

IN THE MATTER OF

ATLANTIC RICHFIELD COMPANY, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3314. Complaint, Nov. 26, 1990—Decision, Nov. 26, 1990

This consent order requires, among other things, ARCO Chemical Company, a subsidiary of Atlantic Richfield Company and a producer of urethane polyether polyols and propylene glycol, to divest, within twelve months of this order, to a Commission-approved acquirer: the propylene glycol assets and businesses of Union Carbide; and the urethane polyether polyol assets and businesses in the United States and Canada which ARCO acquired from Texas Chemical Company in 1987. The consent order also requires ARCO, for ten years, to secure prior Commission approval before making certain acquisitions.

Appearances

For the Commission: *Rhett R. Krulla* and *Marc G. Schildkraut*.

For the respondents: *Richard Porter, Steptoe & Johnson*, Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Atlantic Richfield Company, a corporation, ARCO Chemical Company, a corporation, (collectively "ARCO"), have entered into an agreement with Union Carbide Corporation, a corporation, and Union Carbide Chemicals and Plastics Company Inc., a corporation, (collectively "Union Carbide"), that violates said Acts, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint stating its charges as follows:

DEFINITIONS

PARAGRAPH 1. For purposes of this complaint, "*propylene oxide*" means the chemical intermediate product, also known as propane

oxide or methyl oxirane, which has the chemical formula $\text{O}-\text{CH}_3\text{CH}-\text{CH}_2$.

PAR. 2. For purposes of this complaint, "*Urethane polyether polyol*" means a low molecular weight alkalene-oxide polymer, produced from propylene oxide and useful as a reactant with isocyanates or polyisocyanates in producing polyurethanes.

PAR. 3. For purposes of this complaint, "*propylene glycol*" means the product produced by hydration of propylene oxide and includes monopropylene glycol, which has the chemical formula $\text{CH}_3\text{-CHOHCH}_2\text{-OH}$; dipropylene glycol; and tripropylene glycol.

THE RESPONDENTS

PAR. 4. Respondent Atlantic Richfield Company is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its principal office and place of business at 515 South Flower Street, Los Angeles, California.

PAR. 5. Atlantic Richfield Company is a major integrated petroleum company engaged, principally in the United States, through its divisions and subsidiaries, in the exploration, development and production of petroleum and natural gas; the purchase and sale of petroleum; the mining and sale of coal; refining and transportation of petroleum and petroleum products; the manufacture and sale of intermediate chemical and specialty products, including propylene oxide, styrene monomer, tertiary butyl alcohol and polystyrenic foams and resins; and the manufacture, refining and marketing of basic commodity chemicals, including ethylene, propylene, methanol and aromatics. On December 31, 1988, Atlantic Richfield Company owned 83.3 percent of the common stock of ARCO Chemical Company.

PAR. 6. Atlantic Richfield Company's net income in 1988 was \$1,583 million on sales of \$18.3 billion.

PAR. 7. Respondent ARCO Chemical Company is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its principal office and place of business at 3801 West Chester Pike, Newtown Square, Pennsylvania. ARCO Chemical Company is a majority-owned subsidiary of Atlantic Richfield Company.

PAR. 7. ARCO Chemical Company is a leading multinational manufacturer and marketer of intermediate chemicals and specialty products used in a broad range of consumer goods. ARCO Chemical Company is a leading manufacturer, both in the United States and in

the world, of propylene oxide and derivatives thereof, including urethane polyether polyol and propylene glycol.

PAR. 8. ARCO Chemical Company's net income in 1988 was \$494 million on sales and other operating revenues of \$2,688 million. Propylene oxide and its derivatives accounted for 36 percent and 39 percent of ARCO Chemical Company's total sales and other operating revenues in 1988 and 1989, respectively.

PAR. 9. Respondent Union Carbide Corporation is a corporation organized, existing and doing business under and by virtue of the laws of New York, with its principal office and place of business at 39 Old Ridgebury Road, Danbury, Connecticut.

PAR. 10. Union Carbide Corporation is a holding company with its core businesses operated through subsidiaries responsible respectively for chemicals and plastics, industrial gases, and carbon products industry segments.

PAR. 11. Union Carbide Corporation's net income in 1988 was \$662 million on net sales of \$8,324 million. The Chemicals and Plastics industry segment accounted for 66 percent of Union Carbide Corporation's sales in 1988 and 76 percent of its operating profit.

PAR. 12. Respondent Union Carbide Chemicals and Plastics Company Inc. is a corporation organized, existing and doing business under and by virtue of the laws of New York, with its principal office and place of business at 39 Old Ridgebury Road, Danbury, Connecticut. Union Carbide Chemicals and Plastics Company Inc. is a wholly-owned subsidiary of Union Carbide Corporation.

PAR. 13. Union Carbide Chemicals and Plastics Company Inc. is diversified manufacturer of ethylene, propylene, and olefin derivatives; chemicals and polymers; and specialty chemicals.

PAR. 14. Union Carbide Chemicals and Plastics Company Inc.'s net income in 1988 was \$643 million on net sales of \$5,539 million.

PAR. 15. At all times relevant herein, each of the respondents or their predecessors have been engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12; and have been corporations whose business is in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

THE ACQUISITION

PAR. 16. On September 27, 1989, ARCO and Union Carbide entered into an agreement for the acquisition by ARCO of Union Carbide's

urethane polyether polyols and propylene glycol assets and businesses ("the Acquisition"). The purchase price for the Acquisition is about \$220 million.

THE RELEVANT MARKETS

PAR. 17. For purposes of this complaint, the relevant lines of commerce in which to evaluate the effects of the acquisition are:

- (a) The manufacture and sale of propylene oxide;
- (b) The manufacture and sale of urethane polyether polyol; and
- (c) The manufacture and sale of propylene glycol.

PAR. 18. For purposes of this complaint, the relevant geographic market is the United States and Canada.

PAR. 19. In 1989, approximately 3 billion pounds of propylene oxide was produced in the United States and Canada. The propylene oxide market is highly concentrated, whether measured by the Herfindahl-Hirschmann Index ("HHI") or by two-firm concentration ratios.

PAR. 20. In 1989, approximately 2 billion pounds of urethane polyether polyol was produced in the United States and Canada. The urethane polyether polyol market is highly concentrated, whether measured by the HHI or by eight-firm, four-firm, and two-firm concentration ratios.

PAR. 21. In 1989, approximately 870 million pounds of propylene glycol was produced in the United States and Canada. The propylene glycol market is highly concentrated, whether measured by the HHI or by four-firm and two-firm concentration ratios.

PAR. 22. It is difficult to enter into the manufacture and sale of propylene oxide, urethane polyether polyol, and propylene glycol. Actions by ARCO relating to acquisitions and technology have made entry more difficult.

PAR. 23. At the time of the Acquisition described above, ARCO and Union Carbide in combination with others were perceived potential and actual potential competitors in the manufacture and sale of propylene oxide in the United States and Canada.

PAR. 24. At the time of the Acquisition described above, ARCO and Union Carbide were actual competitors in the manufacture and sale of urethane polyether polyols and of propylene glycol in the United States and Canada.

