

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Robert Pitofsky, Chairman**
 Sheila F. Anthony
 Mozelle W. Thompson
 Orson Swindle
 Thomas B. Leary

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In the Matter of)	
)	
FMC CORPORATION,)	
)	Docket No.
a corporation,)	
)	
SOLUTIA INC.,)	
)	
a corporation, and)	
)	
ASTARIS LLC,)	
)	
a limited liability company.)	
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DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed joint venture between Respondent FMC Corporation (“FMC”) and Respondent Solutia Inc. (“Solutia”) to form Respondent Astaris LLC (“Astaris”), and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition presented to the Commission for its consideration and which, 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”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said 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 an Order to 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 Order:

1. FMC is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 200 East Randolph Drive, Chicago, Illinois 60601.
2. Solutia is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 575 Maryville Centre Drive, St. Louis, Missouri 63141.
3. Astaris is a limited liability company organized and existing under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 575 Maryville Centre Drive, St. Louis, Missouri 63141.
4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

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

- A. "FMC" means FMC Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by FMC, its joint ventures, including the Joint Venture, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

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- C. “Astaris” means Astaris LLC, its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Astaris, its joint ventures, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- D. "Commission" means the Federal Trade Commission.
- E. “Respondents” means FMC, Solutia and Astaris, respectively and collectively.
- F. “Joint Venture” means the Joint Venture Between FMC and Solutia, as described in the April 29, 1999, Joint Venture Agreement Between FMC and Solutia.
- G. “Prayon” means Societe Chimique Prayon-Rupel S.A., its subsidiaries, divisions, groups, and affiliates controlled by Prayon.
- H. “Peak” means Peak Investments, L.L.C., its subsidiaries, divisions, groups, and affiliates controlled by Peak.
- I. “Emaphos” means Emaphos, S.A., its parents, subsidiaries, divisions, groups, and affiliates controlled by Emaphos.
- J. “Augusta Assets To Be Divested” means the assets, properties and business, tangible and intangible, of the Augusta Plant, including, but not limited to:
 - 1. all machinery, furniture, fixtures, tools and other tangible personal property at the Augusta Plant;
 - 2. a royalty-free, non-exclusive license to all rights, titles, and interest in and to Augusta Intellectual Property;
 - 3. all rights, title, and interest in and to inventories of raw materials (to the extent requested by the acquirer), supplies and parts for the Augusta Plant;
 - 4. all rights, title, and interest in and to the service contracts dedicated to the operations of the Augusta Plant and the customer contracts listed in Confidential Appendix A, attached hereto;
 - 5. all rights, title and interest in and to transferable governmental permits and approvals relating to the operation of the Augusta Plant, to the extent permitted by law;
 - 6. lists of the customers served by and service contracts used for the Augusta Plant;
 - 7. all equipment, vehicles and transportation facilities used since January 1, 1999 at the Augusta Plant;

8. all storage capacity located at the Augusta Plant;
 9. all rights, titles, and interests in and to the owned real property on which the Augusta Plant is located;
 10. all rights under any third-party warranties and guarantees, express or implied, for the Augusta Plant; and
 11. all books, records, and files regarding operating procedures and policies at the Augusta Plant; provided, however, that Respondents may retain a copy of such books, records, and files solely for financial, tax reporting, legal, health, safety and environmental purposes.
- K. “Augusta Intellectual Property” means any form of intellectual property relating to the manufacture of products at the Augusta Plant, including, but not limited to, trade secrets, technical information, inventions, test data, technological know-how, licenses, specifications, designs, drawings, processes, formulas, customer lists, lists of significant current vendors, and quality control data, books, records, and files; provided, however, that Augusta Intellectual Property does not include proprietary information of other parties which Respondents are prevented from disclosing due to the existence of secrecy agreements.
- L. “Augusta Plant” means the Solutia manufacturing plant in Augusta, Georgia, which manufactures phosphate salts and has manufactured phosphoric acid.
- M. “Augusta Products” means the grades and types of phosphate salts that are and have been produced at the Augusta Plant since January 1, 1999.
- N. “Emaphos Phosphoric Acid Agreement” means the agreement dated January 1, 1998, between Solutia Inc. and Emaphos S.A. pursuant to which Solutia agreed to purchase, and Emaphos agreed to sell, specified volumes of phosphoric acid.
- O. “Lawrence Plant” means FMC’s plant in Lawrence, Kansas, which is used to manufacture phosphoric acid, phosphate salts and phosphorus derivatives, and includes the Lawrence P₂S₅ Plant.
- P. “Lawrence Plant Facilities” means all Lawrence Plant facilities used for the operation of the Lawrence P₂S₅ Plant, whether or not used exclusively in the manufacture of P₂S₅.
- Q. “Lawrence Plant Services” means the plant services and functions supplied by Respondents for operation of the Lawrence P₂S₅ Plant.

