursuant to Paragraphs X, XI , or XII of this Order, the Thiacloprid Licensed Intellectual Property and the Olympus Licensed Intellectual Property.

AAA. "Propoxycarbazone" means the chemical compound 2-[[[(4,5-dihydo-4-methyl-5-oxo-3-propoxy-1H-1, 2, 4-triazol-l-yl)methylcarbonyl]amino]sulfonyl]-benzoate].

BBB. "Respondents" means Bayer and Aventis, individually and collectively.

CCC. "Technical Assistance" means providing expert advice, assistance, and training relating to operation of any of the Pesticide Businesses, including, but not limited to, providing administrative services, reasonable and timely access to Respondents' manufacturing facilities for the purpose of inspecting manufacturing operations, and reasonable access to the Pesticide Licensed Intellectual Property and to personnel familiar with such intellectual property.

DDD. "Thiacloprid" means the chemical compound [3-[6-chloro-3-pyridinyl)methyl]2-thiazolidinylidene]-cyanamide.

EEE. "Thiacloprid Acquirer" means the Person that acquires the Thiacloprid Assets pursuant to this Order.

FFF. "Thiacloprid Assets" means Bayer's right, title, and interest in and to all assets, tangible or intangible, relating to the Thiacloprid Business, including, but not limited to:

1. All real property (together with appurtenances, licenses, and permits) owned, leased, or otherwise held by Bayer;

2. All personal property owned, leased, or otherwise held by Bayer;

3. All inventories, stores, and supplies held by, or under the control of Bayer;

4. All Intellectual Property relating primarily to the Thiacloprid Business owned by or licensed to Bayer;

5. All rights of Bayer under any contract (other than multi-product contracts), including, but not limited to, licenses, leases, customer contracts, supply agreements, and procurement contracts;

6. All pending and issued governmental approvals, registrations, consents, licenses, permits, waivers, or other authorizations held by Bayer, including foreign equivalents (except for a co-ownership right in Bayer in the Thiacloprid technical registration);

7. All rights of Bayer under any warranty and guarantee, express or implied;

8. All items of prepaid expense owned by Bayer; and

9. All separately maintained, and all relevant portions of not separately maintained, books, records, and files held by, or under the control of, Bayer.

Provided, however, that the Thiacloprid Assets shall not include Bayer's right, title, and interest to (i) any assets that the Thiacloprid Acquirer does not want to acquire, provided that the Commission approves the divestiture and the manner of divestiture without such assets; (ii) personal property related exclusively to the administration, sales, and distribution operations of Bayer; and (iii) management information systems, computer systems, or software that does not relate exclusively to the Thiacloprid Business.

GGG. "Thiacloprid Business" means Respondent Bayer's business of researching, developing, registering, formulating, manufacturing, licensing, distributing, marketing, and selling all products containing Thiacloprid, including products in development, in any market anywhere in the world.

HHH. "Tribufos" means the chemical compound S,S,S-Tributyl phosphorotrithioate.

II.

IT IS FURTHER ORDERED that:

A. Bayer shall divest the Acetamiprid Assets at no minimum price, absolutely and in good faith, no later than 180 days from the date the Commission accepts the Consent Agreement for public comment, to a Person that receives the prior approval of the Commission and in a manner, and pursuant to an acquisition agreement, that receives the prior approval of the Commission.

B. Respondents shall use their best efforts to obtain the consent of Nippon Soda to the assignment of the Acetamiprid Agreements. If Nippon Soda does not consent to the assignment of the Acetamiprid Agreements relating exclusively to the Acetamiprid Business in Mexico, South America, Central America, and Africa, Bayer shall not be required to divest the Excepted Acetamiprid Assets; provided, however, that nothing in this Paragraph II.B. shall relieve Bayer of the obligation to divest the Acetamiprid Assets (with or without the Excepted Acetamiprid Assets as permitted by this Paragraph II.B.) pursuant to this Paragraph II no later than 180 days from the date the Commission accepts the Consent Agreement for public comment.

C. Bayer shall comply with all terms of the acquisition agreement described in Paragraph II.A. of this Order, and any breach by Bayer of any term of the acquisition agreement shall constitute a violation of this Order. In the event any term of the acquisition agreement varies from or contradicts any term in Paragraphs I through XIX of this Order ("Order Term") to the extent Bayer cannot fully comply with both terms, the Order Term shall determine Bayer's obligations under this Order.

D. No later than the date Bayer divests the Acetamiprid Assets, Bayer shall grant to the Acetamiprid Acquirer (pursuant to one or more agreements that receive the prior approval of the Commission):

1. A worldwide, royalty-free, perpetual, irrevocable, sublicenseable, transferable license to Bayer's rights to the Acetamiprid Licensed Intellectual Property to invent, develop, patent, make, have made, use, sell, offer for sale and import any product (except for products containing an existing patented molecule of Respondents retained by Bayer or any patented molecule invented or acquired by Bayer after the Acquisition Date) anywhere in the world. Such license shall be (i) exclusive (even as to Bayer) for any product containing an existing patented molecule included in the Acetamiprid Assets or any patented molecule invented or acquired by the Acetamiprid Acquirer after the Acquisition Date and (ii) non-exclusive for any other product.

2. An irrevocable, worldwide, perpetual immunity from suit by Bayer based on claims of infringement under all of Respondents' Intellectual Property for the developing, making, having made, using, having used, selling, offering for sale, having sold and importing of any products containing Acetamiprid for any use anywhere in the world (except for products containing an existing patented molecule of Respondents retained by Bayer or any patented molecule invented or acquired by Bayer after the Acquisition Date). Such

immunity shall extend to any person deriving its authority from the Acetamiprid Acquirer.

