UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

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

In the Matter of **Novartis AG,** a corporation, **AstraZeneca, PLC,** a corporation, and **Syngenta AG,** a corporation to be formed.	)	Docket No. C-3979

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed combination of Novartis AG's ("Novartis") crop protection and seeds businesses and AstraZeneca PLC's ("Zeneca") crop protection business to form Syngenta AG ("Syngenta"), and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition intended to present 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 determined to accept the executed Consent Agreement and to place such Consent Agreement on the public record for a period of thirty (30) days, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues the following Order to Maintain Assets:

1. Novartis is a corporation organized, existing and doing business under and by virtue of the laws of Switzerland, with its office and principal place of business located at Lichtstrasse 35, CH-4002, Basel, Switzerland.

2. Zeneca is a corporation organized, existing and doing business under and by virtue of the laws of the United Kingdom, with its office and principal place of business located at 15 Stanhope Gate, London W1K 1LN, United Kingdom.

3. Syngenta will be formed as a corporation organized, existing and doing business under and by virtue of the laws of Switzerland with its office and principal place of business located in Basel, Switzerland.

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 HEREBY ORDERED that, as used in this Order to Maintain Assets, the following definitions shall apply:

A. "Acetochlor Acquirer" means Dow or, in the event Dow is not approved as the Acetochlor Acquirer or for any other reason does not acquire the Acetochlor Assets, any other Person who acquires the Acetochlor Assets, after approval by the Commission.

B. "Acetochlor Assets" means all assets and rights owned or held by Zeneca and relating to and/or used in the operation of the Acetochlor Business, including, without limitation, the assets listed below and including, without limitation, the assets specified in the Acetochlor Divestiture Agreement (which agreement shall not be construed to vary or contradict the terms of this Order):

   1. Zeneca's rights under and title and interest in the Monsanto Contracts;

2. Zeneca's rights, title, and interest in all EPA, state, and foreign registrations and approvals relating to the manufacture or sale of all products of the Acetochlor Business;

3. Zeneca's rights, title, and interest in all Acetochlor Registration Data (except in the case of Safener 29148, which Zeneca shall exclusively license for uses relating to all products of the Acetochlor Business), submissions and supporting data and documents, including, without limitation, all labels, label extensions, or planned or pending label extensions for any application;

4. Zeneca's rights, title, and interest in all trademarks and trade names for all products of the Acetochlor Business;

5. Zeneca's rights, title, and interest in the Acetochlor Intellectual Property;

6. exclusive, perpetual, royalty-free, and transferable licenses under the Zeneca Intellectual Property for uses relating to all products of the Acetochlor Business and copies of all research materials and know-how relating thereto;

7. an exclusive, perpetual, royalty-free, and transferable license for the Glutathione Transferase (GST27) resistance gene to produce plants which are labeled as acetochlor tolerant;

8. Zeneca's rights under and title and interest in all contracts or agreements with customers, suppliers, sales representatives, distributors, agents, licensors, licensees, consignors, and consignees other than multi-product contracts as defined in the Acetochlor Divestiture Agreement;

9. all inventories of all products of the Acetochlor Business;

10. all research materials and know-how of the Acetochlor Business;

11. all Mesotrione rights as set forth in Section 5.04 of the Acetochlor Divestiture Agreement;

12. the Mesotrione Supply Agreement as defined in the Acetochlor Divestiture Agreement; and

13. all books, records, and files, customer lists, customer records and files, vendor lists, catalogs, sales promotion literature, advertising materials, technical information, management information systems, software, inventions, specifications, designs, drawings, processes, and quality control data related to and primarily used

in the Acetochlor Business.

C. "Acetochlor Business" means the research, development, registration, manufacture, formulation, licensing, sale, and distribution by Zeneca of all unmixed and mixed acetochlor products, in any market anywhere in the world, except for the following mixtures: (1) Zeneca's mixtures of acetochlor and EPTC, (2) Zeneca's mixtures of acetochlor and fluorochlorodone (including twin/co-packs of acetochlor and fluorochlorodone), and (3) Zeneca's proposed mixtures of acetochlor and mesotrione.

