

Complaint

IN THE MATTER OF

NOVARTIS AG, ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT*Docket C-3979; File No. 0010082**Complaint, November 1, 2000--Decision, December 15, 2000*

This consent order addresses Respondents Novartis AG and AstraZeneca PLC=s agreement to combine their crop protection and seed businesses. The complaint alleges that the proposed transaction, if consummated, would substantially lessen competition in the markets for corn herbicides and fungicides in the United States. The order requires Astra Zeneca to divest its acetochlor herbicide business to Dow AgroSciences including the intellectual property, know-how, registrations, trademarks, rights to technical assistance, and rights under the joint venture contracts with Monsanto that are necessary to the manufacture and sale of acetochlor-based corn herbicides. Respondent Novartis will divest its strobilurin fungicide business to Bayer AG including its trifloxystrobin production facilities in MuttENZ, Switzerland, and intellectual property, know-how, and registrations, and trademarks necessary to manufacture the divested strobilurin fungicides.

Participants

For the Commission: *Frederick J. Horne, Richard Liebeskind, Morris A. Bloom, Daniel P. DuCore, Christopher T. Taylor, Louis Silvia, and Daniel O=Brien.*

For the Respondents: *Ronan P. Harty, Davis Polk & Wardwell and Kenneth S. Prince, Shearman & Sterling.*

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 (the ACommission@), having reason to believe that respondents Novartis AG (ANovartis@), a corporation, and AstraZeneca PLC (AZeneca@), a corporation, both subject to the jurisdiction of the

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Commission, have agreed to combine Novartis= crop protection and seeds businesses with Zeneca=s crop protection business to form Syngenta AG (ASyngenta@), a corporation, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. ' 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. ' 45, 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 Novartis AG is a corporation organized, existing and doing business under and by virtue of the laws of Switzerland, with its office and principal place of business located at Lichtstrasse 35, CH-4002, Basel, Switzerland. Novartis owns a variety of subsidiaries, including Novartis US Co., Novartis Agribusiness Biotechnology Research, Inc., Novartis BCM North America, Inc., Novartis Crop Protection, Inc., Novartis Seeds, Inc., Novartis Specialty Crops, Inc., and Wilson Genetics, LLC, which engage in crop protection and seed businesses in the United States. Novartis is engaged in the discovery, development, manufacture and sale of crop protection chemicals, seeds, proprietary and generic pharmaceutical products, and human and animal health products.

2. Respondent AstraZeneca PLC is a corporation organized, existing and doing business under and by virtue of the laws of the United Kingdom, with its office and principal place of business located at 15 Stanhope Gate, London W1K 1LN, United Kingdom. AstraZeneca owns a variety of subsidiaries, including Zeneca Holdings, Inc., and Zeneca Ag Products, Inc., which engage in the crop protection business in the United States. Zeneca is engaged in the discovery, development, manufacture and sale of crop protection chemicals and proprietary and generic pharmaceutical products.

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3. Respondent Syngenta AG will be formed as a corporation organized, existing and doing business under and by virtue of the laws of Switzerland with its office and principal place of business located in Basel, Switzerland.

II. JURISDICTION

4. Novartis and Zeneca, and/or their subsidiaries, are, and at all times relevant herein have been, engaged in commerce as Acommerce@ is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. ' 12, and are corporations whose businesses are in or affect commerce as Acommerce@ is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. ' 44.

III. THE PROPOSED MERGER

5. On or about December 2, 1999, Novartis and Zeneca executed a Master Agreement pursuant to which Zeneca will contribute its agricultural chemicals business and Novartis will contribute its agricultural chemicals and seeds businesses to a newly formed Swiss company, Syngenta AG. Novartis shareholders will own 61 percent of Syngenta and Zeneca shareholders will own 39 percent of Syngenta. Syngenta will have annual sales of approximately \$8 billion.

IV. THE RELEVANT MARKETS

6. One relevant line of commerce in which to analyze the effects of the proposed transaction is the research, development, manufacture, and sale of herbicides applied prior to weed emergence for control of grassy weeds in corn. Such herbicides contain active chemical ingredients that inhibit the growth of grassy weeds. Preventing early competition between growing corn and grassy weeds is essential to economic production of

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corn. There are no economic substitutes for pre-emergence grass herbicides for use on corn.

7. Other relevant lines of commerce in which to analyze the effects of the proposed merger are the research, development, manufacture, and sale of foliar fungicides for treatment of diseases in cereals, foliar fungicides for treatment of diseases in peanuts, foliar fungicides for treatment of diseases in potatoes, foliar fungicides for treatment of diseases in rice, foliar fungicides for treatment of diseases in turf, and foliar fungicides for treatment of diseases in vegetables. Foliar fungicides, which are applied predominantly to the foliage of plants, contain active chemical ingredients that kill or inhibit the growth of certain types of organisms that cause disease. Such fungicides are essential to economic production of crops and have no economic substitutes.

8. The United States is a relevant geographic area in which to analyze the effects of the merger. United States law requires that herbicides and fungicides undergo a rigorous registration process with the U.S. Environmental Protection Agency (EPA) before they may be used or sold in this country. Other countries have similar registration requirements. The patchwork of regulatory regimes creates national markets.

V. STRUCTURE OF THE MARKETS

Corn Herbicides

9. The market for pre-emergence grass herbicides for use on corn is highly concentrated, as measured by the Herfindahl-Hirschman Index (HHI) and other measures of concentration. United States sales of corn herbicides for pre-emergent control of grasses were more than \$770 million in 1999. Novartis is the leading developer, manufacturer and seller of corn herbicides for pre-emergent control of grasses in the United States with a share of about 50 percent of sales. Zeneca has approximately 15 percent of the market. The proposed merger would increase concentration, as measured by the HHI, by nearly 1400 points to over 4600.

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10. The pre-emergence grass herbicides used by growers of corn belong predominantly to a class of chemicals known as acetanilides. Herbicides based on one of three active ingredients from this group of chemicals, metolachlor, acetochlor, and dimethenamid, account for nearly all sales. Novartis= metolachlor herbicides, sold under the brands Dual and Bicep, are the leading products in the market.

11. Herbicides containing the active ingredient acetochlor are the second best selling products in the market, as well as the second choice for most growers who use Novartis= metolachlor herbicides. Zeneca and Monsanto Company (now known as Pharmacia Corporation) both sell acetochlor herbicides, with all of the active ingredient produced at a Monsanto facility in Muscatine, Iowa, pursuant to a production and registration joint venture between Zeneca and Monsanto. Zeneca=s acetochlor herbicides are sold under the brands Fultime, Surpass, Doubleplay, and TopNotch. Taken together, acetanilide herbicides sold by Novartis, Zeneca, and Monsanto account for nearly 90% of sales.