E. Nothing in this Order shall prevent Bayer from entering into an agreement with the Acetamiprid Acquirer in which the Acetamiprid Acquirer shall grant to Bayer a worldwide, royalty-free, perpetual, irrevocable, sublicenseable, transferable license to the Acetamiprid Acquirer's rights to any Intellectual Property included in the Acetamiprid Assets that does not relate exclusively to the Acetamiprid Business to develop, patent, make, have made, use, sell, offer for sale and import any product (except for products containing (x) an existing patented molecule included in the Acetamiprid Assets, or (y) any patented molecule invented or acquired by the Acetamiprid Acquirer after the Acquisition Date, without the consent of the Acetamiprid Acquirer) anywhere in the world. Such license shall be (i) exclusive (even as to the Acetamiprid Acquirer) for any product containing an existing patented molecule of Respondents retained by Bayer or any patented molecule invented or acquired by Bayer after the Acquisition Date and (ii) non-exclusive for any other product.

F. Upon the request of the Acetamiprid Acquirer made at the time of divestiture of the Acetamiprid Assets, pursuant to an agreement that receives the prior approval of the Commission, Bayer shall provide Technical Assistance to the Acetamiprid Acquirer, for a period not to exceed 12 months from the date Bayer divests the Acetamiprid Assets, sufficient to enable the Acetamiprid Acquirer to operate the Acetamiprid Business in substantially the same manner as that employed by Respondents; provided, however, that Bayer shall not (i) require the Acetamiprid Acquirer to pay compensation for Technical Assistance that exceeds the Direct Cost of providing such goods and services, (ii) terminate its obligation to provide Technical Assistance because of a material breach by the Acetamiprid Acquirer of any agreement to provide such assistance, in the absence of a final order of a court of competent jurisdiction, or (iii) seek to limit the damages (such as indirect, special, and consequential damages) which the Acetamiprid Acquirer would be entitled to receive in the event of Bayer's breach of any agreement to provide Technical Assistance.

G. The purpose of the divestiture of the Acetamiprid Assets and of the related obligations is to ensure the continued use of the assets in the same business in which the Acetamiprid Assets were engaged by Respondents at the time of the announcement of the proposed Acquisition, including the development of new chemical insecticides and applications and the pursuit of registrations and approvals for new products and to remedy the lessening of competition alleged in the Commission's complaint.

III.

IT IS FURTHER ORDERED that:

A. Bayer shall divest the Fipronil Assets at no minimum price, absolutely and in good faith, no later than 180 days from the date the Commission accepts the Consent Agreement for public comment, to a Person that receives the prior approval of the Commission and in a manner, and pursuant to an acquisition agreement, that receives the prior approval of the Commission.

B. Bayer shall comply with all terms of the acquisition agreement described in Paragraph III.A. of this Order, and any breach by Bayer of any term of the acquisition agreement shall constitute a violation of this Order. In the event any term of the acquisition agreement varies from or contradicts any term in Paragraphs I through XIX of this Order ("Order Term") to the extent Bayer cannot fully comply with both terms, the Order Term shall determine Bayer's obligations under this Order.

C. No later than the date Bayer divests the Fipronil Assets, Bayer shall grant to the Fipronil Acquirer (pursuant to one or more agreements that receive the prior approval of the Commission):

1. A worldwide, royalty-free, perpetual, sublicenseable, irrevocable, transferable license to Bayer's rights to the Fipronil Licensed Intellectual Property to invent, develop, patent, make, have made, use, sell, offer for sale, and import any product (except for products containing an existing patented molecule of Respondents retained by Bayer or any patented molecule invented or acquired by Bayer after the Acquisition Date) anywhere in the world. Such license shall be (i) exclusive (even as to Bayer) for any product containing an existing patented molecule included in the Fipronil Assets or any patented molecule invented or acquired by the Fipronil Acquirer after the Acquisition Date and (ii) non-exclusive for any other product.

2. An irrevocable, worldwide, perpetual immunity from suit by Bayer based on claims of infringement under all of Respondents' Intellectual Property for the developing, making, having made, using, having used, selling, offering for sale, having sold, and importing of any product containing Fipronil for any use anywhere in the world (except for products containing an existing patented molecule of Respondents retained by Bayer or any patented molecule invented or acquired by Bayer after the Acquisition Date). Such immunity shall extend to any person deriving its authority from the Fipronil Acquirer.

D. Nothing in this Order shall prevent Bayer from entering into an agreement with the Fipronil Acquirer in which the Fipronil Acquirer shall grant to Bayer:

1. A worldwide, royalty-free, perpetual, irrevocable, sublicenseable, transferable license to the Fipronil Acquirer's rights to any Intellectual Property included in the Fipronil Assets that does not relate exclusively to the Fipronil Business to develop, patent, make, have made, use, sell, offer for sale, and import any product (except for products

containing (x) an existing patented molecule included in the Fipronil Assets, subject to Paragraph III.D.2. of this Order, or (y) any patented molecule invented or acquired by the Fipronil Acquirer after the Acquisition Date, without the consent of the Fipronil Acquirer) anywhere in the world. Such license shall be (i) exclusive (even as to the Fipronil Acquirer) for any product containing an existing patented molecule of Respondents retained by Bayer or any patented molecule invented or acquired by Bayer after the Acquisition Date and (ii) non-exclusive for any other product.

2. A worldwide, royalty-free, exclusive (except as to the Fipronil Acquirer), perpetual, irrevocable, sublicenseable, transferable license to the Fipronil Acquirer's rights to any Intellectual Property included in the Fipronil Assets to develop, patent, make, have made, use, sell, offer for sale, and import any product containing Fipronil for Non-Agricultural Use anywhere in the world; provided, however, that Bayer may obtain such license only if it would not impair the viability of the Fipronil Acquirer, and the Commission approves the divestiture of the Fipronil Assets with such a license.

