

IN THE MATTER OF

HOECHST CELANESE CORPORATION, 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 9216. Complaint, Nov. 17, 1988—Decision, Nov. 26, 1991

This consent order prohibits, among other things, a German company and its U.S. subsidiaries, for a period of ten years, from entering into any agreement, with any producer of acetal products, to allocate, divide or restrict competition in markets for acetal products. In addition, the consent order prohibits the respondents from using certain restrictions to limit competition from Daicel Chemical Industries and Polyplastics Company of Japan, their partners in a joint venture.

Appearances

For the Commission: *Rhett R. Krulla.*

For the respondents: *James T. Halverson, Shearman & Sterling,*
New York, N.Y.

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 Hoechst Aktiengesellschaft, a corporation, Hoechst Corporation, a corporation, and Hoechst Celanese Corporation, a corporation, hereinafter sometimes referred to as respondents, have violated 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 in that respect as follows:

DEFINITION

PARAGRAPH 1. For purposes of this complaint, "acetal" means the crystalline engineering thermoplastic polymer resin known as acetal, polyacetal or polyoxymethylene (POM), and includes both acetal homopolymers, manufactured from formaldehyde and consisting of repeating oxymethylene units with esterified terminal hydroxy

groups, and acetal copolymers, having oxyethylene groups inserted randomly along the polymer chains.

THE RESPONDENTS

PAR. 2. Respondent Hoechst Aktiengesellschaft ("Hoechst AG") is a corporation organized and existing under the laws of the Federal Republic of Germany, and has its principal place of business at D-6230 (Main) 80, Frankfurt, Federal Republic of Germany. Hoechst AG is the corporate parent of respondents Hoechst Corporation and Hoechst Celanese Corporation.

PAR. 3. Respondent Hoechst Corporation is a wholly-owned subsidiary of Hoechst AG, and is the corporate parent of respondent Hoechst Celanese Corporation. Hoechst Corporation is a corporation organized and existing under the laws of the State of Delaware, and has its principal place of business at Route 202-206 North, Bridgewater, New Jersey.

PAR. 4. Respondent Hoechst Celanese Corporation ("Hoechst Celanese") is a corporation organized and existing under the laws of the State of Delaware, and has its principal place of business at Route 202-206 North, Bridgewater, New Jersey. Hoechst Celanese is a wholly-owned subsidiary of Hoechst Corporation, and was formed through the merger of American Hoechst Corporation and Celanese Corporation ("Celanese") on February 27, 1987.

PAR. 5. At all times relevant herein, 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.

PAR. 6. Hoechst AG and its affiliates (the "Hoechst Group") include approximately 250 companies, operating in more than 120 countries. The Hoechst Group's sales in 1987 were approximately \$20.6 billion. The Hoechst Group is one of the four largest producers and marketers of chemicals and chemical-related products in the world. At the time of the acquisition described below, the Hoechst Group sold acetal throughout the world, including in the United States, and engaged in research and development relating to acetal process and application technology.

PAR. 7. Hoechst Celanese manufactures and sells, principally to industrial customers, a diversified line of products, including textile

and industrial fibers, specialty and bulk chemicals, and engineering thermoplastics, including acetal. Hoechst Celanese owns and operates 29 manufacturing plants, 24 of which are located in the United States, three of which are located in Canada, and two of which are located in Europe. In 1987 Hoechst Celanese had revenues of approximately \$4.596 billion, assets of approximately \$5.388 billion, and operating income of approximately \$418 million.

OTHER PARTIES

PAR. 8. American Hoechst Corporation ("American Hoechst") was, at the time of the acquisition described below, a corporation organized and existing under the laws of the State of Delaware, and had its principal place of business at 1041 Route 202-206 North, Somerville, New Jersey. At the time of the acquisition described below, American Hoechst was a wholly-owned subsidiary of Hoechst AG, engaged in the production and sale of various petrochemicals, plastics, and pharmaceuticals in the United States. American Hoechst sold in the United States acetal supplied by Hoechst AG. American Hoechst had sales of approximately \$1.659 billion in 1986.

PAR. 9. At the time of the acquisition described below, Celanese Corporation was a corporation organized and existing under the laws of the State of Delaware, and had its principal executive offices and place of business at 1211 Avenue of the Americas, New York, New York. Celanese's overall net income was \$178 million in 1985 on sales of approximately \$3 billion. Celanese was the leading producer of acetal in the United States. In addition, Celanese owned a 41-percent interest in Ticona Polymerwerke GMBH ("Ticona"), the leading acetal producer in Europe, and owned a 45-percent interest in Polyplastics Co., Ltd. ("Polyplastics"), the leading acetal producer in Japan. Prior to the acquisition, Celanese licensed acetal technology to Ticona and to Polyplastics, and was a licensee of acetal technology from Ticona and Polyplastics.

PAR. 10. At the time of the acquisition described below, Ticona Polymerwerke GMBH was a foreign corporation organized and existing under the laws of the Federal Republic of Germany, and had its principal place of business at Kelsterbach, Federal Republic of Germany. Ticona was then jointly owned by Hoechst AG, which owned 59% of the capital stock of Ticona, and Celanese, which owned 41% of the capital stock of Ticona. Hoechst AG and Celanese had equal representation on Ticona's board of directors. Ticona was

engaged in the manufacture of acetal, and in research and development related to acetal. Acetal manufactured by Ticona was marketed and sold by Hoechst AG throughout the world, including in the United States. In addition, Hoechst AG managed the operations of Ticona, directly or through Hoechst AG officers and employees assigned to Ticona. Prior to the acquisition, Ticona licensed acetal technology to Celanese and to Polyplastics, and was a licensee of acetal technology from Celanese and Polyplastics.

THE ACQUISITION

PAR. 11. On or about November 3, 1986, Hoechst AG and American Hoechst commenced a cash tender offer for up to 100 percent of the issued and outstanding shares of Celanese common and preferred stock, with the intent of effecting a merger of Hostachem Acquisition Incorporated, a Delaware corporation wholly-owned by American Hoechst and Hoechst AG, into Celanese, all as contemplated in the Agreement of Merger entered into among Hoechst AG, American Hoechst and Celanese, on November 2, 1986. Pursuant to that Agreement, Celanese's Board of Directors approved Hoechst's tender offer, recommended its acceptance by Celanese stockholders, and agreed to approve the merger of Hostachem Acquisition Incorporated into Celanese following the tender offer.

PAR. 12. In February 1987, pursuant to the tender offer, American Hoechst acquired over 90 percent of the outstanding shares of common and preferred stock of Celanese. On or about February 27, 1987, American Hoechst was merged into Celanese and the surviving corporation was renamed Hoechst Celanese Corporation.

THE RELEVANT MARKETS

PAR. 13. For purposes of this complaint, the relevant line of commerce in which to evaluate the effects of the acquisition is the manufacture and sale of acetal.

PAR. 14. For purposes of this complaint, the relevant geographic market is the world.

PAR. 15. In 1986, approximately 700 million pounds of acetal were sold in the world, including approximately 115 million pounds of acetal that were sold in the United States. The world acetal market is highly concentrated, whether measured by the Herfindahl-Hirschmann Index or by four-firm and eight-firm concentration ratios.

PAR. 16. It is difficult to enter into the manufacture and sale of acetal.

PAR. 17. At the time of the acquisition described above, Celanese and Ticona were actual competitors in the manufacture and sale of acetal in the world, including in the United States.

PAR. 18. At the time of the acquisition, Celanese, and Hoechst AG and American Hoechst were actual competitors in the sale of acetal in the world, including in the United States.

THE EFFECTS OF THE ACQUISITION

PAR. 19. The effect of the aforesaid acquisition may be substantially to lessen competition with respect to the manufacture and sale of acetal in the world, including in the United States, 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. Eliminated substantial actual competition between Celanese and Ticona;
- b. Eliminated substantial actual competition between Celanese, Hoechst AG and American Hoechst; and
- c. Significantly enhanced the likelihood of collusion or interdependent coordination among the remaining firms that sell or produce acetal.

THE VIOLATIONS CHARGED

PAR. 20. The acquisition of Celanese by American Hoechst and Hoechst AG violates Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

PAR. 21. The acquisition of Celanese by American Hoechst and Hoechst AG violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission ("the Commission"), having heretofore issued its complaint charging respondents Hoechst Aktiengesellschaft, Hoechst Corporation, and Hoechst Celanese Corporation (hereinafter collectively "respondents") with 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, and respondents having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the 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 Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25 of its Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and no public comment thereon having been received, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Hoechst Aktiengesellschaft ("Hoechst AG") is a company organized and existing under the laws of the Federal Republic of Germany, and has its principal place of business at D-6230 (Main) 80, Frankfurt, Federal Republic of Germany. Hoechst AG is the corporate parent of Respondents Hoechst Corporation and Hoechst Celanese Corporation.

2. Respondent Hoechst Corporation is a wholly-owned subsidiary of Hoechst AG, and is the corporate parent of Respondent Hoechst Celanese Corporation. Hoechst Corporation is a corporation organized and existing under the laws of the State of Delaware, and has its principal place of business at Route 202-206 North, Bridgewater, New Jersey.

3. Respondent Hoechst Celanese Corporation ("Hoechst Celanese") is a corporation organized and existing under the laws of the State of Delaware, and has its principal place of business at Route 202-206 North, Bridgewater, New Jersey. Hoechst Celanese is a wholly-owned subsidiary of Hoechst Corporation, and was formed through the merger of American Hoechst Corporation and Celanese Corporation ("Celanese") on February 27, 1987.

4. The Commission has issued and served upon Hoechst AG, Hoechst Corporation, and Hoechst Celanese (collectively, "Respondents") a complaint charging them with 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. Respondents have filed an answer to the complaint denying said charges.

5. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of each of the respondents, and the proceeding is in the public interest.

ORDER

I.

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

A. "*Acetal*" means the crystalline engineering thermoplastic polymer resin known as Acetal, polyacetal or polyoxymethylene (POM), and includes both Acetal homopolymers, manufactured from formaldehyde or methanol and consisting of repeating oxymethylene units with esterified terminal hydroxy groups, and Acetal copolymers, having oxyethylene groups or other monomer groups, including 1-4 butanediolformal, inserted randomly along the polymer chains.

B. "*Acetal products*" means Acetal; trioxane; and Acetal to which fillers, reinforcing agents, and other polymers and/or chemical additives have been added where the Acetal is thirty (30) percent or more of the organic polymer content.

C. "*Acetal technology*" means patented and unpatented technology and know-how relating to the development, manufacture, sale, or use of Acetal products.

D. "*Acetal Assets and Businesses*" include but are not limited to all assets, properties, business and goodwill, tangible and intangible, utilized in the development, production, distribution or sale of Acetal products, 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.

E. "*Before*" means on the date or at any time prior to that date.

F. "*Commercially implemented*" means technology that has been practiced commercially in a commercially-scaled facility for the manufacture of acetal products.

G. "*Control*" means "control" as it is defined at 16 CFR 801.1(b) on the date this order becomes final.

H. "*Daicel*" means Daicel Chemical Industries, Ltd., a corporation organized and existing under the laws of Japan (with its principal place of business at Osaka, Japan), its predecessors, subsidiaries, divisions, groups and affiliates controlled directly or indirectly by Daicel Chemical Industries, Ltd., and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns other than respondents.

I. "*Daicel VP*" means Daicel acting pursuant to paragraph VI of this order.

J. "*Daicel/Polyplastics site*" means any site in Japan at which Polyplastics manufactures Acetal products and any property owned by Daicel or by Polyplastics proximate to such site or connected to such site via supply or service lines.

K. "*Material confidential information*" means competitively sensitive or proprietary information not independently known to respondents 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.

L. "*Polyplastics*" means Polyplastics Company, Ltd., a corporation organized and existing under the laws of Japan (with its principal place of business at Osaka, Japan), its predecessors, subsidiaries,

divisions, groups and affiliates controlled directly or indirectly by Polyplastics Company, Ltd., and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

M. "*Polyplastics/TEPCO Acetal technology*" means all acetal technology that:

1. Polyplastics, independent of respondents and respondents' acetal technology, has developed or patented, or in the future develops or patents;

2. Polyplastics has licensed or otherwise obtained, or in the future licenses or otherwise obtains, from any person other than respondents;

3. Polyplastics had the right to use under license from respondents and commercially implemented at its Fuji City, Japan, facility before February 27, 1987; or

4. Has been provided to TEPCO by respondents or Polyplastics for commercial use in the design and operation of the facilities TEPCO now has under construction in Kaoshing, Taiwan, Republic of China, for the manufacture of acetal products as of the date that commercial production of acetal polymers commences at that facility; and all other such technology provided to TEPCO by respondents or Polyplastics and put in commercial use within six (6) months after the date that commercial production of acetal polymer commences at the Kaoshing facility.

N. "*Respondents*" means, individually and collectively:

1. Hoechst Aktiengesellschaft, a corporation organized and existing under the laws of the Federal Republic of Germany (with its principal place of business at Frankfurt, Federal Republic of Germany),

2. Hoechst Corporation, and Hoechst Celanese Corporation, two corporations organized and existing under the laws of Delaware (with their principal places of business at Bridgewater, New Jersey),

their predecessors, subsidiaries, divisions, groups and affiliates controlled directly or indirectly by Hoechst Aktiengesellschaft, Hoechst Corporation, or Hoechst Celanese Corporation, individually or collectively, and their respective directors, officers, employees, agents, and representatives and their respective successors and assigns. For purposes of this order the term "respondents" excludes Polyplastics and TEPCO.

O. "*Substantial purpose*" means fifty (50) percent or more of the

anticipated production from the incremental capacity is intended to be used for the stated purpose.

P. "TEPCO" means Taiwan Engineering Plastics Co., Ltd., a corporation organized and existing under the laws of Taiwan, Republic of China, (with its principal place of business at Taipei, Taiwan), its predecessors, subsidiaries, divisions, groups and affiliates controlled directly or indirectly by Taiwan Engineering Plastics Co., Ltd., and their respective successors and assigns.

Q. "United States" means the United States, including its territories and possessions.

R. "Viability and Competitiveness" means capable of operating independently at the same output as currently (at competitive prices) and capable of functioning independently and competitively in the acetal business.

II.

It is ordered, That, for a period of ten (10) years following the date this order becomes final, respondents do forthwith cease and desist from creating, maintaining, adhering to, participating in, or enforcing (including enforcing, after the ten-year period expires, any agreement entered into before the date this order becomes final with respect to: i) conduct within such period; or ii) conduct after such period by any person who initiated or engaged in similar conduct during such period) any agreement (if any) with any producer of acetal products to allocate, divide or restrict competition in markets for acetal products. Provided, however, respondents, Polyplastics, and TEPCO may, consistent with the terms of this order, enter into agreements with each other designating any of respondents, Polyplastics, or TEPCO an exclusive or nonexclusive distributor or selling agent for the sale of acetal products in any part of the world, except that respondents may not be designated an exclusive distributor or exclusive selling agent, in the United States, of Polyplastics, Daicel, or (to the exclusion of Polyplastics or other third parties) TEPCO. Provided, further, that respondents retain the right, in their sole discretion, to limit the use of acetal technology owned by respondents, except as required by this order.

III.

It is further ordered, That, for a period of ten (10) years following

the date this order becomes final, respondents shall forthwith cease and desist from creating, maintaining, adhering to, participating in, or enforcing any agreement (if any) (except for those actions permitted under paragraph II of this order) that:

A. Restricts the right of Daicel VI or Polyplastics to sell, cause to be sold, use, or cause to be used acetal products in the United States; or restricts the right of Daicel VI or Polyplastics to engage in the development or manufacture of acetal products in the United States using Polyplastics/TEPCO acetal technology, except as provided in paragraph VI of this order; or restricts the rights of customers of Polyplastics or Daicel to use or resell acetal products purchased from Polyplastics or Daicel VI. *Provided that*, to the extent that Polyplastics sells, causes to be sold, uses, or causes to be used acetal products in the United States during such period, acetal technology, including manufacturing technology for manufacture in Japan, necessary to effect sales or use in the United States shall be perpetually licensed to such entity for use in connection with sales or use of acetal products thereafter in the United States. *Provided, further*, that any of the Polyplastics/TEPCO acetal technology licensed, transferred and used by Daicel or Polyplastics for the construction of a new facility or expansion of an existing facility pursuant to operation of paragraph VI of this order shall be perpetually licensed to such entity for use in connection with such new facility or facility expansion, including but not limited to the right to manufacture at such facility and sell acetal products produced therein in the United States. *Provided, however*, that respondents may take action with respect to any shipment or sale of Acetal products in or into the United States by any person to the extent that respondents believe, in good faith, is reasonably necessary to protect respondents from direct or indirect liability under any law of the United States, including, but not limited to, the Toxic Substances Control Act.

B. Designates respondents the exclusive distributor or exclusive selling agent in the United States or any part thereof of acetal products manufactured by Daicel VI, Polyplastics, or (to the exclusion of Polyplastics or other third parties) TEPCO.

IV.

It is further ordered, That respondents shall take no action against:

A. Daicel VI or Polyplastics to enforce any patent of respondents necessary to utilize the Polyplastics/TEPCO Acetal technology with respect to the development, manufacture, use, or sale of acetal products in the United States; or

B. Any customer of Polyplastics or Daicel VI to enforce any patent of respondents necessary to utilize the Polyplastics/TEPCO acetal technology with respect to purchases of acetal products in the United States or purchases of acetal products for sale or use in the United States.

V.

It is further ordered, That, for a period of ten (10) years following the date this order becomes final, respondents shall take no action, directly or indirectly, to restrict, interfere with, or, except through competition by respondents in the open market, influence in any manner:

A. The selling price of acetal products (i) that Polyplastics or Daicel VI manufactures or sells in the United States; or (ii) that Polyplastics or Daicel VI sells for resale in the United States or sells for use in manufacture in the United States to the extent that respondents know that such products are destined for the United States;

B. The volume of acetal products that Polyplastics or Daicel VI manufactures or sells in the United States;

C. The volume of acetal products that Polyplastics or Daicel VI manufactures in Japan for sale into the United States or for use in manufacture in the United States; or

D. The geographic areas in which Polyplastics sells acetal products that Polyplastics obtains from TEPCO.

Provided, however, respondents may, consistent with the terms of this order, enter into a distribution arrangement or selling agency permitted under paragraph II of this order and may negotiate price and volume with respect to purchases by respondents from Polyplastics, TEPCO or Daicel. *Provided, further*, that respondents may exercise any of their rights permitted under paragraph VI of this order.

VI.

It is further ordered, That, for a period of ten (10) years following

the date this order becomes final, whenever Daicel submits in writing or by motion a proposal to the Board of Directors of Polyplastics for Polyplastics, using Polyplastics/TEPCO acetal technology, (1) to construct new facilities or expand existing facilities for the manufacture of acetal products in the United States; (2) to add production capacity at any then-existing Daicel/Polyplastics site in Japan (or, if necessary space is not available or costs would be substantially higher at then-existing Daicel/Polyplastics sites, at such other sites in Japan as Polyplastics may select), an express, substantial purpose of which is to supply Acetal products for sale or use in the United States; or (3) to construct production capacity at any site in Japan for the sole express purpose of supplying acetal products for sale or use in the United States:

A. Respondents shall, within 60 days after receipt of the proposal, either (1) agree in writing to the proposal and agree to make the necessary capital contribution, if any, as specified in the request; or (2) notify Daicel and Polyplastics in writing that respondents elect not to participate in the proposal;

B. If respondents elect not to participate in the proposal pursuant to paragraph VI. (A)(2) of this order, Daicel may, at its own sole election, pursue the proposal independently of Polyplastics,

1. At any site in the United States,

2. At any then-existing Daicel/Polyplastics site in Japan,

3. If necessary space is not available or costs would be substantially higher at then-existing Daicel/Polyplastics sites, at such sites in Japan as Daicel may select, provided Daicel agrees to designate Polyplastics an exclusive distributor or selling agent for the sale outside the United States of acetal products produced at such site, or

4. If the sole express purpose of the proposal is to supply acetal products for sale or use in the United States, at such sites in Japan as Daicel may select,

through a non-exclusive license by respondents and Polyplastics (without the right to sublicense except to an entity controlled by Daicel and which entity no other owner controls and no owner other than Daicel is engaged, at the time of the sublicense, in manufacturing industrial organic chemicals, plastics materials or synthetic resins or fibers anywhere in the world which, if manufactured in the United States, would be defined in Standard Industrial Classification (SIC) Codes 286 and 282) of the Polyplastics/TEPCO Acetal technology for

the manufacture of Acetal products in the United States or Japan for use in connection with the proposal. If Daicel so elects, it shall notify respondents and Polyplastics of its intention to pursue the proposal independently at least sixty (60) days prior to proceeding with the proposal. *Provided, however*, respondents may limit, in the license, the persons to whom the license may be assigned in the event of a sale of the licensed entity to exclude persons engaged, at the time of the sale, in manufacturing industrial organic chemicals, plastics materials or synthetic resins which, if manufactured in the United States, would be defined in Standard Industrial Classification (SIC) Codes 286 and 282.

C. Within sixty (60) days of receipt of notice from Daicel that Daicel intends to pursue independently the proposal, respondents shall, at their sole election, either:

1. Execute and cause Polyplastics to execute in favor of Daicel a license and authorization to Daicel to use all Polyplastics/TEPCO acetal technology in connection with the proposal at any then-existing Daicel/Polyplastics site in Japan (or, if necessary space is not available or costs would be substantially higher at existing sites, at such sites in Japan as Daicel may select provided Daicel agrees to designate Polyplastics an exclusive distributor or selling agent for the sale outside the United States of acetal products produced at such site; or, if the sole express purpose of the proposal is to supply acetal products for sale or use in the United States, at such sites in Japan as Daicel may select) or at any site in the United States and any subsequent expansion thereof. The royalty to be paid by Daicel for use of the Polyplastics/TEPCO acetal technology, either in the United States or Japan, shall be commercially reasonable, shall be paid by Daicel only to Polyplastics, and shall be distributed by Polyplastics in accordance with established practice. If Daicel agrees to designate Polyplastics an exclusive distributor or selling agent for the sale outside the United States of acetal products produced by Daicel pursuant to paragraph VI.(B)(3) of this order, respondents shall, as shareholders in Polyplastics, cooperate with Daicel in causing Polyplastics to agree to distribute or sell outside the United States, and to take such action as may be necessary to distribute or sell outside the United States, acetal products produced by Daicel pursuant to paragraph VI.(B)(3) of this order on terms and conditions no less favorable than those under which Polyplastics distributes or sells acetal products produced by respondents or by TEPCO;

2. Agree in writing to proceed with the original proposal through

Polyplastics, in accordance with paragraph VI.(A)(1) of this order, agree to support and vote in favor of the proposal, and agree to make the necessary capital contribution, authorize expenditure of the retained earnings of Polyplastics, or authorize financing of the proposal by debt, as specified in the proposal. If respondents elect to agree to proceed with the original proposal through Polyplastics,

a. Daicel must pursue the proposal through Polyplastics; and

b. Respondents must allow Daicel to pursue the proposal through Polyplastics and must support and vote in favor of, and take no action to impede, the proposal and shall, as shareholders in Polyplastics, cooperate with Daicel in taking such actions and in causing Polyplastics directors to take such action as may be appropriate to have the improvements, construction, or other proposal so funded to be made and done; or

3. Agree in writing to proceed with the proposal through Polyplastics and agree to support and vote in favor of the proposal, provided Daicel contributes all necessary capital funding, without use of the retained earnings of Polyplastics and without imposing on respondents financial liability for the capital cost of the proposal. If respondents make this election,

a. Daicel must pursue the proposal through Polyplastics;

b. Respondents must support and vote in favor of, and take no action to impede, the proposal and shall, as shareholders in Polyplastics, cooperate with Daicel in taking such actions and in causing Polyplastics directors to take such action as may be appropriate to have the improvements, construction, or other proposal so funded to be made and done; and

c. Respondents shall negotiate in good faith with Daicel to establish a satisfactory corporate and financial structure that equitably compensates Daicel for its investment, permits Daicel to realize such return on its investment as the project may yield, and, to the extent commercially feasible, protects respondents from loss. *Provided, however,* that the respective voting interests in Polyplastics of Daicel and respondents in existence on June 13, 1991, shall not be altered. *Provided further,* that, notwithstanding any agreement to the contrary, dilution of respondents' ownership shares in Polyplastics as a result of application of this paragraph VI.(C)(3) of this order shall not affect the rights of Polyplastics use of acetal technology under any license agreement.

D. If the respondents, Polyplastics, and Daicel are unable to agree on (i) the availability of sufficient space for the installation of new capacity for acetal products at then-existing Daicel/Polyplastics sites or the relative costs of constructing capacity at these sites or other sites in Japan; (ii) the site at which Polyplastics shall construct production capacity in Japan pursuant to paragraph VI of this order; (iii) the amount of the royalty or other terms of the technology license pursuant to paragraph VI.(C)(1) of this order; (iv) the establishment or operation of an exclusive distribution or sales agency pursuant to paragraph VI.(C)(1) of this order; or (v) a corporate and financial structure pursuant to paragraphs VI.(C)(3) or IX.(E)(2) of this order, Daicel may elect to cause the issue to be submitted to outside, independent, binding arbitration in the City, County, and State of New York. In the event Daicel so elects, respondents shall agree to submit to such arbitration, and the issue shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") and the AAA's Supplementary Procedures for International Commercial Arbitration or any successor rules thereto. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The decision of the arbitrator, after confirmation by the court pursuant to 9 U.S.C. 9, or succeeding statutory provisions, shall be final and binding upon the parties, and the failure of respondents thereafter to abide by the arbitrator's award shall be a violation of this order.

VII.

It is further ordered, That, for a period commencing on the date this order becomes final and continuing for ten (10) years, respondents shall not acquire, directly or indirectly, without the prior approval of the Commission, assets, or all or any part of the total outstanding stock or share capital of, or any other interest in, any entity (including, but not limited to Polyplastics) that owns or operates assets engaged in, used for or previously used for (and still suitable for use for) the production of acetal in any location in the world. *Provided, however*, these prohibitions shall not relate to the construction of new facilities by or for respondents or to the acquisition of compounding or recycling facilities. *Provided further*, that such prior approval shall not be required.

A. If respondents satisfy the conditions set forth in paragraphs VIII or IX of this order;

B. If, before the acquisition, respondents already control such entity and already own a sufficient proportion of the voting shares of such entity and have sufficient representation on the board of directors of such entity so that no other owner of such entity, and no group of owners other than respondents, can veto or block any action respondents may direct such entity to take;

C. If respondents acquire two (2) percent or less of any class of the outstanding stock or share capital of any entity, provided respondents' total ownership of such entity, including the stock or share capital to be acquired, does not exceed two (2) percent of any class of the outstanding stock or share capital of the entity;

D. If respondents acquire solely for the purpose of investment five (5) percent or less of any class of the outstanding stock or share capital of any entity provided respondents' total ownership of such entity, including the stock or share capital to be acquired, does not exceed five (5) percent of any class of the outstanding stock or share capital of the entity; or

E. If respondents acquire outstanding shares of Polyplastics provided the voting rights now exercised respectively by respondents and by Daicel with respect to Polyplastics do not change from the rights existing on June 13, 1991, and provided the total of the shares of Polyplastics owned by respondents including the shares to be acquired does not exceed fifty (50) percent of the total outstanding shares of Polyplastics.

VIII.

It is further ordered, That

A. If, in the absence of an acquisition agreement with an entity that neither owns nor operates nor has any interest in assets engaged in, used for, or previously used for (and still suitable for use for) the production of acetal in any location in the world (hereinafter "Acquired entity"), respondents announce their intention to acquire or commence an acquisition of, any interest in the Acquired entity and, before respondents obtain sufficient control of the Acquired entity to prevent an acquisition by the Acquired entity, such Acquired entity acquires stock or share capital of, or any other interest in, any third entity that has an interest in assets engaged in, used for or previously

used for (and still suitable for use for) the production of acetal (hereinafter "Third entity"), respondents may, in lieu of obtaining prior approval of such acquisition under paragraph VII of this order, comply with and satisfy each of the requirements of this paragraph VIII of this order;

B. If, in the absence of an acquisition agreement with an entity that neither owns nor operates nor has any interest in assets engaged in, used for, or previously used for (and still suitable for use for) the production of acetal in any location in the world (hereinafter "Acquired entity"), respondents announce their intention to acquire or commence an acquisition of, any interest in the Acquired entity and, before respondents obtain sufficient control of the Acquired entity to prevent an acquisition by the Acquired entity, such Acquired entity acquires assets (hereinafter "Third entity assets") that include any assets used in the production of acetal, respondents may, in lieu of obtaining prior approval of such acquisition under paragraph VII of this order, comply with and satisfy each of the requirements of this paragraph VIII of this order;

C. If respondents acquire fifty-one (51) percent or more of the total outstanding stock or share capital of any entity, other than Daicel, Polyplastics or TEPCO, that owns or operates assets engaged in, used for, or previously used for (and still suitable for use for) the production of acetal in any location in the world (hereinafter "Acquired entity"), respondents may, in lieu of obtaining prior approval of such acquisition under paragraph VII of this order, comply with and satisfy each of the requirements of this paragraph VIII of this order.

D. In order to make an acquisition under paragraphs VIII.(A), VIII.(B), or VIII.(C) of this order without obtaining the Commission's prior approval pursuant to paragraph VII, respondents shall comply with and fulfill each of the following requirements:

1. Respondents shall notify the Commission

- a. At least thirty (30) days prior to making an acquisition under paragraph VIII.(C); and

- b. As soon as practicable, and in any event, within three (3) days of respondents learning of the acquisition by the Acquired entity of any interest in a Third entity or of Third entity assets, as described in paragraphs VIII.(A) or VIII.(B) of this order.

Respondents shall file such notification with the Secretary of the Commission and shall file a copy thereof with the Assistant Director

for Compliance, Bureau of Competition. Such notification shall follow the format for filings under Section 7A of the Clayton Act, 15 U.S.C. 18a, and the Commission's Premerger Reporting Rules promulgated thereunder, 16 CFR 801, *et seq.*, and, in addition, shall include a verified written report setting forth in detail the manner and form in which respondents intend to comply with the provisions of this paragraph VIII of this order with respect to such acquisition. 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.

2. For all acquisitions under paragraph VIII.(A) of this order, as soon as respondents have sufficient control over the Acquired entity to do so, respondents shall place all stock and share capital of the Third entity in a non-voting trust until said stock or share capital is divested. For all acquisitions under paragraphs VIII.(B) or VIII.(C) of this order, respondents shall comply with all terms of paragraph VIII.(H) of this order. Respondents' obligations under paragraph VIII.(H) of this order shall take effect as soon as respondents have sufficient control over the Acquired entity to satisfy the terms of paragraph VIII.(H) and shall continue in effect until such time as respondents have divested all the Properties to Be Divested, as specified respectively in paragraphs VIII.(D)(3)(a), VIII.(D)(3)(b), and VIII.(D)(3)(c) of this order, or until such other time as paragraph VIII.(H) provides.

3. Within twelve (12) months after:

a. The date when respondents have sufficient control over the Acquired entity, pursuant to paragraph VIII.(A) of this order, to divest stock or share capital of the Third entity, respondents shall divest, absolutely and in good faith, all the stock or share capital of the Third entity ("the Properties to Be Divested");

b. The date when respondents have sufficient control over the Acquired entity, pursuant to paragraph VIII.(B) of this order, to divest assets of the Acquired entity, respondents shall divest, absolutely and in good faith, all the Acetal Assets and Business of the Acquired entity and also divest such additional Third entity assets and effect such arrangements encompassed within the Third entity assets that are necessary to assure, insofar as possible under the circumstances of divesting the Third entity assets, the Viability and Competitiveness of

the Acetal Assets and Businesses of the Acquired entity ("the Properties to Be Divested");

c. The date of any acquisition under paragraph VIII.(C) of this order, respondents shall divest, absolutely and in good faith, all the Acetal Assets and Businesses of the Acquired entity and also divest such additional assets and businesses of the Acquired entity and effect such arrangements that are necessary to assure the Viability and Competitiveness of the Acetal Assets and Businesses of the Acquired entity ("the Properties to Be Divested").

4. Respondents 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. Respondents shall demonstrate, in their application for approval of a proposed divestiture,

a. For divestitures to be effected pursuant to paragraph VIII.(D)(3)(c) of this order, the Viability and Competitiveness of the Properties to Be Divested; or

b. For divestitures to be effected pursuant to paragraphs VIII.(D)(3)(a) or VIII.(D)(3)(b) of this order, that the proposed divestiture assures, insofar as possible under the circumstances of divesting the Third entity or the Third entity assets, the Viability and Competitiveness of the Properties to Be Divested and that respondents have done nothing to decrease the Viability and Competitiveness of the Properties to Be Divested relative to the condition in which they existed at the time respondents acquired control over the Acquired entity. *Provided that*, respondents have no obligation to go outside the Third entity or the Third entity assets to enhance the Viability and Competitiveness of the Properties to Be Divested.

The purpose of the divestiture is to ensure (insofar as possible, for divestitures to be effected pursuant to paragraphs VIII.(D)(3)(a) or VIII.(D)(3)(b) of this order, under the circumstances of divesting the Third entity or the Third entity assets) the continuation of the Properties to Be Divested as ongoing, viable businesses engaged in the development, manufacture and sale of acetal, and to remedy any lessening of competition resulting from the acquisition.

5. Within sixty (60) days after the date respondents file with the Commission the notice required by paragraph VIII.(D)(1) of this order and every sixty (60) days thereafter until respondents either (1) withdraw such notification and abandon the proposed acquisition, or

(2) have fully complied with the provisions of paragraph VIII of this order, respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying and have complied with those provisions. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of substantive contacts or negotiations for the divestiture of the Properties to Be Divested, including the identity of all parties contacted. Respondents also shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, and reports and recommendations concerning divestiture.

E. If Respondents have not divested, absolutely and in good faith and with the Commission's prior approval, the Properties to Be Divested within the time required by paragraph VIII.(D)(3) of this order, respondents shall consent to the appointment by the Commission of a trustee to divest:

1. In the case of an acquisition under paragraphs VIII.(A) or VIII.(B) of this order, the Properties to Be Divested; and
2. In the case of an acquisition under paragraph VIII.(C) of this order, the stock or other share capital of the Acquired entity.

If, however, prior to the end of the twelve-month period, respondents have submitted an application for approval of a proposed divestiture, the divestiture period shall be extended until the Commission approves or denies the submitted plan.

F. 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, respondents shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by respondents to comply with this order.

G. If a trustee is appointed by the Commission or a court pursuant to paragraphs VIII.(E) or VIII.(F) of this order, respondents shall consent to the following terms and conditions regarding the trustee's

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.

2. The trustee shall, subject to the prior approval of the Commission, have the exclusive power and authority to divest, as specified in paragraph VIII.(E) of this order, the Properties to Be Divested and the stock or other share capital of the Acquired entity and to effect the additional obligations as set out in 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. Respondents shall cause, subject to an appropriate confidentiality agreement, the trustee to have full and complete access to the personnel, books, records and facilities related to the Acquired entity, or any other relevant information, as the trustee may reasonably request. Respondents shall cause to be developed such financial or other information as such trustee may reasonably request and shall cooperate with any reasonable request of the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by respondents shall extend the time for divestiture under this paragraph in an amount equal to the delay, as determined by the Commission or the court for a court-appointed trustee.

5. Subject to respondents' absolute and unconditional obligation to divest at no minimum price, and the purpose of the divestiture as stated in paragraph VIII.(D)(4) 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 or the stock or other share capital of the Acquired entity, as applicable. The divestiture shall be made in the manner set out in paragraph VIII.(E) of this order, *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 respondents from among those approved by the Commission.

6. 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 authority to employ, at the cost and expense of respondents, 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 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 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 completing the divestitures specified in paragraph VIII.(E) of this order.

7. Except in the case of reckless disregard of his or her duties or intentional wrong doing, respondents 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, respondents 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 VIII.(G)(1) 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 Acquired entity.

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

H. From the date respondents acquire fifty-one (51) percent or more of the stock or other share capital of the Acquired entity pursuant to paragraph VIII.(C) of this order, or have sufficient control over the Acquired entity pursuant to paragraph VIII.(B) of this order to satisfy the terms of this paragraph VIII.(H), until the day after the divestiture required by this paragraph VIII of this order has been completed, respondents (meaning for purposes of this paragraph VIII.(H) of this order, respondents excluding the Acquired entity and excluding all personnel connected with the Acquired entity as of the date respondents acquire the stock or other share capital of the acquired entity) will hold the stock and other share capital of the Acquired entity separate and apart on the following terms and conditions:

1. The Acquired entity shall be held separate and apart and shall be operated independently of respondents except to the extent that respondents must exercise direction and control over the Acquired entity to assure compliance with this order.

2. Respondents shall not influence, exercise direction over, or exercise control over, directly or indirectly, the Acquired entity, *provided, however*, that respondents may exercise only such direction and control over the Acquired entity as is necessary to assure compliance with this order.

3. Respondents shall maintain the viability and competitiveness and marketability of the Acquired entity and shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair its marketability or viability and competitiveness. *Provided that*, for acquisitions pursuant to paragraph VIII.(B) of this order, respondents have no obligation to go outside the Third entity assets to enhance the viability and competitiveness of the Third entity assets.

4. Respondents shall not permit any director, officer, employee, or agent of respondents to also be a director, officer or employee of the Acquired entity. Respondents may exercise any voting rights associated with the stock and share capital of the Acquired entity only to the extent necessary to assure compliance with this order.

5. Except as required by law or as reported by the auditor (provided for in subparagraph VIII.(H)(6) of this order) 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 order (including accomplishing the divestitures), or negotiating

agreements to complete the divestitures, respondents shall not receive or have access to, or the use of, any of the Acquired entity's material confidential information not in the public domain, except as such information would be available to respondents 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 VIII.(H)(5) of this order shall only be used for the purpose set out in this subparagraph VIII.(H)(5) of this order.

6. Respondents may retain an independent auditor to monitor the operation of the Acquired entity. Said auditor may report to respondents on all aspects of the operation of the Acquired entity other than the Third entity or the Acetal Assets and Businesses of the Acquired entity but shall not disclose to respondents material confidential information concerning the Acquired entity.

7. Respondents shall not change the composition of the management of the Acquired entity except that the Acquired entity shall have the power to remove employees for cause.

8. Any employee of respondents who obtains or may obtain confidential information under this paragraph VIII.(H) of this order shall enter a confidentiality agreement prohibiting disclosure of confidential information until the day after the divestiture required by this paragraph VIII of this order has been completed.

9. All earnings and profits of the Acquired entity shall be retained separately in the Acquired entity.

10. Should the Federal Trade Commission or the Attorney General seek in any proceeding to compel respondents to divest themselves of the Acquired entity or to compel either respondents or the acquired entity to divest any assets or businesses of the Acquired entity, or to seek any other injunctive or equitable relief, respondents 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.

I. Nothing contained in this order shall prevent the Commission or the Attorney General from taking any action to prevent any acquisition of the Acquired entity by respondents, including an action under Section 7A of the Clayton Act, 15 U.S.C. 18a, or Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b).

IX.

It is further ordered, That, notwithstanding the provisions of paragraph VII of this order, which require prior approval, respondents may acquire, without the prior approval of the Commission, stock or share capital of Polyplastics, or any other interest therein, provided each of the following conditions of this paragraph IX of this order are satisfied and are complied with by respondents:

A. For a period of ten (10) years following the date this order becomes final, respondents shall take no action to solicit Daicel to tender or otherwise sell any stock or share capital of Polyplastics or any other interest therein other than those actions necessary for respondents to preserve their rights under paragraph IX.(B) of this order. *Provided, however,* that this paragraph IX.(A) of this order does not apply to an acquisition of Polyplastics shares pursuant to paragraph VII.(E) of this order.

B. The stock or share capital of Polyplastics or other interest therein is tendered to respondents pursuant to the right of first refusal contained in paragraph 2.5 of the Main Agreement, dated June 25, 1962 between Daicel and Celanese, which states in pertinent part:

[I]f at any time while both [Daicel and Celanese] are owners of shares of POLYPLASTICS the party so desiring (herein sometimes called "Offeror") will give to the other party (herein sometimes called "Offeree") a first right to purchase in the following manner:

- I. The Offeror will give to the Offeree a notice and offer in writing stating
 - (a) the number of shares of POLYPLASTICS offered for sale to Offeree,
 - (b) the price per share of the shares so offered and the place and currency of payment, and
 - (c) that the said offer shall remain open and irrevocable for a period of sixty days.
- II. If the said offer is accepted in writing and unconditionally prior to its expiration, Offeree shall have a further period of ninety days to make payment in full for the shares so sold.
- III. If the said offer is not accepted Offeror may offer and sell the said shares, subject to the applicable provisions of Japanese law, by public or private sale at any time or from time to time, within a period of twelve months from expiration or earlier refusal of the said offer to any third part or parties, at a price per share not less than the price per share fixed in the notice and offer to Offeree for settlement at the same place and in the same currency as stated in such notice. The parties agree to take all action necessary to permit such public or private sale.

If the Offeror does not sell the shares so offered within such twelve months period, the said shares shall again be subject to a first right of purchase as aforesaid;

C. For a period of ten (10) years following the date this order becomes final, the respective voting rights exercised by respondents and by Daicel with respect to Polyplastics shall not change from the rights existing on June 13, 1991;

D. For a period of ten (10) years following the date this order becomes final, respondents do not obtain, in total holdings, more than fifty (50) percent of the total outstanding shares of Polyplastics;

E. During the ten (10) year period following the date this order becomes final, prior to entering into any agreement with Daicel pursuant to which respondents would obtain more than fifty (50) percent of the outstanding shares of Polyplastics upon expiration of paragraphs VII and IX of this order, respondents shall satisfy and comply with each of the following conditions:

1. At least thirty (30) days prior to executing such agreement, respondents shall deliver written notification to the Commission of the proposed agreement. Respondents shall file such notification with the Secretary of the Commission and shall file a copy thereof with the Assistant Director for Compliance, Bureau of Competition. Such notification shall follow the format for filings under Section 7A of the Clayton Act, 15 U.S.C. 18a, and the Commission's Premerger Reporting Rules promulgated thereunder, 16 CFR 801, *et seq.*, and, in addition, shall include a verified written report setting forth in detail the manner and form in which respondents intend to comply with the provisions of this paragraph IX of this order with respect to such acquisition. 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;

2. Prior to execution of such agreement, respondents and Daicel shall establish a corporate and financial structure that will assure that Daicel retains, without expiration, equitable ownership of, and realizes the total profit or loss resulting from, any subsequent investment made by Daicel, or any subsequent capital contribution made by Polyplastics or to Polyplastics made by Daicel, pursuant to paragraph VI of this order, while preserving respondents' future ownership rights in the then existing assets and operations of Polyplastics. If respondents and Daicel are unable to agree on a satisfactory corporate and financial structure, Daicel may elect binding arbitration, in

accordance with the provisions of paragraph VI.(D) of this order, to determine the structure; and

3. Execution and consummation of such agreement shall have no effect on any rights available to Daicel pursuant to paragraph VI of this order, and Daicel shall retain, after execution or consummation of any such agreement, all rights available to it pursuant to paragraph VI of this order.

X.

It is further ordered, That this order shall not be construed to prohibit respondents from engaging in any action, conduct, agreement, or other course of dealing, not affecting United States commerce. The meaning of "affecting United States commerce" shall be determined with reference to the judicial interpretation of the phrase "affecting commerce" as set forth in Section 7 of the Clayton Act, 15 U.S.C. 18. *Provided, however,* that nothing in this paragraph X. of this order shall affect respondents' obligations under this order with respect to any acquisition by respondents of all or any part of the assets, stock or share capital of, or any other interest in, Polyplastics or Daicel.

XI.

It is further ordered, That this order shall not be construed to prohibit respondents from engaging in any action, conduct, agreement, or other course of dealing under compulsion of a foreign sovereign government or an agency thereof, to the extent such compulsion would immunize those activities from a finding of illegality under the Sherman Act, 15 U.S.C. 1, *et seq.*, provided:

A. Respondents shall not, directly or indirectly, induce or solicit such compulsion by any foreign sovereign government or any agency thereof; and

B. Respondents shall notify the Secretary of the Commission within the earlier of:

1. Fifteen (15) days after any legal counsel of Hoechst Aktiengesellschaft or Hoechst Celanese Corporation becomes aware that any foreign sovereign government or any agency thereof is considering such compulsion; or

2. Twenty (20) days after any officer or director of Hoechst

Celanese Corporation, any member of the Management Board of Hoechst Aktiengesellschaft, or any of respondents' representatives on the Polyplastics Board of Directors becomes aware that any foreign sovereign government or any agency thereof is considering such compulsion and recognizes that such compulsion might affect the operation of any provision of this order.

Such notification shall be in the form of a verified written statement and shall include all information concerning such compulsion known to or believed by respondents, the basis for the information, a statement of the manner in which the information was obtained, and a statement of the effect of the compulsion on the requirements of the order.

XII.

It is further ordered, That, within sixty (60) days after the date this order becomes final, respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying and have complied with the provisions of this order.

XIII.

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

XIV.

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 respondents, made to any of their respective principal offices, respondents shall permit any duly authorized representatives of the Commission:

A. Access, during office hours 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 respondents, as applicable, relating to any matters contained in this order; and

B. Upon ten days notice to respondents, and without restraint or interference from respondents, to interview officers or employees of respondents, who may have counsel present, regarding such matters.

XV.

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

Commissioner Owen recused and Commissioner Yao not participating.

IN THE MATTER OF

O'NEILL, INCORPORATED

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
TEXTILE FIBER PRODUCTS IDENTIFICATION ACT AND
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3352. Complaint, Dec. 9, 1991—Decision, Dec. 9, 1991

This consent order requires, among other things, the California-based company, d/b/a Onax, Inc., to label or otherwise identify the constituent fiber content, percentages of fiber content, manufacturer's name, and country of origin for their textile fiber products, as required by the Textile Fiber Products Identification Act. In addition, the order requires the respondent to distribute a copy of the order to each of its operating divisions.

Appearances

For the Commission: *Sylvia J. Kundig* and *Jeffrey A. Klurfeld*.

For the respondent: *Paul B. Meltzer*, *O'Neill, Incorporated*, Santa Cruz, CA.

COMPLAINT

The Federal Trade Commission, having reason to believe that O'Neill, Incorporated, a corporation, also trading and doing business as Onax, Inc. ("respondent"), has violated the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. O'Neill, Incorporated is a corporation organized, existing and doing business under the laws of the State of California. Its office and principal place of business is 1071 41st Avenue, Santa Cruz, California.

PAR. 2. Respondent is an importer, manufacturer, and wholesaler of textile fiber products, including, but not limited to, wearing apparel constructed of neoprene ("neoprene-type garments"), such as wet-suits, that consist of a rubber substance enclosed between two layers of a knit fabric.