THE EFFECTS OF THE ACQUISITION

PAR. 25. The effect of the Acquisition may be substantially to lessen

competition in each of the relevant markets in the United States and Canada, in violation 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, because, among other things, the acquisition:

(a) Eliminates substantial perceived potential and actual potential competition in the manufacture and sale of propylene oxide between ARCO and Union Carbide, between Union Carbide and others, and between ARCO and others in the United States and Canada;

(b) Increases the level of vertical integration and reduced the size of the merchant market for propylene oxide in the United States and Canada, making entry less likely and reducing the probability of eventual deconcentration of this market;

(c) Eliminates substantial actual competition, between ARCO and Union Carbide and between Union Carbide and others, in the manufacture and sale of urethane polyether polyol in the United States and Canada;

(d) Eliminates substantial actual competition, between ARCO and Union Carbide and between Union Carbide and others, in the manufacture and sale of propylene glycol in the United States and Canada; and

(e) Significantly enhances the likelihood of collusion or interdependent coordination among the remaining firms in the relevant markets.

THE VIOLATIONS CHARGED

PAR. 26. The Acquisition of the urethane polyether polyol and propylene glycol assets and businesses of Union Carbide by ARCO, individually or in combination with other acquisitions by ARCO, violates Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

PAR. 27. The Acquisition of the urethane polyether polyol and propylene glycol assets and businesses of Union Carbide by ARCO, individually or in combination with other acquisitions by ARCO, violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

PAR. 28. ARCO's actions in deterring entry into the manufacture and sale of propylene oxide, urethane polyether polyol, and propylene glycol in the relevant geographic market violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

Commissioner Starek not participating.

DECISION AND ORDER

The Federal Trade Commission ("the Commission"), having initiated an investigation of the proposed acquisition by ARCO Chemical Company, a partially-owned subsidiary of Atlantic Richfield Company, (hereinafter collectively "ARCO"), of certain of the assets and businesses of Union Carbide Chemicals and Plastics Company Inc., a wholly-owned subsidiary of Union Carbide Corporation, (hereinafter collectively "Union Carbide"), which acquisition is more fully described at paragraph I.(A) below, and ARCO and Union Carbide having been furnished with a copy of a draft complaint that the Bureau of Competition has presented to the Commission for its consideration and which, if issued by the Commission, would charge ARCO and Union Carbide with violations of the Clayton Act and Federal Trade Commission Act; and

Respondents ARCO and Union Carbide, their attorneys, and counsel for the Commission having thereafter executed an agreement containing consent order, an admission by respondents of all the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of said 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, 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 the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

A. Atlantic Richfield Company is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its principal office and place of business at 515 South Flower Street, Los Angeles, California.

B. ARCO Chemical Company is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its principal office and place of business at 3801 West Chester Pike, Newtown Square, Pennsylvania.

C. Union Carbide Corporation is a corporation organized, existing and doing business under and by virtue of the laws of New York, with its principal office and place of business at 39 Old Ridgebury Road, Danbury, Connecticut.

D. Union Carbide Chemicals and Plastics Company Inc., is a corporation organized, existing and doing business under and by virtue of the laws of New York, with its principal office and place of business at 39 Old Ridgebury Road, Danbury, Connecticut.

E. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of ARCO and Union Carbide, and the proceeding is in the public interest.

ORDER

I.

As used in this order, the following definitions shall apply:

(A) “*Acquisition*” means the Asset Purchase Agreement entered into on September 27, 1989, by which ARCO agreed to acquire and Union Carbide agreed to convey certain rights and interests in, and title to, certain of the assets and businesses of Union Carbide.

(B) “*ARCO*” means Atlantic Richfield Company and ARCO Chemical Company, their predecessors, subsidiaries, divisions, groups and affiliates (including the Properties to Be Divested as hereinafter defined) controlled (the definition of “control”, as used in this order, is the definition currently appearing at 16 CFR 801.1(b)) by Atlantic Richfield Company or ARCO Chemical Company, and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

(C) “*ARCO Group*” means individually and collectively ARCO; any joint venture in which ARCO is a participant relating to the manufacture, sale, or use of propylene oxide (“PO”), any PO coproduct, or any derivative of PO; each participant in any joint venture with ARCO relating to the manufacture, sale, or use of PO, any PO coproduct, or any derivative of PO; each customer of the ARCO Group that manufactures, purchases, or uses PO, any PO coproduct, or any derivative of PO; and each supplier of products or services to the ARCO Group relating to the development, manufacture, sale, or use of PO, any PO coproduct, or any derivative of PO.

(D) “*Properties to Be Divested*” means:

1. All of the propylene glycol Assets and Businesses of Union Carbide that ARCO agreed to acquire or acquired pursuant to the Acquisition (hereinafter "Paragraph I.(D)1 Properties"); and

2. All of the urethane polyether polyol Assets and Businesses in the United States and Canada, including their territories and possessions, that ARCO acquired from Texaco, together with all improvements or modifications made to those Assets and Businesses by ARCO (hereinafter "Paragraph I.(D)2 Properties").

(E) "*Assets and Businesses*" include but are not limited to all assets, properties, businesses and goodwill, tangible and intangible, utilized in the transportation, production, distribution or sale of propylene glycol or urethane polyether polyols, including, without limitation the following:

1. All machinery, fixtures, equipment, vehicles, transportation and storage facilities, furniture, tools, supplies, stores, spare parts, and other tangible personal property;

2. All customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, technical information, management information systems, software, trademarks, patents, inventions, trade secrets, technology, know-how, specifications, designs, drawings, processes and quality control data;

3. Raw material and finished product inventories and goods in process;

4. All right, title and interest in and to owned or leased real property, together with appurtenances, licenses and permits;

5. All right, title and interest in and to the contracts entered into in the ordinary course of business with customers (to the extent assignable) (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;

6. All rights under warranties and guarantees, express or implied;

7. All separately maintained, as well as relevant portions of not separately maintained books, records and files; and

8. All items of prepaid expense.

(F) "*Commission*" means the Federal Trade Commission.

(G) "*Dow*" means The Dow Chemical Company, its predecessors, subsidiaries, divisions, groups and affiliates controlled by Dow and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

(H) "*Texaco*" means Texaco Inc. and Texaco Chemical Company, their predecessors, subsidiaries, divisions, groups and affiliates controlled by Texaco and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

(I) "*Texaco Group*" means individually and collectively Texaco; any joint venture in which Texaco is a participant relating to the manufacture, sale, or use of PO, any PO coproduct, or any derivative of PO; each participant in any joint venture with Texaco relating to the manufacture, sale, or use of PO, any PO coproduct, or any derivative of PO; each customer of the Texaco Group that manufactures, purchases, or uses PO, any PO coproduct, or any derivative of PO; and each supplier of products or services to the Texaco Group relating to the development, manufacture, sale, or use of PO, any PO coproduct, or any derivative of PO.

(J) "*Union Carbide*" means Union Carbide Corporation and Union Carbide Chemicals and Plastics Company Inc., their predecessors, subsidiaries, divisions, groups and affiliates controlled by Union Carbide and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

(K) "*PO*" means propylene oxide.

(L) "*PO Entrant*" means any person other than ARCO or DOW who has obtained the permits from federal, state, provincial, county or municipal regulatory authorities necessary to commence construction, or who has commenced construction, of a commercial PO plant in the United States or Canada, including their territories and possessions.

(M) "*Polyols*" means polyether polyols, except that as used in definitions (N), (O), (P), (Q), and (R) and in Paragraph III below, Polyols means polyether polyols used as feedstock for Performance Polyols or used in conjunction with Performance Polyols.

(N) "*Urethane polyether polyol*" means Polyols useful as a reactant with isocyanates or polyisocyanates in producing polyurethanes. Urethane polyether polyol includes Performance Polyols.