E. Nothing in this Order shall prevent Bayer from entering into a supply agreement with the Fipronil Acquirer (i) to supply Fipronil to Bayer on cost-plus terms in amounts necessary to cover Bayer's needs for Fipronil for Non-Agricultural Use for up to two years, which term may be extended, subject to Commission approval, and (ii) to supply Fipronil intermediates to Bayer on cost-plus terms in amounts necessary to cover Bayer's needs until expiration of any and all patents covering such intermediates.

F. Respondents shall use their best efforts to obtain the necessary consents to assign to the Fipronil Acquirer their rights and obligations in (i) the Merial Agreements; (ii) the Scotts Fipronil Supply Agreement dated September 30, 1998, and the Scotts Research Agreement (at least to the extent relating to Fipronil-related research), (iii) the Amended and Restated Fipronil License Agreement with Clorox dated January 31, 2002, (iv) the U.S. Licence Agreement with TechPac dated December 13, 1999 and related agreements, and (v) the Sumitomo Fipronil Supply Agreement dated April 7, 1998; provided, however, that if Respondents are unable to obtain such consents, Bayer may enter into an agreement, subject to prior approval of the Commission, with the Fipronil Acquirer to obtain a supply of Fipronil to enable Bayer to fulfill its obligations under the supply agreements described in this Paragraph III.F.

G. Upon the request of the Fipronil Acquirer made at the time of divestiture of the Fipronil Assets, pursuant to an agreement that receives the prior approval of the Commission, Bayer shall provide Technical Assistance to the Fipronil Acquirer, for a period not to exceed 12 months from the date Bayer divests the Fipronil Assets, sufficient to enable the Fipronil Acquirer to operate the Fipronil Business in substantially the same manner as that employed by Respondents; provided, however, that Bayer shall not (i) require the Fipronil Acquirer to pay compensation for Technical Assistance that exceeds the Direct Cost of providing such goods

and services, (ii) terminate its obligation to provide Technical Assistance because of a material breach by the Fipronil Acquirer of any agreement to provide such assistance, in the absence of a final order of a court of competent jurisdiction, or (iii) seek to limit the damages (such as indirect, special, and consequential damages) which the Fipronil Acquirer would be entitled to receive in the event of Bayer's breach of any agreement to provide Technical Assistance.

H. The purpose of the divestiture of the Fipronil Assets and of the related obligations is to ensure the continued use of the assets in the same business in which the Fipronil Assets were engaged by Respondents at the time of the announcement of the proposed Acquisition, including the development of new chemical insecticides and applications and the pursuit of registrations and approvals for new products and to remedy the lessening of competition alleged in the Commission's complaint.

IV.

IT IS FURTHER ORDERED that:

A. Bayer shall divest the Flucarbazone Assets at no minimum price, absolutely and in good faith, no later than 180 days from the date the Commission accepts the Consent Agreement for public comment, to a Person that receives the prior approval of the Commission and in a manner, and pursuant to an acquisition agreement, that receives the prior approval of the Commission.

B. Bayer shall comply with all terms of the acquisition agreement described in Paragraph IV.A. of this Order, and any breach by Respondents of any term of the acquisition agreement shall constitute a violation of this Order. In the event any term of the acquisition agreement varies from or contradicts any term in Paragraphs I through XIX of this Order ("Order Term") to the extent Bayer cannot fully comply with both terms, the Order Term shall determine Bayer's obligations under this Order.

C. No later than the date Bayer divests the Flucarbazone Assets, Bayer shall grant to the Flucarbazone Acquirer (pursuant to one or more agreements that receive the prior approval of the Commission):

1. A worldwide, royalty-free, perpetual, sublicenseable, irrevocable, transferable license to Bayer's rights to the Flucarbazone Licensed Intellectual Property to invent, develop, patent, make, have made, use, sell, offer for sale and import any product (except for products containing an existing patented molecule of Respondents retained by Bayer or any patented molecule invented or acquired by Bayer after the Acquisition Date) anywhere in the world. Such license shall be (i) exclusive (even as to Bayer) for any product containing an existing patented molecule included in the Flucarbazone Assets

or any patented molecule invented or acquired by the Flucarbazone Acquirer and (ii) non-exclusive for any other product.

2. An irrevocable, worldwide, perpetual immunity from suit by Bayer based on claims of infringement under all of Respondents' Intellectual Property for the developing, making, having made, using, having used, selling, offering for sale, having sold, and importing of any product containing Flucarbazone for any use anywhere in the world (except for products containing an existing patented molecule of Respondents retained by Bayer or any patented molecule invented or acquired by Bayer after the Acquisition Date). Such immunity shall extend to any person deriving its authority from the Flucarbazone Acquirer.

D. Nothing in this Order shall prevent Bayer from entering into an agreement with the Flucarbazone Acquirer in which the Flucarbazone Acquirer shall grant to Bayer a worldwide, royalty-free, perpetual, irrevocable, sublicenseable, transferable license to the Flucarbazone Acquirer's rights to any Intellectual Property included in the Flucarbazone Assets that does not relate exclusively to the Flucarbazone Business to develop, patent, make, have made, use, sell, offer for sale, and import any product (except for products containing (x) an existing patented molecule included in the Flucarbazone Assets, or (y) any patented molecule invented or acquired by the Flucarbazone Acquirer after the Acquisition Date, without the consent of the Flucarbazone Acquirer) anywhere in the world. Such license shall be (i) exclusive (even as to the Flucarbazone Acquirer) for any product containing an existing patented molecule of Respondents retained by Bayer or any patented molecule invented or acquired by Bayer after the Acquisition Date and (ii) non-exclusive for any other product.

