



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

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

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

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

## **ORDER**

### **I.**

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

- A. “Bayer” means Bayer AG, its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Bayer AG, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Aventis” means Aventis S.A., its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Aventis S.A., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “ACS” means Aventis CropScience Holding S.A., its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Aventis CropScience Holding S.A., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- D. “Commission” means the Federal Trade Commission.

- E. “Acetamiprid” means the chemical compound (E)-N<sup>1</sup>-[(6-chloro-3-pyridyl) methyl]-N<sup>2</sup>-cyano-N<sup>1</sup>-methylacetamidine.
- F. “Acetamiprid Assets” means Aventis’ right, title, and interest in and to all assets, tangible or intangible, relating to the Acetamiprid Business, including, but not limited to:
1. All real property (together with appurtenances, licenses, and permits) owned, leased or otherwise held by Aventis;
  2. All personal property owned, leased, or otherwise held by Aventis;
  3. All inventories, stores, and supplies held by, or under the control of Aventis;
  4. All Intellectual Property relating primarily to the Acetamiprid Business owned by or licensed to Aventis, including, but not limited to, that identified in Confidential Appendix A;
  5. All rights of Aventis under any contract (other than multi-product contracts), including but not limited to licenses, leases, customer contracts, supply agreements, and procurement contracts;
  6. All pending and issued governmental approvals, registrations, consents, licenses, permits, waivers, or other authorizations held by Aventis, including foreign equivalents;
  7. All rights of Aventis under any warranty and guarantee, express or implied;
  8. All items of prepaid expense owned by Aventis; and
  9. All separately maintained, and all relevant portions of not separately maintained, books, records, and files held by, or under the control of, Aventis.

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

- G. “Acetamiprid Business” means Respondent Aventis’ business of researching, developing, registering, formulating, manufacturing, licensing, distributing, marketing, and selling all products containing Acetamiprid, including products in development, in any market anywhere in the world, prior to the Acquisition Date (and such business as conducted by Bayer after the Acquisition Date pursuant to this Order and the Order to Hold Separate); provided, however, that if Respondents retain any of the Excepted Acetamiprid Assets as permitted in Paragraph II.B. of this Order, the Acetamiprid Business shall not include the business described in this Paragraph I.G. relating exclusively to any market in Mexico, South America, Central America, or Africa.
- H. “Acetamiprid Agreements” means all agreements between Nippon Soda and Aventis relating to the Acetamiprid Business.
- I. “Acetamiprid Licensed Intellectual Property” means all Intellectual Property relating (but not relating primarily) to the Acetamiprid Business as of the date of divestiture of the Acetamiprid Assets.
- J. “Acquirer” means any Person that acquires any of the Pesticide Assets pursuant to this Order.
- K. “Acquisition” means the proposed acquisition described in (i) the Stock Purchase Agreement dated as of October 2, 2001, among Aventis Agriculture, Hoechst Aktiengesellschaft, and Bayer AG, and (ii) the Stock Purchase Agreement dated as of October 2, 2001, among Schering Aktiengesellschaft, SCIC Holdings LLC, and Bayer AG.
- L. “Acquisition Date” means the date of consummation of the Acquisition.
- M. “Additional Flucarbazone Assets” means Bayer’s right, title, and interest in and to all assets, tangible or intangible, relating to the Olympus Business, including, but not limited to:
1. All real property (together with appurtenances, licenses, and permits) owned, leased or otherwise held by Bayer;
  2. All personal property owned, leased, or otherwise held by Bayer;
  3. The Kansas City Production Assets;
  4. All inventories, stores, and supplies held by, or under the control of Bayer;
  5. All Intellectual Property owned by or licensed to Bayer;



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

2. All personal property owned, leased, or otherwise held by Aventis;
3. The Elbeuf Production Facility;
4. All inventories, stores, and supplies held by, or under the control of Aventis;
5. All Intellectual Property relating primarily to the Fipronil Business owned by or licensed to Aventis, including, but not limited to, that identified in Confidential Appendix B;
6. All rights of Aventis under any contract (other than multi-product contracts), including, but not limited to, licenses, leases, customer contracts, supply agreements, and procurement contracts;
7. All governmental approvals, registrations, consents, licenses, permits, waivers, or other authorizations held by Aventis, including foreign equivalents (except for a co-ownership right in Bayer in the Fipronil technical registration and the underlying data packages to the extent necessary to satisfy Bayer's obligations under the Merial Agreements);
8. All rights of Aventis under any warranty and guarantee, express or implied;
9. All items of prepaid expense owned by Aventis; and
10. All separately maintained, and all relevant records of not separately maintained, books, records, and files held by, or under the control of, Aventis.