- X. “P₂S₅ Assets to Be Divested” means:
1. the Lawrence P₂S₅ plant, including all machinery, furniture, fixtures, tools and other tangible personal property dedicated to the manufacture and sale of P₂S₅ at the Lawrence Plant;
 2. all rights, title, and interest in and to Lawrence P₂S₅ Intellectual Property dedicated to the research, development, manufacture and sale of Lawrence P₂S₅, and a non-exclusive, perpetual, royalty-free transferable license for Lawrence P₂S₅ Intellectual Property not dedicated to the research, development, manufacture or sale of Lawrence P₂S₅; provided that the acquirer has rights to transfer such license only to any person to whom it is transferring its entire interest in the P₂S₅ Assets to Be Divested, or from whom it has agreed to purchase elemental phosphorus for use in the manufacture of P₂S₅;
 3. all rights, title, and interest in and to inventories of products that are useable and saleable in the ordinary course of business, raw materials (to the extent requested by the acquirer), supplies and parts, or the part thereof, dedicated to the manufacture or sale of Lawrence P₂S₅, including work-in-process and finished goods;
 4. all rights, title, and interest in and to agreements, express or implied, necessary for the manufacture or sale of Lawrence P₂S₅, including, but notP

9. all of FMC's rights, title and interest under each of the personal property leases for tangible assets (other than office equipment) and property leased by FMC, which leases are dedicated to the manufacture and sale of Lawrence P₂S₅;
 10. all rights under any third-party warranties and guarantees, express or implied, for the manufacture and sale of Lawrence P₂S₅; and
 11. all books, records, and files regarding operating procedures and policies at the Lawrence P₂S₅ Plant; provided, however, that Respondents may retain a copy of such books, records and files as appropriate for operation of the Lawrence Plant, for provision of Lawrence Plant Services or P₂S₅ Technical Services, and for financial, tax reporting, legal, health, safety and environmental purposes.
- Y. "P₂S₅ Construction Project" means construction of new facilities or modification of the Lawrence P₂S₅ Plant for purposes of creating access to the Lawrence P₂S₅ Plant, receiving raw materials for use in the Lawrence P₂S₅ Plant, or manufacturing or transporting Lawrence P₂S₅.
- Z. "P₂S₅ Nameplate Level" means the rated nameplate capacity of the Lawrence P₂S₅ Plant.
- AA. "P₂S₅ Technical Services" means research and development and laboratory analysis relating to Lawrence P₂S₅, whether conducted by Respondents at the Lawrence Plant or at other facilities, in the form of personnel time, access to equipment and materials, or otherwise.
- BB. "Trustee" means a trustee appointed pursuant to Paragraph VII.A. of this Order.
- CC.

Commission's complaint. Failure by Respondents to perform the divestiture agreement shall also constitute a violation of this Order.

Provided, however, that, if at the time the Commission issues the Order, the Commission notifies Respondents that Prayon is not an acceptable acquirer or that the Prayon Divestiture Agreement is not an acceptable manner of divestiture, the Respondents shall, within five (5) months of the date on which this Order is issued by the Commission, divest the Augusta Assets To Be Divested only to an acquirer that is approved by the Commission, and divest these assets only in a manner approved by the Commission.