E. Upon the request of the Flucarbazone Acquirer made at the time of divestiture of the Flucarbazone Assets, pursuant to an agreement that receives the prior approval of the Commission, Bayer shall, for a period not to exceed 30 months from the date Bayer divests the Flucarbazone Assets, provide a supply of products containing Flucarbazone, including any such products to be developed (hereinafter "Flucarbazone Products") to the Flucarbazone Acquirer:

1. Bayer shall provide quantities of Flucarbazone Products sufficient to enable the Flucarbazone Acquirer (i) to satisfy customer demand at substantially the same levels as Bayer prior to the Acquisition Date, (ii) to satisfy changes in customer demand that occur in the ordinary course of business, (iii) to meet customer delivery dates, and (iv) to manage the transition to an alternative means of supply upon termination of Bayer's obligations under Paragraph IV.E. of this Order.

2. Bayer shall (i) manufacture Flucarbazone Products that are of substantially the same quality as that achieved by Bayer prior to the Acquisition Date, (ii) manufacture the Flucarbazone Products in substantially the same manner as employed by Bayer prior to

the Acquisition Date, and (iii) use its best efforts to implement any improvement in the manufacturing process of the Flucarbazone Products developed in the ordinary course of business or as a result of the Acquisition.

Provided, however, that Bayer shall not (i) require the Flucarbazone Acquirer to pay compensation for supplying Flucarbazone Products that exceeds the Direct Cost of providing goods and services, (ii) terminate its obligation to supply Flucarbazone Products because of a material breach by the Flucarbazone Acquirer of any agreement to provide Flucarbazone Products, in the absence of a final order of a court of competent jurisdiction, or (iii) seek to limit the damages (such as indirect, special, and consequential damages) which the Flucarbazone Acquirer would be entitled to receive in the event of Bayer's breach of any agreement to supply Flucarbazone Products.

F. Upon the request of the Flucarbazone Acquirer at the time of divestiture of the Flucarbazone Assets, pursuant to an agreement that receives the prior approval of the Commission, Bayer shall provide Technical Assistance to the Flucarbazone Acquirer, for a period not to exceed 30 months from the date Bayer divests the Flucarbazone Assets, sufficient to enable the Flucarbazone Acquirer to operate the Flucarbazone Business in substantially the same manner as that employed by Bayer; provided, however, that Bayer shall not (i) require the Flucarbazone Acquirer to pay compensation for Technical Assistance that exceeds the Direct Cost of providing such goods and services, (ii) terminate its obligation to provide Technical Assistance because of a material breach by the Flucarbazone Acquirer of any agreement to provide such assistance, in the absence of a final order of a court of competent jurisdiction, or (iii) seek to limit the damages (such as indirect, special, and consequential damages) which the Flucarbazone Acquirer would be entitled to receive in the event of Bayer's breach of any agreement to provide Technical Assistance.

G. The purpose of the divestiture of the Flucarbazone Assets and of the related obligations is to ensure the continued use of the assets in the same businesses in which the Flucarbazone Assets were engaged by Respondents at the time of the announcement of the proposed Acquisition, including the development of new chemical herbicides and applications and the pursuit of registrations and approvals for new products and to remedy the lessening of competition alleged in the Commission's complaint.

V.

IT IS FURTHER ORDERED that:

A. Bayer shall divest the Folex Assets, absolutely and in good faith, to Amvac Corporation pursuant to the Amvac Acquisition Agreement, no later than twenty days from the date the Commission accepts the Consent Agreement for public comment.

B. The Amvac Acquisition Agreement is incorporated by reference and made a part of this Order as Confidential Appendix E. Bayer shall comply with all terms of the Amvac Acquisition Agreement, and any breach by Bayer of any term of the Amvac Acquisition Agreement shall constitute a violation of this Order. In the event any term of the Amvac Acquisition Agreement varies from or contradicts any term in Paragraphs I through XIX of this Order ("Order Term") to the extent that Bayer cannot fully comply with both terms, the Order Term shall determine Bayer's obligations under this Order.

C. If, at the time the Commission determines to make this Order final, the Commission determines that Amvac Corporation is not acceptable as the Folex Acquirer, or that the Amvac Acquisition Agreement is not an acceptable manner of divestiture, and so notifies Bayer, Bayer shall immediately terminate or rescind the Amvac Acquisition Agreement and divest the Folex Assets:

1. At no minimum price, absolutely and in good faith, no later than 180 days from the date this Order becomes final, to a Person that receives the prior approval of the Commission and in a manner, and pursuant to an acquisition agreement, that receives the prior approval of the Commission.

2. Bayer shall comply with all terms of the acquisition agreement described in Paragraph V.C.1. of this Order, and any breach by Bayer of any term of the acquisition agreement shall constitute a violation of this Order. In the event any term of the acquisition agreement varies from or contradicts any term in Paragraphs I through XIX of this Order ("Order Term") to the extent Bayer cannot fully comply with both terms, the Order Term shall govern Bayer's obligations under this Order.

D. No later than the date Bayer divests the Folex Assets, Bayer shall grant to the Folex Acquirer (pursuant to one or more agreements that receive the prior approval of the Commission):

1. A worldwide, royalty-free, non-exclusive, perpetual, sublicenseable, irrevocable, transferable license to Bayer's rights to the Folex Licensed Intellectual Property to invent, develop, patent, make, have made, use, sell, offer for sale, and import any product (except for products containing an existing patented molecule of Respondents retained by Bayer or any patented molecule invented or acquired by Bayer after the Acquisition Date) anywhere in the world. Such license shall be (i) exclusive (even as to Bayer) for any product containing an existing patented molecule included in the Folex Assets or any patented molecule invented or acquired by the Folex Acquirer and (ii) non-exclusive for any other product.

2. An irrevocable, worldwide, perpetual immunity from suit by Bayer based on claims of infringement under all of Respondents' Intellectual Property for the developing, making, having made, using, having used, selling, offering for sale, having sold, and importing of any product containing Tribufos for any use anywhere in the world (except for products containing an existing patented molecule of Respondents retained by Bayer or any patented molecule invented or acquired by Bayer after the Acquisition Date). Such immunity shall extend to any person deriving its authority from the Folex Acquirer.