(O) "*Polymer/Polyols*" means any composition comprising a polymer dispersed in, or mixed or otherwise combined with, a Polyol, said composition being useful in producing a polyurethane by reaction with an isocyanate or a polyisocyanate.

(P) "*Performance Polyols*" means Polymer/Polyols and/or any two-phase composition containing a Polyol that is an end-use performance substitute for a Polymer/Polyol as a reactant with isocyanates or polyisocyanates in producing polyurethanes.

(Q) "*UCC Patent Rights*" shall mean any patent or patent application in the United States or Canada, including their territories and possessions, assigned to or under which rights were granted to, ARCO pursuant to the Acquisition, claiming: 1) Performance Polyols; 2) a process for producing Performance Polyols; 3) Polyols; 4) a process for producing Polyols; 5) a process for producing polyurethanes using Polyols or Performance Polyols as starting materials; 6) or polyurethanes so produced and each patent identified in Appendix III of this order.

(R) "*UCC Technology*" shall mean general and specific information, assigned or under which rights were granted to ARCO pursuant to the Acquisition, relating to 1) Polyols; 2) Performance Polyols; 3) feedstocks for Performance Polyols and for use in conjunction with Performance Polyols (including the manufacture, use, and constitution of Polyols and further including process design information regarding Polyols); 4) the production of Performance Polyols; 5) the composition of Performance Polyols; 6) the use of Performance Polyols in making polyurethanes; and 7) the economic factors relating to the production of Performance Polyols and polyurethanes made therefrom; all such information being sufficiently detailed for the commercial production, sale, and use of Performance Polyols and the commercial production of polyurethane therefrom. UCC Technology shall include (but shall not be limited to) all technical information, data, specification, drawings, design and equipment specifications, manuals, engineering reports, manufacturing designs and reports, operating manuals, and polyurethane-forming formulations. UCC Technology shall exclude information to the extent disclosure of such information by Union Carbide is prohibited by a contract between Union Carbide and any polyurethane producer, unless said polyurethane producer consents to such disclosure.

(S) "*Viability and Competitiveness*" of the Properties to Be Divested means each such property is capable of operating independently at the same output as currently (at competitive prices) and is capable of functioning independently and competitively in the Urethane polyether polyol business or the propylene glycol business.

II.

It is ordered, That:

(A) Within twelve (12) months of the date this order becomes final,

ARCO shall divest, absolutely and in good faith, the Properties to Be Divested and shall also divest such additional ancillary Assets and Businesses and effect such arrangements that are necessary to assure the Viability and Competitiveness of the Properties to Be Divested. *Provided, however*, ARCO may retain free rights to practice under all patents and use all unpatented technology included within the Paragraph I.(D)2 Properties to Be Divested.

(B) ARCO shall divest the Properties to Be Divested pursuant to Paragraph I.(D)1 only with the prior consent of Union Carbide, which consent shall not unreasonably be withheld. The acquirer shall have the right to enforce all rights and privileges of ARCO set out in the Acquisition with respect to the Properties to Be Divested pursuant to Paragraph I.(D)1. Union Carbide shall provide the acquirer substantially the same services as it agreed to provide ARCO pursuant to the Acquisition for the Properties to Be Divested under Paragraph I.(D)1. In addition, Union Carbide shall provide to the acquirer upon the request of the acquirer, such additional services as may be necessary for the continued operation of such Properties to Be Divested at Union Carbide's South Charleston, West Virginia plant that cannot otherwise economically be obtained and that Union Carbide can economically provide. Union Carbide shall provide services to the acquirer for a period that Union Carbide has agreed to provide ARCO similar services pursuant to the Acquisition or is actually providing such services to ARCO at such facility. Union Carbide shall charge the acquirer the lesser of Union Carbide's costs consistent with Union Carbide's current practices or the charge at which ARCO contracted to purchase such services for such Properties to Be Divested.

(C) ARCO shall comply with all terms of the Agreement to Hold Separate, attached to this order and made a part hereof as Appendix I. Said Agreement shall continue in effect until such time as ARCO has divested all the Properties to Be Divested or until such other time as the Agreement to Hold Separate provides.

(D) ARCO shall divest the Properties to Be Divested only to an acquiring entity or entities that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. ARCO shall demonstrate the Viability and Competitiveness of the Properties to Be Divested in its application for approval of a proposed divestiture. The purpose of the divestiture of the Properties to Be Divested is to ensure the continuation of the assets as ongoing, viable businesses engaged in the manufacture and sale of

urethane polyether polyols and propylene glycol, and to remedy any lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

(E) ARCO shall take such action as is necessary to maintain the viability, competitiveness and marketability of the Properties to Be Divested and shall not cause or permit the destruction, removal or impairment of the Properties to Be Divested except in the ordinary course of business and except for ordinary wear and tear.

III.

It is further ordered, That, at the time of the divestiture of the Paragraph I.(D)2 properties required by this order, ARCO shall include with the Paragraph I.(D)2 Properties a paid-up, non-royalty bearing, perpetual, and non-exclusive license (a) under the UCC Patent Rights to make, use and sell Polyols and Performance Polyols in the United States and Canada, including their territories and possessions and (b) to use UCC Technology to make, use and sell Polyols and Performance Polyols in the United States and Canada, including their territories and possessions; and for a period of three (3) years following the divestiture required by this order, ARCO shall provide to the acquirer of the Paragraph I.(D)2 Properties, if the acquirer so requests, such additional know-how as may be necessary to manufacture and sell Performance Polyols. ARCO's grant shall be subject to, and the licensee shall take the license subject to, any preexisting rights granted by Union Carbide to other licensees other than ARCO as of the date the Agreement Containing Consent Order was signed.

IV.

It is further ordered, That, for a period of three (3) years following the divestiture of the Paragraph I.(D)2 properties required by this order, Union Carbide shall provide to ARCO, for transmittal by ARCO to the acquirer of the Paragraph I.(D)2 Properties pursuant to Paragraph III of this order, such know-how (not otherwise obtainable from ARCO) regarding UCC Patent Rights and UCC Technology in the possession of Union Carbide as may be necessary for the acquirer of the Paragraph I.(D)2 Properties to manufacture and sell Performance Polyols.

V.

It is further ordered, That, at the time of the divestiture of the Paragraph I.(D)2 properties required by this order, ARCO shall assign to the acquirer of the Paragraph I.(D)2 Properties, all of ARCO's rights and interests under all tolling agreements between ARCO and Texaco relating to the manufacture of Polyols at Texaco's Conroe, Texas, facility.

VI.

It is further ordered, That, for a period of five (5) years from the date of each divestiture required by this order, ARCO shall, at the acquirer(s)'s request, contract with the acquirer(s) to supply to the acquirer(s) PO, in such quantities as the acquirer(s) may request for use in the Properties to Be Divested, or for use in the manufacture of Performance Polyols under the license provided by ARCO pursuant to Paragraph III of this order subject only to the capacity constraints of ARCO's PO production facilities in the United States and preexisting contractual obligations. The price, terms, and conditions at which ARCO shall supply PO to the acquirer(s) of the Properties to Be Divested shall be no less favorable to the acquirer(s) than the price, terms, and conditions at which ARCO supplies PO to any other person in the United States or Canada, including their territories and possessions, that competes with the acquirer(s).

VII.