- B. Within thirty (30) days of the date that this Order is accepted by the Commission for public comment, Respondents shall provide Prayon with a complete list of all non-clerical employees of Solutia employed at the Augusta Plant. If Respondents divest the Augusta Assets to Be Divested to an acquirer other than Prayon, then Respondents shall provide such list to the acquirer no later than the date on which a divestiture agreement is signed with such acquirer. Such list shall state each such individual's name, position, address, current or last known business telephone number and a description of the duties and work performed by the individual in connection with the Augusta Products.
- C. Respondents shall provide Prayon with an opportunity to inspect the personnel files and other documentation relating to all non-clerical employees at the Augusta Plant, to the extent permissible under applicable laws, at the request of Prayon, within sixty (60) days of the date that this Order is accepted by the Commission for public comment. If the Augusta Assets to Be Divested are divested to an acquirer other than Prayon, then Respondents shall provide such opportunity no later than the date on which the divestiture agreement is signed with such acquirer.
- D. Respondents shall provide the proposed acquirer the opportunity to enter into employment contracts with the non-clerical employees described in Paragraph II.B.
- E. Respondents shall provide the Commission-approved acquirer with the opportunity to enter into employment contracts with up to two (2) sales and marketing employees (including business directors, managers, and technical services employees) who are currently or have been employed by Solutia or FMC within the last two (2) years, and who, within thirty days after the date that the Consent Agreement is accepted by the Commission for public comment, have not received offers, or who have decided not, to become employees of Astaris, and shall not interfere with the employment by the Commission-approved acquirer of such individuals; shall not offer any incentive to such employees to decline employment with the Commission-approved acquirer or to accept other employment with the Respondents; and shall remove any impediments that may deter such employees from accepting employment with the Commission-approved acquirer, including, but

not limited to, any non-compete or confidentiality provisions of employment or other contracts with the Respondents that would affect the ability of the those individuals to be employed by the Commission-approved acquirer.

- F. Respondents shall not make employment offers to any individual described in Paragraphs II.D. and II.E., above, who accepts employment with the acquirer of the Augusta Assets To Be Divested, for a period of one (1) year after this Order has been issued if such individual has accepted an employment offer from the Commission-approved acquirer.

III.

IT IS FURTHER ORDERED that:

- A. Respondents shall divest the P₂S₅ Assets To Be Divested to Peak pursuant to the Peak Divestiture Agreement no later than thirty (30) days after the parties form the Joint Venture. The purpose of the divestiture is to ensure the continued use of the P₂S₅ Assets To Be Divested in the same business in which they were engaged at the time of the Joint Venture and to remedy the lessening of competition resulting from the Joint Venture as alleged in the Commission's complaint. Failure by Respondents to perform the divestiture agreement shall also constitute a violation of this Order.

Provided, however, that, if at that time the Commission issues the Order, the Commission notifies Respondents that Peak is not an acceptable acquirer or that the Peak Divestiture Agreement is not an acceptable manner of divestiture, the Respondents shall, within five (5) months of the date on which this Order is issued by the Commission, divest the P₂S₅ Assets to Be Divested only to an acquirer that is approved by the Commission, and divest these assets only in a manner approved by the Commission.

- B. Respondents shall provide and make available to the acquirer of the P₂S₅ Assets To Be Divested, all Lawrence Plant Services, all P₂S₅ Technical Services and access to all Lawrence Plant Facilities that are requested by the acquirer up to a level sufficient to allow the acquirer to practicably operate the P₂S₅ Assets To Be Divested at the P₂S₅ Nameplate Level. Such services and facilities shall be provided and made available at the times requested by the acquirer, except to the extent that such delivery is inconsistent with the safe and orderly operation of the Lawrence Plant, but the provision of such services or the availability of access to such facilities shall be no less timely than was normal during the period beginning January 1, 1999 and ending December 31, 1999.
- C. Respondents shall provide the acquirer of the P₂S₅ Assets To Be Divested with continuing access to all Lawrence Plant Facilities requested by the acquirer to

acquirer, provided that such access does not unreasonably interfere with the continuing commercial operations of the Lawrence Plant.

- I. Respondents shall, for a period of two (2) years from the date that this Order is issued by the Commission, pay the acquirer of the P₂S₅ Assets To Be Divested for damages to the extent proximately caused by failures by Respondents to provide the acquirer of the P

V.

IT IS FURTHER ORDERED that Respondents, for a period of ten (10) years, shall not seek to enforce any provisions in the Emaphos Phosphoric Acid Agreement or any other agreement which directly or indirectly provide that sales of phosphoric acid in the United States by Emaphos or Prayon be made exclusively to Respondents, and shall not enter into any other agreements which directly or indirectly provide that sales of phosphoric acid in the United States by Emaphos or Prayon be made exclusively to Respondents.

VI.

