9910071

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 **Hoechst AG,** a corporation; and **Rhône-Poulenc S.A.,** a corporation; to be renamed **Aventis S.A.**, a corporation.	Docket No. C-3919 DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the proposed merger between Respondent Hoechst AG and Respondent Rhône-Poulenc S.A. into Respondent Aventis S.A., a new entity, 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 Order ("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 accepted the executed Agreement Containing Consent Order 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 issues its Complaint, makes the following jurisdictional findings and enters the following Order:

A. Respondent Hoechst is a corporation organized, existing and doing business under and by virtue of the laws of Germany, with its office and principal place of business located at D-65926 Frankfurt am Main, Germany.

B. Respondent RP is a corporation organized, existing and doing business under and by virtue of the laws of France, with its office and principal place of business located at 25 Quai Paul Doumer, F-92408 Courbevoie, France, that is to be renamed Aventis S.A. with its registered office relocated at Strasbourg (Bas-Rhin)-Espace Europeen de L'Entreprise, 67300 Schiltigheim, France pursuant to the Business Combination Agreement between Hoechst and RP dated May 20, 1999, after consummation of that Agreement.

C. 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. "Hoechst" means Hoechst AG, its directors, officers, employees, agents, and representatives, predecessors, successors, and assigns; the subsidiaries, divisions,

groups and affiliates controlled by Hoechst, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

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

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

D. "Respondents" means Hoechst, RP and Aventis.

E. "Commission" means the Federal Trade Commission.

F. “Revasc” means any pharmaceutical preparation containing the drug substance desirudin (chemical name: desulfatohirudin) that is the subject of the Agreement dated June 25, 1998 by and between Novartis Pharma AG and Rhône-Poulenc Rorer Inc., any of its constituent elements, active ingredients or intermediaries, including, but not limited to, vials containing the lyophilized desirudin and solvent ampules needed for reconstitution, and all rights relating to the research, development, manufacture and sale of Revasc, including without limitation Revasc Patent Rights and Know-how granted in the Agreement dated June 25, 1998 by and between Novartis Pharma AG and Rhône-Poulenc Rorer Inc.

G. “Revasc License” means the rights that RP licensed from Novartis pursuant to the Agreement dated June 25, 1998 by and between Novartis Pharma AG and Rhône-Poulenc Rorer Inc., attached hereto as non-public Appendix I.

H. “Revasc Divestiture Assets” means all rights granted to RP pursuant to the Revasc License and all assets and contracts that are related to the research, development, marketing, sale or use of Revasc.

I. “Novartis” means Novartis Pharma AG, a Swiss corporation, with its office and principal place of business located at Lichstrasse 35, CH-4002 Basel, Switzerland, and includes its directors, officers, employees, agents and representatives, licensees, predecessors, successors, and assigns; the subsidiaries, divisions, groups and affiliates controlled by Novartis, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

J. "Dr. Madaus GmbH" means Dr. Madaus GmbH, a German corporation, with its offices and principal place of business located at Herderstraße 2, D-83512, Wasserburg am Inn, Germany, and includes its directors, officers, employees, agents, representatives, licensees, predecessors, successors, and assigns; the subsidiaries, divisions, groups and affiliates controlled by Dr. Madaus GmbH, and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

K. "FDA" means the United States Food and Drug Administration.

L. "DVT" means deep vein thrombosis.

M. "Know-how" means all technological, technical, scientific, chemical, biological, pharmacological, toxicological, regulatory, marketing and other information, including without limitation all formulae, trade secrets, inventions, techniques, patents, patent applications, discoveries, compounds, compositions of matter, assays, reagents, and biological materials, trademarks, research data, technical data and information, testing data, preclinical and clinical data, toxicological and pharmacological data, statistical analysis, analytical data, clinical protocols, specifications, designs, drawings, processes, testing and quality assurance/quality control data, manufacturing data and information, regulatory submissions, and any other information and experience.

N. "Revasc Know-how" means all confidential business information and Know-how presently owned by RP that relates in whole or in part to Revasc, including without limitation information stored on management information systems (and specifications sufficient for Novartis or the sublicensee specified in Paragraph II to use such information); proprietary software used in connection with Respondent RP's Revasc; all data, contractual rights, materials and information relating to obtaining FDA approvals and other government or regulatory approvals for RP's Revasc; and any other information and experience relating to Revasc.

O. "Confidential Business Information" means all information concerning the research, development, marketing, distribution, cost, pricing, sale and commercialization of a product or product in development.