Fungicides

12. Novartis and Zeneca are the leading sellers of fungicides in the U.S. market, and account for a combined total of approximately 40% of yearly fungicide sales. Typically, for a given crop, there are only 2 or 3 significant sellers of fungicides. In cereals, peanuts, potatoes, rice, and turf, sales by the top 2 or 3 fungicide sellers range from nearly 70% to more than 90% of all sales. In vegetables, sales by the top 5 sellers account for approximately 70% of all sales.

13. Novartis= primary foliar fungicide products are based on the active ingredients propiconazole and trifloxystrobin. Novartis= propiconazole fungicides are sold under the brands Banner, Break, Orbit, and Tilt. Novartis obtained U.S. registration for its trifloxystrobin fungicides in 2000. They are sold under the brands Flint and Compass. In addition, a

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combination product of propiconazole and trifloxystrobin is sold under the brand Stratego.

14. Zeneca=s primary foliar fungicide products are based on the active ingredients chlorothalonil and azoxystrobin. Zeneca=s chlorothalonil fungicides are sold under the brands Bravo and Daconil. Zeneca=s azoxystrobin fungicides, which were registered in the U.S. in 1997, are sold under the brands Abound, Heritage, and Quadris.

15. The most significant recent development in terms of foliar fungicides has been the introduction of a new class of fungicides known as strobilurins. Fungicides of this class are effective against a broad spectrum of diseases on a wide variety of crops and are more environmentally friendly than most traditional fungicides. The effectiveness and environmental profile of strobilurin fungicides have created strong demand for the products among growers. Strobilurins introduced to the market have quickly achieved significant market share and have taken sales away from traditional foliar fungicides. Zeneca=s azoxystrobin fungicides and Novartis= trifloxystrobin fungicides are both strobilurins.

16. Zeneca=s and Novartis= strobilurin fungicides are direct competitors. Zeneca and Novartis, along with BASF Corporation, are the only companies with strobilurin fungicides registered for sale in the United States. No company other than Zeneca, Novartis, or BASF is likely to introduce a new strobilurin fungicide into the U.S. market within the next 3 or 4 years.

VI. ENTRY CONDITIONS

17. Entry into the relevant markets would not be timely, likely, or sufficient in its magnitude, character, and scope to deter or counteract anticompetitive effects of the merger. The need for extensive research and development and registration requirements

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create long lead times for the introduction of new products. Additionally, patents and other intellectual property create large and potentially insurmountable barriers to entry.

18. Developing a new herbicide or fungicide can take six to ten years from the time when a potentially attractive active ingredient is identified. Extensive testing in the field is necessary to evaluate efficacy and use requirements. In addition, several years of testing for negative environmental and toxicological impact is necessary to achieve registration.

VII. EFFECTS OF THE PROPOSED MERGER

19. The proposed transaction, if consummated, may substantially lessen competition or tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. ' 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. ' 45. Specifically the merger will:

Corn Herbicides

- a. eliminate Zeneca and Novartis as substantial, independent competitors;
- b. eliminate actual, direct, and substantial competition between Zeneca and Novartis;
- c. reduce innovation competition among researchers and developers of pre-emergence grass herbicides for use on corn, including the reduction in, delay of, or redirection of research and development projects;
- d. increase the level of concentration in the relevant market;
- e. increase barriers to entry into the relevant market;
- f. increase the merged firm=s ability to exercise market power unilaterally by combining two of the three closest substitutes in the market;

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- g. increase the likelihood and degree of coordinated interaction between or among competitors in the market;

Fungicides

- h. eliminate Zeneca and Novartis as substantial, independent competitors;
- i. eliminate actual, direct, and substantial competition between Zeneca and Novartis;
- j. reduce innovation competition among researchers and developers of foliar fungicides, including the reduction in, delay of, or redirection of research and development projects;
- k. increase the level of concentration in the relevant markets;
- l. increase barriers to entry into the relevant markets;
- m. increase the merged firm=s ability to exercise market power unilaterally by combining two of the three closest substitutes in the markets; and
- n. increase the likelihood and degree of coordinated interaction between or among competitors in the markets.

VIII. VIOLATIONS CHARGED

20. The merger agreement described in Paragraph 5 constitutes a violation of Section 5 of the FTC Act, 15 U.S.C. ' 45.

Order to Maintain Assets

21. The merger, if consummated, would constitute a violation of Section 5 of the FTC Act, 15 U.S.C. ' 45, and Section 7 of the Clayton Act, 15 U.S.C. ' 18.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this first day of November, 2000, issues its complaint against said Respondents.

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (ACommission@), having initiated an investigation of the proposed combination of Novartis AG=s (ANovartis@) crop protection and seeds businesses and AstraZeneca PLC=s (AZeneca@) crop protection business to form Syngenta AG (ASyngenta@), and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition intended to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. ' 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. ' 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (AConsent Agreement@), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission=s Rules; and

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The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having determined to accept the executed Consent Agreement and to place such Consent Agreement on the public record for a period of thirty (30) days, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues the following Order to Maintain Assets:

1. Novartis is a corporation organized, existing and doing business under and by virtue of the laws of Switzerland, with its office and principal place of business located at Lichtstrasse 35, CH-4002, Basel, Switzerland.
2. Zeneca is a corporation organized, existing and doing business under and by virtue of the laws of the United Kingdom, with its office and principal place of business located at 15 Stanhope Gate, London W1K 1LN, United Kingdom.
3. Syngenta will be formed as a corporation organized, existing and doing business under and by virtue of the laws of Switzerland with its office and principal place of business located in Basel, Switzerland.
4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER**I.**

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

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- D. AAcetochlor Acquirer@ means Dow or, in the event Dow is not approved as the Acetochlor Acquirer or for any other reason does not acquire the Acetochlor Assets, any other Person who acquires the Acetochlor Assets, after approval by the Commission.
- E. AAcetochlor Assets@ means all assets and rights owned or held by Zeneca and relating to and/or used in the operation of the Acetochlor Business, including, without limitation, the assets listed below and including, without limitation, the assets specified in the Acetochlor Divestiture Agreement (which agreement shall not be construed to vary or contradict the terms of this Order):
1. Zeneca=s rights under and title and interest in the Monsanto Contracts;
 2. Zeneca=s rights, title, and interest in all EPA, state, and foreign registrations and approvals relating to the manufacture or sale of all products of the Acetochlor Business;
 3. Zeneca=s rights, title, and interest in all Acetochlor Registration Data (except in the case of Safener 29148, which Zeneca shall exclusively license for uses relating to all products of the Acetochlor Business), submissions and supporting data and documents, including, without limitation, all labels, label extensions, or planned or pending label extensions for any application;
 4. Zeneca=s rights, title, and interest in all trademarks and trade names for all products of the Acetochlor Business;
 5. Zeneca=s rights, title, and interest in the Acetochlor Intellectual Property;