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

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





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

- FF. "Flucarbazone Business" means Respondent Bayer's business of researching, developing, registering, formulating, manufacturing, licensing, distributing, marketing, and selling all products containing Flucarbazone, including products in development, in any market anywhere in the world.
- GG. "Flucarbazone Licensed Intellectual Property" means all Intellectual Property relating (but not relating primarily) to the Flucarbazone Business as of the date of divestiture of the Flucarbazone Assets.
- HH. "Folex Acquirer" means the Person that acquires the Folex Assets pursuant to this Order.
- II. "Folex Assets" means Aventis' right, title, and interest in and to all assets, tangible or intangible, relating to the Folex Business, including, but not limited to:
1. All real property (together with appurtenances, licenses, and permits) owned, leased, or otherwise held by Aventis;
  2. All personal property owned, leased, or otherwise held by Aventis;
  3. All inventories, stores, and supplies held by, or under the control of Aventis;
  4. All Intellectual Property relating primarily to the Folex Business owned by or licensed to Aventis, including, but not limited to, that described in Confidential Appendix D;
  5. All rights of Aventis under any contract (other than multi-product contracts), including, but not limited to, licenses, leases, customer contracts, supply agreements, and procurement contracts;
  6. All pending and issued governmental approvals, registrations, consents, licenses, permits, waivers, or other authorizations held by Aventis, including foreign equivalents;
  7. All rights of Aventis under any warranty and guarantee, express or implied;

8. All items of prepaid expense owned by Aventis; and
9. All separately maintained, and all relevant portions of not separately maintained, books, records, and files held by, or under the control of, Aventis.

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



- WW. “Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity.
- XX. “Pesticide Assets” means the Acetamiprid Assets, Fipronil Assets, Flucarbazono Assets, and Folex Assets, and if divested by the Divestiture Trustee pursuant to Paragraphs X, XI, or XII of this Order, the Thiacloprid Assets and Additional Flucarbazono Assets.
- YY. “Pesticide Businesses” means the Acetamiprid Business, Fipronil Business, Flucarbazono Business, and Folex Business, and if divested by the Divestiture Trustee pursuant to Paragraphs X, XI, or XII of this Order, the Thiacloprid Business and Olympus Business.
- ZZ. “Pesticide Licensed Intellectual Property” means the Acetamiprid Licensed Intellectual Property, Fipronil Licensed Intellectual Property, Flucarbazono Licensed Intellectual Property, and Folex Licensed Intellectual Property, and if divested by the Divestiture Trustee pursuant to Paragraphs X, XI, or XII of this Order, the Thiacloprid Licensed Intellectual Property and the Olympus Licensed Intellectual Property.
- AAA. “Propoxycarbazono” 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].
- BBB. “Respondents” means Bayer and Aventis, individually and collectively.
- CCC. “Technical Assistance” means providing expert advice, assistance, and training relating to operation of any of the Pesticide Businesses, including, but not limited to, providing administrative services, reasonable and timely access to Respondents’ manufacturing facilities for the purpose of inspecting manufacturing operations, and reasonable access to the Pesticide Licensed Intellectual Property and to personnel familiar with such intellectual property.
- DDD. “Thiacloprid” means the chemical compound [3-[6-chloro-3-pyridinyl)methyl]2-thiazolidinylidene]-cyanamide.
- EEE. “Thiacloprid Acquirer” means the Person that acquires the Thiacloprid Assets pursuant to this Order.
- FFF. “Thiacloprid Assets” means Bayer’s right, title, and interest in and to all assets, tangible or intangible, relating to the Thiacloprid Business, including, but not limited to:
1. All real property (together with appurtenances, licenses, and permits) owned, leased, or otherwise held by Bayer;

2. All personal property owned, leased, or otherwise held by Bayer;
3. All inventories, stores, and supplies held by, or under the control of Bayer;
4. All Intellectual Property relating primarily to the Thiacloprid Business owned by or licensed to Bayer;
5. All rights of Bayer under any contract (other than multi-product contracts), including, but not limited to, licenses, leases, customer contracts, supply agreements, and procurement contracts;
6. All pending and issued governmental approvals, registrations, consents, licenses, permits, waivers, or other authorizations held by Bayer, including foreign equivalents (except for a co-ownership right in Bayer in the Thiacloprid technical registration);
7. All rights of Bayer under any warranty and guarantee, express or implied;
8. All items of prepaid expense owned by Bayer; and
9. All separately maintained, and all relevant portions of not separately maintained, books, records, and files held by, or under the control of, Bayer.

