

THE COMPETITION TRIBUNAL

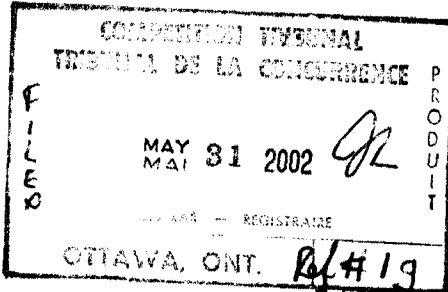
IN THE MATTER OF an application by the Commissioner of Competition for an Order pursuant to sections 92 and 105 of the *Competition Act*, R.S.C. 1985, c.C-34, as amended;

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

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CT- 2002 / 003

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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 Holdings 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

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE		P R O D U I T
MAY 31 2002	<i>HL</i>	
REGISTRAR - REGISTRAIRE		
OTTAWA, ONT.	#19	

DRAFT CONSENT ORDER

UPON THE application of the Commissioner of Competition (the "Commissioner"), pursuant to sections 92 and 105 of the *Competition Act*, R.S.C. 1985, c. C-34 as amended (the "Act") and pursuant to a Notice of Application dated May 31st, 2002, for a Consent Order directing the divestiture of certain assets and other remedies as specified in the draft Consent Order (the "Order");

AND UPON READING the Notice of Application, the Statement of Grounds and Material Facts, the Consent Order Impact Statement, the Consent of the Parties and the Consent of the Independent Managers and Monitor filed;

AND CONSIDERING THAT the Commissioner, Bayer AG ("Bayer") and Aventis

CropScience Holding S.A. ("ACS") have reached an agreement which is reflected in this Order;

AND CONSIDERING THAT by the Consent Interim Order issued ♦ (the "Consent Interim Order"), Bayer and ACS are required, pending the final divestiture of the Pesticide Assets and the provision of the Iprodione Licence and if necessary, the divestiture of the Additional Iprodione Assets or further order of the Competition Tribunal, *inter alia*, to conduct themselves pursuant to the Consent Interim Order, and, in particular, to hold separate and not knowingly take any action to adversely affect the competitiveness, assets, operations or financial position of the Pesticide Businesses and the Iprodione Canola Seed Treatment Business;

AND CONSIDERING THAT the Commissioner declares himself satisfied that, on the basis of the considerations outlined in the Consent Order Impact Statement, the remedies provided herein, if ordered, will be sufficient to avoid any substantial lessening or prevention of competition in the markets described in the Statement of Grounds and Material Facts filed with the Notice of Application;

AND IT BEING UNDERSTOOD by the parties that the Commissioner has alleged certain material facts, and Bayer and ACS do not necessarily agree with all of the facts alleged but do not contest the Statement of Grounds and Material Facts or the Consent Order Impact Statement for the purposes of this application and any proceeding initiated by the Commissioner relating to this Order, including an application to vary or rescind this Order under section 106 of the *Act*, nor does it constitute an admission by Bayer or ACS of the facts alleged in the Statement of Grounds and Material Facts or the Consent Order Impact Statement or that such facts as alleged are true;

AND UPON BEING ADVISED that Bayer and ACS consensually attorn to the jurisdiction of the Competition Tribunal (the "Tribunal") for the purposes of these applications and any proceeding initiated by the Commissioner relating to this Order, including an application to vary or rescind this Order under section 106 of the *Act*;

AND UPON HEARING counsel for the parties in respect of this application;

THE TRIBUNAL ORDERS THAT:

I. DEFINITIONS

1. For the purposes of this Order, the following definitions shall apply:
 - (a) **“Bayer”** means Bayer AG, a corporation existing under the laws of Germany, 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, including Bayer Inc., a corporation existing under the laws of Canada, its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates.
 - (b) **“Aventis”** means Aventis S.A., a French societe anonyme, 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, including Aventis CropScience Canada Co., a corporation existing under the laws of Canada, its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates.
 - (d) **“Commissioner”** means the Commissioner of Competition appointed pursuant to section 7 of the *Competition Act* (Canada).
 - (e) **“Acetamiprid”** means the chemical compound (E)-N¹-[(6-chloro-3-pyridyl) methyl]-N²-cyano-N¹-methylacetamidine.
 - (f) **“Acetamiprid Assets”** means ACS’ right, title, and interest in and to all assets, tangible or intangible, relating to the Acetamiprid Business, including, but not limited to:
 - (i) All personal property owned, leased or otherwise held by ACS;
 - (ii) All inventories, stores, and supplies held by, or under the control of ACS;
 - (iii) All Intellectual Property relating primarily to the Acetamiprid Business owned by or licensed to ACS, including but not limited to that identified in Confidential Appendix A;

- (iv) All rights of ACS under any contract (other than multi-product contracts), including but not limited to licenses, leases, customer contracts, supply agreements, and procurement contracts;
- (v) All pending and issued governmental approvals, registrations, consents, licenses, permits, waivers, or other authorizations held by ACS, including foreign equivalents;
- (vi) All rights of ACS under any warranty and guarantee, express or implied;
- (vii) All items of prepaid expense owned by ACS; and
- (viii) All separately maintained, and all relevant portions of not separately maintained, books, records, and files held by, or under the control of, ACS.

Provided, however, that the Acetamiprid Assets shall not include ACS' right, title, and interest in and to (i) any real property (together with appurtenances, licences and permits) owned, leased or otherwise held by ACS or Aventis; (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 ACS; (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 Bayer retains as permitted in Paragraph 4 of this Order.