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6. exclusive, perpetual, royalty-free, and transferable licenses under the Zeneca Intellectual Property for uses relating to all products of the Acetochlor Business and copies of all research materials and know-how relating thereto;

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7. an exclusive, perpetual, royalty-free, and transferable license for the Glutathione Transferase (GST27) resistance gene to produce plants which are labeled as acetochlor tolerant;

8. Zeneca=s rights under and title and interest in all contracts or agreements with customers, suppliers, sales representatives, distributors, agents, licensors, licensees, consignors, and consignees other than multi-product contracts as defined in the Acetochlor Divestiture Agreement;

9. all inventories of all products of the Acetochlor Business;

10. all research materials and know-how of the Acetochlor Business;

11. all Mesotrione rights as set forth in Section 5.04 of the Acetochlor Divestiture Agreement;

12. the Mesotrione Supply Agreement as defined in the Acetochlor Divestiture Agreement; and

13. all books, records, and files, customer lists, customer records and files, vendor lists, catalogs, sales promotion literature, advertising materials, technical information, management information systems, software, inventions, specifications, designs, drawings, processes, and quality control data related to and primarily used in the Acetochlor Business.

F. Acetochlor Business means the research, development, registration, manufacture, formulation, licensing, sale, and distribution by Zeneca of all unmixed and mixed acetochlor products, in any market anywhere in the world, except for the following mixtures: (1) Zeneca=s mixtures of acetochlor and EPTC, (2) Zeneca=s mixtures of acetochlor and

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fluorochlorodone (including twin/co-packs of acetochlor and fluorochlorodone), and (3) Zeneca=s proposed mixtures of acetochlor and mesotrione.

- G. AAcetochlor Divestiture Agreement@ means the Asset Purchase Agreement between Zeneca and Dow dated as of October 17, 2000, and its related agreements, schedules, exhibits and appendices.
- H. ACommission@ means the Federal Trade Commission.
- I. ADecision and Order@ means the Decision and Order incorporated with this Order to Maintain Assets into the Consent Agreement.
- J. ANovartis@ means Novartis AG, its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Novartis, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- K. APerson@ means any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity.
- L. ARespondents@ means Novartis, Zeneca, and Syngenta, respectively and collectively.
- M. AStrobilurin Acquirer@ means Bayer or, in the event Bayer is not approved as the Strobilurin Acquirer or for any other reason does not acquire the Strobilurin Assets, any other Person who acquires the Strobilurin Assets, after approval by the Commission.
- N. AStrobilurin Assets@ means all assets and rights owned or held by Novartis and relating to and/or used in the operation

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of the Strobilurin Business, including, without limitation, the assets listed below and including, without limitation, those assets specified in the Strobilurin Divestiture Agreement (which agreement shall not be construed to vary or contradict the terms of this Order):

1. Novartis= rights, title, and interest in all machinery, furniture, fixtures, equipment, tools, and other tangible personal property at the Muttenez Production Facility used for or necessary for the manufacture of trifloxystrobin, trifloxystrobin intermediates, or compounds containing trifloxystrobin;
2. all rights, licenses, permits, registrations, know-how, technical information, and other permissions or expertise necessary to manufacture trifloxystrobin, trifloxystrobin intermediates, or compounds containing trifloxystrobin at the Muttenez Production Facility;
3. Novartis= lease with Clariant for the land and buildings of the Muttenez Plant, infrastructure and support services;
4. Novartis= rights, title, and interest in all United States Environmental Protection Agency, state, and foreign registrations and approvals relating to the manufacture or sale of strobilurin fungicides or compounds containing strobilurin fungicides;
5. Novartis= rights, title, and interest in all Strobilurin Registration Data, submissions and supporting data and documents, including, without limitation, all labels, label extensions, or planned or pending label extensions for any application;
6. Novartis= rights, title, and interest in all trademarks and trade names for trifloxystrobin, any compound

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containing trifloxystrobin, or any other strobilurin fungicide;

7. Novartis= rights, title, and interest in the Strobilurin Intellectual Property, *provided, however*, that Novartis may receive (i) an exclusive (except as to the Strobilurin Acquirer), perpetual, royalty-free, and transferable license back from the Strobilurin Acquirer to use the Strobilurin Intellectual Property identified in confidential Appendix 3 of the Decision and Order outside of the field of strobilurin fungicides, and (ii) a non-exclusive perpetual, royalty-free and transferable license from the Strobilurin Acquirer to use the Strobilurin Intellectual Property not identified in confidential Appendix 3 outside of the field of strobilurin fungicides;

8. exclusive, perpetual, royalty-free, and transferable licenses under the Novartis Intellectual Property for fungicidal uses relating to trifloxystrobin, compounds containing trifloxystrobin, or any other strobilurin fungicide of the Strobilurin Business, and copies of all research materials and know-how relating thereto;

9. non-exclusive, perpetual, royalty-free, and transferable licenses under the Novartis Intellectual Property for non-fungicidal uses relating to trifloxystrobin, compounds containing trifloxystrobin, or any other strobilurin fungicide of the Strobilurin Business, and copies of all research materials and know-how relating thereto;

10. Novartis= rights under and title and interest in all contracts or agreements with customers, suppliers, sales representatives, distributors, agents, licensors, licensees, consignors, and consignees related to and primarily used in the Strobilurin Business;

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11. all inventories of trifloxystrobin and compounds containing trifloxystrobin;
12. all research materials and know-how of the Strobilurin Business; and

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13. all books, records, and files, customer lists, customer records and files, vendor lists, catalogs, sales promotion literature, advertising materials, technical information, management information systems, software, inventions, specifications, designs, drawings, processes, and quality control data related to and primarily used in the Strobilurin Business.

- O. AStrobilurin Business@ means the research, development, registration, manufacture, formulation, licensing, sale and distribution of the existing strobilurin fungicide products and product developments of Novartis, in any market anywhere in the world, including all existing straight products or combinations therewith.
- P. AStrobilurin Divestiture Agreement@ means the Asset Purchase Agreement between Novartis and Bayer dated as of September 7, 2000, and its related agreements, schedules, exhibits and appendices.
- Q. AZeneca@ means AstraZeneca PLC, its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Zeneca, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

provided, however, any term used in this Order to Maintain Assets that is not defined in this Paragraph I has the same meaning as defined in the Decision and Order.