E. Nothing in this Order shall prevent Bayer from entering into an agreement with the Folex Acquirer in which the Folex Acquirer shall grant to Bayer a worldwide, royalty-free, non-exclusive, perpetual, irrevocable, sublicenseable, transferable license to the Folex Acquirer's rights to any Intellectual Property included in the Folex Assets that does not relate exclusively to the Folex Business to develop, patent, make, have made, use, sell, offer for sale, and import any product (except for products containing (x) an existing patented molecule included in the Folex Assets, or (y) any patented molecule invented or acquired by the Folex Acquirer after the Acquisition Date, without the consent of the Folex Acquirer) anywhere in the world. Such license shall be (i) exclusive (even as to the Folex Acquirer) for any product containing an existing patented molecule of Respondents retained by Bayer or any patented molecule invented or acquired by Bayer after the Acquisition Date and (ii) non-exclusive for any other product.

F. Upon the request of the Folex Acquirer made at the time of divestiture of the Folex Assets, pursuant to an agreement that receives the prior approval of the Commission, Respondents shall provide Technical Assistance to the Folex Acquirer, for a period not to exceed 6 months from the date Bayer divests the Folex Assets, sufficient to enable the Folex Acquirer to operate the Folex Business in substantially the same manner as that employed by Aventis; provided, however, that Bayer shall not (i) require the Folex Acquirer to pay compensation for Technical Assistance that exceeds the Direct Cost of providing such goods and services, (ii) terminate its obligation to provide Technical Assistance because of a material breach by the Folex Acquirer of any agreement to provide such assistance, in the absence of a final order of a court of competent jurisdiction, or (iii) seek to limit the damages (such as indirect, special, and consequential damages) which the Folex Acquirer would be entitled to receive in the event of Bayer's breach of any agreement to provide Technical Assistance.

G. Bayer shall not enter into any agreement with the Folex Acquirer that prohibits the Folex Acquirer from manufacturing any unmixed or mixed tribufos product, including any such product to be developed, or from arranging for a third-party to manufacture such tribufos product.

H. The purpose of the divestiture of the Folex Assets and of the related obligations is to ensure the continued use of the assets in the same businesses in which the Folex Assets were engaged by

Respondents at the time of the announcement of the proposed Acquisition, including the development of new defoliants and applications and the pursuit of registrations and approvals for new products and to remedy the lessening of competition alleged in the Commission's complaint.

VI.

IT IS FURTHER ORDERED that Bayer shall allow each Acquirer an opportunity to enter into an employment contract with any employees of Respondents identified by agreement between Respondents and the Acquirer and made a part of the relevant Divestiture Agreement (hereinafter "Pesticide Employees"):

A. No later than thirty days before the date the applicable Pesticide Assets are divested, Respondents shall (i) provide to the Acquirer a list of all applicable Pesticide Employees, (ii) allow the Acquirer an opportunity to interview such Pesticide Employees, and (iii) allow the Acquirer to inspect the personnel files and other documentation relating to such Pesticide Employees, to the extent permissible under applicable laws.

B. Respondents shall (i) not offer any incentive to any Pesticide Employee to decline employment with any Acquirer, (ii) remove any contractual impediments with Respondents that may deter any Pesticide Employee from accepting employment with any Acquirer, including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with Respondents that would affect the ability of the Pesticide Employee to be employed by the Acquirer, and (iii) not interfere with the employment by any Acquirer of any Pesticide Employee.

C. Respondents shall (i) vest all current and accrued pension benefits as of the date of transition of employment with any Acquirer for any Pesticide Employees who accept an offer of employment from the Acquirer no later than thirty days from the date Respondents divest the applicable Pesticide Assets and (ii) pay a bonus to any Key Employee (hereinafter defined) who accepts an offer of employment from any Acquirer no later than thirty days from the date Respondents divest the applicable Pesticide Assets, pursuant to the terms set forth in Confidential Appendix F attached to this Order.

D. For a period of one year from the date this Order becomes final, Respondents shall not, directly or indirectly, hire or enter into any arrangement for the services of any Pesticide Employee employed by any Acquirer, unless such Pesticide Employee's employment has been terminated by the Acquirer without the consent of the Pesticide Employee.

For purposes of this Paragraph VI and Confidential Appendix F, "Key Employee" means any Pesticide Employee identified by agreement between Respondents and any Acquirer and made a part of the relevant Divestiture Agreement.

VII.

IT IS FURTHER ORDERED that:

A. Except in the course of performing their obligations under any Divestiture Agreement or this Order, Respondents shall not (i) provide, disclose or otherwise make available any Non-Public Pesticide Information to any Person and (ii) use any Non-Public Pesticide Information for any reason or purpose.

B. Respondents shall disclose Non-Public Pesticide Information (i) only to those Persons who require such information for the purposes permitted under Paragraph VII.A. of this Order, (ii) only to the extent such part of the Non-Public Pesticide Information is so required, and (iii) only to those Persons who agree in writing to maintain the confidentiality of such information.

C. Respondents shall enforce the terms of this Paragraph VII as to any Person and take such action as is necessary to cause each such Person to comply with the terms of this Paragraph VII, including training and all other actions that Respondents would take to protect their own trade secrets and proprietary information.

VIII.

IT IS FURTHER ORDERED that Bayer shall take such actions as are necessary to maintain the viability of the Pesticide Licensed Intellectual Property, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Pesticide Licensed Intellectual Property.

IX.

IT IS FURTHER ORDERED that:

A. RICHARD GILMORE ("Monitor") is hereby appointed to monitor Respondents' compliance with Paragraphs I through XIX of this Order.

B. Respondent shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:

1. The Monitor shall have the power and authority to monitor Respondent's compliance with the terms of this Order and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor pursuant to the terms of this Order and in a manner consistent with the purposes of this Order.