It is further ordered, That ARCO shall rescind all existing non-compete provisions contained in any agreements between ARCO and Texaco purporting to restrict Texaco's right to engage in the manufacture of urethane polyether polyol in the United States or Canada, including their territories and possessions, or the sale in any country of urethane polyether polyol manufactured in the United States or Canada, including their territories and possessions; and ARCO and Union Carbide shall rescind the provisions of any existing agreements between ARCO and Union Carbide purporting to restrict Union Carbide's right to engage in the manufacture of urethane polyether polyol or propylene glycol in the United States or Canada, including their territories and possessions, or the sale in any country of urethane polyether polyol or propylene glycol manufactured in the

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United States or Canada, including their territories and possessions. ARCO shall take no action to enforce any such non-compete provision against Texaco or against Union Carbide.

VIII.

It is further ordered, That, once Texaco consents to take no action and assert no claim against the ARCO Group based on any conduct of ARCO or other persons working on PO technology with ARCO, and relating to such work, prior to the date the Agreement Containing Consent Order was signed, relating to any use, development, misappropriation, disclosure or license to others by the ARCO Group of any technology relating to the manufacture, sale, or use of PO or any coproducts of PO/TBA or PO/MBTE technology ARCO shall take no action and shall assert no claim against the Texaco Group based on any conduct of Texaco or other persons working on PO technology with Texaco, and relating to such work, prior to the date the Agreement Containing Consent Order was signed, relating to any use, development, misappropriation, disclosure or license to others by the Texaco Group of any technology relating to the manufacture, sale, or use of PO or any coproducts of PO/TBA or PO/MBTE technology. *Provided, however*, if, in the judgment of the Commission, Texaco unreasonably fails to consent to the assignment under Paragraph V of this order, ARCO's obligations under this Paragraph VIII of this order shall be suspended until Texaco consents to said assignment.

IX.

It is further ordered, That, notwithstanding any provision to the contrary, in any contract between ARCO and Texaco, between ARCO and Union Carbide, or between ARCO and the acquirer(s) of the Properties to Be Divested, for a period commencing on the date this order becomes final and continuing for ten (10) years, ARCO shall permit upon ninety (90) days notice, Texaco, Union Carbide, and the acquirer(s), without penalty or forfeiture of any kind, to purchase or otherwise receive any or all of their PO requirements in the United States or Canada, including their territories and possessions, from any PO Entrant, including but not limited to PO supplied by such PO Entrant via manufacture outside the United States or Canada, including their territories and possessions; and, to the extent of any

such purchases or receipts of PO by Texaco, Union Carbide, or the acquirer(s), ARCO shall relieve Texaco, Union Carbide, and the acquirer(s) of any contractual obligation to purchase such quantities of PO from ARCO.

X.

It is further ordered, That:

(A) If ARCO has not divested, absolutely and in good faith and with the Commission's approval, the Properties to Be Divested within twelve (12) months of the date this order becomes final, ARCO shall consent to the appointment by the Commission of a trustee to effectuate the obligations set out in Paragraphs II.(A) and II.(B) of this order. In the event the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, ARCO shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by ARCO to comply with this order.

(B) If a trustee is appointed by the Commission or a court pursuant to Paragraph X.(A) of this order, ARCO shall consent to the following terms and conditions regarding the trustee's powers, authorities, duties and responsibilities:

1. The Commission shall select the trustee, subject to the consent of ARCO, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

2. The trustee shall, subject to the prior approval of the Commission, have the exclusive power and authority to divest the Properties to Be Divested and to divest such additional ancillary Assets and Businesses of ARCO and to effect the additional obligations set out in Paragraphs II.(A) and II.(B) of this order.

3. The trustee shall have eighteen (18) months from the date of appointment to accomplish the divestiture. If, however, at the end of

the eighteen-month period the trustee has submitted a plan of divestiture or believes that divestiture can be accomplished within a reasonable time, the divestiture period may be extended by the Commission. *Provided, however*, the Commission may only extend the divestiture period two (2) times.

4. Subject to an appropriate confidentiality agreement, the trustee shall have full and complete access to the personnel, books, records and facilities related to the Properties to Be Divested, or any other relevant information, as the trustee may reasonably request. ARCO shall develop such financial or other information as such trustee may reasonably request and shall cooperate with any reasonable request of the trustee. ARCO shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by ARCO shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or the court for a court-appointed trustee.

5. Subject to ARCO's absolute and unconditional obligation to divest at no minimum price, and the purpose of the divestiture as stated in Paragraph II.(D) of this order, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available with each acquiring entity for the divestiture of the Properties to Be Divested. The divestiture shall be made in the manner set out in Paragraph II, *provided, however*, if the trustee receives bona fide offers from more than one acquiring entity or entities, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by ARCO, to which (as to the Paragraph I.(D)1 Properties to Be Divested only) Union Carbide has no reasonable objection, from among those approved by the Commission.

6. The trustee shall serve, without bond or other security, at the cost and expense of ARCO, on such reasonable and customary terms and conditions as the Commission or a court may set. Subject to the consent of ARCO, which consent shall not be unreasonably withheld, the trustee shall have authority to employ, at the cost and expense of ARCO, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants (all of whom shall be subject to appropriate confidentiality agreements) as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale 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 ARCO 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 the Properties to Be Divested.

7. Except in the case of reckless disregard of his or her duties or intentional wrong doing, ARCO shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, or liabilities arising in any manner out of, or in connection with, the trustee's duties under this order.

8. Within sixty (60) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, ARCO shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

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 X.(A) of this order.

10. The Commission and, 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 Properties to Be Divested.

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

XI.

It is further ordered, That, within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until ARCO has fully complied with the provisions of Paragraphs II and III of this order, ARCO shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying and has complied with those provisions, including the Hold Separate Agreement. ARCO shall include in its

compliance reports, among other things that are required from time to time, a full description of substantive contacts or negotiations for the divestiture of assets or businesses specified in Paragraph II of this order, including the identity of all parties contacted. ARCO also shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and reports and recommendations concerning divestiture.

XII.

It is further ordered, That, for a period commencing on the date this order becomes final and continuing for ten (10) years, ARCO shall not acquire, without the prior approval of the Commission, directly or indirectly, through subsidiaries or otherwise, assets located in the United States or Canada, including their territories and possessions, used for or previously used for (and still suitable for use for) the production of PO, urethane polyether polyol, or propylene glycol. ARCO shall also not acquire, without the prior approval of the Commission, directly or indirectly, through subsidiaries or otherwise, more than one percent of the total outstanding stock or share capital of, or any other interest in, any entity (other than an entity included within ARCO under Paragraph I.(B) of this order as of the date the Agreement Containing Consent Order was signed) that owns or operates assets located in the United States or Canada, including their territories and possessions, engaged in the production of urethane polyether polyol or propylene glycol. *Provided, however,* these prohibitions shall not relate to the construction of new facilities. *Provided, further,* that such prior approval shall not be required if ARCO satisfies the conditions set forth in Paragraph XIII of this order.

XIII.