II.

IT IS FURTHER ORDERED that:

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- O. Between the date Respondents sign the Consent Agreement and the date the Acetochlor Assets are completely divested, Respondents shall:
1. Maintain the Acetochlor Assets in substantially the same condition (except for normal wear and tear and sales of inventory in the ordinary course) existing at the time respondent signs the Consent Agreement; preserve intact the Acetochlor Assets; keep available the services of the current officers, employees, and agents of such businesses; and maintain the relations and good will with suppliers, customers, landlords, creditors, employees, agents, and others having business relationships with such businesses;
 2. Take such action that is consistent with the past practices of Respondents in connection with the Acetochlor Business and is taken in the ordinary course of the normal day-to-day operations of Respondents; and
 3. Not take any affirmative action, or fail to take any action within their control, as a result of which the viability, competitiveness, and marketability of the Acetochlor Assets would be diminished.

P. The purpose of this Order to Maintain Assets is to: (i) preserve the Acetochlor Assets as a viable, competitive, and ongoing business and (ii) prevent interim harm to competition.

III.**IT IS FURTHER ORDERED** that:

- A. Between the date Respondents sign the Consent Agreement and the date the Strobilurin Assets are completely divested, Respondents shall:

Order to Maintain Assets

1. Maintain the Strobilurin Assets in substantially the same condition (except for normal wear and tear and sales of inventory in the ordinary course) existing at the time respondent signs the Consent Agreement; preserve intact the Strobilurin Assets; keep available the services of the current officers, employees, and agents of such businesses; and maintain the relations and good will with suppliers, customers, landlords, creditors, employees, agents, and others having business relationships with such businesses;
 2. Take such action that is consistent with the past practices of Respondents in connection with the Strobilurin Business and is taken in the ordinary course of the normal day-to-day operations of Respondents; and
 3. Not take any affirmative action, or fail to take any action within their control, as a result of which the viability, competitiveness, and marketability of the Strobilurin Assets would be diminished.
- B. The purpose of this Order to Maintain Assets is to: (i) preserve the Strobilurin Assets as a viable, competitive, and ongoing business and (ii) prevent interim harm to competition.

IV.**IT IS FURTHER ORDERED** that:

- A. At any time after Respondents sign the Consent Agreement, the Commission may appoint one or more persons to serve as Monitor Trustee to ensure that Respondents expeditiously perform their obligations as required by this Order to Maintain Assets and the Decision and Order.
- B. If a Monitor Trustee is appointed pursuant this Paragraph, Respondents shall consent to the following terms and

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conditions regarding the powers, duties, authorities, and responsibilities of the Monitor Trustee:

1. The Commission shall select the Monitor Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) business days after notice by the staff of the Commission to Respondents of the identity of any proposed trustee, Respondents shall be deemed to have consented to the selection of the proposed trustee.
2. The Monitor Trustee shall have the power and authority to monitor Respondents' compliance with the terms of this Order to Maintain Assets and the terms of the Decision and Order and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor Trustee in a manner consistent with the purposes of such orders and in consultation with the Commission.
3. Within ten (10) business days after appointment of the Monitor Trustee, Respondents shall execute a trust agreement that, subject to the approval of the Commission, confers on the Monitor Trustee all the rights and powers necessary to permit the Monitor Trustee to monitor Respondents' compliance with the terms of this Order to Maintain Assets and the Decision and Order in a manner consistent with the purposes of such orders. Respondents may require the Monitor Trustee to sign a confidentiality agreement prohibiting the use, or disclosure to anyone other than the Commission, of any competitively sensitive or proprietary information gained as a result of his or her role as Monitor Trustee.
4. The Monitor Trustee shall serve until Respondents have completed all obligations under (a) this Order to Maintain Assets and (b) the initial term of any supply agreement

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required by Paragraphs II and III of the Decision and Order (except for any supply agreement relating to Paragraph II.B.5. of the Decision and Order).

5. The Monitor Trustee shall have full and complete access to Respondents' books, records, documents, personnel, facilities and technical information relating to compliance with this Order to Maintain Assets and the Decision and Order, or to any other relevant information, as the Monitor Trustee may reasonably request. Respondents shall cooperate with any reasonable request of the Monitor Trustee. Respondents shall take no action to interfere with or impede the Monitor Trustee's ability to monitor Respondents' compliance with this Order to Maintain Assets and the Decision and Order.
6. The Monitor Trustee shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set. The Monitor Trustee shall have authority to employ, at the expense of Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor Trustee's duties and responsibilities. The Monitor Trustee shall account for all expenses incurred, including fees for his or her services, subject to the approval of the Commission.
7. Respondents shall indemnify the Monitor Trustee and hold the Monitor Trustee harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Monitor Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim whether or not resulting in any liability, except to the extent that such losses, claims,

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damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Monitor Trustee.

8. If at any time the Commission determines that the Monitor Trustee has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve, the Commission may appoint a substitute to serve as Monitor Trustee in the same manner as provided in this Paragraph.
9. The Commission may on its own initiative or at the request of the Monitor Trustee issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order to Maintain Assets and the Decision and Order.
10. The Monitor Trustee shall report in writing to the Commission concerning Respondents' compliance with this Order to Maintain Assets and the Decision and Order (i) every sixty (60) days for a period of six months from the date Respondent signs the Consent Agreement and (ii) annually thereafter on the anniversary of the date this Order to Maintain Assets becomes final during the remainder of the Monitor Trustee's period of appointment.

V.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondents such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of this Order to Maintain Assets.

VI.

Decision and Order

IT IS FURTHER ORDERED that for the purposes of determining or securing compliance with this Order to Maintain Assets, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents made to their principal United States offices, Respondents shall permit any duly authorized representatives of the Commission:

A. Access, during office hours of Respondents and in the presence of counsel, to all facilities, and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of the Respondents relating to compliance with this Order to Maintain Assets; and

B. Upon five (5) days' notice to Respondents and without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

VII.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate on the earlier of:

A. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. ' 2.34; or

B. Three (3) business days after termination of the duties of the Monitor Trustee appointed pursuant to this Order to Maintain Assets.

By the Commission.