P. "NDA" means a New Drug Application, any preparatory work, drafts and data necessary for the preparation thereof, and Know-how, and includes without limitation both supplemental and abbreviated NDAs.

Q. "New Indications" means any indication other than DVT, and includes, but is not limited to, Heparin-Induced Thrombocytopenia and arterial indications.

R. "Revasc Patent Rights" means any and all patents and patent applications owned, licensed or controlled by Respondents related to Revasc, including, but not limited to, the patents listed in or issuing on applications listed in the Annex attached to the Revasc License attached hereto as non-public Appendix I, and any and all reissues, extensions (including supplementary protection certificates), substitutions, confirmations, registrations, revalidations, additions, continuations or divisions of or to any of the aforesaid patents.

S. "Revasc Business Plan" means the development work for Revasc as provided in the Revasc Business Plan of 1999, attached hereto as non-public Appendix II and incorporated by reference herein.

T. "Merger" means the proposed merger of Hoechst and RP by means of an exchange offer by RP for all of Hoechst's outstanding shares, with Hoechst shareholders receiving one RP share for each 1.33 outstanding Hoechst shares pursuant to the Business Combination Agreement between Hoechst and RP dated May 20, 1999.

U. "Direct cost" means the cost of labor and materials associated with preparing, reviewing, modifying and submitting New Drug Applications to the FDA and other worldwide health authorities, and includes the cost of training personnel in accomplishing those duties and in responding to inquiries from the FDA and other worldwide health authorities regarding those applications.

V. "Refludan" means the drug substance lepirudin (chemical name : desulfatohirudin).

W. "Refludan Assets" means all of Respondents' assets and rights relating to the research, development and manufacture of Refludan for sale in North America, including the regulatory approvals, physical assets necessary to manufacture Refludan (excluding the production assets in Marburg, Germany), and all of its brand names and trade names. Refludan Assets include the New Drug Application Number 20-807 on file with the Food and Drug Administration ("FDA"), and include, but are not limited to:

1. manufacturing operations, machinery, fixtures, equipment, furniture, tools and other tangible personal property necessary to manufacture Refludan;

2. all intellectual property, inventions, technology, know-how, patents, trademarks, brand names, trade names, trade secrets and copyrights;

3. all research materials, formulations, patent rights, trade secrets, specifications, protocols, technical information, management information systems, software, specifications, designs, drawings, processes and quality control data;

4. all customer lists, vendor lists, catalogs, sales promotion literature and advertising materials;

5. inventory and storage capacity;

6. all rights, titles and interests in and to owned or leased real property, together with appurtenances, licenses and permits relating to the assets described in Definition W;

7. all rights, titles and interests in and to contracts relating to the research and development of Refludan;

8. all rights, titles and interests in and to the contracts entered into in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;

9. all rights under warranties and guarantees, express or implied;

10. all books, records and files; and

11. all items of prepaid expense relating to the assets described in Definition W;

Provided, however, that the Refludan Assets shall also include all research, development and manufacturing assets necessary to produce Refludan in an FDA Good Manufacturing Practice-approved facility if the person acquiring the Refludan Assets requests such assets.

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

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

Z. "KPC" means the Kuwait Petroleum Corporation, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; the

subsidiaries, divisions, groups and affiliates controlled by KPC, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

AA. "Cellulose Acetate Business" means the production, marketing, distribution, and/or sale of cellulose acetate flake, filament, and tow products.

BB. "Primester" means the cellulose acetate flake manufacturing joint venture between Rhodia and Eastman Chemical Company, located in Tennessee.

II.

IT IS FURTHER ORDERED that:

A. Respondents shall not develop, manufacture, distribute, or sell Revasc or participate in the development, manufacture, distribution or sale of Revasc and shall not assert any rights granted by the Revasc License or any other contract against any person for any activities related to the use of Revasc; provided, however, that Respondents shall retain such rights under the Revasc License and other contract(s) as are necessary to fulfill the requirements of Paragraph II of this Order.

B. Respondent RP shall offer to transfer and surrender at no minimum price to Novartis, absolutely and in good faith, within ten (10) days from the date the Agreement Containing Consent Order in this matter is accepted by the Commission for public comment, the Revasc Divestiture Assets.