- (g) **"Acetamiprid Business"** means ACS' 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 Consent Interim Order); provided, however, that if Bayer retains any of the Excepted Acetamiprid Assets as permitted in Paragraph 4 of this Order, the Acetamiprid Business shall not include the business described in this Paragraph 1(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 or Iprodione Licence or the Additional Iprodione 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:
- (i) All personal property owned, leased or otherwise held by Bayer;
 - (ii) The Kansas City Production Assets;
 - (iii) All inventories, stores, and supplies held by, or under the control of Bayer;
 - (iv) All Intellectual Property owned by or licensed to Bayer;
 - (v) 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;
 - (vi) All pending and issued governmental approvals, registrations, consents, licenses, permits, waivers, or other authorizations held by Bayer, including foreign equivalents;
 - (vii) All rights of Bayer under any warranty and guarantee, express or implied;
 - (viii) All items of prepaid expense owned by Bayer; and
 - (ix) All separately maintained, and all relevant portion 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, licences and permits) owned, leased or otherwise held by Bayer 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) ***“Additional Iprodione Assets”*** means ACS’s right, title, and interest in the Iprodione Trademark and the Iprodione Inventories.
- (o) ***“Assail”*** means the ACS insecticide product based on Acetamiprid that forms part of the Acetamiprid Assets.
- (p) ***“Assail ST”*** means the ACS seed treatment product based on Acetamiprid that forms part of the Acetamiprid Assets.
- (q) ***“Charter”*** means the ACS seed treatment product based on Triconazole that forms part of the Triconazole Assets.
- (r) ***“Consent Interim Order”*** means the Consent Interim Order of the Competition Tribunal issued pursuant to which Bayer and ACS are required, pending the final divestiture of the Pesticide Assets and the provision of the Iprodione Licence and, if necessary, the final divestiture of the Additional Iprodione Assets to manage and operate the “Hold Separate Businesses” (as defined therein) independently of Bayer and ACS.
- (s) ***“Consent Proceeding”*** means the application of the Commissioner pursuant to sections 92 and 105 of the *Competition Act* for this Order directing the divestiture of certain assets owned by affiliates of Bayer and certain other remedies in respect of this matter.
- (t) ***“Direct Cost”*** means (i) if in connection with Paragraphs 9, 14 and 19 of this Order, the actual cost of raw materials, direct labour, and reasonably allocated factory overhead in manufacturing an item, or (ii) if in connection with Paragraphs 7, 10, 15 and 20 of this Order, the cost of direct material and labour used to provide the relevant service.
- (u) ***“Divestiture Agreement”*** means any of the acquisition agreements referenced in Paragraphs 3, 8, 11 and 16 of this Order, or any acquisition agreement entered into by the Divestiture Trustee pursuant to Part X of this Order.
- (v) ***“Divestiture Trustee”*** means the Divestiture Trustee appointed pursuant to Part X of this Order.
- (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) ***“Everest”*** means the Bayer herbicide product based on Flucarbazone that forms part of the Flucarbazone Assets.

- (y) **"Excepted Acetamiprid Assets"** means that part of the Acetamiprid Assets relating exclusively to ACS' 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 Consent Interim Order).
- (z) **"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.
- (aa) **"Flucarbazone Acquirer"** means the Person that acquires the Flucarbazone Assets (and Additional Flucarbazone Assets, if divested) pursuant to this Order.
- (bb) **"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:
- (i) All personal property owned, leased, or otherwise held by Bayer;
 - (ii) All inventories, stores, and supplies held by, or under the control of Bayer;
 - (iii) 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 B;
 - (iv) 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;
 - (v) All pending and issued governmental approvals, registrations, consents, licenses, permits, waivers, or other authorizations held by Bayer, including foreign equivalents;
 - (vi) All rights of Bayer under any warranty and guarantee, express or implied;
 - (vii) All items of prepaid expense owned by Bayer; and

- (viii) 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, licences and permits) owned, leased or otherwise held by Bayer ; (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.

- (cc) "**Flucarbazone Business**" means 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.
- (dd) "**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.
- (ee) "**Foundation Lite**" means the seed treatment product sold under that name based on the chemical compound Iprodione that forms part of the Iprodione Canola Seed Treatment Business.
- (ff) "**Intellectual Property**" means, worldwide as of the date of the divestiture of the applicable Pesticide Assets or the provision of the Iprodione Licence or, if necessary, the divestiture of the Additional Iprodione Assets, without limitation, (i) all trade names, registered and unregistered trademarks, service marks and applications, domain names, trade dress, all 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; provided, however, that for the purposes of Paragraphs 6, 13, 18, 34 and 37 of this Order "Intellectual Property" shall not include any trade names, registered and unregistered trademarks, service marks and applications, domain names, or trade dress.
- (gg) "**Iprodione**" means the chemical compound 3-(3,5-dichlorophenyl)-N-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamid.
- (hh) "**Iprodione Acquirer**" means the Person that acquires the Iprodione Licence (and Additional Iprodione Assets, if divested) pursuant to this Order.