It is further ordered, That, if, in the absence of an acquisition agreement with an entity that neither owns nor operates nor has any interest in assets located in the United States or Canada, including their territories and possessions, engaged in the production of urethane polyether polyol, propylene glycol, or PO (hereinafter "Acquired entity"), ARCO announces its intention to acquire or commences an acquisition of, any interest in the Acquired entity and,

before ARCO obtains sufficient control of the Acquired entity to prevent an acquisition by the Acquired entity, such Acquired entity acquires more than one percent of the total outstanding stock or share capital of, or any other interest in, any third entity that has an interest in assets that produce urethane polyether polyol or propylene glycol in the United States or Canada, including their territories and possessions, (hereinafter "Third entity"), or said Acquired entity acquires any assets used in the production of urethane polyether polyol, propylene glycol or PO in the United States or Canada, including their territories and possessions, ARCO may, in lieu of obtaining prior approval of such acquisition under Paragraph XII of this order, comply with each of the requirements of this Paragraph XIII of this order. In order to make such an acquisition without obtaining the Commission's prior approval pursuant to Paragraph XII, ARCO shall:

(A) Notify the Commission as soon as practicable, and in any event, within three (3) days of ARCO learning of the acquisition by the Acquired entity of any interest in a Third entity, as described in Paragraph XIII of this order. Such notification shall follow the format for filings set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, as amended. Such notification shall be in addition to any reporting, waiting period, and other requirements applicable to the transaction under Section 7A of the Clayton Act, 15 U.S.C. 18a and the Commission's Premerger Reporting Rules promulgated thereunder, 16 CFR Parts 801, 802, 803.

(B) In the case where the Acquired entity acquired assets used in the production of urethane polyether polyol, propylene glycol or PO, ARCO shall comply with all terms of the Agreement to Hold Separate, attached to this order and made a part hereof as Appendix IV. Said Agreement shall take effect as soon as ARCO has sufficient control over the Acquired entity to satisfy the terms of the Agreement to Hold Separate and shall continue in effect until such time as ARCO has divested all the stock or share capital of the Third entity or all the Assets and Businesses acquired by the Acquired entity or until such other time as the Agreement to Hold Separate provides. In the case where the Acquired entity acquired stock or share capital of the Third entity, as soon as ARCO has sufficient control over the Acquired entity to do so, ARCO shall place all stock and share capital of the Third entity in a non-voting trust until said stock or share capital is divested.

(C) Within three (3) months of the date when ARCO has sufficient

control over the Acquired entity to divest assets, stock or share capital of the Acquired entity, ARCO shall:

1. In the case where the Acquired entity acquired stock or share capital of the Third entity, divest, absolutely and in good faith, the stock or share capital of the Third entity, or

2. In the case where the Acquired entity acquired assets used in the production of urethane polyether polyol, propylene glycol or PO, divest, absolutely and in good faith, all the Assets and Businesses of the Acquired entity and also divest such additional ancillary assets and businesses and effect such arrangements that are necessary to assure the Viability and Competitiveness of the Assets and Businesses of the Acquired entity.

(D) ARCO shall divest the stock or share capital of the Third entity or the Assets and Businesses of the Acquired entity only to an acquiring entity or entities that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. In the case where the Acquired entity acquired assets used in the production of urethane polyether polyol or propylene glycol, ARCO shall demonstrate the Viability and Competitiveness of the Assets and Businesses of the Acquired entity in its application for approval of a proposed divestiture. The purpose of the divestiture is to ensure the continuation of the assets as ongoing, viable businesses engaged in the manufacture and sale of urethane polyether polyols and propylene glycol, and to remedy any lessening of competition resulting from the acquisition.

(E) In the case where the Acquired entity acquired assets used in the production of urethane polyether polyol or propylene glycol, ARCO shall take such action as is necessary to maintain the viability, competitiveness and marketability of the Assets and Businesses of the Acquired entity and shall not cause or permit the destruction, removal or impairment of any assets or businesses it may have to divest except in the ordinary course of business and except for ordinary wear and tear.

(F) If ARCO has not divested, absolutely and in good faith and with the Commission's prior approval, the stock or share capital of the Third entity or the Assets and Businesses of the Acquired entity within three (3) months of the date when ARCO has sufficient control over the Acquired entity to divest assets, stock or share capital of the Acquired entity, ARCO shall consent to the appointment by the Commission of a trustee to divest:

1. The stock or share capital of the Third entity or
2. The Assets and Businesses of the Acquired entity and to divest such additional ancillary assets and businesses of the Acquired entity and effect such arrangements that may be necessary to assure the Viability and Competitiveness of the Assets and Businesses of the Acquired entity.

(G) In the event the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, ARCO shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by ARCO to comply with this order.

(H) If a trustee is appointed by the Commission or a court pursuant to Paragraph XIII.(F) of this order, ARCO shall consent to the terms and conditions regarding the trustee's powers, authorities, duties and responsibilities set out in Paragraph X.(B) of this order. *Provided, however,* that each reference to "Properties to Be Divested" in Paragraph X.(B) of this order shall, for the purposes of this Paragraph XIII, mean either the "stock or share capital of the Third entity" or the "Assets and Businesses of the Acquired entity."

XIV.

It is further ordered, That, one year from the date this order becomes final and annually for nine years thereafter, ARCO shall file with the Commission a verified written report of its compliance with this order.

XV.

It is further ordered, That, for the purposes of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and on reasonable notice to ARCO or to Union Carbide, as applicable, made to its principal office, ARCO and Union Carbide shall permit any duly authorized representatives of the Commission:

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(A) Access, during office hours and in the presence of counsel, to inspect and designate for copying all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of ARCO or of Union Carbide, as applicable, relating to any matters contained in this order; and

(B) Upon five days notice to ARCO or to Union Carbide, as applicable, and without restraint or interference from ARCO or Union Carbide, to interview officers or employees of ARCO and Union Carbide, who may have counsel present, regarding such matters.

XVI.

It is further ordered, That, ARCO and Union Carbide shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the corporation such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation, dissolution or sale of subsidiaries that may affect compliance obligations arising out of the order or any other change that may affect compliance obligations arising out of the order.

Commissioner Starek not participating.

APPENDIX I

AGREEMENT TO HOLD SEPARATE

This Agreement to Hold Separate (the "Agreement") is by and among Atlantic Richfield Company, a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 515 South Flower Street, Los Angeles, California; ARCO Chemical Company, a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business at 3801 West Chester Pike, Newtown Square, Pennsylvania (collectively referred to as "ARCO"); and the Federal Trade Commission (the "Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively, the "Parties").

Premises

Whereas, on September 27, 1989, ARCO entered into an Asset Purchase Agreement providing for the acquisition of certain of the

assets and businesses (hereinafter "the Acquired Assets") of Union Carbide Chemicals and Plastics Company Inc., a wholly-owned subsidiary of Union Carbide Corporation (collectively referred to as "Union Carbide"); (hereinafter the "Acquisition"); and

Whereas, Union Carbide manufactures and sells Polyols and propylene glycol; and

Whereas, the Commission is now investigating the Acquisition to determine if it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order ("Consent Order"), the Commission must place it on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* of the Acquired Assets during the period prior to the final acceptance of the Consent Order by the Commission (after the 60-day public notice period), divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of the Properties to Be Divested as described in Paragraph I of the Consent Order and the Commission's right to seek to restore Union Carbide's Polyols and propylene glycol assets and businesses as a viable competitor; and

Whereas, the purpose of this Agreement and the Consent Order is to:

(i) Preserve the Acquired Assets as a viable independent business pending the divestiture of the Properties to Be Divested as viable and ongoing enterprises,

(ii) Remedy any anticompetitive effects of the Acquisition, and

(iii) Preserve the Acquired Assets as ongoing, viable entities engaged in the manufacture and sale of Polyols and propylene glycol in the event that divestiture is not achieved; and

Whereas, ARCO entering into this Agreement shall in no way be construed as an admission by ARCO that the Acquisition is illegal; and

Whereas, ARCO understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the

provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, the Parties agree, upon understanding that the Commission has determined that it has reason to believe the acquisition may substantially lessen competition, and in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from ARCO or Union Carbide with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order to which it is annexed and made a part thereof, and, in the event the required divestitures are not accomplished, to seek divestiture of such assets as are held separate pursuant to this Agreement, and other relief, as follows:

1. ARCO agrees to execute and be bound by the attached Consent Order.

2. ARCO agrees that from the date this Agreement is accepted until the earliest of the dates listed in subparagraphs 2.a - 2.c, it will comply with the provisions of paragraph 3 of this Agreement:

a. Three business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Section 2.34 of the Commission's Rules;

b. 120 days after publication in the Federal Register of the Consent Order, unless by that date the Commission has finally accepted such Order; or

c. The day after the divestitures required by the Consent Order have been completed.