Decision and Order

DECISION AND ORDER

The Federal Trade Commission (ACommission@), having initiated an investigation of the proposed combination of Novartis AG=s (ANovartis@) crop protection and seeds businesses and AstraZeneca PLC=s (AZeneca@) crop protection business to form Syngenta AG (ASyngenta@), and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition intended to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. ' 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. ' 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (AConsent Agreement@), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission=s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Maintain Assets, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now, in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. ' 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Order:

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1. Novartis is a corporation organized, existing and doing business under and by virtue of the laws of Switzerland, with its office and principal place of business located at Lichtstrasse 35, CH-4002, Basel, Switzerland.
2. Zeneca is a corporation organized, existing and doing business under and by virtue of the laws of the United Kingdom, with its office and principal place of business located at 15 Stanhope Gate, London W1K 1LN, United Kingdom.
3. Syngenta will be formed as a corporation organized, existing and doing business under and by virtue of the laws of Switzerland with its office and principal place of business located in Basel, Switzerland.
4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER**I.**

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

- A. **AAcetoChlor Acquirer@** means Dow or, in the event Dow is not approved as the AcetoChlor Acquirer or for any other reason does not acquire the AcetoChlor Assets, any other Person who acquires the AcetoChlor Assets, after approval by the Commission.
- B. **AAcetoChlor Assets@** means all assets and rights owned or held by Zeneca and relating to and/or used in the operation of the AcetoChlor Business, including, without limitation, the assets listed below and including, without limitation, the

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assets specified in the Acetochlor Divestiture Agreement (which agreement shall not be construed to vary or contradict the terms of this Order):

1. Zeneca=s rights under and title and interest in the Monsanto Contracts;
2. Zeneca=s rights, title, and interest in all EPA, state, and foreign registrations and approvals relating to the manufacture or sale of all products of the Acetochlor Business;
3. Zeneca=s rights, title, and interest in all Acetochlor Registration Data (except in the case of Safener 29148, which Zeneca shall exclusively license for uses relating to all products of the Acetochlor Business), submissions and supporting data and documents, including, without limitation, all labels, label extensions, or planned or pending label extensions for any application;
4. Zeneca=s rights, title, and interest in all trademarks and trade names for all products of the Acetochlor Business;
5. Zeneca=s rights, title, and interest in the Acetochlor Intellectual Property;
6. exclusive, perpetual, royalty-free, and transferable licenses under the Zeneca Intellectual Property for uses relating to all products of the Acetochlor Business and copies of all research materials and know-how relating thereto;
7. an exclusive, perpetual, royalty-free, and transferable license for the Glutathione Transferase (GST27) resistance gene to produce plants which are labeled as acetochlor tolerant;
8. Zeneca=s rights under and title and interest in all contracts or agreements with customers, suppliers, sales

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representatives, distributors, agents, licensors, licensees, consignors, and consignees other than multi-product contracts as defined in the Acetochlor Divestiture Agreement;

9. all inventories of all products of the Acetochlor Business;
 10. all research materials and know-how of the Acetochlor Business;
 11. all Mesotrione rights as set forth in Section 5.04 of the Acetochlor Divestiture Agreement;
 12. the Mesotrione Supply Agreement as defined in the Acetochlor Divestiture Agreement; and
 13. all books, records, and files, customer lists, customer records and files, vendor lists, catalogs, sales promotion literature, advertising materials, technical information, management information systems, software, inventions, specifications, designs, drawings, processes, and quality control data related to and primarily used in the Acetochlor Business.
- C. AAcetochlor Business@ means the research, development, registration, manufacture, formulation, licensing, sale, and distribution by Zeneca of all unmixed and mixed acetochlor products, in any market anywhere in the world, except for the following mixtures: (1) Zeneca=s mixtures of acetochlor and EPTC, (2) Zeneca=s mixtures of acetochlor and fluorochlorodone (including twin/co-packs of acetochlor and fluorochlorodone), and (3) Zeneca=s proposed mixtures of acetochlor and mesotrione.
- D. AAcetochlor Divestiture Agreement@ means the Asset Purchase Agreement between Zeneca and Dow dated as of

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October 17, 2000, and its related agreements, schedules, exhibits and appendices.

- E. **AAceto chlor Intellectual Property@** means any form of intellectual property predominantly relating to the research, development, manufacture, sale, or use of any product of the Aceto chlor Business, owned, licensed or controlled by Zeneca, including, but not limited to, the patents and trademarks listed in or issuing on applications listed in confidential Appendix 1 hereto, trade secrets, research materials, technical information, inventions, test data, technological know-how, product efficacy data, safety data, production and formulation know-how, licenses, registrations, submissions, approvals, technology, specifications, designs, drawings, processes, recipes, protocols, formulas, quality control data, books, records, and files. Aceto chlor Intellectual Property does not include Zeneca Intellectual Property.
- F. **AAceto chlor Non-Public Information@** means any information disclosed by the Aceto chlor Acquirer to Respondents, or otherwise obtained by Respondents, in connection with any Aceto chlor Supply Agreement. Non-Public Information shall not include: (i) information in the public domain, (ii) information that subsequently falls within the public domain through no violation of this Order by Respondents, or (iii) information that subsequently becomes known to Respondents from a third party not in breach of a confidential disclosure agreement.
- G. **AAceto chlor Registration Data@** means all data relating to any product of the Aceto chlor Business, and all data relating to safeners used with such products, that has been, or will be, submitted to the United States Environmental Protection Agency or to any state or foreign regulatory agency for purposes of obtaining or maintaining any registration or authorization for any product of the Aceto chlor Business.

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- H. **AAceto chlor Supply Agreement@** means any agreement describing the terms agreed to by Respondents and an Aceto chlor Acquirer and approved by the Commission relating to the supply of any product required by Paragraph II.B. of this Order.
- I. **AAceto chlor Technical Services@** means (1) provision of expert advice, assistance and training in technical and regulatory areas relating to the Aceto chlor Business, including, but not limited to, such services in (a) non-microencapsulated formulations, (b) Monsanto ARM arrangements, (c) the process for the manufacture of safeners, (d) micro-encapsulated formulations, (e) the transfer or licensing of product registration and regulatory data, (f) proprietary on-going studies, and (g) bulk sales and logistics in the United States, and (2) reasonable access to Zeneca=s manufacturing sites.
- J. **ABayer@** means Bayer AG, a corporation organized, existing and doing business under and by virtue of the laws of Germany, with its office and principal place of business located at Werk Leverkusen, S1368 Leverkusen, Germany.
- K. **AClariant@** means Clariant AG, a company organized, existing and doing business under and by virtue of the laws of Switzerland, with its office and principal place of business located at Rothausstrasse 61, CH-4132 Muttenz, Switzerland.
- L. **ACommission@** means the Federal Trade Commission.
- M. **ADow@** means Dow AgroSciences LLC, a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located in Indianapolis, Indiana.