D. "Acetochlor Divestiture Agreement" means the Asset Purchase Agreement between Zeneca and Dow dated as of October 17, 2000, and its related agreements, schedules, exhibits and appendices.

E. "Commission" means the Federal Trade Commission.

F. "Decision and Order" means the Decision and Order incorporated with this Order to Maintain Assets into the Consent Agreement.

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

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

I. "Respondents" means Novartis, Zeneca, and Syngenta, respectively and collectively.

J. "Strobilurin Acquirer" means Bayer or, in the event Bayer is not approved as the Strobilurin Acquirer or for any other reason does not acquire the Strobilurin Assets, any other Person who acquires the Strobilurin Assets, after approval by the Commission.

K. "Strobilurin Assets" means all assets and rights owned or held by Novartis and relating to and/or used in the operation of the Strobilurin Business, including, without limitation, the assets listed below and including, without limitation, those assets specified in the Strobilurin Divestiture Agreement (which agreement shall not be construed to vary or contradict the terms of this Order):

1. Novartis' rights, title, and interest in all machinery, furniture, fixtures, equipment, tools, and other tangible personal property at the Muttenz Production Facility used for or necessary for the manufacture of trifloxystrobin, trifloxystrobin intermediates, or compounds containing trifloxystrobin;

2. all rights, licenses, permits, registrations, know-how, technical information, and other permissions or expertise necessary to manufacture trifloxystrobin, trifloxystrobin intermediates, or compounds containing trifloxystrobin at the Muttenz Production Facility;

3. Novartis' lease with Clariant for the land and buildings of the Muttenz Plant, infrastructure and support services;

4. Novartis' rights, title, and interest in all United States Environmental Protection Agency, state, and foreign registrations and approvals relating to the manufacture or sale of strobilurin fungicides or compounds containing strobilurin fungicides;

5. Novartis' rights, title, and interest in all Strobilurin Registration Data, submissions and supporting data and documents, including, without limitation, all labels, label extensions, or planned or pending label extensions for any application;

6. Novartis' rights, title, and interest in all trademarks and trade names for trifloxystrobin, any compound containing trifloxystrobin, or any other strobilurin fungicide;

7. Novartis' rights, title, and interest in the Strobilurin Intellectual Property, provided, however, that Novartis may receive (i) an exclusive (except as to the Strobilurin Acquirer), perpetual, royalty-free, and transferable license back from the Strobilurin Acquirer to use the Strobilurin Intellectual Property identified in confidential Appendix 3 of the Decision and Order outside of the field of strobilurin fungicides, and (ii) a non-exclusive perpetual, royalty-free and transferable license from the Strobilurin Acquirer to use the Strobilurin Intellectual Property not identified in confidential Appendix 3 outside of the field of strobilurin fungicides;

8. exclusive, perpetual, royalty-free, and transferable licenses under the Novartis Intellectual Property for fungicidal uses relating to trifloxystrobin, compounds containing trifloxystrobin, or any other strobilurin fungicide of the Strobilurin Business, and copies of all research materials and know-how relating thereto;

9. non-exclusive, perpetual, royalty-free, and transferable licenses under the Novartis Intellectual Property for non-fungicidal uses relating to trifloxystrobin, compounds containing trifloxystrobin, or any other strobilurin fungicide of the Strobilurin Business, and copies of all research materials and know-how relating thereto;

10. Novartis' rights under and title and interest in all contracts or agreements with customers, suppliers, sales representatives, distributors, agents, licensors, licensees, consignors, and consignees related to and primarily used in the

Strobilurin Business;

11. all inventories of trifloxystrobin and compounds containing trifloxystrobin;

12. all research materials and know-how of the Strobilurin Business; and

13. all books, records, and files, customer lists, customer records and files, vendor lists, catalogs, sales promotion literature, advertising materials, technical information, management information systems, software, inventions, specifications, designs, drawings, processes, and quality control data related to and primarily used in the Strobilurin Business.

L. "Strobilurin Business" means the research, development, registration, manufacture, formulation, licensing, sale and distribution of the existing strobilurin fungicide products and product developments of Novartis, in any market anywhere in the world, including all existing straight products or combinations therewith.