3. ARCO will hold the Acquired Assets as they are presently constituted separate and apart on the following terms and conditions:

a. The Acquired Assets shall be held separate and apart and shall be operated independently of ARCO (meaning here and hereinafter, ARCO excluding the Acquired Assets and excluding all personnel connected with the Acquired Assets on behalf of Union Carbide as of the date this Agreement was signed) except to the extent that ARCO must exercise direction and control over the Acquired Assets to assure compliance with this Agreement or the Consent Order.

b. ARCO shall not exercise direction or control over, or influence directly or indirectly, the Acquired Assets; *provided, however*, that ARCO may exercise only such direction and control over the Acquired

Assets as is necessary to assure compliance with this Agreement or the Consent Order.

c. ARCO shall maintain the viability and marketability of the Acquired Assets and shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair their marketability or viability.

d. Except for the single ARCO director, officer, employee, or agent serving on the "New Board" or "Management Committee" (as defined in subparagraph 3.i), ARCO shall not permit any director, officer, employee, or agent of ARCO to also be a director, officer or employee of the Acquired Assets.

e. Except as required by law or as reported by the auditor (provided for in subparagraph 3.f) and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations or litigation, obtaining legal advice, acting to assure compliance with this Agreement or the Consent Order (including accomplishing the divestitures), or negotiating agreements to dispose of assets, ARCO shall not receive or have access to, or the use of, any of the Acquired Assets' "material confidential information" not in the public domain, except as such information would be available to ARCO in the normal course of business if the Acquisition had not taken place. Any such information that is obtained pursuant to this subparagraph shall only be used for the purposes set out in this subparagraph. ("*Material confidential information*," as used herein, means competitively sensitive or proprietary information not independently known to ARCO from sources other than Union Carbide or the Acquired Assets, and includes but is not limited to customer lists, customers, price lists, prices, individual transactions, marketing methods, patents, technologies, processes, or other trade secrets).

f. ARCO may retain an independent auditor to monitor the operation of the acquired assets. Said auditor may report to ARCO on all aspects of the operation of the acquired assets other than information on customer lists, customers, price lists, prices, individual transactions, marketing methods, patents, technologies, processes, or other trade secrets.

g. ARCO shall not change the composition of the management of the Acquired Assets except that the non-ARCO (as ARCO is defined in subparagraph 3.a hereof) directors or members serving on the New Board or Management Committee (as defined in subparagraph 3.i hereof) shall have the power to remove employees for cause.

h. All material transactions, out of the ordinary course of business and not precluded by subparagraphs 3.a - 3.g hereof, shall be subject to a majority vote of the New Board or Management Committee (as defined in subparagraph 3.i hereof).

i. ARCO shall either separately incorporate the Acquired Assets and adopt new Articles of Incorporation and Bylaws that are not inconsistent with other provisions of this Agreement or shall establish a separate business venture with articles of agreement covering the conduct of the Acquired Assets in accordance with this Agreement. ARCO shall also elect a new three-person board of directors of the Acquired Assets ("New Board") or Management Committee of the Acquired Assets ("Management Committee") once it obtains title to the Acquired Assets. ARCO may elect the directors to the New Board or select the members of the Management Committee; *provided, however*, that such New Board or Management Committee shall consist of at least two non-ARCO directors, officers, or employees and no more than one ARCO director, officer, employee, or agent. Except as permitted by this Agreement, the director of the Acquired Assets or member of the Acquired Assets Management Committee who is also an ARCO director, officer, employee or agent shall not receive, in his or her capacity as a director or Management Committee member of the Acquired Assets, material confidential information and shall not disclose any such information received under this Agreement to ARCO or use it to obtain any advantage for ARCO. Such director or Management Committee member shall participate in matters which come before the New Board or Management Committee only for the limited purpose of considering a capital investment or other transactions exceeding \$1,000,000 and carrying out ARCO's and the Acquired Assets' responsibilities under this Agreement or the Consent Order. Except as permitted by this Agreement, such director or Management Committee member shall not participate in any matter, or attempt to influence the votes of the other directors or Management Committee members with respect to matters that would involve a conflict of interest if ARCO and the Acquired Assets were separate and independent entities. Meetings of the New Board or Management Committee during the term of this Agreement shall be stenographically transcribed and the transcripts retained for two (2) years after the termination of this Agreement.

j. Any ARCO employee who obtains or may obtain confidential information under this Agreement shall enter a confidentiality

agreement prohibiting disclosure of confidential information until the day after the divestitures required by the Consent Order have been completed.

k. All earnings and profits of the Acquired Assets shall be retained separately in the Acquired Assets. If necessary, ARCO shall provide the Acquired Assets with sufficient working capital to operate at the current rate of operation.

l. Should the Federal Trade Commission seek in any proceeding to compel ARCO (meaning here and hereinafter ARCO including the Acquired Assets) to divest itself of the Acquired Assets or to compel ARCO to divest any assets or businesses of the Acquired Assets that it may hold, or to seek any other injunctive or equitable relief, ARCO shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. ARCO also waives all rights to contest the validity of this Agreement.

4. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to ARCO made to its principal office, ARCO shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of ARCO and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of ARCO relating to compliance with this Agreement;

b. Upon five (5) days notice to ARCO, and without restraint or interference from it, to interview officers or employees of ARCO, who may have counsel present, regarding any such matters.

5. This agreement shall not be binding until approved by the Commission.

APPENDIX II

STIPULATION

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

(1) The parties consent that the Court may file and enter a Final Judgment in the form attached to this Stipulation, on the Court's own motion or on the motion of any

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party at any time, and without further notice to any party or other proceedings, if plaintiff has not withdrawn its consent, which it may do at any time before the entry of judgment by serving notice of its withdrawal on defendants and filing that notice with the Court;

(2) The defendants waive any objection to venue for purposes of this Final Judgment;

(3) In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding; and

(4) The parties' execution of this Stipulation and the entry of Final Judgment settles, discharges, and releases any and all claims of the plaintiff arising from the acquisition by defendants Atlantic Richfield Company and ARCO Chemical Company of certain assets of defendants Union Carbide Corporation and Union Carbide Chemicals and Plastics Company Inc., as set forth in the Commission's complaint:

(a) Against the defendants for failure to comply with any provision of Section 7A of the Clayton Act, 15 U.S.C. 18a; and

(b) Against any officer, director, or partner of the defendants for failure to comply with any provision of Section 7A of the Clayton Act, 15 U.S.C. 18a.

FINAL JUDGMENT

Plaintiff, the United States of America, having commenced this action by filing its Complaint herein for violations of Section 7A of the Clayton Act, 15 U.S.C. 18a, commonly known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue:

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties hereto, it is hereby

Ordered, adjudged, and decreed as follows:

I.