C. If Novartis, within twenty (20) days from receipt of RP's offer as required by Paragraph II.B. of this Order, fails to accept the return of the Revasc Divestiture Assets, then Respondents shall absolutely and in good faith, within six (6) months from the date the Agreement Containing Consent Order in this matter is accepted by the Commission for public comment, sublicense, at no minimum price, the Revasc Divestiture Assets only to a licensee that receives the approval of Novartis, pursuant to Section 14 of the Revasc License, and that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission; provided, however, that Respondents' sublicense shall restrict Respondents' access to Revasc Know-how, except to the extent that such information is specifically required to perform the short-term service contract and Support required by Paragraph II.E. of this Order, and shall restrict Respondents' use of such information solely for those purposes. An Interim Trustee shall be used where appropriate to avoid the necessity of Respondents' gaining access to Revasc Know-how.

D. Respondents shall assign or transfer their rights relating to the manufacturing of Revasc, including, but not limited to, the toll manufacturing agreement and any other agreements between or among RP, Aventis, Novartis and Dr. Madaus

GmbH relating to the manufacture or preparation of Revasc, to Novartis within ten (10) days from the date that Novartis accepts the offer described in Paragraph II.B., or to the sublicensee within ten (10) days from the date that the sublicensee is approved pursuant to Paragraph II.C. of this Order.

E. At the option of Novartis or Respondent RP's sublicensee, Respondents shall enter into a short-term service contract with Novartis or the sublicensee to continue to perform the development work for Revasc at a price not to exceed direct cost. The short-term service contract shall terminate no later than one year after the date on which the FDA approves Revasc for the prevention of DVT. Additionally, at the option of Novartis or the sublicensee, Respondents shall provide expertise and grant reasonable support to Novartis or the sublicensee in the transfer of Revasc Know-how, in the handover of data necessary for preparation of any dossier for Revasc, including the NDA for Revasc for the United States, and in assisting Novartis or the sublicensee to address questions from the FDA or other regulatory agencies (all of the foregoing, collectively "Support") at a price not to exceed Respondents' direct cost.

F. Within ten (10) days from the date that Novartis accepts return of the Revasc Divestiture Assets, or within ten (10) days from the date that the Commission approves the sublicensee, Respondent RP shall transfer and surrender to Novartis or the sublicensee, all Revasc Know-how and shall not keep copies of such Revasc Know-how unless otherwise agreed to by Novartis or the sublicensee for the purpose of performing the Support obligations or development work for Revasc as provided in the Revasc Business Plan; provided, however, that Respondents shall keep such information as is required solely for the purpose of performing the short-term service contract and Support required by Paragraph II.E. of this Order, and shall use such information solely for those purposes. In no event shall Respondents keep any copies of Revasc Know-how after the earlier of either: (1) termination of the short-term service contract; or (2) written request by Novartis (if it accepts the Revasc Divestiture Assets), or by the sublicensee for the transfer of the Revasc Know-how.

G. Respondents shall take such actions as are necessary to maintain the development of Revasc and to prevent the destruction, removal, wasting, delay, deterioration, or impairment of the assets used in the research, development, manufacturing or sale of Revasc, including but not limited to the submission of the NDA for Revasc pursuant to RP's Revasc Business Plan, until Respondents have fully complied with the obligations specified in Paragraphs II.B. through II.F. of this Order.

H. The purpose of this Paragraph II is to ensure the continued research, development, manufacture and sale of Revasc in the United States and to remedy the lessening of competition resulting from the Merger as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

A. At any time after the Agreement Containing Consent Order in this matter is accepted by the Commission for public comment, the Commission may appoint an individual to serve as a trustee ("the Interim Trustee") to assure that Respondents expeditiously perform their responsibilities as required by Paragraphs II and V of this Order.

B. If an Interim Trustee is appointed pursuant to Paragraph III. A. of this Order, Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Interim Trustee:

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 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 shall exercise such power and authority and carry out the duties and responsibilities of the Interim Trustee in a manner consistent with the purposes of this Order and in consultation with the Commission.

3. Within ten (10) days after appointment of the Interim Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, confers on the Interim Trustee all the rights and powers necessary to permit the Interim Trustee to monitor Respondents' compliance with the terms of this Order and in a manner consistent with the purposes of this Order.

4. The Interim Trustee shall serve until the later of the divestiture of the Revasc Divestiture Assets or, if any options under Paragraph II.E. are exercised, the date that all agreements entered into pursuant to Paragraph II.E. have terminated; provided, however, the Commission may extend this period as may be necessary or appropriate to accomplish the purposes of this Order; provided further, however, that if the Refludan Assets are divested pursuant to Paragraphs IV. and V. of this Order, then the Interim Trustee shall serve until all agreements entered into pursuant to Paragraphs IV. and V. have terminated.