- (ii) **"Iprodione Canola Seed Treatment Business"** means the ACS business of researching, developing, registering, formulating, manufacturing, licensing, distributing, marketing, and selling products containing Iprodione, for canola seed treatment uses in Canada prior to the Acquisition Date (and such business as conducted by Bayer after the Acquisition Date pursuant to this Order and the Consent Interim Order).
- (jj) **"Iprodione Inventories"** means all inventories, stores and supplies of Foundation Lite existing at the time of divestiture of the Additional Iprodione Assets.
- (kk) **"Iprodione Licence"** means the irrevocable, assignable, non-exclusive licence offered to the Acquirer of the Acetamiprid Business, for use in respect of seed treatments in Canada, of all Intellectual Property relating primarily to the Iprodione Canola Seed Treatment Business in Canada owned by or licensed to ACS prior to the Acquisition Date and such other Intellectual Property related to the Iprodione Canola Seed Treatment Business in Canada, if any, as may be necessary for the operation of the Iprodione Canola Seed Treatment Business in Canada, including but not limited to that identified in Confidential Appendix C, but excluding all trade names, registered and unregistered trademarks, service marks and applications and domain names.
- (ll) **"Iprodione Trademark"** means the exclusive rights of ACS in the trademark "Foundation Lite" and to any trade dress and trade names relating to Foundation Lite and non-exclusive rights to any registrations related to the use thereof in connection with the Iprodione Canola Seed Treatment Business as would be necessary, in combination with the Iprodione Licence, to permit the acquirer thereof to immediately market and sell Foundation Lite in Canada.
- (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) **"Material Confidential Information"** means competitively sensitive or proprietary information not independently known to a Person from sources other than the entity to which the information pertains including, without limiting the generality of the foregoing, any customer lists, price lists, marketing methods, patents, technologies, processes or other trade secrets.
- (oo) **"Monitor"** means the Monitor appointed pursuant to Part IX of this Order and the Hold Separate Monitor appointed pursuant to paragraphs 31 or 32 of the Consent Interim Order issued ♦, and any employees, agents or other persons acting for or on behalf of the Monitor with respect to any matter referred to in this Order or the Consent Interim Order issued ♦.

- (pp) **“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.
- (qq) **“Olympus Business”** means 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.
- (rr) **“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.
- (ss) **“Person”** means any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity.
- (tt) **“Pesticide Assets”** means the Acetamiprid Assets, Flucarbazone Assets and Triconazole Assets and, if divested by the Divestiture Trustee pursuant to Parts X, XI or XII of this Order, the Thiocloprid Assets and the Additional Flucarbazone Assets.
- (uu) **“Pesticide Businesses”** means the Acetamiprid Business, Flucarbazone Business and Triconazole Business and, if divested by the Divestiture Trustee pursuant to Parts X, XI or XII of this Order, the Thiocloprid Business and Olympus Business.
- (vv) **“Pesticide Licensed Intellectual Property”** means the Acetamiprid Licensed Intellectual Property, Flucarbazone Licensed Intellectual Property and Triconazole Licensed Intellectual Property, and if divested by the Divestiture Trustee pursuant to Parts X, XI or XII of this Order, the Thiocloprid Licensed Intellectual Property and the Olympus Licensed Intellectual Property.
- (ww) **“Propoxycarbazone”** means the chemical compound 2-[[[(4,5-dihydro-4-methyl-5-oxo-3-propoxy-1H-1, 2, 4-triazol-1-yl)methylcarbonyl]amino]sulfonyl]-benzoate].
- (xx) **“Respondents”** means Bayer and ACS.
- (yy) **“Technical Assistance”** means providing expert advice, assistance, and training relating to the operation of any of the Pesticide Businesses or the Iprodione Licence, and, if divested by the Divestiture Trustee, the Additional Iprodione Assets, including but not limited to, providing administrative services, reasonable and timely access to Bayer manufacturing facilities for the purpose of inspecting manufacturing operations, and reasonable access to the Pesticide Licensed Intellectual Property or Intellectual Property included in the Iprodione Licence and to personnel familiar with such intellectual property.

- (zz) **“Thiacloprid”** means the chemical compound [3-[6-chloro-3-pyridinyl)methyl]2-thiazolidinylidene]-cyanamide.
- (aaa) **“Thiacloprid Acquirer”** means the Person that acquires the Thiacloprid Assets pursuant to this Order.
- (bbb) **“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:
- (i) All personal property owned, leased, or otherwise held by Bayer;
 - (ii) All inventories, stores, and supplies held by, or under the control of Bayer;
 - (iii) All Intellectual Property relating primarily to the Thiacloprid Business owned by or licensed to Bayer;
 - (iv) 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;
 - (v) 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);
 - (vi) All rights of Bayer under any warranty and guarantee, express or implied;
 - (vii) All items of prepaid expense owned by Bayer; and
 - (viii) 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 Commissioner 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.

- (ccc) **“Thiacloprid Business”** means 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.
- (ddd) **“Triticonazole”** means 5-[(4-chlorophenyl)methylene]-2,2-dimethyl-1-(1H-1,2,4-triazol-1-yl)methyl)cyclopentanol.

- (eee) **"Triticonazole Acquirer"** means the Person that acquires the Triticonazole Assets pursuant to this Order.
- (fff) **"Triticonazole Assets"** means ACS' right, title, and interest in and to all assets, tangible or intangible, relating to the Triticonazole Business, including, but not limited to:
- (i) All personal property owned, leased, or otherwise held by ACS;
 - (ii) All inventories, stores, and supplies held by, or under the control of ACS;
 - (iii) All Intellectual Property relating primarily to the Triticonazole Business owned by or licensed to ACS, including but not limited to that described in Confidential Appendix D;
 - (iv) All rights of ACS under any contract (other than multi-product contracts), including but not limited to licenses, leases, customer contracts, supply agreements, and procurement contracts;
 - (v) All pending and issued governmental approvals, registrations, consents, licenses, permits, waivers, or other authorizations held by ACS, including foreign equivalents;
 - (vi) All rights of ACS under any warranty and guarantee, express or implied;
 - (vii) All items of prepaid expense owned by ACS; and
 - (viii) All separately maintained, and all relevant portions of not separately maintained, books, records, and files held by, or under the control of, ACS.

Provided, however, that the Triticonazole Assets shall not include ACS' right, title, and interest in and to (i) any real property (together with appurtenances, licences and permits) owned, leased or otherwise held by ACS or Aventis; (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 ACS; and (iv) management information systems, computer systems, or software that does not relate exclusively to the Triticonazole Business; and provided, however, that the Triticonazole Assets shall not include Bayer's or ACS's right, title and interest in and to the manufacture, use and sale of all products containing Triticonazole, including products in development, for seed treatment uses outside Canada.