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- N. **AMonsanto Contracts@** means the contracts and agreements between Monsanto Company, Zeneca, and their predecessors or successors, relating to production and supply of acetochlor, listed in confidential Appendix 2 hereto.
- O. **AMuttenz Production Facility@** means the facilities located in Muttenz, Switzerland, owned by Clariant, at which Novartis produces cyproconazole and trifloxystrobin.
- P. **ANovartis@** means Novartis AG, its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Novartis, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

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- Q. ANovartis Intellectual Property@ means any form of intellectual property relating to or used in the research, development, manufacture, sale, or use of trifloxystrobin, any compound containing trifloxystrobin, or any other compound consisting of or containing a strobilurin fungicide, licensed to, owned, or controlled by Novartis.
- R. APerson@ means any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity.
- S. ARespondents@ means Novartis, Zeneca, and Syngenta, respectively and collectively.
- T. AStrobilurin Acquirer@ means Bayer or, in the event Bayer is not approved as the Strobilurin Acquirer or for any other reason does not acquire the Strobilurin Assets, any other Person who acquires the Strobilurin Assets, after approval by the Commission.
- U. AStrobilurin Assets@ means all assets and rights owned or held by Novartis and relating to and/or used in the operation of the Strobilurin Business, including, without limitation, the assets listed below and including, without limitation, those assets specified in the Strobilurin Divestiture Agreement (which agreement shall not be construed to vary or contradict the terms of this Order):
1. Novartis= rights, title, and interest in all machinery, furniture, fixtures, equipment, tools, and other tangible personal property at the Muttenez Production Facility used for or necessary for the manufacture of trifloxystrobin, trifloxystrobin intermediates, or compounds containing trifloxystrobin;

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2. all rights, licenses, permits, registrations, know-how, technical information, and other permissions or expertise necessary to manufacture trifloxystrobin, trifloxystrobin intermediates, or compounds containing trifloxystrobin at the Muttenez Production Facility;
3. Novartis= lease with Clariant for the land and buildings of the Muttenez Plant, infrastructure and support services;
4. Novartis= rights, title, and interest in all United States Environmental Protection Agency, state, and foreign registrations and approvals relating to the manufacture or sale of strobilurin fungicides or compounds containing strobilurin fungicides;
5. Novartis= rights, title, and interest in all Strobilurin Registration Data, submissions and supporting data and documents, including, without limitation, all labels, label extensions, or planned or pending label extensions for any application;
6. Novartis= rights, title, and interest in all trademarks and trade names for trifloxystrobin, any compound containing trifloxystrobin, or any other strobilurin fungicide;
7. Novartis= rights, title, and interest in the Strobilurin Intellectual Property, *provided, however*, that Novartis may receive (i) an exclusive (except as to the Strobilurin Acquirer), perpetual, royalty-free, and transferable license back from the Strobilurin Acquirer to use the Strobilurin Intellectual Property identified in confidential Appendix 3 hereto outside of the field of strobilurin fungicides, and (ii) a non-exclusive perpetual, royalty-free and transferable license from the Strobilurin Acquirer to use the Strobilurin Intellectual Property not identified in confidential Appendix 3 outside of the field of strobilurin fungicides;

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8. exclusive, perpetual, royalty-free, and transferable licenses under the Novartis Intellectual Property for fungicidal uses relating to trifloxystrobin, compounds containing trifloxystrobin, or any other strobilurin fungicide of the Strobilurin Business, and copies of all research materials and know-how relating thereto;
 9. non-exclusive, perpetual, royalty-free, and transferable licenses under the Novartis Intellectual Property for non-fungicidal uses relating to trifloxystrobin, compounds containing trifloxystrobin, or any other strobilurin fungicide of the Strobilurin Business, and copies of all research materials and know-how relating thereto;
 10. Novartis= rights under and title and interest in all contracts or agreements with customers, suppliers, sales representatives, distributors, agents, licensors, licensees, consignors, and consignees related to and primarily used in the Strobilurin Business;
 11. all inventories of trifloxystrobin and compounds containing trifloxystrobin;
 12. all research materials and know-how of the Strobilurin Business; and
 13. all books, records, and files, customer lists, customer records and files, vendor lists, catalogs, sales promotion literature, advertising materials, technical information, management information systems, software, inventions, specifications, designs, drawings, processes, and quality control data related to and primarily used in the Strobilurin Business.
- V. AStrobilurin Business@ means the research, development, registration, manufacture, formulation, licensing, sale and

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distribution of the existing strobilurin fungicide products and product developments of Novartis, in any market anywhere in the world, including all existing straight products or combinations therewith.

- W. **ASTrobilurin Divestiture Agreement@** means the Asset Purchase Agreement between Novartis and Bayer dated as of September 7, 2000, and its related agreements, schedules, exhibits and appendices.
- X. **ASTrobilurin Intellectual Property@** means any form of intellectual property relating predominantly to the research, development, manufacture, sale, or use of trifloxystrobin, any compound containing trifloxystrobin, or any other compound consisting of or containing a strobilurin fungicide, owned, licensed or controlled by Novartis, including, but not limited to, the patents and trademarks listed in or issuing on applications listed in confidential Appendix 4 hereto, trade secrets, research materials, technical information, inventions, test data, technological know-how, product efficacy data, safety data, production and formulation know-how, licenses, registrations, submissions, approvals, technology, specifications, designs, drawings, processes, recipes, protocols, formulas, quality control data, books, records, and files. Strobilurin Intellectual Property does not include Novartis Intellectual Property.
- Y. **ASTrobilurin Non-Public Information@** means any information disclosed by the Strobilurin Acquirer to Respondents, or otherwise obtained by Respondents, in connection with any Strobilurin Supply Agreement. Non-Public Information shall not include: (i) information in the public domain, (ii) information that subsequently falls within the public domain through no violation of this Order by Respondents, or (iii) information that subsequently becomes known to Respondents from a third party not in breach of a confidential disclosure agreement.