5. The Interim Trustee shall have full and complete access to Respondents' personnel, books, records, documents, facilities and technical information relating to the research, development, manufacture, importation, distribution and sale of Revasc, 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 relate to the manufacture of Revasc and all materials and information relating to the FDA and other government or regulatory approvals. 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 this Order.

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 Commission may, among other things, require the Interim Trustee to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Interim Trustee's duties. 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 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 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 Interim Trustee in the same manner as provided in Paragraph III.B.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.

10. Respondents shall submit reports as required by the Interim Trustee. The Interim Trustee shall obtain and evaluate reports submitted to him or

her by Respondents with respect to the performance of Respondents' obligations under the Order. The Interim Trustee shall report in writing to the staff of the Commission every two (2) months for the period that he or she serves as Interim Trustee.

IV.

IT IS FURTHER ORDERED that:

A. If Respondents have not fully complied with the obligations specified in Paragraph II.B. through II.G. of this Order, the Commission may appoint an individual to serve as a trustee to divest either: (1) the Revasc Divestiture Assets, Revasc Know-how and all other rights granted to Respondent RP by the Revasc License; or (2) the Refludan Assets. 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 to divest all of Respondent RP's Revasc Divestiture Assets or the Refludan Assets. 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 IV. 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 all of Respondent RP's Revasc Divestiture Assets.

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 Paragraph II. of this Order.

4. The trustee shall have twelve (,fo2 TD er.

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 Respondents, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting all of Respondent RP's Revasc Divestiture Assets.

8. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the 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 trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph IV.B. of this Order.

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

11. The trustee shall have no obligation or authority to operate or maintain the Revasc Divestiture Assets.

12. The trustee shall report in writing to Respondents and the Commission every sixty (60) days concerning the trustee's efforts to accomplish the divestiture.

V.

IT IS FURTHER ORDERED that in the event that the Commission appoints a trustee to divest the Refludan Assets, the trustee shall divest the Refludan Assets on behalf of Respondents in the following manner:

A. The assets shall be divested, absolutely and in good faith, as a competitively viable, ongoing product line in North America, at no minimum price, to an Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture is to

ensure the continued research, development, manufacture and sale of Refludan in North America and to remedy the lessening of competition resulting from the Merger as alleged in the Commission's complaint.

B. Respondents' agreement with the Acquirer or the New Acquirer (as specified in Paragraph V.B.9-10) (hereinafter the "Divestiture Agreement") shall include the following provisions, and Respondents shall commit to satisfy the following:

1. Respondents shall contract manufacture on behalf of and deliver to the Acquirer or the New Acquirer, in a timely manner and under reasonable terms and conditions ("the Contract Manufacturing Arrangement"), a supply of Refludan, specified in the Divestiture Agreement at cost for a period not to exceed four (4) years from the date the Divestiture Agreement is approved, or three (3) months after the date the Acquirer or the New Acquirer obtains all necessary FDA approvals to manufacture and sell Refludan in the United States, whichever is earlier; provided, however, that the four (4) year period may be extended by the Commission in twelve (12) month increments for a period not to exceed two (2) years.

2. After Respondents commence delivery of Refludan to the Acquirer or the New Acquirer pursuant to the Divestiture Agreement and for the term of the Contract Manufacturing Arrangement for Refludan, referred to in Paragraph V.B.1. of this Order, Respondents will make inventory of Refludan available for sale or resale in the United States and Canada only to the Acquirer or New Acquirer.

3. Respondents shall make representations and warranties that the Refludan supplied pursuant to the Divestiture Agreement meets the FDA approved specifications. Respondents shall agree to indemnify, defend and hold the Acquirer or the New Acquirer harmless from any and all suits, claims, actions, demands, liabilities, expenses or losses alleged to result from the failure of the Refludan supplied to the Acquirer or New Acquirer pursuant to the Divestiture Agreement by Respondents to meet FDA specifications. This obligation shall be contingent upon the Acquirer or the New Acquirer giving Respondents prompt, adequate notice of such claim, cooperating fully in the defense of such claim, and permitting Respondents to assume the sole control of all phases of the defense and/or settlement of such claim, including the selection of counsel; provided, however, any such defense and/or settlement shall be consistent with the obligations assumed by Respondents under this Order. This obligation shall not require Respondents to be liable for any negligent act or omission of the Acquirer or the New Acquirer or for any representations and warranties, express or implied, made by the Acquirer or the New Acquirer that exceed the representations and warranties made by Respondents to the Acquirer or the New Acquirer.