M. "Strobilurin Divestiture Agreement" means the Asset Purchase Agreement between Novartis and Bayer dated as of September 7, 2000, and its related agreements, schedules, exhibits and appendices.

N. "Zeneca" means AstraZeneca PLC, its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Zeneca, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

provided, however, any term used in this Order to Maintain Assets that is not defined in this Paragraph I has the same meaning as defined in the Decision and Order.

II.

IT IS FURTHER ORDERED that:

A. Between the date Respondents sign the Consent Agreement and the date the Acetochlor Assets are completely divested, Respondents shall:

1. Maintain the Acetochlor Assets in substantially the same condition (except for normal wear and tear and sales of inventory in the ordinary course) existing at the time respondent signs the Consent Agreement; preserve intact the Acetochlor Assets; keep available the services of the current officers, employees, and agents of such businesses; and maintain the relations and good will with suppliers, customers, landlords, creditors, employees, agents, and others having business relationships with such businesses;

2. Take such action that is consistent with the past practices of Respondents in connection with the Acetochlor Business and is taken in the ordinary course of the normal day-to-day operations of Respondents; and

3. Not take any affirmative action, or fail to take any action within their control, as a result of which the viability, competitiveness, and marketability of the Acetochlor Assets would be diminished.

B. The purpose of this Order to Maintain Assets is to: (i) preserve the Acetochlor Assets as a viable, competitive, and ongoing business and (ii) prevent interim harm to competition.

III.

IT IS FURTHER ORDERED that:

A. Between the date Respondents sign the Consent Agreement and the date the Strobilurin Assets are completely divested, Respondents shall:

1. Maintain the Strobilurin Assets in substantially the same condition (except for normal wear and tear and sales of inventory in the ordinary course) existing at the time respondent signs the Consent Agreement; preserve intact the Strobilurin Assets; keep available the services of the current officers, employees, and agents of such businesses; and maintain the relations and good will with suppliers, customers, landlords, creditors, employees, agents, and others having business relationships with such businesses;

2. Take such action that is consistent with the past practices of Respondents in connection with the Strobilurin Business and is taken in the ordinary course of the normal day-to-day operations of Respondents; and

3. Not take any affirmative action, or fail to take any action within their control, as a result of which the viability, competitiveness, and marketability of the Strobilurin Assets would be diminished.

B. The purpose of this Order to Maintain Assets is to: (i) preserve the Strobilurin Assets as a viable, competitive, and ongoing business and (ii) prevent interim harm to competition.

IV.

IT IS FURTHER ORDERED that:

A. At any time after Respondents sign the Consent Agreement, the Commission may appoint

one or more persons to serve as Monitor Trustee to ensure that Respondents expeditiously perform their obligations as required by this Order to Maintain Assets and the Decision and Order.

B. If a Monitor Trustee is appointed pursuant this Paragraph, Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and

the Decision and Order.

6. The Monitor 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 Monitor 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 Monitor Trustee's duties and responsibilities. The Monitor 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 Monitor Trustee and hold the Monitor Trustee harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Monitor 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 losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Monitor Trustee.

8. If at any time the Commission determines that the Monitor Trustee has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve, the Commission may appoint a substitute to serve as Monitor Trustee in the same manner as provided in this Paragraph.

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

10. The Monitor Trustee shall report in writing to the Commission concerning Respondents' compliance with this Order to Maintain Assets and the Decision and Order (i) every sixty (60) days for a period of six months from the date Respondent signs the Consent Agreement and (ii) annually thereafter on the anniversary of the date this Order to Maintain Assets becomes final during the remainder of the Monitor Trustee's period of appointment.

V.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondents such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance

obligations arising out of this Order to Maintain Assets.

VI.

IT IS FURTHER ORDERED that for the purposes of determining or securing compliance with this Order to Maintain Assets, 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 to Maintain Assets; 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.

VII.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate on the earlier of:

A. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or

B. Three (3) business days after termination of the duties of the Monitor Trustee appointed pursuant to this Order to Maintain Assets.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: November 1, 2000