- (ggg) "***Triticonazole Business***" means ACS' business of researching, developing, registering, formulating, manufacturing, licensing, distributing, marketing, and selling all products containing Triticonazole, including products in development, for seed treatment uses in Canada prior to the Acquisition Date (and such business as conducted by Bayer after the Acquisition Date pursuant to this Order and the Consent Interim Order).
- (hhh) "***Triticonazole Licensed Intellectual Property***" means all Intellectual Property relating (but not relating primarily) to the Triticonazole Business as of the date of divestiture of the Triticonazole Assets.

II. **APPLICATION**

2. The provisions of this Order apply to:

- (a) the Respondents, Bayer and ACS;
- (b) each officer, director, employee, agent or other Person acting for or on behalf of Bayer with respect to any of the matters referred to in this Order, save the Hold Separate Businesses as defined in the Consent Interim Order;
- (c) all other Persons acting in concert or participating with Bayer with respect to the matters referred to in this Order, save the Hold Separate Businesses as defined in the Consent Interim Order, who shall have received actual notice of this Order;
- (d) Richard Gilmore or any other individual appointed as Monitor or any substitute Monitor(s) and each employee, agent or other Person acting for or on behalf of such Monitor with respect to any matter referred to in this Order or the Consent Interim Order;
- (e) the Hold Separate Businesses, the Bayer Global Hold Separate Manager and the ACS Global Hold Separate Manager, the Product Hold Separate Business Managers (as those terms are defined in the Consent Interim Order), or substitutes appointed pursuant to the Consent Interim Order, and each employee, agent or other person acting for or on behalf thereof with respect to any matter referred to in the Consent Interim Order;
- (f) the Divestiture Trustee; and
- (g) the Acquirer(s) and the Acquirer(s)'s successors and assigns.

III. DIVESTITURE OF THE ACETAMIPRID ASSETS

3. Bayer shall divest the Acetamiprid Assets, including Assail and Assail ST, at no minimum price, absolutely and in good faith, no later than 180 days from the Acquisition Date, to a Person that receives the prior approval of the Commissioner and in a manner, and pursuant to an acquisition agreement, that receives the prior approval of the Commissioner.
4. Bayer shall use its 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 4 shall relieve Bayer of the obligation to divest the Acetamiprid Assets (with or without the Excepted Acetamiprid Assets as permitted by this Paragraph 4) pursuant to Paragraph 3 no later than 180 days from the Acquisition Date.
5. 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 Commissioner):
 - (a) A worldwide, royalty-free, perpetual, irrevocable, sublicenseable, transferable licence to Bayer's rights to the Acetamiprid Licensed Intellectual Property to develop, patent, make, have made, use, sell, offer for sale and import any product anywhere in the world (except for products containing an existing patented molecule retained by Bayer or any patented molecule invented or acquired by Bayer after the Acquisition Date). Such licence shall be (i) exclusive (even as to Bayer) for use in association with 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; and
 - (b) For greater certainty, an irrevocable, worldwide, perpetual immunity from suit by Bayer based on claims of infringement under all of Bayer's 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 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.

6. 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 licence 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 licence shall be (i) exclusive (even as to the Acetamiprid Acquirer) for use in association with any product containing an existing patented molecule retained by Bayer or any patented molecule invented or acquired by Bayer after the Acquisition Date and (ii) non-exclusive for any other product.
7. 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 Commissioner, Bayer shall provide Technical Assistance to the Acetamiprid Acquirer, for a period not to exceed 12 months from the date Bayer divest the Acetamiprid Assets, sufficient to enable the Acetamiprid Acquirer to operate the Acetamiprid Business in substantially the same manner as that employed by ACS prior to the Acquisition Date; 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 their 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.

IV. PROVISION OF THE IPRIDIONE LICENCE

8. Bayer shall provide the Iprodione Licence at no minimum price, absolutely and in good faith, no later than 180 days from the Acquisition Date, to the Acquirer of the Acetamiprid Business and in a manner, and pursuant to an acquisition agreement, that receives the prior approval of the Commissioner.

9. Upon the request of the Acetamiprid Acquirer made at the time of the provision of the Iprodione Licence, pursuant to an agreement that receives the prior approval of the Commissioner, Bayer shall, for a period not to exceed 30 months from the date Bayer provides the Iprodione Licence, provide a supply of Iprodione and/or any technical grade thereof used in the Iprodione Canola Seed Treatment Business of ACS prior to the Acquisition Date (hereinafter "Iprodione Products") to the Acetamiprid Acquirer:

- (a) Bayer shall provide quantities of Iprodione Products sufficient to enable the Acetamiprid Acquirer (i) to satisfy customer demand at substantially the same levels as ACS 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 9 of this Order; and
- (b) Bayer shall (i) manufacture Iprodione Products that are of substantially the same quality as that achieved by ACS prior to the Acquisition Date, (ii) manufacture the Iprodione Products in substantially the same manner as employed by ACS prior to the Acquisition Date, and (iii) use its best efforts to implement any improvement in the manufacturing process of the Iprodione Products developed in the ordinary course of business or as a result of the Acquisition;

provided, however, that Bayer shall not (i) require the Acetamiprid Acquirer to pay compensation for supplying Iprodione Products that exceeds the Direct Cost of providing goods and services, (ii) terminate its obligation to supply Iprodione Products because of a material breach by the Acetamiprid Acquirer of any agreement to provide Iprodione 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 Acetamiprid Acquirer would be entitled to receive in the event of Bayer's breach of any agreement to supply Iprodione Products.