2. Within ten days after it signs the Consent Agreement, Respondent shall execute an agreement that, subject to the approval of the Commission, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondent's compliance with the terms of this Order in a manner consistent with the purposes of this Order. If requested by Respondents, the Monitor shall sign a confidentiality agreement prohibiting the use, or disclosure to anyone other than the Commission, of any competitively sensitive or proprietary information gained as a result of his or her role as Monitor.

3. The Monitor's power and duties under this Paragraph IX shall terminate sixty days after the Monitor has completed his or her final report pursuant to Paragraph IX.B.8.(ii), or at such other time as directed by the Commission.

4. The Monitor shall have full and complete access to Respondents' books, records, documents, personnel, facilities and technical information relating to compliance with this Order, or to any other relevant information, as the Monitor may reasonably request. Respondents shall cooperate with any reasonable request of the Monitor. Respondents shall take no action to interfere with or impede the Monitor's ability to monitor Respondents' compliance with this Order.

5. The Monitor shall serve, without bond or other security, at the expense of Respondent, on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of Respondent, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. The Monitor shall account for all expenses incurred, including fees for his or her services, subject to the approval of the Commission.

6. Respondents shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from the Monitor's gross negligence or wilful misconduct. For purposes of this Paragraph IX.B.6., the term "Monitor" shall include all Persons retained by the Monitor pursuant to Paragraph IX.B.5. of this Order.

7. If at any time the Commission determines that the Monitor has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve, the Commission may appoint a substitute to serve as Monitor. The Commission shall select a substitute Monitor subject to the consent of Respondent, which consent shall not be unreasonably withheld. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed Monitor within ten days after notice from the staff of the Commission to Respondent of the identity of any proposed substitute Monitor, Respondent shall be deemed to have consented to the selection of the proposed substitute. Respondent shall execute the agreement required by Paragraph IX.B.2. of this Order within ten days after the Commission appoints a substitute Monitor. The substitute Monitor shall serve according to the terms and conditions of this Paragraph IX.

8. The Monitor shall report in writing to the Commission (i) every sixty days from the date this Order becomes final, (ii) no later than thirty days from the date Respondents have completed all obligations required by Paragraphs II through V of this Order, and (iii) at any other time as requested by the staff of the Commission, concerning Respondents' compliance with this Order.

C. The Commission may on its own initiative or at the request of the Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.

X.

IT IS FURTHER ORDERED that:

A. If Bayer has not divested, absolutely and in good faith any of the Acetamiprid Assets, Fipronil Assets, Flucarbazone Assets, or Folex Assets within the time and in the manner required by Paragraphs II through V of this Order, the Commission may at any time appoint one or more Persons as Divestiture Trustee to divest such assets to an acquirer and to execute a Divestiture Agreement that satisfies the requirements and purposes of this Order; provided, however, that if Bayer fails to divest (i) the Flucarbazone Assets, within the time and in the manner required by Paragraph IV of this Order, the Divestiture Trustee shall divest the Flucarbazone Assets and the Additional Flucarbazone Assets (to a single acquirer) or (ii) the Acetamiprid Assets, within the time and in the manner required by Paragraph II of this Order, the Divestiture Trustee may divest either the Thiacloprid Assets or the Acetamiprid Assets.

B. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the

Commission, Respondents shall consent to the appointment of an Divestiture Trustee in such action. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph X shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.

C. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph X, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the Divestiture Trustee, subject to the consent of the Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a Person with experience and expertise in acquisitions and divestitures and may be the same Person as the Monitor appointed pursuant to Paragraph IX of this Order. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten business days after receipt of written notice from the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

2. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to accomplish the divestiture for which he or she has been appointed pursuant to the terms of this Order and in a manner consistent with the purposes of this Order and to enter into a Divestiture Agreement with any acquirer.

3. Within ten days after appointment of the Divestiture Trustee, Respondents shall execute an agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed Divestiture Trustee, of the court, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to accomplish the divestiture for which he or she has been appointed.

4. The Divestiture Trustee shall have twelve months from the date the Commission approves the agreement described in Paragraph X.C.3. of this Order to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period the Divestiture Trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court appointed Divestiture Trustee, by the court; provided, however, the Commission may extend this period only two times.

5. The Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the assets to be divested, or to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may reasonably request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.

6. The Divestiture Trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, but shall divest expeditiously at no minimum price. The divestiture shall be made only to an acquirer that receives the prior approval of the Commission, and the divestiture shall be accomplished only in a manner that receives the prior approval of the Commission; provided, however, if the Divestiture Trustee receives bona fide offers, for a particular asset, from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity or entities selected by Respondents from among those approved by the Commission; provided, further, that Respondents shall select such entity within five business days of receiving written notification of the Commission's approval.

7. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the Respondents, and the Divestiture Trustee's power shall be terminated. The Divestiture Trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the Divestiture Trustee's divesting the assets.

8. Respondents 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 defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from gross negligence or willful misconduct by the Divestiture Trustee. For purposes of this Paragraph X.C.8., the term "Divestiture Trustee" shall include all Persons retained by the Divestiture Trustee pursuant to Paragraph X.C.7. of this Order.

9. If the Divestiture Trustee ceases to act or fails to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph X for appointment of the initial Divestiture Trustee.

10. The Divestiture Trustee shall have no obligation or authority to operate or maintain the assets to be divested.

11. The Divestiture Trustee shall report in writing to the Commission every sixty days concerning the Divestiture Trustee's efforts to accomplish the divestiture.

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

XI.