IT IS FURTHER ORDERED that:

A. At any time after Respondents sign the Agreement Containing Consent Orders in this matter, the Commission may appoint an Interim Trustee to ensure that Respondents expeditiously perform their responsibilities as required by Paragraphs III and IV of this Order and the divestiture agreement approved by the Commission. Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Interim Trustee appointed pursuant to this Paragraph VI.:

1. The Commission shall select the Interim Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after receipt of notice by the staff of the Commission to Respondents of the identity of any proposed trustee, Respondents shall be deemed to have consented to the selection of the proposed trustee.
2. The Interim Trustee shall have the power and authority to monitor Respondents' compliance with the terms of this order and with the terms of the divestiture agreement.
3. Within ten (10) days after appointment of the Interim Trustee, Respondents shall execute a trust agreement (in the form attached) that, subject to the prior approval of any applicable law, shall be in effect within ten (10) days of the date of the order. (0.1018 Tc iohgh)

The term of the Interim Trustee may be extended up to an additional two (2) years at the option of the Commission.

5. The Interim Trustee shall have full and complete access to Respondents' personnel, books, records, documents, facilities and technical information used for the research, manufacture, marketing, distribution and sale of P₂S₅ and relating to the Lawrence Plant Services, the Lawrence Plant Facilities, the P₂S₅ Technical Services, and the supply of elemental phosphorus, or to any other relevant information, as the Interim Trustee may reasonably request, including, but not limited to, all documents and records kept in the normal course of business that are used for the manufacture of P₂S₅, and all documents and records kept in the normal course of business that relate to the Lawrence Plant Services, Lawrence Plant Facilities, and the P₂S₅ Technical Services. Respondents shall cooperate with any reasonable request of the Interim Trustee. Respondents shall take no action to interfere with or impede the Interim Trustee's ability to monitor Respondents' compliance with Paragraphs III. and IV. of this Order and the divestiture agreement.
6. The Interim Trustee shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set. The Interim Trustee shall have authority to employ, at the expense of Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Trustee's duties and responsibilities. The Interim Trustee shall account for all expenses incurred, including fees for his or her services, subject to the approval of the Commission.
7. Respondents shall indemnify the Interim Trustee and hold the Interim Trustee harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Interim Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparations 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 misfeasance, gross negligence, willful or wanton acts, or bad faith by the Interim Trustee.
8. If the Commission determines that the Interim Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute trustee in the same manner as provided in Paragraph VI.A.1. of this Order.

9. The Commission may on its own initiative or at the request of the Interim Trustee issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this order and the divestiture agreement.
- B. The Interim Trustee shall report to the Commission in writing, concerning compliance by Respondents with the provisions of Paragraph VI. within ten (10) days from the date the Peak Divestiture Agreement is approved and every sixty (60) days thereafter.

VII.

IT IS FURTHER ORDERED that:

- A. If Respondents have not divested, absolutely and in good faith and with the Commission's prior approval, the Assets To Be Divested in accordance with Paragraphs II.A. and III.A. of this Order, the Commission may appoint a trustee to divest the Assets To Be Divested. 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 a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed 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.
- B. If a trustee is appointed by the Commission or a court pursuant to Paragraph VII.A. of this Order, Respondents shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:
 1. The Commission shall select the trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed trustee, Respondents shall be deemed to have consented to the selection of the proposed trustee.
 2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Assets To Be Divested.

3. Within ten (10) days after appointment of the trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this Order.
4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph VII.B.3. 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 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 trustee, by the court; provided, however, the Commission may extend this period only two (2) times.
5. The 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 trustee may request. Respondents shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the 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

carry out the trustee's duties and responsibilities. The 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 trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the

- B. Acquire all or part of the Augusta Assets to Be Divested or the P₂S₅ Assets to Be Divested.

IX.

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days of the date this Order is issued and every thirty (30) days thereafter until Respondents have obtained Commission approval for the acquirers and the manner of divestitures required by Paragraphs II. and III. of this Order,

XI.

IT IS FURTHER ORDERED that for the purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents made to their principal United States offices, Respondents shall permit any duly authorized representatives of the Commission:

- A. Access, during office hours of Respondents and in the presence of counsel, to all facilities, and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of the Respondents relating to compliance with this Order; and
- B. Upon five (5) days' notice to Respondents and without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

XII.

IT IS FURTHER ORDERED

[Confidential Appendices A, B, 1 and 2 Redacted From
Public Record Version of Decision & Order]