4. Respondents shall make representations and warranties that Respondents will hold harmless and indemnify the Acquirer or New Acquirer for any liabilities or loss of profits resulting from the failure by Respondents to deliver Refludan in a timely manner as required by the Divestiture Agreement unless Respondents can demonstrate that their failure was entirely beyond the control of Respondents and in no part the result of negligence or willful misconduct on Respondents' part.

5. During the term of the Contract Manufacturing Arrangement between Respondents and the Acquirer or the New Acquirer, upon request by the Acquirer, New Acquirer or the Interim Trustee, Respondents shall make available to the Interim Trustee all records that relate to the manufacture of Refludan.

6. Upon reasonable notice and request from the Acquirer or the New Acquirer to Respondents, Respondents shall provide in a timely manner: (a) assistance and advice to enable the Acquirer or the New Acquirer (or the designees of the Acquirer or New Acquirer) to obtain all necessary FDA approvals to manufacture and sell Refludan; (b) assistance to the Acquirer or New Acquirer (or the designee thereof) as is necessary to enable the Acquirer or New Acquirer (or the designee thereof) to manufacture Refludan in substantially the same manner and quality employed or achieved by Respondents; and (c) consultation with knowledgeable employees of Respondents and training, at the request of and at the facility of the Acquirer's or the New Acquirer's choosing, until the Acquirer or New Acquirer (or the designee thereof) receives certification from the FDA or abandons its efforts for certification from the FDA, sufficient to satisfy the management of the Acquirer or New Acquirer that its personnel (or the designee's personnel) are adequately trained in the manufacture of Refludan. Such assistance shall include on-site inspections of the manufacturing plants, at the Acquirer's or New Acquirer's request, which is the specified source of supply of the Contract Manufacturing. Respondents may require reimbursement from the Acquirer or New Acquirer for all their direct out-of-pocket expenses incurred in providing the services required by this Paragraph.

7. The Divestiture Agreement shall require the Acquirer or the New Acquirer to submit to the Commission within ten (10) days of signing the Divestiture Agreement a certification attesting to the good faith intention of the Acquirer or the New Acquirer, including a plan by the Acquirer or the New Acquirer, to obtain in an expeditious manner all necessary FDA approvals to manufacture and sell Refludan.

8. The Divestiture Agreement shall require the Acquirer or the New Acquirer to submit to the Commission and Interim Trustee periodic, verified written reports, setting forth in detail the efforts of the Acquirer or the New Acquirer to sell Refludan obtained pursuant to the Divestiture Agreement and to obtain all FDA approvals necessary to manufacture and sell Refludan. The Divestiture Agreement shall require the first such report to be submitted sixty (60) days from the date the Divestiture Agreement is approved by the Commission and every ninety (90) days thereafter until all necessary FDA approvals are obtained by the Acquirer or the New Acquirer to manufacture and sell Refludan in the United States. The Divestiture Agreement shall also require the Acquirer or the New Acquirer to report to the Commission and the Interim Trustee within ten (10) days of its ceasing the sale in the United States of Refludan obtained pursuant to the Divestiture Agreement for any time period exceeding sixty (60) days or abandoning its efforts to obtain all necessary FDA approvals to manufacture and sell Refludan in the United States. The Acquirer or New Acquirer shall provide the Interim Trustee access to all records and all facilities that relate to its efforts, pursuant to the Divestiture Agreement, to sell or manufacture Refludan or obtain FDA approvals.

9. The Divestiture Agreement shall provide that the Commission may terminate the Divestiture Agreement if the Acquirer or the New Acquirer: (a) voluntarily ceases for sixty (60) days or more the sale of, or otherwise fails to pursue good faith efforts to sell, Refludan in the United States prior to obtaining all necessary FDA approvals to manufacture and sell Refludan in the United States; (b) fails to pursue good faith efforts to obtain all necessary FDA approvals to manufacture and sell Refludan in the United States; or (c) fails to obtain all necessary FDA approvals of its own to manufacture and sell Refludan in the United States within four (4) years from the date the Commission approves the Divestiture Agreement between Respondents and the Acquirer or the New Acquirer; provided, however, that the four (4) year period may be extended by the Commission in twelve (12) month increments for a period not to exceed an additional two (2) years if it appears that such FDA approvals are likely to be obtained within such extended time period.