The Court has jurisdiction of the subject matter herein and of the parties hereto. The Complaint states a claim upon which relief can be granted against the defendants, Atlantic Richfield Company, ARCO Chemical Company, Union Carbide Corporation, and Union Carbide Chemicals and Plastics Company Inc. under Section 7A of the Clayton Act, 15 U.S.C. 18a.

II.

Judgment is hereby entered in favor of plaintiff, United States of America and against defendants, Atlantic Richfield Company, ARCO Chemical Company, Union Carbide Corporation, and Union Carbide Chemicals and Plastics Company Inc., and, pursuant to Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1), defendants Atlantic Richfield Company and ARCO Chemical Company shall pay a total civil

penalty in the amount of One Million Dollars (\$1,000,000), and defendants Union Carbide Corporation and Union Carbide Chemicals and Plastics Company Inc. shall pay a total civil penalty in the amount of One Million Dollars (\$1,000,000). Payment shall be made by wire transfer of the funds to the United States Treasury through the Treasury Financial Communications System. The defendants shall pay the full amount of the civil penalties within fifteen (15) days of entry of this Final Judgment. In the event of a default in payment, interest at the rate of eighteen (18) percent per annum shall accrue thereon from the date of default to the date of payment.

III.

Each party shall bear its own costs of the within action.

IV.

Entry of this Final Judgment is in the public interest.

APPENDIX III

PATENT RIGHTS

<u>Patent No.</u>	<u>Exp. Date</u>	<u>Title</u>
3,836,598	09/17/91	Olefinic Silicone Organic Polymer Graft Copolymers
3,939,106	02/17/93	Energy Absorbing Polyurethane-Polyurea Cellular Elastomers
4,060,439	11/29/94	Polyurethane Foam Composition and Method of Making Same
4,104,236	08/01/95	Liquid Polymer/Polyols and Polyurethane Elastomers Based Thereon
4,107,106	08/15/95	Phenol-Aldehyde-Amine Resin/Glycol Curatives for Energy Absorbing Polyurethanes
4,111,865	09/05/95	Polymer/Polyols and Polyurethane Forms and Elastomers Therefrom
4,119,586	10/10/95	Polymer/Polyol Compositions, Processes for Making Same and Processes for Making Polyurethane Products Therefrom
4,125,505	11/14/95	Polymer/Polyols from High Ethylene Oxide Content Polyols
4,143,002	03/06/96	Chalk-Resistant, Medium to Dark Colored Polyurethanes, Polymer/Polyol and Polyisocyanate Compositions for Use in Producing Same and Methods for Making Said Polyurethanes
4,148,840	04/10/96	Polymer/Polyol Compositions Made from Preformed Polymer/Polyols, Processes for Making Same and Processes for Making Polyurethane Products Therefrom

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<u>Patent No.</u>	<u>Exp. Date</u>	<u>Title</u>
4,172,825	10/30/96	Polymer/Polyol and Process for Production Thereof
4,190,711	02/26/97	Thermoplastic Polyether Polyurethane Elastomers
4,195,151	03/25/97	Phenol-Aldehyde-Amine Resin/Glycol Curative Compositions
4,198,488	04/15/97	Polymer-Polyols and Polyurethanes Based Thereon
4,208,314	06/17/97	Polymer/Polyols and Process for Production Thereof
4,214,055	07/22/97	High Resilience Flame-Retardant Polyurethane Foams Based on Polymer/Polyol Compositions
4,226,756	10/07/97	Mixtures of Extenders and Polyols or Polymer/Polyols Useful in Polyurethane Production
4,242,249	12/30/97	Polymer/Polyols via Non-Aqueous Dispersion Stabilizers
4,242,476	12/30/97	Polymer/Polyol Compositions Containing Vinylidene Chloride
4,282,331	08/04/98	Polyurethane Foam Prepared from a Copolymer/Polyol Composition
4,283,500	08/11/98	Polymer/Polyisocyanates
4,312,973	01/26/99	Polyurethane Elastomers Prepared from Polyol or Polymer/Polyol-Chain Extender Mixtures
4,332,716	06/01/99	Polymer/Polyisocyanate Compositions, Processes for Making Same, and Processes for Making Polyurethane Products Therefrom
4,350,780	09/21/99	Polyurethanes Made with Polymer/Polyols Prepared via Preformed Stabilizers
4,357,430	11/02/99	Polymer/Polyols, Methods for Making Same and Polyurethanes Based Thereon
4,407,983	10/04/00	Polyoxamate Polymer/Polyols
4,463,107	07/31/01	Polymer/Polyol Compositions Having Improved Combustion Resistance
4,495,341	01/22/02	Epoxy-Modified Polyols and Polymer-Polyols Useful in the Preparation of Improved Plastics, Including Polyurethane Foams, Elastomers and the Like
4,524,157	06/18/02	Adducts and Polymer-Polyols Useful in the Preparation of Improved Plastics, Including Polyurethane Foams, Elastomers and the Like
4,539,340	09/03/02	Half-Ester Adducts and Polymer-Polyols Useful in the Preparation of Improved

<u>Patent No.</u>	<u>Exp. Date</u>	<u>Title</u>
		Plastics, Including Polyurethane Foams, Elastomers and the Like
4,581,470	04/08/03	Novel Polyols and Uses Thereof
4,585,831	04/29/03	Epoxy-Modified Polyols and Polymer-Polyols Useful in the Preparation of Improved Plastics Including Polyurethane Foams, Elastomers and the Like
4,623,674	11/18/03	Polymer/Polyols of Substituted Styrenes and Polyurethanes Made Therefrom
4,647,624	03/03/04	Epoxy-Modified Polyols and Polymer-Polyols Useful in the Preparation of Improved Plastics, Including Polyurethane Foams, Elastomers and the Like
4,652,589	03/24/04	Polymer/Polyols Having Improved Combustion Resistance and Intrinsic Viscosity, Methods of Making Same and Polyurethanes Prepared Therefrom
4,659,772	04/21/04	Novel Polymer/Polyols and Uses Thereof
4,727,094	02/23/05	Method for Producing Polyurethanes
Re.32,733	08/16/05	Polymer/Polyol Compositions Having Improved Combustion Resistance

APPENDIX IV

AGREEMENT TO HOLD SEPARATE

This Agreement to Hold Separate (the "Agreement") is by and among Atlantic Richfield Company, a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 515 South Flower Street, Los Angeles, California; ARCO Chemical Company, a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business at 3801 West Chester Pike, Newtown Square, Pennsylvania (collectively referred to as "ARCO"); and the Federal Trade Commission (the "Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively, the "Parties").

Premises

Whereas, on September 27, 1989, ARCO entered into an Asset Purchase Agreement providing for the acquisition of certain of the assets and businesses of Union Carbide Chemicals and Plastics

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Company Inc., a wholly-owned subsidiary of Union Carbide Corporation (collectively referred to as "Union Carbide"); (hereinafter the "Acquisition"); and

Whereas, Union Carbide manufactures and sells Polyols and propylene glycol; and

Whereas, the Commission is now investigating the Acquisition to determine if it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order ("Consent Order"), the Commission must place it on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* of the assets of an Acquired entity described in Paragraph XIII.(B) of the Consent Order (hereinafter "Acquired Assets") during the time period provided by said Consent Order, divestiture of the Acquired Assets might be less than an effective remedy; and

Whereas, a purpose of this Agreement and the Consent Order is to:

- (i) Preserve the Acquired Assets as a viable independent business pending the divestiture described in Paragraph XIII of the Consent Order as viable and ongoing enterprises, and
- (ii) Remedy any anticompetitive effects of the acquisition described in Paragraph XIII of the Consent Order.