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

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

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

## II.

**IT IS FURTHER ORDERED** that:

- A. Bayer shall divest the Acetamiprid Assets at no minimum price, absolutely and in good faith, no later than 180 days from the date the Commission accepts the Consent Agreement for public comment, to a Person that receives the prior approval of the Commission and in a manner, and pursuant to an acquisition agreement, that receives the prior approval of the Commission.
- B. Respondents shall use their best efforts to obtain the consent of Nippon Soda to the assignment of the Acetamiprid Agreements. If Nippon Soda does not consent to the assignment of the Acetamiprid Agreements relating exclusively to the Acetamiprid Business in Mexico, South America, Central America, and Africa, Bayer shall not be required to divest the Excepted Acetamiprid Assets; provided, however, that nothing in this Paragraph II.B. shall relieve Bayer of the obligation to divest the Acetamiprid Assets (with or without the Excepted Acetamiprid Assets as permitted by this Paragraph II.B.) pursuant to this Paragraph II no later than 180 days from the date the Commission accepts the Consent Agreement for public comment.
- C. Bayer shall comply with all terms of the acquisition agreement described in Paragraph II.A. of this Order, and any breach by Bayer of any term of the acquisition agreement shall constitute a violation of this Order. In the event any term of the acquisition agreement varies from or contradicts any term in Paragraphs I through XIX of this Order (“Order Term”) to the extent Bayer cannot fully comply with both terms, the Order Term shall determine Bayer’s obligations under this Order.
- D. No later than the date Bayer divests the Acetamiprid Assets, Bayer shall grant to the Acetamiprid Acquirer (pursuant to one or more agreements that receive the prior approval of the Commission):
1. A worldwide, royalty-free, perpetual, irrevocable, sublicenseable, transferable license to Bayer’s rights to the Acetamiprid Licensed Intellectual Property to invent, develop, patent, make, have made, use, sell, offer for sale and import any product (except for products containing an existing patented molecule of Respondents retained by Bayer or any patented molecule invented or acquired by Bayer after the Acquisition Date) anywhere in the world. Such license shall be (i) exclusive (even as to Bayer) for any product containing an existing patented molecule included in the Acetamiprid Assets or any patented molecule invented or acquired by the Acetamiprid Acquirer after the Acquisition Date and (ii) non-exclusive for any other product.
  2. An irrevocable, worldwide, perpetual immunity from suit by Bayer based on claims of infringement under all of Respondents’ Intellectual Property for the developing, making, having made, using, having used, selling, offering for sale, having sold and importing of any products containing Acetamiprid for any use anywhere in the world (except for products containing an existing patented molecule of Respondents retained by Bayer or any patented molecule invented or acquired by Bayer after the Acquisition Date). Such



- A. Bayer shall divest the Fipronil Assets at no minimum price, absolutely and in good faith, no later than 180 days from the date the Commission accepts the Consent Agreement for public comment, to a Person that receives the prior approval of the Commission and in a manner, and pursuant to an acquisition agreement, that receives the prior approval of the Commission.
- B. Bayer shall comply with all terms of the acquisition agreement described in Paragraph III.A. of this Order, and any breach by Bayer of any term of the acquisition agreement shall constitute a violation of this Order. In the event any term of the acquisition agreement varies from or contradicts any term in Paragraphs I through XIX of this Order (“Order Term”) to the extent Bayer cannot fully comply with both terms, the Order Term shall determine Bayer’s obligations under this Order.
- C. No later than the date Bayer divests the Fipronil Assets, Bayer shall grant to the Fipronil Acquirer (pursuant to one or more agreements that receive the prior approval of the Commission):
1. A worldwide, royalty-free, perpetual, sublicenseable, irrevocable, transferable license to Bayer’s rights to the Fipronil Licensed Intellectual Property to invent, develop, patent, make, have made, use, sell, offer for sale, and import any product (except for products containing an existing patented molecule of Respondents retained by Bayer or any patented molecule invented or acquired by Bayer after the Acquisition Date) anywhere in the world. Such license shall be (i) exclusive (even as to Bayer) for any product containing an existing patented molecule included in the Fipronil Assets or any patented molecule invented or acquired by the Fipronil Acquirer after the Acquisition Date and (ii) non-exclusive for any other product.
  2. An irrevocable, worldwide, perpetual immunity from suit by Bayer based on claims of infringement under all of Respondents’ Intellectual Property for the developing, making, having made, using, having used, selling, offering for sale, having sold, and importing of any product containing Fipronil for any use anywhere in the world (except for products containing an existing patented molecule of Respondents retained by Bayer or any patented molecule invented or acquired by Bayer after the Acquisition Date). Such immunity shall extend to any person deriving its authority from the Fipronil Acquirer.
- D. Nothing in this Order shall prevent Bayer from entering into an agreement with the Fipronil Acquirer in which the Fipronil Acquirer shall grant to Bayer:
1. A worldwide, royalty-free, perpetual, irrevocable, sublicenseable, transferable license to the Fipronil Acquirer’s rights to any Intellectual Property included in the Fipronil Assets that does not relate exclusively to the Fipronil Business to develop, patent, make, have made, use, sell, offer for sale, and import any product (except for products



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

2. A worldwide, royalty-free, exclusive (except as to the Fipronil Acquirer), perpetual, irrevocable, sublicenseable, transferable license to the Fipronil Acquirer's rights to any Intellectual Property included in the Fipronil Assets to develop, patent, make, have made, use, sell, offer for sale, and import any product containing Fipronil for Non-Agricultural Use anywhere in the world; provided, however, that Bayer may obtain such license only if it would not impair the viability of the Fipronil Acquirer, and the Commission approves the divestiture of the Fipronil Assets with such a license.
- E. Nothing in this Order shall prevent Bayer from entering into a supply agreement with the Fipronil Acquirer (i) to supply Fipronil to Bayer on cost-plus terms in amounts necessary to cover Bayer's needs for Fipronil for Non-Agricultural Use for up to two years, which term may be extended, subject to Commission approval, and (ii) to supply Fipronil intermediates to Bayer on cost-plus terms in amounts necessary to cover Bayer's needs until expiration of any and all patents covering such intermediates.
- F. Respondents shall use their best efforts to obtain the necessary consents to assign to the Fipronil Acquirer their rights and obligations in (i) the Merial Agreements; (ii) the Scotts Fipronil Supply Agreement dated September 30, 1998, and the Scotts Research Agreement (at least to the extent relating to Fipronil-related research), (iii) the Amended and Restated Fipronil License Agreement with Clorox dated January 31, 2002, (iv) the U.S. Licence Agreement with TechPac dated December 13, 1999 and related agreements, and (v) the Sumitomo Fipronil Supply Agreement dated April 7, 1998; provided, however, that if Respondents are unable to obtain such consents, Bayer may enter into an agreement, subject to prior approval of the Commission, with the Fipronil Acquirer to obtain a supply of Fipronil to enable Bayer to fulfill its obligations under the supply agreements described in this Paragraph III.F.
- G. Upon the request of the Fipronil Acquirer made at the time of divestiture of the Fipronil Assets, pursuant to an agreement that receives the prior approval of the Commission, Bayer shall provide Technical Assistance to the Fipronil Acquirer, for a period not to exceed 12 months from the date Bayer divests the Fipronil Assets, sufficient to enable the Fipronil Acquirer to operate the Fipronil Business in substantially the same manner as that employed by Respondents; provided, however, that Bayer shall not (i) require the Fipronil Acquirer to pay compensation for Technical Assistance that exceeds the Direct Cost of providing such goods

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

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

#### IV.

**IT IS FURTHER ORDERED** that:

- A. Bayer shall divest the Flucarbazone Assets at no minimum price, absolutely and in good faith, no later than 180 days from the date the Commission accepts the Consent Agreement for public comment, to a Person that receives the prior approval of the Commission and in a manner, and pursuant to an acquisition agreement, that receives the prior approval of the Commission.
- B. Bayer shall comply with all terms of the acquisition agreement described in Paragraph IV.A. of this Order, and any breach by Respondents of any term of the acquisition agreement shall constitute a violation of this Order. In the event any term of the acquisition agreement varies from or contradicts any term in Paragraphs I through XIX of this Order ("Order Term") to the extent Bayer cannot fully comply with both terms, the Order Term shall determine Bayer's obligations under this Order.
- C. No later than the date Bayer divests the Flucarbazone Assets, Bayer shall grant to the Flucarbazone Acquirer (pursuant to one or more agreements that receive the prior approval of the Commission):
1. A worldwide, royalty-free, perpetual, sublicenseable, irrevocable, transferable license to Bayer's rights to the Flucarbazone Licensed Intellectual Property to invent, develop, patent, make, have made, use, sell, offer for sale and import any product (except for products containing an existing patented molecule of Respondents retained by Bayer or "Order Tagreement Tagree