10. The Divestiture Agreement shall provide that if it is terminated, the Refludan Assets shall revert back to Respondents and shall be divested by the trustee to a New Acquirer pursuant to the provisions of Paragraph IV. of this order.

VI.

IT IS FURTHER ORDERED that:

A. Respondents shall not complete the Merger until Hoechst has divested its interest in Celanese as set out in the Form F-1 initially filed by Hoechst with the U.S. Securities and Exchange Commission on September 27, 1999.

B. Respondents shall not participate in any decisions relating to, or receive confidential business information concerning, and shall not directly or indirectly influence or seek to influence the conduct of Rhodia's Cellulose Acetate Business in any way through board membership, shareholdings or otherwise whenever all of the following are true:

1. KPC holds more than five (5) percent of the voting securities in Celanese;

2. KPC holds more than five (5) percent of the voting securities in Aventis;

3. Respondents hold more than five (5) percent of the voting securities in Rhodia or have a seat on Rhodia's board of directors; and

4. Rhodia holds any interest in Primester.

C. Within three (3) months of the date the Agreement Containing Consent Order in this matter is accepted by the Commission for public comment, Respondents shall have reduced their holdings in Rhodia to 5 percent or less of Rhodia's issued and outstanding voting securities. For purposes of this Paragraph VI. C. only, any Rhodia shares held in escrow by RP at that time, to be exchanged with the exchangeable notes issued by RP in a private placement as described in the Prospectus dated October 14, 1999, filed by Rhodia with the Securities and Exchange Commission on October 18, 1999, in connection with Rhodia's Registration Statement on Form F-3 (Reg. No. 333-10832) (the "Form F-3"), shall not be included as shares held by RP for purposes of calculating RP's Rhodia holdings.

D. Within six (6) months of the end of the note exchange period described in the Form F-3, Respondents shall have reduced their holdings in Rhodia to five (5) percent or less of Rhodia's issued and outstanding voting securities.

VII.

IT IS FURTHER ORDERED that:

A. If Respondents have not fully complied with the obligations specified in Paragraph VI.C of this Order, the Commission may appoint a trustee to divest any shares of Rhodia held in Respondents' names, excluding those Rhodia shares Respondents are required to hold pursuant to the private placement described in the Form F-3. In the event that the Commission or the Attorney General brings an action pursuant to § 45(*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 to divest any Rhodia shares held in Respondents' names above five (5) percent of Rhodia's issued and outstanding voting securities, excluding those Rhodia shares Respondents are required to hold pursuant to the private placement described in the Form F-3. 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 any shares of Rhodia held in Respondents' names, excluding those Rhodia shares held in Respondents' names pursuant to the note exchange program described in the Form F-3.

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

arrangement contingent on the trustee's divesting all of the shares specified in Paragraph VII.A.

8. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the 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 trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner provided in Paragraph VII.B. of this Order.

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

11. The trustee shall report in writing to Respondents and the Commission every sixty (60) days concerning the trustee's efforts to accomplish the divestiture.

.

VIII.

IT IS FURTHER ORDERED that:

A. If Respondents have not fully complied with the obligations specified in Paragraph VI.D of this Order, the Commission may appoint a trustee to divest any shares of Rhodia held in Respondents' names. In the event that the Commission or the Attorney General brings an action pursuant to § 45(*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 to divest any Rhodia shares held in Respondents' names above five (5) percent of Rhodia's issued and outstanding voting securities. 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 VIII.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 afer 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 any shares of Rhodia held in Respondents' names.

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

such entity within five (5) business days of receiving notification of the Commission's approval.

7. The trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the 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 Respondents, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting all of the shares specified in Paragraph VIII.A.

8. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the 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 notkers Tcspo tenseeshe tonseu2lt3eshe aeptrry eparext thethst onsul, claim* -0.01

XII.

IT IS FURTHER ORDERED that this order shall terminate at the earlier of: (1) January 18, 2010; or (2) after the divestitures required by Paragraphs II.B. through II.F., IV., V., VI., and VII. of this Order have been accomplished.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: January 18, 2000

APPENDIX I (Non-Public)
Copy of Revasc License

APPENDIX II. [nonpublic]
Revasc Business Plan

APPENDIX III (nonpublic)
Interim Trustee Agreement