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- Z. **ASTrobilurin Registration Data@** means all data, owned or controlled by Novartis, relating to any compound consisting of or containing trifloxystrobin or any other strobilurin fungicide that has been, or will be, submitted to the United States Environmental Protection Agency or to any state or foreign regulatory agency for purposes of obtaining or maintaining any registration or authorization for any product consisting or containing trifloxystrobin or any other strobilurin fungicide.
- AA. **ASTrobilurin Supply Agreement@** means any agreement describing the terms agreed to by Respondents and a Strobilurin Acquirer and approved by the Commission relating to the supply of any product required by Paragraph III.B. of this Order.
- BB. **ASTrobilurin Technical Services@** means (1) provision of expert advice, assistance and training in technical and regulatory areas relating to the Strobilurin Business, including, but not limited to, such services in toxicology, environmental, ecotex, metabolism, residues, general matters, field biology, process development for Muttentz processes, quality control, analytical matters, and formulation technology, and (2) reasonable access to Respondents' manufacturing facilities used to produce the products to be supplied under Paragraph III.B.(1), (2), and (3) of this Order.
- CC. **ASyngenta@** means Syngenta AG, its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Syngenta, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- DD. **ASyngenta Formation@** means the spin-off and merger of Novartis' crop protection and seeds businesses and Zeneca's crop protection business to create a new company, Syngenta

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AG, as described in the December 2, 1999, Master Agreement between Novartis and AstraZeneca.

- EE. AZeneca@ means AstraZeneca PLC, its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Zeneca, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- FF. AZeneca Intellectual Property@ means any form of intellectual property relating to or used in the research, development, manufacture, sale, or use of any product of the Acetochlor Business (e.g., process technology, safener technology, microencapsulation technology), licensed to, owned, or controlled by Zeneca, listed in confidential Appendix 5 hereto.

II.

IT IS FURTHER ORDERED that:

- A. Respondents shall divest the Acetochlor Assets, absolutely and in good faith, at no minimum price to Dow pursuant to the Acetochlor Divestiture Agreement, no later than (i) ten business days after the Syngenta Formation or (ii) ten business days after receipt by Respondents of all necessary governmental approvals from Germany, and in any event, no later than six (6) months from the date the Commission places the Consent Agreement on the record for public comment; *provided, however*, that in the event Dow does not acquire the Acetochlor Assets because of Dow's breach of the Acetochlor Divestiture Agreement, Respondents shall divest the Acetochlor Assets to another Person that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission, within six (6) months from the date the Commission places the Consent Agreement on the record for public comment; provided, further, that if at the time the Commission determines to make the Order final, the Commission notifies Respondents that Dow is not approved as the Acetochlor Acquirer or that the Acetochlor Divestiture

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Agreement is not an acceptable manner of divestiture, Respondents shall divest the Acetochlor Assets to another Person that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission, within five (5) months from the date this Order becomes final.

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- B. Respondents shall supply to the Acetochlor Acquirer, in a timely manner and in quantities reasonably required to operate the Acetochlor Assets, the following products necessary to enable the Acetochlor Acquirer to conduct the Acetochlor Business in substantially the same manner as Respondents: (1) emulsifiable concentrate and granular formulations of acetochlor and acetochlor mixtures; (2) microencapsulated formulations of acetochlor and acetochlor mixtures; (3) Safener 29148, (4) Safener 25788, and (5) mesotrione. Respondents shall supply any product required by this Paragraph II.B. pursuant to an Acetochlor Supply Agreement.
- C. Respondents shall make representations and warranties that any products supplied under an Acetochlor Supply Agreement meet the product and quality specifications, and are contained, packaged and labeled in accordance with the specifications required by applicable governmental laws, rules, and regulations and agreed to between Respondents and the Acetochlor Acquirer.
- D. Except for events of force majeure, Respondents shall be liable for any damages to the Acetochlor Acquirer resulting from Respondents' breach of any obligation or warranty contained in any Acetochlor Supply Agreement, including liability for any indirect, consequential, special, or incidental damages; *provided, however*, that nothing in this Paragraph shall preclude Respondents from raising any applicable defenses.
- E. Respondents shall not terminate any Acetochlor Supply Agreement for any reason; *provided, however*, that Respondents may terminate an Acetochlor Supply Agreement due to an alleged material breach by the Acetochlor Acquirer, but only after Respondents (i) have provided the Acetochlor Acquirer with 60 days notice to cure the breach, (ii) have submitted their claim to arbitration, and (iii) the arbitrator has fully resolved the claim in Respondents' favor.

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- F. Respondents shall provide the Acetochlor Acquirer an opportunity to:
1. Enter into employment contracts with any individual identified in confidential Appendix 6 of this Order, or any other individuals subsequently identified by agreement between Respondents and an Acetochlor Acquirer; and
 2. Inspect the personnel files and other documentation relating to the individuals identified in Paragraph II.F.1. of this Order, to the extent permissible under applicable laws, no later than twenty (20) days from the date Respondents sign the Consent Agreement, or no later than the date on which an Acetochlor Acquirer other than Dow signs an agreement to acquire the Acetochlor Assets.
- G. From the date Respondents sign the Consent Agreement until the divestiture required by Paragraph II.A. is completed, Respondents shall take steps, including implementation of appropriate incentive plans (such as payment of all current and accrued benefits and pensions, to which the employees are entitled) and appropriate bonuses, to cause the individuals identified in Paragraph II.F.1. of this Order to accept offers of employment from the Acetochlor Acquirer.
- H. Respondents shall not interfere with the employment by the Acetochlor Acquirer of the individuals identified in Paragraph II.F.1. of this Order; shall not offer any incentive to such individuals to decline employment with the Acetochlor Acquirer to accept other employment with Respondents; and shall remove any contractual impediments with Respondents that may deter such individuals from accepting employment with the Acetochlor Acquirer, including, but not limited to, any non-compete provisions of employment or other contracts with Respondents that would affect the ability of those individuals to be employed by the Acetochlor Acquirer.

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- I. Respondents shall not make employment offers to any individual identified in Paragraph II.F.1. of this Order for a period of one (1) year from the date this Order becomes final if such individual has accepted an employment offer from the Acetochlor Acquirer, unless such individual has been involuntarily separated from employment by such Acetochlor Acquirer.
- J. For a period up to twelve (12) months from the date the Acetochlor Assets are divested, at the request of the Acetochlor Acquirer at any time during the twelve (12) month period, Respondents shall provide Acetochlor Technical Services to enable the Acetochlor Acquirer to conduct the Acetochlor Business in substantially the same manner as Respondents.
- K. Respondents shall use their reasonable best efforts to transfer to the Acetochlor Acquirer, or assist the Acetochlor Acquirer in obtaining, any approval, consent, ratification, waiver, or other authorization (including governmental) that is or will become necessary to complete the divestitures required by Paragraph II.A. of this Order.
- L. The Acetochlor Divestiture Agreement, or any other asset purchase agreement approved by the Commission, shall be incorporated into this Order and made a part hereof. Any failure to comply with the terms of the Acetochlor Divestiture Agreement or such other asset purchase agreement shall constitute a violation of this Order.
- M. The purpose of the divestiture required by this Paragraph II is to ensure the continued use of the Acetochlor Assets in the same business in which such assets are engaged at the time of the proposed merger between Respondents and to remedy the lessening of competition alleged in the Commission's complaint.