Whereas, ARCO entering into this Agreement shall in no way be construed as an admission by ARCO that the Acquisition is illegal; and

Whereas, ARCO understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, the Parties agree, in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from ARCO with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce Section 7A(g)(1) of the Clayton Act in a civil penalty action with respect to the Acquisition, to enforce this Agreement and the Consent Order to which it is annexed and made a part thereof, and, in the event the required divestitures are not

accomplished, to seek divestiture of such assets as are held separate pursuant to this Agreement, and other relief, as follows:

1. ARCO agrees to execute and be bound by the attached Consent Order.

2. ARCO agrees that, from the date ARCO has sufficient control over the Acquired entity to satisfy the terms of this Agreement until the day after the divestitures required by Paragraph XIII of the Consent Order have been completed, ARCO will hold the Acquired Assets separate and apart on the following terms and conditions:

a. The Acquired Assets shall be held separate and apart and shall be operated independently of ARCO (meaning here and hereinafter, ARCO excluding the Acquired Assets and excluding all personnel connected with the Acquired Assets as of the date ARCO has sufficient control over the Acquired entity to satisfy the terms of this Agreement) except to the extent that ARCO must exercise direction and control over the Acquired Assets to assure compliance with this Agreement or the Consent Order.

b. ARCO shall not exercise direction or control over, or influence directly or indirectly, the Acquired Assets, provided, however, that ARCO may exercise only such direction and control over the Acquired Assets as is necessary to assure compliance with this Agreement or the Consent Order.

c. ARCO shall maintain the viability and marketability of the Acquired Assets and shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair their marketability or viability.

d. Except for the single ARCO director, officer, employee, or agent serving on the "New Board" (as defined in subparagraph 2.i), ARCO shall not permit any director, officer, employee, or agent of ARCO to also be a director, officer or employee of the Acquired Assets.

e. Except as required by law or as reported by the auditor (provided for in subparagraph 2.f) and except to the extent that necessary information is exchanged in the course of evaluating the acquisition of the Acquired entity, defending investigations or litigation, obtaining legal advice, acting to assure compliance with this Agreement or the Consent Order (including accomplishing the divestitures), or negotiating agreements to dispose of Acquired Assets, ARCO shall not receive or have access to, or the use of, any of the Acquired Asset's "material confidential information" not in the public domain, except as such

information would be available to ARCO in the normal course of business if the acquisition of the Acquired entity had not taken place. Any such information that is obtained pursuant to this subparagraph shall only be used for the purpose set out in this subparagraph. (*"Material confidential information,"* as used herein, means competitively sensitive or proprietary information not independently known to ARCO from sources other than the Acquired entity, and includes but is not limited to customer lists, customers, price lists, prices, individual transactions, marketing methods, patents, technologies, processes, or other trade secrets).

f. ARCO may retain an independent auditor to monitor the operation of the Acquired Assets. Said auditor may report to ARCO on all aspects of the operation of the Acquired Assets other than information on customer lists, customers, price lists, prices, individual transactions, marketing methods, patents, technologies, processes, or other trade secrets.

g. ARCO shall not change the composition of the management of the Acquired Assets except that the non-ARCO (as defined in subparagraph 2.a hereof) directors or members serving on the New Board (as defined in subparagraph 2.i, hereof) shall have the power to remove employees for cause.

h. All material transactions, out of the ordinary course of business and not precluded by subparagraphs 2.a - 2.g hereof, shall be subject to a majority vote of the New Board (as defined in subparagraph 2.i hereof).

i. ARCO shall separately incorporate the Acquired Assets and shall adopt new Articles of Incorporation and By-laws that are not inconsistent with other provisions of this Agreement. ARCO shall also elect a new three-person board of directors of the Acquired Assets ("New Board"). ARCO may elect the directors to the New Board; *provided, however*, that such New Board shall consist of at least two non-ARCO directors, officers, or employees and no more than one ARCO director, officer, employee, or agent. Except as permitted by this Agreement, the director of the Acquired Assets who is also an ARCO director, officer, employee or agent shall not receive, in his or her capacity as a director, material confidential information and shall not disclose any such information received under this Agreement to ARCO or use it to obtain any advantage for ARCO. Such director shall participate in matters which come before the New Board only for the limited purpose of considering a capital investment or other transac-

tions exceeding \$1,000,000 and carrying out ARCO's and the Acquired Asset's responsibilities under this Agreement or the Consent Order. Except as permitted by this Agreement, such director shall not participate in any matter, or attempt to influence the votes of the other directors with respect to matters that would involve a conflict of interest if ARCO and the Acquired Assets were separate and independent entities. Meetings of the New Board during the term of this Agreement shall be stenographically transcribed and the transcripts retained for two (2) years after the termination of this Agreement.

j. Any ARCO employee who obtains or may obtain confidential information under this Agreement shall enter a confidentiality agreement prohibiting disclosure of confidential information until the day after the divestitures required by Paragraph XIII of the Consent Order have been completed.

k. All earnings and profits of the Acquired Assets shall be retained separately in the Acquired Assets. If necessary, ARCO shall provide the Acquired Assets with sufficient working capital to operate at the current rate of operation.

1. Should the Federal Trade Commission seek in any proceeding to compel ARCO (meaning here and hereinafter ARCO including the Acquired Assets) to divest itself of the Acquired entity or to compel ARCO to divest any assets or businesses of the Acquired entity that it may hold, or to seek any other injunctive or equitable relief, ARCO shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the acquisition of the Acquired entity. ARCO also waives all rights to contest the validity of this Agreement.

3. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to ARCO made to its principal office, ARCO shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of ARCO and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of ARCO relating to compliance with this Agreement;

b. Upon five (5) days notice to ARCO, and without restraint or

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interference from it, to interview officers or employees of ARCO, who may have counsel present, regarding any such matters.

4. This agreement shall not be binding until approved by the Commission.

IN THE MATTER OF

ROCHE HOLDING LTD., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3315. Complaint, Nov. 28, 1990—Decision, Nov. 28, 1990

This consent order requires, among other things, Roche Holding, Ltd., a Swiss pharmaceutical company, and related American corporations to divest either Genentech's interest in GLC Associates, a partnership between Genentech and Lubrizol, Inc., or GLC's vitamin C assets. Roche also is required to divest its human growth hormone releasing factor business. Both divestitures are to be effected to Commission-approved acquirers within one year after the effective date of the order; otherwise the Commission may appoint a trustee to make the divestitures.

Appearances

For the Commission: *M. Howard Morse* and *Steven A. Newborn*.

For the respondents: *Bertram M. Kantor, Wachtell, Lipton, Rosen & Katz*, New York, N.Y. and *Arthur F. Golden, Davis Polk & Wardwell*, New York, N.Y.

COMPLAINT

The Federal Trade Commission, having reason to believe that respondents, Roche Holding Ltd., Roche Holdings, Inc., and Hoffman-La Roche Inc. (collectively "Roche"), all subject to the jurisdiction of the Federal Trade Commission, propose to acquire voting securities of Genentech, Inc. ("Genentech"), also subject to the jurisdiction of the Federal Trade Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act ("FTC Act"), as amended, 15 U.S.C. 45; and it appearing that a proceeding in respect thereof would be in the public interest, the Commission hereby issues its complaint, pursuant to Section 11 of the Clayton Act, 15 U.S.C. 21, and Section (5b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), stating its charges as follows: