

Complaint

119 F.T.C.

IN THE MATTER OF

MONTEDISON S.P.A., 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-3580. Complaint, May 25, 1995--Decision, May 25, 1995

This consent order requires, among other things, the Royal Dutch Petroleum Company and the Shell Group of Companies to divest all of Shell Oil's polypropylene assets to Union Carbide Corporation, or to another Commission approved acquirer, within six months, requires Montedison to relinquish revenues under the profit sharing agreement from future U.S. licenses by Mitsui Petrochemical Industries Ltd., and requires the respondents, for ten years, to obtain Commission approval before acquiring any interest in such a company or before entering into similar agreements.

Appearances

For the Commission: *Howard Morse, Rhett Krulla and William Baer.*

For the respondents: *Robert Joffe, Cravath, Swaine & Moore, New York, N.Y. Kevin Arquit, Rogers & Wells, Washington, D.C. William Pelster, Skadden, Arps, Slate, Meagher & Flom, New York, N.Y. and Allen Lackey and Charles Corddry, in-house counsel for Shell Oil Co., Houston, TX.*

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 Montedison S.p.A. and HIMONT Incorporated (collectively "Montedison") and Shell Petroleum N.V., a holding company of the Royal Dutch/Shell Group of Companies ("the Shell Group") controlled by N.V. Koninklijke Nederlandsche Petroleum Maatschappij (Royal Dutch Petroleum Company) ("Royal Dutch") and The "Shell" Transport and Trading Company, p.l.c. ("Shell T&T"), (collectively "Shell") have agreed to form and acquire interests in a joint venture that would merge certain assets and

businesses of Montedison and of companies of the Shell Group, in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and that such acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, and having reason to believe that Montedison has entered into agreements in restraint of trade in violation of Section 5 of the Federal Trade Commission Act, 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:

I. RESPONDENTS

1. Respondent Montedison S.p.A. is a corporation organized, existing and doing business under and by virtue of the laws of Italy with its principal executive offices located at Foro Buonaparte, 31, 20121 Milan, Italy.

2. Respondent HIMONT Incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal executive offices located at Three Little Falls Centre, 2801 Centerville Road, Wilmington, Delaware. HIMONT Incorporated is a wholly-owned, indirect subsidiary of Montedison S.p.A.

3. Respondent Royal Dutch Petroleum Company is a corporation organized, existing and doing business under and by virtue of the laws of the Netherlands with its principal executive offices located at Carel van Bylandtlaan 30, The Hague, The Netherlands.

4. Respondent The "Shell" Transport and Trading Company, p.l.c., is a corporation organized, existing and doing business under and by virtue of the laws of England with its principal executive offices located at Shell Centre, London SE1 7NA, England.

5. Respondent Shell Oil Company ("Shell Oil") is a corporation organized, existing and doing business under and by virtue of the laws of Delaware with its principal executive offices located at One Shell Plaza, Houston, Texas. Shell Oil is a member company of the Royal Dutch/Shell Group of Companies, and all of its shares are directly or indirectly owned by Royal Dutch Petroleum Company and The "Shell" Transport and Trading Company, p.l.c.

6. 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.

II. THE PROPOSED JOINT VENTURE

7. On or about December 30, 1993, Montedison and Shell entered into an agreement to form and acquire equal interests in a joint venture that would merge the majority of Shell's and Montedison's worldwide polyolefins businesses. The proposed joint venture, designated by Montedison and Shell as "Montell," combines assets valued at over six billion dollars.

8. Under the terms of the agreement between Montedison and Shell, Shell would retain outside the proposed joint venture polypropylene assets of Shell Oil, including Shell Oil's polypropylene catalyst and polypropylene resin production facilities, Shell Oil's rights and obligations under a 1983 Cooperative Undertaking Agreement with Union Carbide Corporation ("Union Carbide"), pursuant to which Shell Oil and Union Carbide research, develop and license polypropylene technology and polypropylene catalyst worldwide, and Shell Oil's interest in the Seadrift Polypropylene Company, a partnership with Union Carbide which produces polypropylene resin. Nonetheless, Shell would control Shell Oil as well as Montell, and the proposed joint venture would create a common interest between Shell and Montedison.

III. THE RELEVANT MARKETS

9. One relevant line of commerce within which to analyze the likely effects of the proposed joint venture is licensing of polypropylene technology, which involves licensing a combination of current generation; advanced process technology, plant design, polypropylene catalyst technology and rights to purchase and use polypropylene catalysts.

10. Another relevant line of commerce within which to analyze the likely effects of the proposed joint venture is polypropylene technology, including polypropylene process technology, plant design, and polypropylene catalyst technology, whether licensed to others or consumed internally. Innovation through competition in

research and development in the polypropylene technology market leads to reductions in cost, improved product properties and performance, and expansion of applications and use of polypropylene resins.

11. Another relevant line of commerce within which to analyze the likely effects of the proposed joint venture is the licensing, production and sale of high-yield/high-specificity polypropylene catalysts and catalyst technology. Polypropylene catalysts initiate the polymerization of propylene and control the characteristics of the polypropylene resin produced as well as the cost of production. There is no economic substitute for such catalysts in the production of polypropylene resin.

12. Another relevant line of commerce within which to analyze the likely effects of the proposed joint venture is the production and sale of polypropylene resin. Polypropylene resin has distinct performance characteristics and superior physical properties, including high temperature resistance and stiffness, compared to other commodity thermoplastics. Polypropylene is the lowest cost thermoplastic per pound, and because of its relatively low density, it has a substantial cost advantage on a volume basis. There is no economic substitute for polypropylene resin in the vast majority of applications where it is used.

13. Another relevant line of commerce within which to analyze the likely effects of the proposed joint venture is the production and sale of polypropylene impact copolymer resin, a type of polypropylene resin produced through copolymerization, in a second reactor, of polypropylene and ethylene or other olefin monomers and characterized by high impact strength. Polypropylene impact copolymer resin has distinct performance characteristics and superior physical properties in low temperature applications and applications requiring high impact strength. There is no economic substitute for polypropylene impact copolymer resin in the vast majority of applications where it is used.

14. The relevant geographic area within which to analyze the likely effects of the proposed joint venture in polypropylene technology; in licensing of polypropylene technology; and in the licensing, production and sale of polypropylene catalysts is the world. Polypropylene technology can be transferred easily and is disseminated throughout the world through licensing. Polypropylene catalysts are also distributed throughout the world.

15. The relevant geographic area within which to analyze the likely effects of the proposed joint venture in the production and sale of polypropylene resin, and in the production and sale of polypropylene impact copolymer resin, includes the United States and Canada. Sustained imports are unlikely because of the relatively high cost of transporting polypropylene resin, import duties, long lead times required for shipping polypropylene resin from overseas, and the need for after-sales technical support.

IV. MARKET STRUCTURE

16. Montedison, through HIMONT, is the leading competitor in each of the relevant markets. Montedison's strong market position in the polypropylene resin markets and its extensive licensing network provide a flow of information and support its research and development program. Montedison accounts for approximately 20 percent of polypropylene resin capacity and production, and approximately 30 percent of capacity and 35 percent of production of polypropylene impact copolymer resin, in the United States and Canada.

17. Montedison has coordinated with Mitsui Petrochemical Industries Ltd. ("Mitsui") in licensing of polypropylene technology and in the sale of polypropylene catalysts. Montedison and Mitsui share royalties from licensing of polypropylene technology and licensing of catalyst technology and share profits from the sale of polypropylene catalysts manufactured in the United States for sale to licensees of Montedison and Mitsui in the Western Hemisphere. Montedison and Mitsui polypropylene technology accounts for approximately 45% of all polypropylene capacity built or projected to be built in the world since 1990, and over 50% of capacity built or projected to be built under technology licenses. Montedison and Mitsui catalysts account for over 55% of world production of polypropylene catalysts.

18. Shell is the second largest producer of polypropylene catalyst, polypropylene resin and impact copolymer polypropylene resin in the world and is a leader in catalyst technology. Shell's strong global position in polypropylene resin supports, and provides a flow of market information for, its research and development activities in polypropylene technology.

19. Shell Oil and Union Carbide engage in research and development and license polypropylene technology throughout the world, combining pursuant to a December 1983 Cooperative Undertaking Agreement, Shell's "SHAC" polypropylene catalyst with Union Carbide's "Unipol" process technology. In addition, Shell, Shell Oil, and Union Carbide cooperate in research and development of polypropylene catalysts pursuant to a Polypropylene Catalyst Research and Development Agreement. Unipol/SHAC is the second leading polypropylene technology in the world. The Shell Group and Unipol/SHAC licenses account for over 25% of all polypropylene capacity built or projected to be built in the world since 1990, and over 30% of capacity built or projected to be built pursuant to technology licenses.

20. Shell Oil produces polypropylene catalysts in the United States which it uses for production of polypropylene resin and sells to Unipol/SHAC licensees. In addition, Shell sells polypropylene catalysts manufactured under contract exclusively for Shell. Overall, Shell accounts for approximately 20% of world production of polypropylene catalyst.

21. Shell produces and sells polypropylene resin in the United States and Canada and markets polypropylene impact copolymer resin and other polypropylene resin manufactured in the Seadrift joint venture plant jointly owned by Shell and Union Carbide. Shell, including Seadrift, accounts for over 8% of capacity and over 9% of production of polypropylene resin, and over 11% of capacity and over 7% of production of polypropylene impact copolymer resin, in the United States and Canada.

22. The technology licensing market is very highly concentrated, as measured by the Herfindahl-Hirschmann Index ("HHI") and other measures of concentration. The proposed joint venture would create a common interest between Montedison and Shell, increasing concentration as measured by the HHI by over 3000 points to over 7000. The Montedison/Mitsui and Unipol/SHAC technologies collectively account for over 80 % of completed and projected additions to capacity pursuant to technology licenses since 1990. Other technologies are not a significant competitive constraint.

23. The polypropylene technology market is also very highly concentrated. The HHI for completed and projected additions to capacity based on technology employed, including both licensed and captive technology, would increase by over 2300 points to over 5100

as a result of the proposed joint venture. The Montedison/Mitsui and Unipol/SHAC technologies collectively account for over 70% of all polypropylene capacity built or projected to be built worldwide since 1990.

24. The polypropylene catalyst market is also very highly concentrated. The proposed joint venture would put under common control over 75% of the world's production of polypropylene catalyst. The proposed joint venture would increase concentration as measured by the HHI in polypropylene catalyst production by over 2400 points to over 6000.

25. The U.S. and Canada polypropylene market is moderately concentrated. The proposed joint venture would increase concentration as measured by the HHI by over 350 points to over 1400 for both capacity and production.

26. The U.S. and Canada polypropylene impact copolymer market would become highly concentrated as a result of the proposed joint venture. The joint venture would increase concentration as measured by the HHI by approximately 700 points for capacity and approximately 500 points for production to approximately 2100 and 2300, respectively.

27. Entry into the relevant markets would not be timely, likely or sufficient to deter or offset reductions in competition resulting from the proposed joint venture. Invention of a current generation polypropylene catalyst and process technology requires substantial technological expertise, takes several years of research and development, and involves large sunk costs with no guarantee of success. Patent obstacles, and uncertainties of patent litigation, further increase the risk of entry. Once a current generation polypropylene catalyst and process technology has been invented additional time and sunk costs are required to commercialize the technology. Entry into licensing of polypropylene technology requires, in addition to the time and requirements for entry into polypropylene technology, matching process technology, plant design and a polypropylene catalyst so that they function efficiently together to produce a range of grades of polypropylene resin; customer acceptance of the resin offered by the technology and assurance that the technology is free of potential patent liability; and a track record of commercial success in manufacturing and selling polypropylene resin using the process technology, plant design and polypropylene catalyst.

28. Barriers to entry into the polypropylene catalyst, polypropylene resin and polypropylene impact copolymer resin markets include patents, environmental permitting, extensive sunk costs and time consumed in research and development, design and construction of a plant, and customer qualification. Effluent and solvent recovery make design, siting and permitting of a polypropylene catalyst plant particularly difficult. Even after catalyst plant construction is completed, substantial additional time is required before suitable catalysts can be produced and customer qualification requirements met.

29. The polypropylene resin and polypropylene impact copolymer resin markets are characterized by industry practices that facilitate coordinated interaction, including but not limited to:

- a. Licensing agreements that allow technology providers to monitor sales and capacity expansions of licensee competitors;
- b. Supply arrangements that allow suppliers of polypropylene catalysts to monitor the level of production and sales of polypropylene resin competitors;
- c. The existence of industry-wide surveys that communicate among competitors, on a monthly basis, information concerning price, capacity utilization rates, and inventory;
- d. Advance notification of price increases and signaling of price increases through the trade press;
- e. Advance announcements of capacity expansion; and
- f. Long-term relationships between customers and suppliers, difficult qualification requirements, and high costs to customers in switching suppliers, that facilitate customer allocation.

V. EFFECTS OF THE PROPOSED JOINT VENTURE

30. The effect of the proposed joint venture may be substantially to lessen competition or to tend to create a monopoly in the relevant markets in the following ways, among others:

- a. It will eliminate actual, direct and substantial competition between Montedison and Shell in the relevant markets;
- b. It will create a shared interest between Montedison and Shell and result in spill-over effects on competition outside the joint venture;

c. It will reduce Montedison's and Shell's incentives to license polypropylene technology and to license or sell polypropylene-catalysts to polypropylene resin manufacturers that compete with the joint venture;

d. It will substantially increase the level of concentration in the relevant markets;

e. It will increase Montedison and Shell's ability unilaterally to exercise market power in polypropylene technology; in the licensing of polypropylene technology; and in the production, sale and licensing of polypropylene catalysts;

f. It will increase the price of polypropylene technology licenses and polypropylene catalysts and reduce innovation in polypropylene technology, increasing the cost of polypropylene resin production and the price of polypropylene resin;

g. It will significantly enhance the likelihood of coordinated interaction among competitors in the production and sale of polypropylene resin and polypropylene impact copolymer resin;

h. It will increase barriers to entry into the relevant markets; and

i. It will allow Shell to limit the ability of Union Carbide and Shell Oil to compete in the licensing of polypropylene technology pursuant to the Cooperative Undertaking Agreement and the Polypropylene Catalyst Research and Development Agreement.

31. The proposed joint venture may impair the ability of Union Carbide and Shell Oil to engage in export sales through licensing of polypropylene technology in export markets, resulting in the loss of substantial economic opportunities in the United States. Shell's acquisition of an interest in the joint venture likely would cause Shell to reduce its investment in support of Unipol/SHAC, reducing the export of goods and services, including catalyst and licensing, engineering and technical support services, from the United States. The proposed joint venture has a direct, substantial, and reasonably foreseeable adverse effect on export trade or export commerce of persons engaged in such trade or commerce in the United States.

VI. OTHER ANTICOMPETITIVE CONDUCT

32. Montedison's royalty and profit sharing agreement with Mitsui constitutes an unfair method of competition in the licensing of polypropylene technology and in the licensing of polypropylene

catalyst. The purpose and effect of Montedison's agreement with Mitsui is to limit competition and to allocate or divide territories or markets for the licensing of polypropylene technology and in the licensing of polypropylene catalyst, including the United States. Although earlier technology licensing agreements between Montedison and Mitsui may have been justified as reasonable agreements to exchange and transfer technology, Montedison entered into subsequent and current agreements with Mitsui upon expiration of the earlier agreements with the purpose and effect of allocating or dividing territories or markets for the licensing of polypropylene technology and licensing of catalyst technology and restricting competition, including price competition, between Montedison and Mitsui in the United States.

VII. VIOLATIONS CHARGED

33. The agreement between Montedison and Shell described in paragraph seven violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

34. The proposed joint venture between Montedison and Shell, would, if consummated, violate 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.

35. The proposed joint venture would have an adverse effect on U.S. export trade in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

36. The agreement between Montedison and Mitsui described in paragraphs seventeen and thirty-two 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 initiated an investigation of the proposed formation of a joint venture between Montedison S.p.A. and HIMONT Incorporated (collectively "Montedison") and Shell Petroleum N.V., a holding company of the Royal Dutch/Shell Group of Companies ("the Shell Group") controlled by N.V. Koninklijke Nederlandsche Petroleum Maatschappij (Royal Dutch Petroleum Company) ("Royal Dutch") and The "Shell" Transport and Trading Company, p.l.c. ("Shell

T&T"), that would merger certain assets and businesses of Montedison and of companies of the Shell Group; and Royal Dutch, Shell T&T, and Shell Oil Company ("Shell Oil"), a company of the Shell Group, (collectively "Shell") and Montedison, all collectively hereinafter sometimes referred to as "respondents," having been furnished with it 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 Shell and Montedison with violations of the Clayton Act and Federal Trade Commission Act; and

Respondents Shell and Montedison, 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 a 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, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, 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:

1. Respondent Montedison S.p.A. is a corporation organized, existing and doing business under and by virtue of the laws of Italy with its principal executive offices located at Foro Buonaparte, 31, 20121 Milan, Italy.

2. Respondent HIMONT Incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal executive offices located at Three Little Falls Centre, 2801 Centerville Road, Wilmington, Delaware.

HIMONT Incorporated is a wholly-owned, indirect subsidiary of Montedison S.p.A.

3. Respondent Royal Dutch is a corporation organized, existing and doing business under and by virtue of the laws of the Netherlands with its principal executive offices located at Carel van Bylandtlaan 30, The Hague, The Netherlands. Royal Dutch is a holding company which, together with Shell T&T, controls the Shell Group.

4. Respondent Shell T&T is a corporation organized, existing and doing business under and by virtue of the laws of England with its principal executive offices located at Shell Centre, London SE1 7NA, England. Shell T&T is a holding company which, together with Royal Dutch, controls the Shell Group.

5. Respondent Shell Oil is a corporation organized, existing and doing business under and by virtue of the laws of Delaware with its principal executive offices located at One Shell Plaza, Houston, Texas. Shell Oil is a member company of the Shell Group, and all of its shares are directly or indirectly owned by Royal Dutch and Shell T&T.

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

ORDER

I.

It is ordered, That, as used in this order, the following definitions shall apply:

A. The following terms shall mean the following entities:

1. "*Montedison*" means Montedison S.p.A. and its wholly owned subsidiary Montedison (Nederland) N.V., a holding company that owns Montecatini Nederland B.V., which in turn owns, directly or indirectly, through its subsidiaries HIMONT Incorporated, Spherilene S.r.l., Moplefan S.p.A. and Montepolmieri Sud, S.p.A., all of the polyolefins interests of Montedison S.p.A. "Montedison" includes all subsidiaries, divisions, and groups and affiliates controlled by Montedison S.p.A., their respective successors and assigns, and their

respective directors, officers, employees, agents and representatives. Unless otherwise indicated, "Montedison" does not include Montell.

2. "*HIMONT*" means HIMONT Incorporated. "HIMONT" includes all subsidiaries, divisions, and groups and affiliates controlled by HIMONT, their respective successors and assigns, and their respective directors, officers, employees, agents and representatives.

3. "*Shell*" means N.V. Koninklijke Nederlandsche Petroleum Maatschappij (Royal Dutch Petroleum Company) ("Royal Dutch"), The "Shell" Transport and Trading Company, p.l.c. ("Shell T&T"), and the Shell Group.

4. "*The Shell Group*" means all companies controlled by Royal Dutch and/or Shell T&T, including Shell Oil and Shell Petroleum N.V. "The Shell Group" includes all subsidiaries, divisions, and groups and affiliates controlled by companies of the Shell Group, Royal Dutch or Shell T&T, their respective successors and assigns, and their respective directors, officers, agents and representatives. Unless otherwise indicated, "the Shell Group" does not include Montell.

5. "*Shell Oil*" means Shell Oil Company. "Shell Oil" includes all subsidiaries, divisions, and groups controlled by Shell Oil, their respective successors and assigns, and their respective directors, officers, agents and representatives. Unless otherwise indicated, "Shell Oil" does not include Polycor.

6. "*Montell*" means Montell Polyolefins, the corporation to be formed, pursuant to the Agreement to Merge Polyolefins Businesses, to hold the majority of the polyolefins businesses of Montedison and of Shell and to be owned, directly or indirectly, by Montedison and companies of the Shell Group. "Montell" includes all subsidiaries, divisions, and groups controlled by Montell, their respective successors and assigns, and their respective directors, officers, agents and representatives.

7. "*Montell Affiliates*" means companies that Montell controls as that term is defined in 16 CFR 801.1(b), except that this term shall also include (i) any entity other than Montell in which Shell or Montedison has an ownership interest of 25% or more as of December 1, 1994 and which interest is contributed to Montell, and (ii) companies in which Montell has an ownership interest of 35% or more and would have control as defined in 16 CFR 801.1(b) if

ownership interests held directly or indirectly by a government were excluded.

8. "*Technipol*" means a company to be formed and held separate by Montedison under the terms and conditions of the attached Agreement to Hold Separate. "Technipol" includes all subsidiaries, divisions, and groups controlled by Technipol, their respective successors and assigns, and their respective directors, officers, agents and representatives.

9. "*Polyco*" means a company to be formed by Shell Oil to succeed to and conduct, under the terms and conditions of this order, the Properties to Be Divested. "Polyco" includes all subsidiaries, divisions, and groups controlled by Polyco, their respective successors and assigns, and their respective directors, officers, agents and representatives.

10. "*Akzo Nobel*" means Akzo Nobel N.V., Akzo Nobel Inc., Akzo Chemicals BV and Akzo Chemicals Inc.

11. "*Mitsui*" means Mitsui Petrochemical Industries Ltd.

12. "*Union Carbide*" or "UCC" mean Union Carbide Corporation.

B. "*Commission*" means the Federal Trade Commission.

C. "*Agreement to Merge Polyolefins Businesses*" means the agreement between Montedison and Shell Petroleum N.V. (a company of the Shell Group) dated December 30, 1993, and amendments thereto, to merge the majority of the worldwide polyolefins businesses of Montedison and of Shell into a new entity to be owned by Montedison and companies of the Shell Group.

D. "*Propylene Polymers*" or "*PP*" mean homopolymers of propylene and copolymers or polyolefinic alloys of propylene with less than 50% by mol of other monoolefins and having a flexural modulus (measured according to ASTM D 790-71) higher than 4,000 Kg/cm².

E. "*PP Catalyst*" means supported catalyst components including compounds of transition metals of Groups IV-VIII of the Periodic Table, at least in part supported on a carrier, the essential component of which is a halogen-containing compound of magnesium, for use in production of Propylene Polymers.

F. "*Catalyst Support*" means preformed catalyst supports or support carriers which may be titanated, *i.e.*, combined with titanium or with a titanium containing compound, to produce PP Catalyst.

G. "*Catalyst Systems*" means specified combinations of PP Catalyst and other components designed, developed, used, or suitable for use for the production of Propylene Polymers.

H. "*PP Technology*" means technology relating to Propylene Polymers and the production thereof, and to the preparation and use of Catalyst Systems.

I. "*Catalyst Technology*" means technology relating to PP Catalyst and to the production, preparation and use of PP Catalyst, Catalyst Support and Catalyst Systems.

J. "*Shell Catalyst Technology*" means Catalyst Technology, including Know-How and patent rights, developed, under development, used, offered for license or licensed to any person by companies of the Shell Group at any time prior to the date of transfer to Polyco of the Properties to Be Divested.

K. "*Shell Oil Catalyst Technology*" means Catalyst Technology, including Know-How and patent rights, developed, under development, used, offered for license or licensed to any person by Union Carbide or Shell Oil at any time prior to the date of transfer to Polyco of the Properties to Be Divested.

L. "*Unipol PP Technology*" means PP Technology and Catalyst Technology, including Know-How and patent rights, developed, under development, offered for license, or licensed to any person by UCC and/or Shell Oil in accordance with their Cooperative Undertaking Agreement dated December 22, 1983, or used by UCC and Shell Oil in their partnership PP facility at Seadrift, Texas at any time prior to the date this order becomes final.

M. "*Unipol/SHAC Technology Business*" means the research and development, promotion, and licensing of Unipol PP Technology and Shell Oil Catalyst Technology; the research and development of PP Catalyst, Catalyst Support and Catalyst Systems utilizing Unipol PP Technology and Shell Oil Catalyst Technology; rights and obligations under, and activities conducted pursuant to, the Cooperative Undertaking Agreement between UCC and Shell Oil dated December 22, 1983, and the Polypropylene Catalyst Research and Development Agreement among Shell Oil, UCC and Shell Internationale Research Maatschappij B.V. ("The Tripartite Catalyst Research Agreement"); and the research and development, production and sale of Propylene Polymers, and the demonstration of Unipol PP Technology and Shell Oil Catalyst Technology, pursuant

to the Seadrift Polypropylene Company partnership agreement between UCC and Shell Oil.

N. "*LIPP Process*" means PP Technology developed and used by Shell for the production of Propylene Polymers through a bulk liquid polymerization process.

O. "*Know-How*" means all relevant information, including knowledge, experience and specifications.

P. "*Material Confidential Information*" means competitively sensitive or proprietary information, not in the public domain, concerning the PP Technology, Catalyst Technology, PP Catalyst, Catalyst Support, or Propylene Polymers businesses.

Q. "*Properties to Be Divested*" means

1. All assets, tangible and intangible, of Shell Oil relating to PP Technology, Catalyst Technology, Propylene Polymers and PP Catalyst, including without limitation:

a. Shell Oil's Propylene Polymers plant and assets at Norco, Louisiana, and Shell Oil's associated facilities at Norco, Louisiana for splitting and separating polymer-grade propylene and propane from chemical-grade propylene;

b. Shell Oil's PP Catalyst plant and assets at Norco, Louisiana;

c. Shell Oil's interest in the Seadrift Polypropylene Company and the Propylene Polymers plant at Seadrift, Texas;

d. Shell Oil's PP Catalyst pilot plant;

e. Shell Oil's facilities and equipment (other than real property and general, chemical analytical equipment) at the Westhollow Technology Center at Houston, Texas, primarily utilized during the year prior to the transfer to Polyco of the Properties to Be Divested in research, development and technical support with respect to Shell Oil's Propylene Polymers, PP Catalyst and Catalyst Technology businesses;

f. A rent-free lease, until five years from the date of divestiture of the Properties to Be Divested or until such earlier date as the acquirer may elect, to offices and research and development space at the Westhollow Technology Center at Houston, Texas, associated with the Properties to Be Divested;

g. All owned or leased distribution facilities, rail cars and other assets used in sales or technical service of Propylene Polymers or PP

Catalyst, other than real property at the headquarters offices, general sales offices, and research center of Shell Oil;

h. All intellectual property, including patent rights, trade secrets, technology and Know-How, relating to Catalyst Technology, PP Catalyst, Catalyst Systems, and Propylene Polymers;

i. All customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, technical information, management information systems, software, inventions, specifications, designs, drawings, processes and quality control data;

j. All interest in and to the contracts entered into in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees, including without limitation agreements with Shell Canada and Pecten, and rights under warranties and guarantees, express or implied;

k. All books, records, and files;

l. Shell Oil's interest in owned or leased real property associated with the Norco, Louisiana, and Seadrift, Texas, Propylene Polymers plants, together with appurtenances, licenses and permits;

m. Shell Oil's interest in owned or leased improvements to real property associated with the Norco, Louisiana, PP Catalyst plant, together with appurtenances, licenses and permits, and a rent-free lease to the land associated with the PP Catalyst plant for the life of the plant;

n. Shell Oil's interest in the Unipol/SHAC Technology Business and in the Cooperative Undertaking Agreement dated December 22, 1983, including but not limited to all future revenue of Shell Oil from Unipol PP Technology and Shell Catalyst Technology developed, under development, offered for license, or licensed to any person by UCC or Shell Oil at any time prior to the date of transfer to Polycyco;

o. Exclusive world-wide rights to all Shell Oil trademarks and trade names relating to Propylene Polymers other than Shell Oil trademarks used by Shell Oil for its products generally, such as the "SHELL" mark and the Pecten emblem;

p. All licenses relating to the manufacture and sale of Propylene Polymers and PP Catalyst or the licensing of PP Technology or Catalyst Technology, including but not limited to Shell Oil's rights under the following patents:

- (1) All applicable patents of Shell;
- (2) All patents of Montedison and Mitsui covered by the July 30, 1985 Agreement of Himont Incorporated, Mitsui, Union Carbide Corporation, and Shell Chemical Company; any patent license agreements between Montedison and Shell; and any patent license agreements between Mitsui and Shell;
- (3) Phillips U.S. Patent 4,376,851 "crystalline polypropylene";
- (4) Studiengesellschaft Kohle U.S. Patent 4,125,698 covering production of PP with a titanium chloride/DEAC catalyst; and
- (5) Amoco Chemical Company patents covering "PP Catalyst" identified in the patent license agreement between Amoco and Shell Oil, including Amoco U.S. Patent 4,540,679; Japan Patent Application 59350/85 and European Patent Application 159,150; and

q. Shell Oil's rights under The Tripartite Catalyst Research Agreement; the Polypropylene Agreement between Shell Research Limited and Shell Oil Company; the PP Catalyst Patent Settlement Agreement between Shell Internationale Research Maatschappij B.V. and Shell Oil Company; and the July 30, 1985 Agreement of Himont Incorporated, Mitsui, Union Carbide Corporation, and Shell Chemical Company, subject to any necessary approval of parties not subject to this order; and

2. All Shell's worldwide rights to the "SHAC" trademark; all customer lists, records and files, all catalogs, and all sales promotion literature relating to sales by Shell outside the United States of PP Catalyst and Propylene Polymers manufactured by Shell Oil; and all interest in and to contracts entered into by Shell in the ordinary course of business with customers, sales representatives, distributors and agents relating to the sale, outside the United States, of PP Catalyst or Propylene Polymers manufactured by Shell oil (together with associated bid and performance bonds).

R. "*Viability and Competitiveness*" means having the capability and incentive to operate independently at annual levels of research and development, licensing, production, and sales of PP Technology, Catalyst Technology, PP Catalyst, Catalyst Support and Propylene Polymers at least equal to levels experienced during each of the two (2) calendar years immediately preceding the date of transfer to Polyco of the Properties to Be Divested, and capable through its own

resources of functioning independently and competitively in the PP Technology, Catalyst Technology, PP Catalyst, and Propylene Polymers businesses.

II.

It is further ordered, That:

A. Shell and Shell Oil, as applicable, shall divest the Properties to Be Divested, absolutely and in good faith, within six (6) months of the date this order becomes final, and shall also divest such additional, ancillary assets and businesses and effect such arrangements as are necessary to assure the marketability and the Viability and Competitiveness of the Properties to Be Divested.

B. The period of six (6) months as specified in paragraph II.A shall be extended to March 31, 1997, if either of the following conditions is satisfied:

1. Union Carbide declines, within thirty (30) days following receipt by Union Carbide of the report of the independent appraiser, to acquire the Properties to Be Divested for the fair market value of the Properties to Be Divested as an operating business as determined by an independent appraisal prepared in accordance with the following procedure, or as otherwise agreed, or at such price as agreed, by Shell Oil and Union Carbide:

a. Prior to the expiration of fifteen (15) days from the date this order becomes final Shell Oil will notify Union Carbide of Shell Oil's selection of an independent appraiser;

b. The independent appraiser selected by Shell Oil will perform the appraisal unless within fifteen (15) days from notification of Shell Oil's selected independent appraiser, Union Carbide objects to Shell Oil's selected independent appraiser and notifies Shell Oil of its selection of an independent appraiser;

c. Within fifteen (15) days from the date the name of Union Carbide's selected independent appraiser is received by Shell Oil, Shell Oil will either agree to Union Carbide's selected independent appraiser or request that the two selected independent appraisers jointly select, within ten (10) days of such request, another independent appraiser;

d. The compensation paid to the independent appraiser shall be paid by Shell Oil or as otherwise agreed by Shell Oil and Union Carbide, and the amount of compensation shall be independent of the amount of the fair market value of the Properties to Be Divested as determined by the appraisal;

e. The independent appraiser shall be authorized by Shell to question personnel and examine all relevant books and records, including personnel and books and records of the Unipol/SHAC Technology Business, in connection with the appraisal under appropriate confidentiality provisions;

f. The independent appraisal shall be completed and presented by the appraiser to Union Carbide and Shell Oil within forty-five (45) days of the selection of the appraiser as set forth in this paragraph II.B.1 of this order; or

2. Union Carbide, within (30) days of receiving notice from Shell Oil that Shell proposes to divest Polyco to a named acquirer approved by the Commission, does not consent to the transfer of Polyco's interest in the Cooperative Undertaking Agreement dated December 22, 1983, to such Commission approved acquirer.

C. In the event that, prior to the expiration of the six (6) months specified in paragraph II.A of this order, the Commission has neither approved nor disapproved, within sixty (60) days of receipt of the application, an application for approval of a divestiture to a proposed acquirer submitted in accordance with paragraphs II.A and II.F of this order, the time period specified in paragraph II.A of this order may be extended by the Commission by the number of days in excess of sixty (60) required by the Commission to rule on the divestiture application and, if the Commission approves divestiture to a person other than Union Carbide, the Commission may further extend such period, if necessary, by thirty (30) days in order to provide Shell Oil time to comply with the requirements of paragraph II.B.2 of this order.

D. Provided further, if at the instance of Union Carbide over the opposition of Shell, Shell is enjoined or otherwise prohibited by court order from divesting the Properties to Be Divested, Shell shall promptly give written notice of such order to the Commission, whereupon the period within which Shell shall divest the Properties to Be Divested under paragraphs II.A, II.B or II.C of this order shall

be extended to the earlier of (1) one year from the expiration of the time specified in paragraph II.A of this order and such additional time as may be allowed in paragraphs II.B or II.C of this order; or (2) ninety (90) days after the injunction or other order expires.

E. Respondents 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 Shell and Shell Oil, as applicable, have divested all the Properties to Be Divested or until such other time as the Agreement to Hold Separate provides. Profits accumulated by Technipol during the period the Agreement to Hold Separate is in effect shall be retained by Montedison upon expiration of the Agreement to Hold Separate and shall in no event be transferred to Montell or Shell.

F. Shell and Shell Oil, as applicable, shall divest the Properties to Be Divested as an incorporated, ongoing business, identified herein as "Polycom and established in accordance with the attached Agreement to Hold Separate, and shall divest the Properties to Be Divested only to Union Carbide or to another acquirer or acquirers that receive the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture is to ensure the continuation of Polyco as an ongoing and viable business engaged in the research, development, manufacture and sale of PP Catalyst and Propylene-Polymers and in the research, development, and, licensing of PP Technology and Catalyst Technology, and to remedy the lessening of competition resulting from the proposed acquisition as alleged in the Commission's complaint.

G. The Properties to Be Divested shall be divested free and clear of (1) all royalties, mortgages, encumbrances and liens to Shell or Montell; and (2) any contractual commitments or obligations to Shell or Montell existing as of the date of divestiture.

H. Should any transfer of an agreement, contract or license required by paragraph II.A of this order not be possible after reasonable effort by Shell and Shell Oil due to a person other than a party to this order withholding its consent to the transfer, Shell Oil shall enter into an agreement with Polyco or the acquirer thereof the purpose of which agreement is to realize the same effect as such transfer. Shell Oil shall submit a copy of each such agreement with its compliance reports to the Commission pursuant to paragraphs VIII.A and VIII.B of this order. Further, Shell Oil shall secure, at its

expense, patent licenses, or assignments of patent licenses, extending to Polyco and the acquirer thereof rights and royalty rates with respect to the manufacture and sale of Propylene Polymers and PP Catalyst from the Properties to Be Divested, and rights to expand production and sale, no less favorable than those held by Shell Oil as of the date of transfer to Polyco of the Properties to Be Divested.

III.

It is further ordered, That:

A. Prior to transfer of any assets or businesses from Shell into Montell or merger of any part of Shell and Montell or Montedison, Shell shall

1. Extend to Polyco, without royalty to Shell or Montell, Shell's rights under agreements relating to the research and development, manufacture and sale of PP Catalyst, Catalyst Support, and Catalyst Systems by any person, including but not limited to nonexclusive rights to sell, and to contract with Akzo Nobel for the production of, PP Catalyst and Catalyst Support;

2. Disclose to Polyco all Shell Catalyst Technology in its possession or to which it has rights;

3. Grant Polyco, without royalty to Shell or Montell, the perpetual, non-exclusive right (1) to license, subject to the rights of Union Carbide, Shell Catalyst Technology to any person worldwide; (2) to sell worldwide to any person PP Catalyst and Catalyst Systems based on Shell Catalyst Technology; and (3) to enforce intellectual property rights with respect to Shell Catalyst Technology worldwide, including without exclusion the right to sue any person who by the manufacture, use or sale of any PP Catalyst or Catalyst System infringes any Shell patent which has been applied for in any country in the world before the date this order becomes final. All costs of any such suit by Polyco shall be borne by Polyco and all damages recovered shall be retained by Polyco; and

4. Grant Polyco, without royalty to Shell or Montell, the exclusive right, until seven years from the date of divestiture of the Properties to Be Divested, (1) to license, subject to the rights of Union Carbide, Shell Catalyst Technology to persons other than Montell and Montell Affiliates; and (2) to sell to persons other than

Montell and Montell Affiliates (or LIPP Process licensees for use in their LIPP Process plants) such PP Catalyst formulations or their equivalent as were manufactured or sold by Shell, or manufactured for Shell by Akzo Nobel, prior to the date this order becomes final; and

B. Shell and Montell shall grant to Polyco and licensees of Unipol PP Technology immunity under patents relating to PP Technology, Catalyst Technology, PP Catalyst, Catalyst Support, Catalyst Systems or Propylene Polymers, based on work conducted prior to December 31, 1997, or prior to one year after divestiture of the Properties to Be Divested, whichever is later, by persons who, as Shell personnel within one (1) year prior to the date of the formation of Montell, had access to Unipol PP Technology other than in the public domain and other than Catalyst Technology received by Shell Oil from other companies of the Shell Group.

C. Until one (1) year after divestiture of the Properties to Be Divested no Shell research personnel who, within one (1) year prior to the date of the formation of Montell, had access to Unipol PP Technology (other than Catalyst Technology received by Shell Oil from other companies of the Shell Group) shall engage in research at facilities of Montell on PP Technology, Shell Catalyst, Technology or Montedison Catalyst Technology. Provided, however, nothing in this order shall require Shell to conduct any research and development for any person or to refrain from conducting research and development for, and at the expense of, any person, including Montell and communicating with, or receiving communications from, such person regarding such research and development work. The results of any research and development conducted by Shell prior to December 31, 1997, or one year after divestiture of the Properties to Be Divested, whichever is later, on Shell Catalyst Technology, including but not limited to research or development conducted for, or at the expense of, Montell, shall be provided to Polyco without payment for use in the Unipol/SHAC Technology Business.

D. Shell (including former employees of Shell transferred to Montell) shall not provide, disclose or otherwise make available to Montedison, Technipol, Montell or Montell Affiliates any Material Confidential Information relating to Unipol PP Technology or the Unipol/SHAC Technology Business (other than Catalyst Technology received by Shell Oil from other companies of the Shell Group), provided however nothing in this paragraph III.D of this order shall

prohibit (1) Montell Affiliates who are licensees of Unipol PP Technology from receiving information, in accordance with such license, for use in their Unipol PP Technology licensed production facilities, including information obtained by Shell, prior to the formation of Montell, under The Tripartite Catalyst Research Agreement; and (2) any communication between Shell and Montell necessary to ensure that Montell and its employees make no unauthorized use or disclosure of any Material Confidential Information.

E. Until two (2) years after divestiture of the Properties to Be Divested, Shell, Montell and Technipol shall not employ, or make offers of employment to, any person employed by Shell Oil whose principal duties, during the year prior to the date of transfer to Polyco of the Properties to Be Divested, related to the management, development or operation of the Properties to Be Divested. This provision, however, does not apply to employment by Shell Oil of any employee who is terminated by Polyco or by the acquirer of the Properties to Be Divested or who is not offered employment by Polyco or by the acquirer of the Properties to Be Divested at a base salary that is at least equivalent, and incentives and benefits that are comparable, to those held by the employee prior to the divestiture of the Properties to Be Divested. Provided, however, Shell Oil shall not be required to, but may, terminate employment of any employee who refuses to accept employment with Polyco; Shell Oil shall substitute alternative personnel of equivalent qualifications, education and experience for any persons declining to accept employment with Polyco who are not terminated by Shell. Shell Oil shall encourage and facilitate employment by Polyco or by the acquirer of the Properties to Be Divested of employees whose principal duties, during the year prior to the date of transfer to Polyco of the Properties to Be Divested, related to the management, development or operation of the Properties to Be Divested; shall not offer any incentive to such employees to decline employment with Polyco or with the acquirer of the Properties to Be Divested or to accept other employment in Shell; and shall remove any impediments that exist which may deter such employees from accepting employment with Polyco or with the acquirer of the Properties to Be Divested, including but not limited to the payment for the benefit of the employees of all accrued bonuses, pensions and other accrued benefits to which such employees are entitled as of the date of the divestiture. Shell Oil

shall not impose any loss of pension benefits on employees to which such employees are entitled under the Shell Oil pension plan as administered under ERISA.

IV.

It is further ordered, That from the date this order becomes final and continuing until three (3) years following the date of the divestiture required by this order, Shell shall, at Polycol's request or at the request of the acquirer of the Properties to Be Divested, contract with Polyco or the acquirer of the Properties to Be Divested to supply to Polyco or the acquirer propylene monomer, in such quantities and product grade as Polyco or the acquirer may request for use in the Properties to Be Divested subject only to the capacity and grade constraints of Shell's propylene monomer production facilities in the United States and preexisting contractual obligations to persons other than Shell, Montedison, and Montell. The price, terms, and conditions at which Shell shall supply any grade of propylene monomer to Polyco and to the acquirer of the Properties to Be Divested shall be no less favorable to Polyco and the acquirer of the Properties to Be Divested than the price, terms, and conditions at which Shell supplies such grade of propylene monomer, directly or indirectly, to Montell in North America, through exchange or otherwise.

V.

It is further ordered, That:

A. If Shell or Shell Oil, as applicable, has 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 II.A of this order or within such additional time as may be allowed in paragraphs II.B, II.C or II.D of this order, the Commission may appoint a trustee to divest the Properties to Be Divested. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(1) of the Federal Trade Commission Act, 15 U.S.C. 45(1), or any other statute enforced by the Commission, Shell 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(1) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Shell to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to paragraph V.A of this order, Shell shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Shell, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Shell has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Shell of the identity of any proposed trustee, Shell shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Properties to Be Divested.

3. Within ten (10) days after appointment of the trustee, Shell shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in paragraph V.B.3 to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Properties to Be Divested or to any other relevant information, as the trustee may request. Shell and Polyco shall develop such financial or other information as such trustee may request and shall cooperate with the

trustee. Shell and Polyco shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by Shell or Polyco shall extend the time for divestiture under this paragraph in an amount equal to the delay, as determined by the Commission or, in the case of a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Shell's absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to the acquirer or acquirers as set out in paragraph II.A of this order; provided, however, if the trustee receives *bona fide* offers from more than one acquiring entity, 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 Shell from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of Shell, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Shell, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission or, 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 Shell 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.

8. Shell shall indemnify the trustee and hold the trustee harmless against any liabilities, losses, claims, damages, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, claims, damages, or expenses result from

misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph V.A of this order.

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

11. The trustee shall have no obligation or authority to operate or maintain the Properties to Be Divested pending completion of the divestiture.

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

VI.

It is further ordered, That:

A. Royal Dutch, Shell T&T and Montedison shall obligate Montell, Montedison shall obligate Technipol, and Shell Oil shall obligate Polyco, to be bound by this order and insure compliance with this order by Montell, Technipol and Polyco, respectively.

B. Shell, Montedison and Montell shall not restrict any Montell Affiliate from licensing PP Technology or Catalyst Technology from the Unipol/SHAC Technology Business or Technipol or from purchasing PP Catalyst or Catalyst Systems from Polyco or Technipol.

C. Polyco shall not withhold its consent, except for good cause, to Union Carbide to grant or negotiate license fees and royalty rates below those minimums specified in the Cooperative Undertaking Agreement dated December 22, 1983, and attachments thereto.

D. Shell, Montedison, Montell and Technipol shall not enter into or renew any agreement or understanding with any developer or licensor of PP Technology or Catalyst Technology or any manufacturer, or seller of PP Catalyst, Catalyst Support, or Catalyst Systems limiting the geographic area within which, or limiting the persons to whom, such person may license PP Technology or Catalyst Technology or may manufacture and sell PP Catalyst,

Catalyst Support, or Catalyst Systems, unless such agreement or understanding relates exclusively to markets other than the United States and has no effect on United States commerce, including but not limited to export commerce. Nothing in this paragraph VI.D shall prohibit Shell, Montedison, Montell or Technipol from legitimately designating a sales agent for the sale of, or contract manufacturer for the production of, PP Catalyst or Propylene Polymers in any geographic area, or from limiting the persons, geographic area or uses for which they respectively grant legitimate licenses of their PP Technology or Catalyst Technology.

E. Montedison, Montell and Technipol shall not (1) enforce any provision in any agreement with Mitsui providing for sharing of royalties with respect to licenses granted by Mitsui after the date this order becomes final for use of PP Technology and Catalyst Technology in the United States in Propylene Polymers plants and in the production of Propylene Polymers; or (2) enter into or renew any agreement with Mitsui providing for sharing of royalties with respect to licensing of PP Technology or Catalyst Technology in the United States for use in Propylene Polymers plants and in the production of Propylene Polymers.

VII.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, Shell, Montedison and Montell shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity, or other interest in any concern, corporate or non-corporate, other than the acquisition by Shell or Montedison of additional shares of Montell, engaged in at the time of such acquisition, or within two (2) years preceding such acquisition engaged in,

1. The research and development (other than only implementation of technology licensed from others), or sale or licensing to any person, of PP Technology or Catalyst Technology anywhere in the world;

2. The research and development, sale, or manufacture for sale of PP Catalyst, Catalyst Support, or Catalyst Systems anywhere in the world; or

3. The manufacture or sale of Propylene Polymers in the United States or Canada; or

B. Acquire any assets used for or previously used for (and still suitable for use for)

1. The research and development (other than only implementation of technology licensed from others), or sale or licensing to any person, of PP Technology or Catalyst Technology anywhere in the world;

2. The research and development, sale, or manufacture for sale of PP Catalyst, Catalyst Support, or Catalyst Systems anywhere in the world; or

3. The manufacture or sale of Propylene Polymers in the United States or Canada.

Provided, however, these prohibitions shall not relate to the construction of new facilities or the acquisition of new or used equipment in the ordinary course of business from a person other than the persons referred to in paragraph VII.A of this order. Provided, further that this paragraph VII of this order shall not apply to the acquisition of Technipol by Montell following completion of the divestiture of the Properties to Be Divested and expiration of the attached Hold Separate Agreement.

VIII.

It is further ordered, That:

A. Within sixty (60) days from the date this order becomes final and every sixty (60) days thereafter until Shell has fully complied with the provisions of paragraphs II and V of this order, Shell Oil 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 paragraphs II and V of this order. Shell Oil shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts

being made to comply with paragraphs II and V of the order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Shell Oil shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

B. One (1) year from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, Royal Dutch, Shell Oil, Montedison and Montell shall each file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with this order.

IX.

It is further ordered, That Royal Dutch, Shell T&T, Shell Oil, Montedison and Montell shall each notify the Commission at least thirty (30) days prior to any proposed change in such company, such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in such company that may affect compliance obligations arising out of this order.

X.

It is further ordered, That, for the purpose of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request, and on reasonable notice, Shell, Montedison and Montell shall each permit any duly authorized representative 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 Shell, Montedison or Montell, as applicable, relating to any matters contained in this order; and

B. Upon five (5) days notice to Shell, Montedison or Montell and without restraint or interference from it, to interview its officers,

directors or employees, who may have counsel present, regarding such matters.

XI.

It is further ordered, That this order shall terminate twenty (20) years from the date this order becomes final.

AGREEMENT TO HOLD SEPARATE

This Agreement to Hold Separate ("Agreement") is by and among Montedison S.p.A., a corporation organized, existing and doing business under the laws of Italy with its principal executive offices located at Foro Buonaparte, 31, 20121 Milan, Italy, and its wholly-owned subsidiary, HIMONT Incorporated, a corporation organized, existing and doing business under the laws of the State of Delaware with its principal executive offices located at Three Little Falls Centre, 2801 Centerville Road, Wilmington, Delaware (collectively "Montedison"); Royal Dutch Petroleum Company, a corporation organized, existing and doing business under the laws of the Netherlands with its principal executive offices located at Carel van Bylandtlaan 30, The Hague, The Netherlands, and The "Shell" Transport and Trading Company, p.l.c., a corporation organized, existing and doing business under the laws of England with its principal executive offices located at Shell Center, London SE1 7NA, England, and their wholly-owned subsidiary, Shell Oil Company, a corporation organized, existing and doing business under the laws of the State of Delaware with its principal executive offices located at One Shell Plaza, Houston, Texas (collectively "Shell"); 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 or about December 30, 1993, Montedison and Shell Petroleum N.V., a holding company of the Shell Group, entered into an agreement providing for the merger (hereinafter the "Acquisition") of the majority of the polyolefin assets and businesses of Montedison

(hereinafter the "Montedison Merged Assets") and the majority of the polyolefin assets and businesses of Shell (hereinafter the "Shell Merged Assets"); and

Whereas, Montedison and Shell each develop and license PP Technology and Catalyst Technology and each develop, manufacture and sell PP Catalyst and Propylene Polymers; and

Whereas, Montedison will establish Technipol and hold Technipol separate from Montell in accordance with the Decision of the Commission of the European Communities in Case No. IV/M. 269-SHELL/MONTECATINI; 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 agreement containing consent order ("consent order"), which would require the divestiture of certain assets, the Commission must place the consent order 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 Montedison Merged Assets and the Shell Merged Assets, respectively, during the period specified in paragraph four of this Agreement, 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.Q of the consent order and the Commission's right to have the Properties to Be Divested continue as a separate, viable and independent entity; and

Whereas, the purpose of this Agreement and the consent order is to:

(i) Preserve the Properties to Be Divested, also referred to herein as "Polyco," as a viable business independent from Montedison, pending the divestiture of the Properties to Be Divested as a viable and ongoing enterprise;

- (ii) Preserve Technipol as a viable business independent from Shell, pending the divestiture of the Properties to Be Divested as a viable and ongoing enterprise; and
- (iii) Remedy any anticompetitive effects of the Acquisition; and

Whereas, Montedison's and Shell's entering into this Agreement shall in no way be construed as an admission by Montedison and Shell that the Acquisition is illegal, and this Agreement shall in no way be construed as limiting in any way the obligations of Montedison and Shell pursuant to the Decision of the Commission of the European Communities in Case No. IV/M. 269-SHELL/MONTECATINI; and

Whereas, Montedison and Shell understand 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, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the consent order, the Commission will not seek a temporary restraining order, preliminary injunction, or permanent injunction with respect to the Acquisition, and in recognition 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 divestiture is not accomplished, to seek divestiture of the Properties to Be Divested and such other relief as the Commission may consider appropriate, the Parties agree as follows:

1. Montedison and Shell agree that from the date this Agreement is signed by Shell and Montedison until the earliest of the dates listed in paragraphs 1.a or 1.b, they each will comply with the provisions of this Agreement:

a. Ten days after the Commission withdraws its acceptance of the consent order pursuant to the provisions of Section 2.34 of the Commission's Rules; or

b. The day after the divestiture required by the consent order has been completed.

2. Montedison, Royal Dutch, Shell T&T and Shell Oil agree to execute and be bound by the agreement containing consent order and to comply, from the date this Agreement is accepted, with the provisions of the consent order as if it were final.

3. The terms capitalized herein shall have the same definitions as in the consent order. In addition, the following terms used herein shall have the following definitions:

a. *"Montedison PP Technology"* means PP Technology and Catalyst Technology, including Know-How and patent rights, developed, under research and development, used, offered for license, or licensed to any person by Montedison at anytime prior to the date of transfer to Technipol of the Montedison Properties to Be Transferred. For purposes of this Agreement Catalloy process and related catalyst technology and technology concerning the production of PP Catalyst or the production of any other component of Catalyst System shall be excluded from "Montedison PP Technology."

b. *"Montedison Properties to Be Transferred"* means the businesses, rights and interests and other assets, tangible and intangible, required to be transferred from Montedison to Technipol pursuant to paragraph eight of this Agreement.

c. *"Existing Montedison Licenses"* means licenses of Montedison PP Technology to persons other than Montell Affiliates in effect as of the date of transfer to Technipol of the Montedison Properties to Be Transferred and includes so-called "catalyst use know-how licenses," "process know-how licenses" and "patent licenses."

d. *"Improvements"* means all refinements, optimizations, or new technical developments, patentable or unpatentable, of Know-How, PP Technology and Catalyst Technology with commercial application, other than Major Advances.

e. *"Major Advances"* means all new technical developments of and changes, patentable or unpatentable, to existing Know-How, PP Technology and Catalyst Technology with commercial application, of the type generally recognized in the industry as revolutionary or of major consequence and would, upon commercial implementation, (a) reduce production costs of Propylene Polymers by at least one (1) cent per pound; (b) significantly increase the quality, productivity or selling potential of the PP Catalyst, Catalyst Support or Catalyst System, or the quality or selling potential of the Propylene Polymers; or (c) enable production of new Propylene Polymers commercially

competitive primarily in end-uses for which Propylene Polymers produced and sold commercially have not been previously suitable for technological reasons. Major Advances include, for example:

- i. In the case of PP Technology, elimination of a unit operation, addition of a unit operation, or introduction of a new comonomer or additive;
- ii. In the case of PP Catalyst, a change in the major type of Catalyst Support;
- iii. In the case of Catalyst Systems, a change in the major type of components or elimination of one component together with a type change in another component; and
- iv. In the case of Propylene Polymers, new compositions or types that display chemical and physical properties not previously achievable by the relevant technology.

4. Montedison and Shell agree that from the date this Agreement is signed by Montedison and Shell until March 1, 1995, Montedison will hold the Montedison Merged Assets separate and apart from Shell and from Montell, and Shell will hold the Shell Merged Assets separate and apart from Montedison and from Montell.

5. Commencing prior to, or concurrently with, transfer to Montell of the Shell Merged Assets, Shell will hold the Properties to Be Divested as they are presently constituted (hereafter "Polyco") separate and apart on the following terms and conditions:

a. Shell and Shell Oil, as applicable, shall transfer to Polyco all ownership and control of the Properties to Be Divested. Polyco shall be held separate and apart and shall be operated independently of Shell (meaning here and hereinafter, Shell excluding Polyco and excluding all personnel connected with Polyco as of the date this Agreement as signed) except to the extent that Shell Oil must exercise direction and control over Polyco to assure compliance with this Agreement or with the consent order.

b. Shell Oil shall separately incorporate Polyco and cause Polyco to adopt new Articles of Incorporation and By-laws and any other required documents for Polyco that are not inconsistent with other provisions of this Agreement. Shell Oil shall also elect a new six-person board of directors of Polyco ("New Board") prior to, or concurrently with, transfer of any assets or businesses from Shell into

Montell or merger of any part of Shell and Montell or Montedison. Questions before the New Board shall be approved by a simple majority of the directors voting on the matter, provided that Polyco shall engage in no transaction that is precluded by this Agreement or by the consent order. Shell Oil may elect the directors to the New Board; provided, however, that such New Board shall consist of at least three outside directors neither previously nor currently employed by Shell or Montedison; two officers of Polyco; and a maximum of one Shell Oil (but not Royal Dutch, Shell T&T or Montell) director, officer, employee, or agent; provided, further, that such Shell Oil director, officer, employee or agent shall enter into a confidentiality agreement in accordance with the provisions of paragraph 5.h hereof and shall not be a person involved in Shell or Montell's Propylene Polymers or PP Catalyst businesses, as defined in paragraph I. of the consent order. Such director who is also a Shell Oil director, officer, employee or agent shall participate in matters that come before the New Board only for the limited purpose of carrying out Shell Oil's and Polyco's responsibilities under this Agreement or under the consent order. Shell Oil will take no action to delay or limit expansion of production capacity by Polyco. Except as permitted by this Agreement, the Shell Oil director shall not participate in any matter, or attempt to influence the votes of the other directors with respect to matters, including but not limited to expansion of capacity, that would involve a conflict of interest if Shell Oil and Polyco were separate and independent entities. In the case of deadlock by the New Board on any question in which the Shell Oil director participates, a second vote shall be taken on the question and the Shell Oil director shall not vote. The New Board shall include a chairman who is independent of Shell and is competent to assure the continual Viability and Competitiveness of Polyco. Shell Oil shall notify the Commission in its next compliance report submitted pursuant to paragraph VIII.A of the consent order of the identity and relevant qualifications and experience of any person whom Shell Oil has appointed as an original or subsequent director of Polyco.

c. Except for the single Shell Oil director, officer, employee, or agent serving on the "New Board" (as defined in paragraph 5.b) Shell shall not permit any director, officer, employee or agent of Shell to also be a director, officer, employee or agent of Polyco. In the event any members of management of the Properties to Be Divested should

choose not to accept employment with Polyco, or should retire or otherwise leave their management positions, the non-Shell (as Shell is defined in paragraph 5.a hereof) directors serving on the New Board (as defined in paragraph 5.b hereof) shall have the exclusive power to replace such members of management.

d. Polyco shall be staffed with sufficient employees to maintain the Viability and Competitiveness of the Properties to Be Divested. Shell, Montell and Technipol shall not employ, or make offers of employment to, any person employed by Shell Oil whose principal duties, during the year prior to the date of transfer to Polyco of the Properties to Be Divested, related to the management, development or operation of the Properties to Be Divested. This provision, however, does not apply to employment by Shell Oil of any employee who is terminated by Polyco or who is not offered employment by Polyco at a level of compensation and benefits at least equivalent to those held by the employee prior to the date of transfer to Polyco of the Properties to be Divested. Shell Oil shall encourage and facilitate employment by Polyco of Shell Oil employees who had line responsibility with respect to the Properties to Be Divested in the year prior to the transfer to Polyco of the Properties to Be Divested; shall not offer any incentive to such employees to decline employment with Polyco or accept other employment in Shell; and shall remove any impediments that exist which may deter much employees from accepting employment with Polyco, including but not limited to the payment, or transfer for the account of the employee, of all accrued bonuses, pensions and other accrued benefits to which such employees would otherwise have been entitled had they remained in the employment of Shell Oil.

e. Shell shall not exercise direction or control over, or influence directly or indirectly, Polyco; provided, however, that Shell Oil may exercise only such direction and control over Polyco as is necessary to assure compliance with this Agreement or with the consent order, including dissolution, merger, consolidation, bankruptcy, sale of substantially all assets, major acquisitions, issuance of equity securities or any change in the legal status of Polyco.

f. Shell shall not cause or permit any destruction, removal, wasting, deterioration or impairment of Polyco, except for ordinary wear and tear. Shell Oil shall maintain the marketability and the Viability and Competitiveness of Polyco and shall not sell, transfer, encumber (other than in the normal course of business) or otherwise

impair its marketability or Viability and Competitiveness. Shell Oil shall provide Polyco with sufficient working capital to operate at current rates of operation, to perform all necessary routine maintenance to, and replacement of, plant and equipment of the Properties to Be Divested, and to maintain the Viability and Competitiveness of the Properties to Be Divested.

g. Shell shall not change the composition of the management of Polyco except that the non-Shell (as Shell is defined in paragraph 5.a hereof) directors or members serving on the New Board (as defined in paragraph 5.b hereof) shall have the power to remove any employee. With the exception of the single Shell Oil director, Shell Oil shall not remove directors of the New Board except for cause.

h. Except as permitted by this Agreement, the Shell Oil New Board member shall not in his or her capacity as a New Board member receive Material Confidential Information and shall not disclose any such information received under this Agreement to Shell, Montedison or Montell or use it to obtain any advantage for Shell, Montedison or Montell. Any Shell Oil director, officer, employee or agent 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.

i. Except as required by law and except to the extent that necessary information is exchanged in the course of 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, Shell, Montedison and Montell shall not receive or have access to, or the use of, any Material Confidential Information of Polyco, except as such information would be available to Montedison in the normal course of business if the Acquisition had not taken place. Any such information that is obtained by Shell Oil pursuant to this paragraph shall only be used for the purposes set out in this paragraph. Provided, however, until divestiture of Polyco, hourly personnel assigned to Polyco plant operations may continue to be covered by existing contracts between Shell Oil and any unions representing such employees; and Shell Oil may assign Shell Oil personnel to perform the accounting, analytical chemistry, human resources, information systems, transportation services and tax

functions for Polyco provided that such Shell Oil personnel shall enter into confidentiality agreements in accordance with the provisions of paragraph 5.h hereof and provided further that those Shell Oil personnel working with Material Confidential Information of Polyco shall not be involved in Montell's PP Technology, Catalyst Technology, PP Catalyst or Propylene Polymers business, as defined in paragraph I. of the consent order for the period that Shell must comply with paragraph five hereof. Provided further that the New Board (as defined in subparagraph 5.b hereof) may designate and contract with Shell Oil as a non-exclusive sales agent for sales of PP Catalyst or Propylene Polymers by Polyco outside the United States, provided that all Shell Oil personnel with access to Material Confidential Information of Polyco in connection with such contract or agency shall, prior to gaining such access, enter into confidentiality agreements in accordance with the provisions of paragraph 5.h hereof.

j. All earnings and profits of Polyco shall be retained separately in Polyco.

k. Should any transfer to Polyco of an agreement, contract or license required to be included in the Properties to Be Divested not be possible after reasonable effort by Shell Oil due to another party withholding its consent to the transfer, Shell Oil shall enter into an agreement with Polyco the purpose of which agreement is to realize the same effect as such transfer. Further, Shell Oil shall secure, at its expense, patent licenses, or assignments of patent licenses, extending to Polyco rights and royalty rates with respect to the manufacture and sale of Propylene Polymers and PP Catalyst, and rights to expand production and sale, no less favorable than those held by Shell Oil as of the date of transfer to Polyco of the Properties to Be Divested.

6. Prior to, or concurrently with, transfer to Montell of the Shell Merged Assets, Royal Dutch and Shell T&T shall ensure that companies of the Shell Group shall:

a. Take such actions as are necessary to establish and maintain separate and apart from Montell the Koninklijke/Shell Laboratorium Amsterdam ("KSLA") research and development laboratory of Shell Research B.V., a company of the Shell Group; and

b. Take such actions as are necessary to ensure that no Shell research personnel who have had access to Unipol PP Technology

(other than Catalyst Technology received by Shell Oil from other companies of the Shell Group) within one (1) year prior to the date of the formation of Montell engage in research at facilities of Montell.

7. Shell Oil's Pecten international marketing organization shall not market or distribute products of Montell but may, as requested by Polyco, market and distribute products produced by Polyco.

8. Prior to, or concurrently with, transfer to Montell of the Montedison Merged Assets, Montedison shall

a. Transfer to Technipol as an ongoing business:

i. PP research and development facilities in the Giulio Natta Research Center in Ferrara, Italy, by outright transfer or lease, including transfer of its P03 pilot plant, equipment, rights-of-way, easements, and other rights and assets appropriate and sufficient to preserve the Viability and Competitiveness of the Montedison PP Technology business.

ii. The irrevocable worldwide right, for a period not to expire prior to the divestiture of the Properties to be Divested, to grant to any person perpetual Montedison PP Technology licenses subject to any lawful rights previously granted to persons not parties to this Agreement. This right shall be exclusive subject to the right of Montell to license Montell Affiliates.

iii. Existing Montedison Licenses and Montedison's PP Catalyst supply contracts with persons other than Montell Affiliates. Should any such transfer not be possible after reasonable effort by Montedison due to the other party withholding its consent to the transfer, Montedison or Montell shall enter into an agreement with Technipol to service the licenses not transferred to Technipol and account for revenues from such licenses strictly for the benefit and account of Technipol, the purpose of which agreement is to realize to the extent possible the same effect of a transfer of such licenses.

iv. Montedison's PP Catalyst sales business.

v. Personnel who possess the specific skills and experience required by Technipol sufficient to support, conduct and preserve the Viability and Competitiveness of the Montedison Properties to Be Transferred. Montedison shall appoint Technipol's managers on the

basis of demonstrated ability and specific experience in the Montedison PP Technology field.

vi. Such other assets (including cash and working capital) and personnel as may be required to effectuate the remedial purpose of this order and to assure that Technipol will be capable of operating independently at the same level of research, development and licensing of PP Technology, and sale of PP Catalyst as existed in the Montedison Properties to Be Transferred on average during the two (2) years prior to the Transfer Date.

b. Physically separate, to the extent feasible, the assets, personnel, offices and facilities transferred or leased to Technipol from those retained in Montedison and from those transferred to Montell so as to assure the independence of Technipol from Montell and to assure that Material Confidential Information that is not to be made available to another person pursuant to the consent order and this Agreement is not accessible to such person.

c. Assign to Technipol all other agreements in which Montedison grants to a person other than Montell or a Montell Affiliate the right to practice Montedison PP Technology. Should any such assignment not be possible after reasonable effort by Montedison due to the other party withholding its consent to the assignment, Montedison or Montell shall enter into an agreement with Technipol the purpose of which is to realize the effect of such assignment.

d. Take such actions as necessary to ensure an ongoing agreement between Montell and Technipol pursuant to which Montell will provide to Technipol, at Montell's cost, services (such as building security, fire protection, trash removal, shipping and receiving, accounting and cleaning services), utilities and common maintenance for the Montedison Properties to Be Transferred, as may be requested by Technipol.

Provided, however, that Montedison shall retain for Montell ownership of, and free right to practice and use, and sell product resulting from the practice or use of, all Montedison PP Technology and PP Catalyst production assets.

9. Commencing prior to, or concurrently with, transfer to Montell of the Montedison Merged Assets, Montedison will hold Technipol as constituted in accordance with paragraph eight of this Agreement separate and apart on the following terms and conditions:

a. Montedison shall separately incorporate Technipol and adopt Articles of Incorporation and By-laws for Technipol that are not inconsistent with other provisions of this Agreement. Montedison shall also elect a board of directors of Technipol prior to, or concurrently with, transfer to Montell of the Montedison Merged Assets.

b. Technipol shall be operated independently of Montell and Shell, and neither Shell nor Montell shall have any ownership or other financial interest in Technipol or exercise direction or control over, or influence directly or indirectly, Technipol, except as specifically authorized by this Agreement.

c. Montedison shall not permit any director, officer, employee or agent of Montell, or any director, officer, employee or agent of Montedison involved in management or oversight of Montell, to also be a director, officer, employee or agent of Technipol.

d. Any Montedison director, officer, employee or agent who obtains or may obtain Material Confidential Information of Technipol under this Agreement shall not disclose to Shell or Montell such Material Confidential Information until the day after divestiture of the Properties to Be Divested has been completed.

e. Montedison shall not cause or permit any destruction, removal, wasting, deterioration or impairment of Technipol, except for ordinary wear and tear. Montedison shall also maintain the Viability and Competitiveness of Technipol and shall not sell, transfer, encumber (other than in the normal course of business) or otherwise impair its Viability and Competitiveness.

f. The purpose of the formation of Technipol and the transfer to it of the Montedison Properties to Be Transferred is to ensure the continuation of separate, full-functioning entity to conduct the business of the Montedison Properties to Be Transferred and to preserve the Viability and Competitiveness of that business until the Properties to Be Divested are divested.

g. Montell shall provide Technipol and its licensees and prospective licensees access to any and all of Montell's commercial scale PP plants using Montedison PP Technology for demonstrating the PP Technology and Catalyst Technology used in the plant to prospective licensees and shall provide technical assistance and training for personnel of Technipol's licensees. In consideration for providing such services and assistance to Technipol, Montell may charge no more than its actual hourly cost of pay and benefits for the

services of Montell personnel providing technical assistance and training and, in the case of technical assistance or training by Montell Personnel at a licensee's or prospective licensee's facilities, reasonable and customary travel and per diem subsistence costs of such personnel.

h. With respect to future Improvements or Major Advances in Montedison PP Technology by Technipol or Montell:

i. Technipol and Montell shall each own any Improvements or Major Advances it develops at its own cost or finances.

ii. Technipol shall have the right to license to any person any results obtained from research and development in the field of PP Technology performed by Technipol under contract for Montell.

iii. Technipol may grant Montell a paid-up, royalty-free, perpetual and non-exclusive right to use any Improvements owned by Technipol or received by Technipol from its licensees.

iv. Technipol may grant Montell a non-exclusive license to use any Major Advances owned by Technipol or received by Technipol from its licensees on a non-discriminatory basis on terms available to other persons.

v. Montell shall grant Technipol a paid-up, royalty-free, perpetual and non-exclusive right to license persons other than Montell Affiliates to use any Improvements owned by Montell.

vi. Montell shall grant Technipol the right to license third parties to use any Major Advances owned by Montell, unless Montell is contractually prohibited, by contract with any person other than a Montell Affiliate or a respondent, from sharing such Major Advances with Technipol. Such grant to Technipol shall be on reasonable terms and conditions which shall, in any event, be no less favorable to Technipol than those offered by Montell to any person other than a Montell Affiliate.

i. Technipol shall have the exclusive right, subject to any lawful rights previously granted to persons not parties to this Agreement, to enforce intellectual property rights with respect to Montedison PP Technology, and to sell PP Catalyst to persons other than Montell and Montell Affiliates.

j. Except as expressly provided in this Agreement, all sales, licensing and other business relationships between Technipol and

either Montedison, Shell or Montell shall be conducted on a non-discriminatory basis on terms available to other persons.

k. Pursuant to a PP Catalyst supply agreement between Montell and Technipol, Montell shall produce PP Catalyst, including Improvements thereto, for Technipol for use by Technipol's licensees and PP Catalyst customers, subject to the rights of Akzo Nobel. To this end, Montell shall dedicate such portion of its PP Catalyst production capacity as is required to supply Technipol's licensees and PP Catalyst customers. The price for PP Catalyst supplied by Montell to Technipol shall be negotiated between Montell and Technipol, but in no event shall be more than the lowest contract price, in terms of the price per pound of Propylene Polymers produced per pound of PP Catalyst, for PP Catalyst available to a licensee other than a Montell Affiliate or government controlled licensee, as of December 31, 1993, recalculated in accordance with the pricing formula in the PP Catalyst supply contract for that licensee, less eight percent (8%).

l. Pursuant to a Catalyst Support supply agreement between Montell and Technipol, Montell shall produce Catalyst Support, including Improvements thereto, for Technipol for sale to Akzo Nobel. The price for Catalyst Support supplied by Montell to Technipol shall be negotiated between Montell and Technipol, but in no event shall be more than the price charged to Akzo Nobel as of December 31, 1993, recalculated in accordance with the pricing formula in the Catalyst Support supply contract between Akzo Nobel and Himont, less eight percent (8%).

m. Notwithstanding any agreement entered into by Montell and Technipol pursuant to paragraphs 9.k and 9.l of this Agreement, Technipol may acquire PP Catalyst and Catalyst Support from any other person.

n. Technipol shall provide to Montell, on the date of transfer to Technipol of the Montedison Properties to Be Transferred and on the first day of every calendar quarter thereafter, an estimate of its requirements for PP Catalyst and Catalyst Support for the following twelve (12) months. Montell shall supply PP Catalyst and Catalyst Support in quantities sufficient to maintain an inventory of PP Catalyst and Catalyst Support equivalent to Technipol's requirements for PP Catalyst and Catalyst Support for a period of six (6) months. In the event that Montell is unable to maintain an inventory of PP Catalyst and Catalyst Support sufficient to supply Technipol's

requirements for PP Catalyst and Catalyst Support for a period of six (6) months, Montell will grant to Technipol the right and Know-How necessary to produce, or have produced on its behalf, PP Catalyst and Catalyst Support.

o. In the case of any shortage of PP Catalyst or Catalyst Support production Montell shall continue to supply Technipol with its requirements except that in the case of shortages that are not the result of Montell's actions Montell may allocate PP Catalyst and Catalyst Support to Technipol and Montell and Montell Affiliates on a pro rata basis based on the previous twelve (12) months. In the case of any shortage of PP Catalyst or Catalyst Support to Technipol, Technipol may request that Montell expand the production facilities, at Montell's expense, in order to meet the requirements of Technipol.

p. Technipol shall have the sole right to determine, subject to PP Catalyst supply contracts with persons other than Montell or Montell Affiliates existing as of the date the Montedison Properties to Be Transferred are transferred to Technipol and the existing Akzo Agreement, the sales price, quantity and type of PP Catalyst and Catalyst Support sold by Technipol to any person.

q. Montell and Shell shall not interfere in, or attempt to influence, any decisions or activities of Technipol.

r. Shell, Montedison, Montell, Technipol and Polyco shall not exchange or discuss between each other, directly or indirectly, current or future intentions, plans or forecasts for pricing, production or capacity for PP Catalyst, Catalyst Support, Catalyst Systems or Propylene Polymers, or royalty rates for licensing PP Technology or Catalyst Technology to others, except as required between Montell and Technipol in accordance with paragraphs 9.k and 9.1 of this Agreement.

10. Except as otherwise provided in the consent order or this Agreement, as required for the purpose of tax return preparation, compliance with any law or request from a revenue authority, or to the extent that necessary information is exchanged in the course of evaluating and consummating the formation of Montell, Technipol or Polyco, defending government investigations or litigation, or negotiating to dispose of assets:

a. Neither Montedison, Montell, Technipol nor Polyco shall provide, disclose or otherwise make available to Shell any Material Confidential Information.

b. Neither Montedison nor Technipol shall provide, disclose or otherwise make available to Montell any Material Confidential Information of Technipol.

c. Shell shall not provide, disclose or otherwise make available to Montedison, Montell or Technipol any material Confidential Information of Polyco or the Unipol/SHAC Technology Business (other than Catalyst Technology received by Shell Oil from other companies of the Shell Group), provided however nothing in this paragraph 10.c of this Agreement shall prohibit (a) Montell Affiliates who are licensees of Unipol PP Technology from receiving information, in accordance with such license, for use in their Unipol PP Technology licensed production facilities, including information obtained by Shell, prior to the formation of Montell, under The Tripartite Catalyst Research Agreement; and (b) any communication between Shell and Montell necessary to ensure that Montell and its employees make no unauthorized use or disclosure of any Material Confidential Information.

d. Neither Montell nor Shell shall provide, disclose or otherwise make available to Montedison or Technipol any Material Confidential Information.

Provided, however, that nothing in this Agreement shall limit or prohibit (a) Montell, Technipol or Polyco from licensing or otherwise doing business on a nondiscriminatory basis with each other or with any entity in which Montedison or a Shell Group company has an interest; or (b) persons elected by Shell or Montedison to the Montell board of directors from participating in decisions relating to Montell if they do not also participate in decisions relating to similar businesses of Technipol or Polyco.

11. To the extent that this Agreement or the consent order requires Shell or Montedison to take, or prohibits Shell or Montedison from taking, certain actions that otherwise may be required or prohibited by contract, Shell and Montedison shall abide by the terms of this Agreement and the consent order and shall not assert as a defense such contract rights in a civil penalty action brought by the Commission to enforce the terms of this Agreement or the consent order.

12. Should the Federal Trade Commission seek in any proceeding to compel Shell (meaning here and hereinafter Shell including Polyco) to divest itself of the Montedison Merged Assets, to compel

Shell to divest any assets or businesses of the Shell Merged Assets or the Montedison Merged Assets that it may hold, to compel Montedison to divest itself of the Shell Merged Assets, to compel Montedison to divest any assets or businesses of the Montedison Merged Assets or the Shell Merged Assets that it may hold, or to seek any other injunctive or equitable relief for any failure to comply with the consent order or this Agreement, or in any way relating to the Acquisition, Shell and Montedison 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. Shell and Montedison also waive all rights to contest the validity of this Agreement.

13. 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 Montedison, Shell, Polycor or Montell made to its principal office, Montedison, Shell, Polycor and Montell shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of Montedison or Shell 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 Montedison, Shell, Polycor or Montell relating to compliance with this Agreement; and

b. Upon ten (10) days notice to Montedison, Shell, Polycor or Montell and without restraint or interference from it, to interview officers or employees of Montedison, Shell, Polycor or Montell who may have counsel present, regarding any such matters.

14. This Agreement shall not be binding on the Commission until it is approved by the Commission.

Modifying Order

119 F.T.C.

IN THE MATTER OF

THE COCA-COLA COMPANY

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket 9207. Final Order, June 13, 1994--Modifying Order, May 25, 1995*

This order reopens a 1994 final order that requires the respondent to obtain Commission approval before acquiring stock or interest in any company that manufactures or sells concentrate, syrup, or carbonated soft drinks in the U.S. This order modifies the final order in settlement of the petitions for review filed by the respondent in the U.S. Court of Appeals.

ORDER REOPENING AND MODIFYING FINAL ORDER

The Commission issued a Final Order in this proceeding on June 13, 1994, and an Order Reopening and Modifying Final Order on December 5, 1994. Respondent, The Coca-Cola Company, filed in the United States Court of Appeals for the District of Columbia Circuit a petition for review of the Commission's Final Order on August 26, 1994, and on February 3, 1995, a petition for review of the Final Order, as modified by the Commission's Order of December 5, 1994. On May 17, 1995, the Commission approved the terms of a modified final order in settlement of the petitions for review; and on May 18, 1995, the Commission and The Coca-Cola Company filed a Stipulation of Dismissal in the court of appeals pursuant to Fed. R. App. P. 42(b).

Now therefore, *It is hereby ordered*, That the aforesaid Final Order, as modified, be, and it hereby is, modified to read as follows:

I. DEFINITIONS

It is ordered, That, for purposes of this order, the following definitions shall apply:

A. "*Coca-Cola*" means The Coca-Cola Company, a corporation organized under the laws of Delaware, with its headquarters located at One Coca-Cola Plaza, N.W., Atlanta, Georgia, and its directors,