10. Upon the request of the Acetamiprid Acquirer at the time of provision of the Iprodione Licence, pursuant to an agreement that receives the prior approval of the Commissioner, Bayer shall provide Technical Assistance to the Acetamiprid Acquirer, for a period not to exceed 30 months from the date Bayer provides the Iprodione Licence, sufficient to enable the Acetamiprid Acquirer to operate the Iprodione Canola Seed Treatment Business, on a non-exclusive basis, in substantially the same manner as that employed by ACS prior to the Acquisition Date; 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.

V. DIVESTITURE OF THE TRITICONAZOLE ASSETS

11. Bayer shall divest the Triticonazole Assets, including Charter, at no minimum price, absolutely and in good faith, no later than 180 days from the Acquisition Date, to a Person that receives the prior approval of the Commissioner and in a manner, and pursuant to an acquisition agreement, that receives the prior approval of the Commissioner.
12. No later than the date Bayer divests the Triticonazole Assets, Bayer shall grant to the Triticonazole Acquirer (pursuant to one or more agreements that receive the prior approval of the Commissioner):
 - (a) A Canada-wide, royalty-free, perpetual, sublicenseable, irrevocable, transferable licence to Bayer's rights to the Triticonazole Licensed Intellectual Property to develop, patent, make, have made, use, sell, offer for sale and import any product (except for products containing an existing patented molecule retained by Bayer or any patented molecule invented or acquired by Bayer after the Acquisition Date). Such licence shall be (i) exclusive (even as to Bayer) for use in association with any product containing an existing patented molecule included in the Triticonazole Assets or any patented molecule invented or acquired by the Triticonazole Acquirer and (ii) non-exclusive for any other product; and
 - (b) For greater certainty, a Canada-wide, irrevocable, perpetual immunity from suit by Bayer based on claims of infringement under all of Bayer's Intellectual Property for the developing, making, having made, using, having used, selling, offering for sale, having sold, and importing of any product containing Triticonazole for any seed treatment use in Canada (except for products containing an existing patented molecule 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 Triticonazole Acquirer.
13. Nothing in this Order shall prevent Bayer from entering into an agreement with the Triticonazole Acquirer in which the Triticonazole Acquirer shall grant to Bayer a worldwide, royalty-free, perpetual, irrevocable, sublicenseable, transferable licence to the Triticonazole Acquirer's rights to any Intellectual Property included in the Triticonazole Assets that does not relate exclusively to the Triticonazole 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 Triticonazole Assets, or (y) any patented molecule invented or acquired by the Triticonazole Acquirer after the Acquisition Date, without the consent of the Triticonazole Acquirer) anywhere in the world. Such licence shall be (i) exclusive (even as to the Triticonazole Acquirer) for use in association with any product containing an existing patented molecule retained by Bayer or any patented molecule invented or acquired by Bayer after the Acquisition Date and (ii) non-exclusive for any other product.

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

- (a) Bayer shall provide quantities of Triticonazole Products sufficient to enable the Triticonazole Acquirer (i) to satisfy customer demand at substantially the same levels as ACS 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 14 of this Order; and
- (b) Bayer shall (i) manufacture Triticonazole Products that are of substantially the same quality as that achieved by ACS prior to the Acquisition Date, (ii) manufacture the Triticonazole Products in substantially the same manner as employed by ACS prior to the Acquisition Date, and (iii) use its best efforts to implement any improvement in the manufacturing process of the Triticonazole Products developed in the ordinary course of business or as a result of the Acquisition;

provided, however, that Bayer shall not (i) require the Triticonazole Acquirer to pay compensation for supplying Triticonazole Products that exceeds the Direct Cost of providing goods and services, (ii) terminate its obligation to supply Triticonazole Products because of a material breach by the Triticonazole Acquirer of any agreement to provide Triticonazole 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 Triticonazole Acquirer would be entitled to receive in the event of Bayer's breach of any agreement to supply Triticonazole Products.

15. Upon the request of the Triticonazole Acquirer at the time of divestiture of the Triticonazole Assets, pursuant to an agreement that receives the prior approval of the Commissioner, Bayer shall provide Technical Assistance to the Triticonazole Acquirer, for a period not to exceed 30 months from the date Bayer divests the Triticonazole Assets, sufficient to enable the Triticonazole Acquirer to operate the Triticonazole Business in substantially the same manner as that employed by ACS prior to the Acquisition Date; provided, however, that Bayer shall not (i) require the Triticonazole 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 Triticonazole 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 Triticonazole Acquirer would be entitled to receive in the event of Bayer's breach of any agreement to provide Technical Assistance.

VI. DIVESTITURE OF THE FLUCARBAZONE ASSETS

16. Bayer shall divest the Flucarbazonone Assets, including Everest, at no minimum price, absolutely and in good faith, no later than 180 days from the Acquisition Date, to a Person that receives the prior approval of the Commissioner and in a manner, and pursuant to an acquisition agreement, that receives the prior approval of the Commissioner.
17. No later than the date Bayer divests the Flucarbazonone Assets, Bayer shall grant to the Flucarbazonone Acquirer (pursuant to one or more agreements that receive the prior approval of the Commissioner):
 - (a) A worldwide, royalty-free, perpetual, sublicenseable, irrevocable, transferable licence to Bayer's rights to the Flucarbazonone Licensed Intellectual Property to develop, patent, make, have made, use, sell, offer for sale and import any product (except for products containing an existing patented molecule retained by Bayer or any patented molecule invented or acquired by Bayer after the Acquisition Date). Such licence shall be (i) exclusive (even as to Bayer) for use in association with any product containing an existing patented molecule included in the Flucarbazonone Assets or any patented molecule invented or acquired by the Flucarbazonone Acquirer and (ii) non-exclusive for any other product; and
 - (b) For greater certainty, an irrevocable, worldwide, perpetual immunity from suit by Bayer based on claims of infringement under all of Bayer's Intellectual Property for the developing, making, having made, using, having used, selling, offering for sale, having sold, and importing of any product containing Flucarbazonone for any use anywhere in the world (except for products containing an existing patented molecule 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 Flucarbazonone Acquirer.
18. Nothing in this Order shall prevent Bayer from entering into an agreement with the Flucarbazonone Acquirer in which the Flucarbazonone Acquirer shall grant to Bayer a worldwide, royalty-free, perpetual, irrevocable, sublicenseable, transferable licence to the Flucarbazonone Acquirer's rights to any Intellectual Property included in the Flucarbazonone Assets that does not relate exclusively to the Flucarbazonone 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 Flucarbazonone Assets, or (y) any patented molecule invented or acquired by the Flucarbazonone Acquirer after the Acquisition Date, without the consent of the Flucarbazonone Acquirer anywhere in the world. Such license shall be (i) exclusive (even as to the Flucarbazonone Acquirer) for use in association with any product containing an existing patented molecule retained by Bayer or any patented molecule invented or acquired by Bayer after the Acquisition Date and (ii) non-exclusive for any other product.