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

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

- B. The Amvac Acquisition Agreement is incorporated by reference and made a part of this Order as Confidential Appendix E. Bayer shall comply with all terms of the Amvac Acquisition Agreement, and any breach by Bayer of any term of the Amvac Acquisition Agreement shall constitute a violation of this Order. In the event any term of the Amvac Acquisition Agreement varies from or contradicts any term in Paragraphs I through XIX of this Order (“Order Term”) to the extent that Bayer cannot fully comply with both terms, the Order Term shall determine Bayer’s obligations under this Order.
- C. If, at the time the Commission determines to make this Order final, the Commission determines that Amvac Corporation is not acceptable as the Folex Acquirer, or that the Amvac Acquisition Agreement is not an acceptable manner of divestiture, and so notifies Bayer, Bayer shall immediately terminate or rescind the Amvac Acquisition Agreement and divest the Folex Assets:
1. At no minimum price, absolutely and in good faith, no later than 180 days from the date this Order becomes final, to a Person that receives the prior approval of the Commission and in a manner, and pursuant to an acquisition agreement, that receives the prior approval of the Commission.
  2. Bayer shall comply with all terms of the acquisition agreement described in Paragraph V.C.1. of this Order, and any breach by Bayer of any term of the acquisition agreement shall constitute a violation of this Order. In the event any term of the acquisition agreement varies from or contradicts any term in Paragraphs I through XIX of this Order (“Order Term”) to the extent Bayer cannot fully comply with both terms, the Order Term shall govern Bayer’s obligations under this Order.
- D. No later than the date Bayer divests the Folex Assets, Bayer shall grant to the Folex Acquirer (pursuant to one or more agreements that receive the prior approval of the Commission):
1. A worldwide, royalty-free, non-exclusive, perpetual, sublicenseable, irrevocable, transferable license to Bayer’s rights to the Folex Licensed Intellectual Property to invent, develop, patent, make, have made, use, sell, offer for sale, and import any product (except for products containing an existing patented molecule of Respondents retained by Bayer or any patented molecule invented or acquired by Bayer after the Acquisition Date) anywhere in the world. Such license shall be (i) exclusive (even as to Bayer) for any product containing an existing patented molecule included in the Folex Assets or any patented molecule invented or acquired by the Folex Acquirer and (ii) non-exclusive for any other product.

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

E.

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

## VI.

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

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

## VII.

**IT IS FURTHER ORDERED** that:

- A. Except in the course of performing their obligations under any Divestiture Agreement or this Order, Respondents shall not (i) provide, disclose or otherwise make available any Non-Public Pesticide Information to any Person and (ii) use any Non-Public Pesticide Information for any reason or purpose.
  - B. Respondents shall disclose Non-Public Pesticide Information (i) only to those Persons who require such information for the purposes permitted under Paragraph VII.A. of this Order, (ii) only to the extent such part of the Non-Public Pesticide Information is so required, and (iii) only to those Persons who agree in writing to maintain the confidentiality of such information.
  - C. Respondents shall enforce the terms of this Paragraph VII as to any Person and take such action as is necessary to cause each such Person to comply with the terms of this Paragraph
- Em6pondents s6all disc Para31 Tc 0.s I Trough XIX
- B. Re933:



1. The Monitor shall have the power and authority to monitor Respondent's compliance with the terms of this Order and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor pursuant to the terms of this Order and in a manner consistent with the purposes of this Order.
2. Within ten days after it signs the Consent Agreement, Respondent shall execute an agreement that, subject to the approval of the Commission, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondent's compliance with the terms of this Order in a manner consistent with the purposes of this Order. If requested by Respondents, the Monitor shall sign a confidentiality agreement prohibiting the use, or disclosure to anyone other than the Commission, of any competitively sensitive or proprietary information gained as a result of his or her role as Monitor.
3. The Monitor's power and duties under this Paragraph IX shall terminate sixty days after the Monitor has completed his or her final report pursuant to Paragraph IX.B.8.(ii), or at such other time as directed by the Commission.
4. The Monitor shall have full and complete access to Respondents' books, records, documents, personnel, facilities and technical information relating to compliance with this Order, or to any other relevant information, as the Monitor may reasonably request. Respondents shall cooperate with any reasonable request of the Monitor. Respondents shall take no action to interfere with or impede the Monitor's ability to monitor Respondents' compliance with this Order.
5. The Monitor shall serve, without bond or other security, at the expense of Respondent, on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of Respondent, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. The Monitor shall account for all expenses incurred, including fees for his or her services, subject to the approval of the Commission.
6. Respondents shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from the Monitor's gross negligence or wilful misconduct. For purposes of this Paragraph IX.B.6., the term "Monitor" shall include all Persons retained by the Monitor pursuant to Paragraph IX.B.5. of this Order.