IT IS FURTHER ORDERED that if the Divestiture Trustee divests the Thiacloprid Assets pursuant to Paragraph X of this Order, the following additional requirements shall apply:

A. No later than the date the Divestiture Trustee divests the Thiacloprid Assets, Bayer shall grant to the Thiacloprid Acquirer (pursuant to one or more agreements that receive the prior approval of the Commission):

1. A worldwide, royalty-free, perpetual, sublicenseable, irrevocable, transferable license to Bayer's rights to the Thiacloprid Licensed Intellectual Property to invent, develop, patent, make, have made, use, sell, offer for sale, and import any product (except for products containing an existing patented molecule of Respondents retained by Bayer or any patented molecule invented or acquired by Bayer after the Acquisition Date) anywhere in the world. Such license shall be (i) exclusive (even as to Bayer) for any product containing an existing patented molecule included in the Thiacloprid Assets or any patented molecule invented or acquired by the Thiacloprid Acquirer and (ii) non-exclusive for any other product.

2. An irrevocable, worldwide, perpetual immunity from suit by Bayer based on claims of infringement under all of Respondents' Intellectual Property for the developing, making, having made, using, having used, selling, offering for sale, having sold, and importing of any product containing Thiacloprid for any use anywhere in the world (except for products containing an existing patented molecule of Respondents retained by Bayer or any patented molecule invented or acquired by Bayer after the Acquisition Date). Such immunity shall extend to any person deriving its authority from the Thiacloprid Acquirer.

B. Nothing in this Order shall prevent the Divestiture Trustee from obtaining agreement with the Thiacloprid Acquirer in which the Thiacloprid Acquirer shall grant to Bayer:

1. A worldwide, royalty-free, perpetual, irrevocable, sublicenseable, transferable license to the Thiacloprid Acquirer's rights to any Intellectual Property included in the Thiacloprid Assets that does not relate exclusively to the Thiacloprid Business to develop, patent, make, have made, use, sell, offer for sale, and import any product (except for products containing (x) an existing patented molecule included in the Thiacloprid Assets, subject to Paragraph XI.B.2. of this Order, or (y) any patented molecule invented or acquired by the Thiacloprid Acquirer after the Acquisition Date, without the consent of the Thiacloprid Acquirer) anywhere in the world. Such license shall be (i) exclusive (even as to the Thiacloprid Acquirer) for any product containing an existing patented molecule of Respondents retained by Bayer or any patented molecule invented or acquired by Bayer after the Acquisition Date and (ii) non-exclusive for any other product.

2. A worldwide, royalty-free, exclusive (except as to the Thiacloprid Acquirer), perpetual, irrevocable, sublicenseable, transferable license to the Thiacloprid Acquirer's rights to any Intellectual Property included in the Thiacloprid Assets to develop, patent, make, have made, use, sell, offer for sale, and import any product containing Thiacloprid anywhere in the world (except for the United States, Canada, and Europe); provided, however, that Bayer may obtain such license only if it would not impair the viability of the Thiacloprid Acquirer, and the Commission approves the divestiture of the Thiacloprid Assets with such a license.

C. Bayer may propose an agreement to allow the Thiacloprid Acquirer to supply to Bayer Thiacloprid (if Bayer obtains a license pursuant to Paragraph XI.B.2. of this Order) and Clothianadin manufactured by the Thiacloprid Acquirer; provided, however, that such agreement shall provide sufficient Thiacloprid to the Thiacloprid Acquirer to support the Thiacloprid Acquirer's good faith plans, decisions, or efforts to meet the production goals and targets in the Thiacloprid Acquirer's business plans and to expand production of Thiacloprid in a manner consistent with the purposes of this Order. If such agreement is proposed by Bayer, the Divestiture Trustee shall include such agreements among the terms offered to prospective acquirers, and may submit a divestiture containing such agreement for the approval of the

Commission. If the Divestiture Trustee is unable to enter into such agreement, or if the Commission does not approve such agreement, or does not approve a divestiture subject to such agreement, the Commission may approve, and the Divestiture Trustee may divest, a divestiture of the Thiacloprid Assets without such agreement.

XII.

IT IS FURTHER ORDERED that if the Divestiture Trustee divests the Additional Flucarbazone Assets pursuant to Paragraph X of this Order, the following additional requirements shall apply:

A. No later than the date the Divestiture Trustee divests the Additional Flucarbazone Assets, Bayer shall grant to the Flucarbazone Acquirer (pursuant to one or more agreements that receive the prior approval of the Commission):

1. A worldwide, royalty-free, perpetual, sublicenseable, irrevocable, transferable license to Bayer's rights to the Olympus Licensed Intellectual Property to invent, develop, patent, make, have made, use, sell, offer for sale and import any product (except for products containing an existing patented molecule of Respondents retained by Bayer or any patented molecule invented or acquired by Bayer after the Acquisition Date) anywhere in the world. Such license shall be (i) exclusive (even as to Bayer) for any product containing an existing patented molecule included in the Additional Flucarbazone Assets or any patented molecule invented or acquired by the Flucarbazone Acquirer and (ii) non-exclusive for any other product.

2. An irrevocable, worldwide, perpetual immunity from suit by Bayer based on claims of infringement under all of Respondents' Intellectual Property for the developing, making, having made, using, having used, selling, offering for sale, having sold and importing any product containing Propoxycarbazone for any use anywhere in the world (except for products containing an existing patented molecule of Respondents retained by Bayer or any patented molecule invented or acquired by Bayer after the Acquisition Date). Such immunity shall extend to any person deriving its authority from the Flucarbazone Acquirer.

B. Nothing in this Order shall prevent the Divestiture Trustee from obtaining agreement with the Flucarbazone Acquirer in which the Flucarbazone Acquirer shall grant to Bayer a worldwide, royalty-free, perpetual, irrevocable, sublicenseable, transferable license to the Flucarbazone Acquirer's rights to any Intellectual Property included in the Additional Flucarbazone Assets

that does not relate exclusively to the Olympus Business to develop, patent, make, have made, use, sell, offer for sale, and import any product (except for products containing (x) an existing patented molecule included in the Additional Flucarbazone Assets, or (y) any patented molecule invented or acquired by the Flucarbazone Acquirer after the Acquisition Date, without the consent of the Flucarbazone Acquirer) anywhere in the world. Such license shall be (i) exclusive (even as to the Flucarbazone Acquirer) for any product containing an existing patented molecule of Respondents retained by Bayer or any patented molecule invented or acquired by Bayer after the Acquisition Date and (ii) non-exclusive for any other product.