19. 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 Commissioner, 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:

- (a) 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 19 of this Order; and
- (b) 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.

20. 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 Commissioner, 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.

VII. PESTICIDE EMPLOYEES

21. Bayer shall allow each Acquirer an opportunity to enter into an employment contract with any employees of Bayer or ACS identified by agreement between Bayer and the Acquirer and made a part of the relevant Divestiture Agreement (hereinafter “Pesticide Employees”).
22. No later than thirty days before the date the applicable Pesticide Assets are divested or the Iprodione Licence is provided and, if necessary, the Additional Iprodione Assets are divested, Bayer 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.
23. Bayer shall, to the extent permissible under applicable laws, (i) not offer any incentive to any Pesticide Employee to decline employment with any Acquirer, (ii) remove any contractual impediments with Bayer 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 Bayer 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.
24. Bayer 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 Bayer divests the applicable Pesticide Assets and provides the Iprodione Licence or, if necessary, divests the Additional Iprodione Assets and (ii) pay a bonus to any Pesticide Employee who accepts an offer of employment from any Acquirer no later than thirty days from the date Bayer divests the applicable Pesticide Assets and provides the Iprodione Licence or, if necessary, divests the Additional Iprodione Assets pursuant to the terms set forth in Confidential Appendix E attached to this Order.
25. For a period of one year from the earlier of the date this Order is issued or the Decision and Order of the U.S. Federal Trade Commission in this matter becomes final, Bayer 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.

VIII. NON-DISCLOSURE

26. Except in the course of performing its obligations under any Divestiture Agreement or this Order or as permitted by the Consent Interim Order, Bayer shall not (i) provide, disclose or otherwise make available any Material Confidential Information to any Person and (ii) use any Material Confidential Information for any reason or purpose.
27. Bayer shall disclose Material Confidential Information (i) only to those Persons who require such information for the purposes permitted under Paragraph 26 of this Order, (ii) only to the extent such part of the Material Confidential Information is so required, and (iii) only to those Persons who agree in writing to maintain the confidentiality of such information.
28. Bayer shall enforce the terms of this Part VIII as to any Person and take such action as is necessary to cause each such Person to comply with the terms of this Part VIII, including training and all other actions that Bayer would take to protect its own trade secrets and proprietary information.

IX. APPOINTMENT OF MONITOR

29. RICHARD GILMORE (“Monitor”) is hereby appointed to monitor Bayer's compliance with Parts I through XVIII of this Order and the Consent Interim Order.
30. Bayer shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
 - (a) The Monitor shall have the power and authority to monitor Bayer'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;
 - (b) Within ten days after the date of this Order Bayer shall execute an agreement that, subject to the approval of the Commissioner, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor Bayer's compliance with the terms of this Order in a manner consistent with the purposes of this Order. If requested by Bayer, the Monitor shall sign a confidentiality agreement prohibiting the use, or disclosure to anyone other than the Commissioner, the U.S. Federal Trade Commission or the Competition Directorate-General of the European Commission, of any competitively sensitive or proprietary information gained as a result of his or her role as Monitor;

- (c) The Monitor's power and duties under this Part IX and the Consent Interim Order shall terminate sixty days after the Monitor has completed his or her final report pursuant to Paragraph 35 of the Consent Interim Order, or at such other time as directed by the Commissioner.

X. DIVESTITURE TRUSTEE

31. If Bayer has not divested, absolutely and in good faith, any of the Acetamiprid Assets, Flucarbazone Assets or Triticonazole Assets or provided the Iprodione Licence within the time and in the manner required by Parts III through VI of this Order, the Commissioner 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 Part VI 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 Part III of this Order, the Divestiture Trustee may divest either the Thiacloprid Assets or the Acetamiprid Assets or (iii) if Bayer fails to provide the Iprodione Licence, within the time and in the manner required by Part IV of this Order, the Divestiture Trustee shall provide the Iprodione Licence and divest the Additional Iprodione Assets to a single acquirer (the "Iprodione Acquirer") that receives the prior approval of the Commissioner.
32. If a Divestiture Trustee is appointed by the Commissioner, Bayer shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
- (a) The Commissioner shall select the Divestiture Trustee, subject to the consent of Bayer, 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 Part IX of this Order. If Bayer has 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 Commissioner to Bayer of the identity of any proposed Divestiture Trustee, Bayer shall be deemed to have consented to the selection of the proposed Divestiture Trustee;
- (b) Subject to the prior approval of the Commissioner, 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;

- (c) Within ten days after appointment of the Divestiture Trustee, Bayer shall execute an agreement that, subject to the prior approval of the Commissioner, 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;
- (d) The Divestiture Trustee shall have twelve months from the date the Commissioner approves the agreement described in Paragraph 32 of this Order to accomplish the divestiture, which shall be subject to the prior approval of the Commissioner. 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 Commissioner; provided, however, the Commissioner may extend this period only two times;
- (e) 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. Bayer shall develop such financial or other information as the Divestiture Trustee may reasonably request and shall cooperate with the Divestiture Trustee. Bayer shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Bayer shall extend the time for divestiture under this Paragraph 32 in an amount equal to the delay, as determined by the Commissioner;
- (f) 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 Commissioner, but shall divest expeditiously at no minimum price. The divestiture shall be made only to an Acquirer that receives the prior approval of the Commissioner, and the divestiture shall be accomplished as set out in this Order; provided, however, if the Divestiture Trustee receives bona fide offers, for a particular asset, from more than one acquiring entity, and if the Commissioner determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity or entities selected by Bayer from among those approved by the Commissioner; provided, further, that Bayer shall select such entity within five business days of receiving written notification of the Commissioner's approval;
- (g) The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Bayer, on such reasonable and customary terms and conditions as the Commissioner or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Bayer 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 Commissioner of the account of the Divestiture Trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Bayer, 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;

- (h) Bayer 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 32, the term "Divestiture Trustee" shall include all Persons retained by the Divestiture Trustee pursuant to Paragraph 32 of this Order;
- (i) If the Divestiture Trustee ceases to act or fails to act diligently, the Commissioner may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph 32 for appointment of the initial Divestiture Trustee;
- (j) The Divestiture Trustee shall have no obligation or authority to operate or maintain the assets to be divested; and
- (k) The Divestiture Trustee shall report in writing to the Commissioner every sixty days concerning the Divestiture Trustee's efforts to accomplish the divestiture.

XI. DIVESTITURE OF THE THIACTLOPRID ASSETS

33. If the Divestiture Trustee divests the Thiactloprid Assets pursuant to Part X of this Order, no later than the date the Divestiture Trustee divests the Thiactloprid Assets, Bayer shall grant to the Thiactloprid Acquirer (pursuant to one or more agreements that receive the prior approval of the Commissioner):
- (a) A worldwide, royalty-free, perpetual, sublicenseable, irrevocable, transferable licence to Bayer's rights to the Thiactloprid Licensed Intellectual Property to develop, patent, make, have made, use, sell, offer for sale and import any product (except for products containing an existing patented molecule retained by Bayer or any patented molecule invented or acquired by Bayer after the Acquisition Date). Such licence shall be (i) exclusive (even as to Bayer) for use in association with any product containing an existing patented molecule included in the Thiactloprid Assets or any patented molecule invented or acquired by the Thiactloprid Acquirer and (ii) non-exclusive for any other product; and

- (b) For greater certainty, an irrevocable, worldwide, perpetual immunity from suit by Bayer based on claims of infringement under all of Bayer's Intellectual Property for the developing, making, having made, using, having used, selling, offering for sale, having sold, and importing of any product containing Thiachloprid for any use anywhere in the world (except for products containing an existing patented molecule 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 Thiachloprid Acquirer.
34. Nothing in this Order shall prevent the Divestiture Trustee from obtaining an agreement with the Thiachloprid Acquirer in which the Thiachloprid Acquirer shall grant to Bayer:
- (a) A worldwide, royalty-free, perpetual, irrevocable, sublicenseable, transferable licence to the Thiachloprid Acquirer's rights to any Intellectual Property included in the Thiachloprid Assets that does not relate exclusively to the Thiachloprid 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 Thiachloprid Assets or, (y) any patented molecule invented or acquired by the Thiachloprid Acquirer after the Acquisition Date, without the consent of the Thiachloprid Acquirer)) anywhere in the world. Such licence shall be (i) exclusive (even as to the Thiachloprid Acquirer) for use in association with any product containing an existing patented molecule retained by Bayer or any patented molecule invented or acquired by Bayer after the Acquisition Date and (ii) non-exclusive for any other product; and
- (b) A worldwide, royalty-free, exclusive (except as to the Thiachloprid Acquirer), perpetual, irrevocable, sublicenseable, transferable licence to the Thiachloprid Acquirer's rights to any Intellectual Property included in the Thiachloprid Assets to develop, patent, make, have made, use, sell, offer for sale and import any product containing Thiachloprid anywhere in the world (except for the United States, Canada, and Europe); provided, however, that Bayer may obtain such licence only if it would not impair the viability of the Thiachloprid Acquirer, and the Commissioner approves the divestiture of the Thiachloprid Assets with such a licence.
35. Bayer may propose an agreement to allow the Thiachloprid Acquirer to supply to Bayer Thiachloprid (if Bayer obtains a licence pursuant to Paragraph 34 of this Order) and Clothianidin manufactured by the Thiachloprid Acquirer; provided, however, that such agreement shall provide sufficient Thiachloprid to the Thiachloprid Acquirer to support the Thiachloprid Acquirer's good faith plans, decisions, or efforts to meet the production goals and targets in the Thiachloprid Acquirer's business plans and to expand production of Thiachloprid 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 Commissioner. If the Divestiture Trustee is unable to

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

XII. DIVESTITURE OF THE ADDITIONAL FLUCARBAZONE ASSETS

36. If the Divestiture Trustee divests the Additional Flucarbazono Assets pursuant to Part X of this Order, no later than the date the Divestiture Trustee divests the Additional Flucarbazono Assets, Bayer shall grant to the Flucarbazono Acquirer (pursuant to one or more agreements that receive the prior approval of the Commissioner):
- (a) A worldwide, royalty-free, perpetual, sublicenseable, irrevocable, transferable licence to Bayer's rights to the Olympus Licensed Intellectual Property to develop, patent, make, have made, use, sell, offer for sale and import any product (except for products containing an existing patented molecule retained by Bayer or any patented molecule invented or acquired by Bayer after the Acquisition Date). Such licence shall be (i) exclusive (even as to Bayer) for use in association with any product containing an existing patented molecule included in the Additional Flucarbazono Assets or any patented molecule invented or acquired by the Flucarbazono Acquirer and (ii) non-exclusive for any other product; and
 - (b) For greater certainty, an irrevocable, worldwide, perpetual immunity from suit by Bayer based on claims of infringement under all of Bayer's Intellectual Property for the developing, making, having made, using, having used, selling, offering for sale, having sold and importing any product containing Propoxycarbazono for any use anywhere in the world (except for products containing an existing patented molecule 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 Flucarbazono Acquirer.
37. Nothing in this Order shall prevent the Divestiture Trustee from obtaining an agreement with the Flucarbazono Acquirer in which the Flucarbazono Acquirer shall grant to Bayer a worldwide, royalty-free, perpetual, irrevocable, sublicenseable, transferable licence to the Flucarbazono Acquirer's rights to any Intellectual Property included in the Additional Flucarbazono 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 Flucarbazono Assets or, (y) any patented molecule invented or acquired by the Flucarbazono Acquirer after the Acquisition Date, without the consent of the Flucarbazono Acquirer) anywhere in the world. Such licence shall be (i) exclusive (even as to the Flucarbazono Acquirer) for use in association with any product containing an existing patented molecule 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. NOTIFICATION TO OFFICERS, EMPLOYEES OR AGENTS

38. Bayer shall provide a copy of this Order to each of its 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. WRITTEN REPORT

39. Bayer shall, at a minimum every sixty (60) days, report to the Commissioner, in writing, of the progress of its efforts to accomplish the divestiture of the Pesticide Assets and the provision of the Iprodione Licence or, if necessary, the divestiture of the Additional Iprodione Assets, including a description of contacts or negotiations and the identity of all parties contacted and prospective acquirers who have come forward, all with reasonable details. The Commissioner has the right to request additional information from Bayer regarding the divestiture efforts and Bayer shall respond forthwith.
40. Bayer shall not, acquire, directly or indirectly, any interest in all or any part of the Pesticide Assets or, if divested, the Additional Iprodione Assets, without the prior approval of the Commissioner, for the next ten (10) years.

XV. COMPLIANCE INSPECTION

41. For the purpose of determining or securing compliance with this Order, subject to any valid claim to a legally recognized privilege, and upon written request, Bayer shall permit any duly authorized representative of the Commissioner:
- (a) upon a minimum of three (3) days notice to Bayer, access during office hours of Bayer to inspect and copy all books, ledgers, accounts, correspondence, memorandum, and other records and documents in the possession or under control of Bayer relating to compliance with this Order; and
 - (b) upon a minimum of eight (8) days notice to Bayer, and without restraint or interference from Bayer, to interview directors, officers or employees of Bayer on matters in the possession or under control of Bayer relating to compliance with this Order.

XVI. NOTICE

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

1. If the Commissioner:

The Commissioner of Competition
Competition Bureau
Industry Canada
Place du Portage, 22nd floor
50 Victoria Street, Phase I
Hull, Quebec K1A 0C9

Attention: Josephine A.L. Palumbo

Tel: (819) 953-3902

Fax: (819) 953-9267

2. If to Bayer:

Bayer AG
Legal Department
K-RP, Rechtsabteilung
D-51368 Leverkusen 1
Germany

Attention: Dr. Gerhart Marchand

Tel: 011 49 214 30 71789

Fax: 011 49 214 30 56524

With a copy to:

Fraser Milner Casgrain LLP
1 First Canadian Place, 39th Floor
100 King Street West
Toronto, Ontario
Canada M5X 1B2

**Attention: Randal T. Hughes
Tracey N. Patel**

Tel: (416) 863-4511

Fax: (416) 863-4592

3. If to ACS:

Aventis CropScience Holding S. A.
55, avenue René Cassin
CP 106
69266 Lyon Cedex 09
France

Attention: Emmanuel Murgue, General Counsel & Secretary

Tel: 011 334 7285 4838

Fax: 011 334 7285 4860

With a copy to:

Stikeman Elliott
1600-50 O'Connor Street
Ottawa, Ontario
Canada K1P 6L2

Attention: Lawson A. W. Hunter, Q.C.
Susan M. Hutton
Kim D.G. Alexander-Cook

Tel: (613) 234-4555

Fax: (613) 230-8877

4. If to the Monitor:

Richard Gilmore
GIC Group
1434 Dulee Street
Alexandria, VA
22314, U.S.A.

Telephone: (703) 684-1366

Fax: (703) 684-1369

XVII. DURATION

43. The Respondents shall be bound by the terms of this Order for a period of ten (10) years following the issuance of the Order by the Tribunal.

XVIII. GENERAL

- 44. The Respondents agree to the issuance of a final Consent Order by the Competition Tribunal, on usual terms, covering the matters agreed to herein.

- 45. The Competition Tribunal shall retain jurisdiction for the purpose of any application by the Commissioner or the Respondents to rescind or vary any of the provisions of this Order in the event of a change of circumstances or otherwise, or with respect to any issue concerning this Order.

- 46. In the event of a dispute as to the interpretation or application of this Order, including any decision by the Commissioner pursuant to this Order or breach of this Order by the Respondents, the Commissioner, the Divestiture Trustee or the Respondents shall be at liberty to apply to the Competition Tribunal for a further Order interpreting any of the provisions of this Order.

DATED at , this day of 2002.

SIGNED on behalf of the Competition Tribunal by the presiding judicial member.

APPENDIX “A”

(CONFIDENTIAL)

APPENDIX “B”

(CONFIDENTIAL)

APPENDIX “C”

(CONFIDENTIAL)

APPENDIX “D”

(CONFIDENTIAL)

APPENDIX “E”

(CONFIDENTIAL)