Commission, Respondents shall consent to the appointment of an Divestiture Trustee in such action. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a



reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from gross negligence or willful misconduct by the Divestiture Trustee. For purposes of this Paragraph X.C.8., the term “Divestiture Trustee” shall include all Persons retained by the Divestiture Trustee pursuant to Paragraph X.C.7. of this Order.

9. If the Divestiture Trustee ceases to act or fails to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph X for appointment of the initial Divestiture Trustee.
  10. The Divestiture Trustee shall have no obligation or authority to operate or maintain the assets to be divested.
  11. The Divestiture Trustee shall report in writing to the Commission every sixty days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
- D. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

## **XI.**

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

- A. No later than the date the Divestiture Trustee divests the Thiacloprid Assets, Bayer shall grant to the Thiacloprid Acquirer (pursuant to one or more agreements that receive the prior approval of the Commission):
  1. A worldwide, royalty-free, perpetual, sublicenseable, irrevocable, transferable license to Bayer's rights to the Thiacloprid Licensed Intellectual Property to invent, develop, patent, make, have made, use, sell, offer for sale, and import any product (except for products containing an existing patented molecule of Respondents retained by Bayer or any patented molecule invented or acquired by Bayer after the Acquisition Date) anywhere in the world. Such license shall be (i) exclusive (even as to Bayer) for any product containing an existing patented molecule included in the Thiacloprid Assets or any patented molecule invented or acquired by the Thiacloprid Acquirer and (ii) non-exclusive for any other product.

2. An irrevocable, worldwide, perpetual immunity from suit by Bayer based on claims of infringement under all of Respondents' Intellectual Property for the developing, making, having made, using, having used, selling, offering for sale, having sold, and importing of any product containing Thiachloprid for any use anywhere in the world (except for products containing an existing patented molecule of Respondents retained by Bayer or any patented molecule invented or acquired by Bayer after the Acquisition Date). Such immunity shall extend to any person deriving its authority from the Thiachloprid Acquirer.
- B. Nothing in this Order shall prevent the Divestiture Trustee from obtaining agreement with the Thiachloprid Acquirer in which the Thiachloprid Acquirer shall grant to Bayer:
1. A worldwide, royalty-free, perpetual, irrevocable, sublicenseable, transferable license 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, subject to Paragraph XI.B.2. of this Order, 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 license shall be (i) exclusive (even as to the Thiachloprid Acquirer) for any product containing an existing patented molecule of Respondents retained by Bayer or any patented molecule invented or acquired by Bayer after the Acquisition Date and (ii) non-exclusive for any other product.
  2. A worldwide, royalty-free, exclusive (except as to the Thiachloprid Acquirer), perpetual, irrevocable, sublicenseable, transferable license 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 license only if it would not impair the viability of the Thiachloprid Acquirer, and the Commission approves the divestiture of the Thiachloprid Assets with such a license.
- C. Bayer may propose an agreement to allow the Thiachloprid Acquirer to supply to Bayer Thiachloprid (if Bayer obtains a license pursuant to Paragraph XI.B.2. of this Order) and Clothianadin 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

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

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



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

**XV.**

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

**XVI.**

**IT IS FURTHER ORDERED** that:

- A. Bayer shall not, without providing advance written notification to the Commission, acquire, directly or indirectly, through subsidiaries or otherwise, any ownership, leasehold, or other interest, in whole or in part, or enter into any kind of joint venture with Merial.
- B. Bayer shall provide the prior notification required by Paragraph XVI.A. on the Notification and  
iv)XVI Tc 0.3017 inNotificatonly/F0 ng  
Bayer shall not,07ithout pr07ithoification required by ParagNre,

Provided, however, that prior notification shall not be required by this Paragraph XVI for a transaction  
34

SEAL

ISSUED:

Confidential Appendices A-F

[Redacted From Public Record Version]