XIII.

IT IS FURTHER ORDERED that Respondents shall provide a copy of this Order to each of Respondents' officers, employees, or agents having managerial responsibility for any obligations under this Order, no later than ten days from the date this Order becomes final.

XIV.

IT IS FURTHER ORDERED that:

A. Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order:

1. No later than sixty days from the date this Order becomes final, and every sixty days thereafter (measured from the due date of the first report under this Order) until one year from the date this Order becomes final (for a total of six reports during the first year).

2. No later than ninety days from the due date of Respondents' sixth report as required by Paragraph XIV.A. of this Order and every ninety days thereafter (measured from the due date of the seventh report) until thirty months from the date this Order becomes final (for a total of twelve reports during the first thirty months).

3. No later than six months from the due date of Respondents' twelfth report as required by Paragraph XIV.B. of this Order, and annually thereafter for the next seven years, on the anniversary of the date this Order becomes final.

Provided, however, that Aventis shall be required to file the reports required by this Paragraph XIV only until the Acquisition Date; provided, further, that Respondents shall also file the report required by this Paragraph XIV at any other time as the Commission may require.

B. For any time period during which Respondents have compliance reporting obligations pursuant to the Order to Hold Separate, Respondents shall comply with Paragraph XIV.A. of this Order by complying with the reporting requirements imposed by the Order to Hold Separate until such reporting obligations terminate. Thereafter, Respondents shall assume the reporting schedule set forth in Paragraph XIV.A. of this Order and file subsequent reports in accordance therewith.

XV.

IT IS FURTHER ORDERED that Bayer shall not acquire, directly or indirectly, through subsidiaries, partnerships, or otherwise, any interest in or all or any part of the Pesticide Assets without the prior approval of the Commission.

XVI.

IT IS FURTHER ORDERED that:

A. Bayer shall not, without providing advance written notification to the Commission, acquire, directly or indirectly, through subsidiaries or otherwise, any ownership, leasehold, or other interest, in whole or in part, or enter into any kind of joint venture with Merial.

B. Bayer shall provide the prior notification required by Paragraph XVI.A. on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that (i) no filing fee will be required for any such notification, (ii) notification shall be filed with the Secretary of the Commission, (iii) notification need not be made to the United States Department of Justice, and (iv) notification is required only of Respondents and not of any other party to the transaction.

C. Bayer shall provide the Notification to the Commission at least thirty days prior to consummating any such transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Bayer shall not consummate the transaction until thirty days after submitting such additional information or documentary material. Early termination of the waiting periods in this Paragraph XVI.C. may be requested and, where appropriate, granted by letter from the Bureau of Competition.

Confidential Appendices A-F

[Redacted From Public Record Version]

THIS IS EXHIBIT "C-1" TO THE
AFFIDAVIT OF Dean Shaikh
SWORN BEFORE ME THIS 31st DAY
OF May 20 02
Josée Brunet
COMMISSIONER FOR OATHS

Commissaire à l'assermentation
JOSÉE BRUNET
96 746
District Judiciaire de Hull, QC

EXHIBIT "C-1"

(CONFIDENTIAL)

THIS IS EXHIBIT "C-2" TO THE
AFFIDAVIT OF Dan Shaikh
SWORN BEFORE ME THIS 31st DAY
OF May 20 02
Josée Brunet
COMMISSIONER FOR OATHS

Commissaire à l'assermentation
JOSÉE BRUNET
96 746
District Judiciaire de Hull QC

EXHIBIT "C-2"

(CONFIDENTIAL)

THIS IS EXHIBIT "C-3" TO THE
AFFIDAVIT OF Deanshaikh
SWORN BEFORE ME THIS 31st DAY
OF May 20 02
Josée Brunet
COMMISSIONER FOR OATHS

Commissaire à l'assermentation
JOSÉE BRUNET
96 746
District Judiciaire de Hull, Q.C.

EXHIBIT "C-3"

(CONFIDENTIAL)

THIS IS EXHIBIT "C-4" TO THE
AFFIDAVIT OF Dean Shaikh
SWORN BEFORE ME THIS 31st DAY
OF May 2022
Josée Brunet
COMMISSIONER FOR OATHS

Commissaire à l'assermentation
JOSÉE BRUNET
96746
District Judiciaire de Hull, QC

EXHIBIT "C-4"

(CONFIDENTIAL)

THIS IS EXHIBIT "C-5" TO THE
AFFIDAVIT OF Dan Khaikh
SWORN BEFORE ME THIS 31st DAY
OF May 20 02
Josée Brunet
COMMISSIONER FOR OATHS

Commissaire à l'assermentation
JOSÉE BRUNET
96746
District Judiciaire de Hull, QC

EXHIBIT "C-5"

(CONFIDENTIAL)

THIS IS EXHIBIT "C-6" TO THE
AFFIDAVIT OF
Dean Shaikh
SWORN BEFORE ME THIS 31st DAY
OF May 2002
Josée Brunet
COMMISSIONER FOR OATHS

Commissaire à l'assermentation
JOSÉE BRUNET
96746
District Judiciaire de Hull, QC.

EXHIBIT "C-6"

(CONFIDENTIAL)

THIS IS EXHIBIT "C-7" TO THE
AFFIDAVIT OF Dean Shaikh
SWORN BEFORE ME THIS 31st DAY
OF May 2012
Josée Brunet
COMMISSIONER FOR OATHS

Commissaire à l'assermentation
JOSÉE BRUNET
96 746
District Judiciaire de Hull, QC

EXHIBIT "C-7"

(CONFIDENTIAL)