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III.**IT IS FURTHER ORDERED** that:

A. Respondents shall divest the Strobilurin Assets, absolutely and in good faith, at no minimum price to Bayer pursuant to the Strobilurin Divestiture Agreement, no later than (i) ten business days after the Syngenta Formation or (ii) ten business days after receipt by Respondents of all necessary governmental approvals from the United Kingdom and Germany, and in any event, no later than six (6) months from the date the Commission places the Consent Agreement on the record for public comment; *provided, however*, that in the event Bayer does not acquire the Strobilurin Assets because of Bayer's breach of the Strobilurin Divestiture Agreement, Respondents shall divest the Strobilurin Assets to another Person that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission, within six (6) months from the date the Commission places the Consent Agreement on the record for public comment; provided, further, that if at the time the Commission determines to make the Order final, the Commission notifies Respondents that Bayer is not approved as the Strobilurin Acquirer or that the Strobilurin Divestiture Agreement is not an acceptable manner of divestiture, Respondents shall divest the Strobilurin Assets to another Person that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission, within five (5) months from the date this Order becomes final.

B. Respondents shall supply to the Strobilurin Acquirer, in a timely manner and in quantities reasonably required to operate the Strobilurin Business, the following products necessary to enable the Strobilurin Acquirer to conduct the Strobilurin Business in substantially the same manner as Respondents: (1) Intermediate step 1, (2) Intermediate step 2, (3) formulations of the products described in confidential Appendix 7 of this Order, and (4) propiconazole for use in mixtures with trifloxystrobin. Respondents shall supply any product required by this Paragraph III.B. pursuant to a Strobilurin Supply Agreement.

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C. Respondents shall make representations and warranties that any products supplied under a Strobilurin Supply Agreement meet the product and quality specifications, and are contained, packaged and labeled in accordance with the specifications required by applicable governmental laws, rules, and regulations and agreed to between Respondents and the Strobilurin Acquirer.

D. Except for events of force majeure, Respondents shall be liable for all damages to the Strobilurin Acquirer resulting from Respondents' breach of any obligation or warranty contained in any Strobilurin Supply Agreement, including liability for any indirect, consequential, special, or incidental damages; *provided, however*, that nothing in this Paragraph shall preclude Respondents from raising any applicable defenses.

E. Respondents shall not terminate any Strobilurin Supply Agreement, during its initial term, for any reason; *provided, however*, that Respondents may terminate a Strobilurin Supply Agreement during its initial term due to an alleged material breach by the Strobilurin Acquirer, but only after Respondents have (i) provided the Strobilurin Acquirer with 60 days notice to cure the breach, (ii) have submitted their claim to arbitration, and (iii) the arbitrator has fully resolved the claim in Respondents' favor.

F. Respondents shall provide the Strobilurin Acquirer an opportunity to:

1. Enter into employment contracts with any individual identified in confidential Appendix 8 of this Order, or any other individuals subsequently identified by agreement between Respondents and a Strobilurin Acquirer, in the event the Strobilurin Acquirer is a Person other than Bayer; and

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2. Inspect the personnel files and other documentation relating to the individuals identified in Paragraph III.F.1. of this Order, to the extent permissible under applicable laws, no later than twenty (20) days from the date Respondents sign the Consent Agreement, or no later than the date on which a Strobilurin Acquirer other than Bayer signs an agreement to acquire the Strobilurin Assets.
- G. From the date Respondents sign the Consent Agreement until the divestiture required by Paragraph III.A. is completed, Respondents shall take steps, including implementation of appropriate incentive plans (such as payment of all current and accrued benefits and pensions, to which the employees are entitled) and appropriate bonuses, to cause the individuals identified in Paragraph III.F.1. of this Order to accept offers of employment from the Strobilurin Acquirer.
- H. Respondents shall not interfere with the employment by the Strobilurin Acquirer of the individuals identified in Paragraph III.F.1. of this Order; shall not offer any incentive to such individuals to decline employment with the Strobilurin Acquirer or to accept other employment with Respondents; and shall remove any contractual impediments with Respondents that may deter such individuals from accepting employment with the Strobilurin Acquirer, including, but not limited to, any non-compete provisions of employment or other contracts with Respondents that would affect the ability of those individuals to be employed by the Strobilurin Acquirer.
- I. Respondents shall not make employment offers to any individual identified in Paragraph III.F.1. of this Order for a period of one (1) year from the date this Order becomes final if such individual has accepted an employment offer from the Strobilurin Acquirer, unless such individual has been

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involuntarily separated from employment by such Strobilurin Acquirer.

- J. For a period up to twelve (12) months from the date the Strobilurin Assets are divested, at the request of the Strobilurin Acquirer at any time during the twelve (12) month period, Respondents shall provide Strobilurin Technical Services to enable the Strobilurin Acquirer to conduct the Strobilurin Business in substantially the same manner as Respondents.
- K. For a period up to six (6) months from the date the Strobilurin Assets are divested, at the request of the Strobilurin Acquirer at any time during the six (6) month period, Respondents shall provide payroll administration services and pension administration services to enable the Strobilurin Acquirer to conduct the Strobilurin Business in substantially the same manner as Respondents.
- L. Respondents shall use their reasonable best efforts to transfer to the Strobilurin Acquirer, or to assist the Strobilurin Acquirer in obtaining, any approval, consent, ratification, waiver, or other authorization (including governmental) that are or will become necessary to complete the divestitures required by Paragraph III.A. of this Order.
- M. The Strobilurin Divestiture Agreement, or any other asset purchase agreement approved by the Commission, shall be incorporated into this Order and made a part hereof. Any failure to comply with the terms of the Strobilurin Divestiture Agreement or such other asset purchase agreement shall constitute a violation of this Order.
- N. The purpose of the divestiture required by this Paragraph III is to ensure the continued use of the Strobilurin Assets in the same business in which such assets are engaged at the time of the proposed merger between Respondents and to remedy the

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lessening of competition alleged in the Commission's complaint.

IV.**IT IS FURTHER ORDERED** that:

- A. Absent the prior written consent of the proprietor of any Acetochlor Non-Public Information or any Strobilurin Non-Public Information, Respondents shall hold and safeguard Acetochlor Non-Public Information and Strobilurin Non-Public Information apart from all other information held by Respondents.
- B. Absent the prior written consent of the proprietor of any Acetochlor Non-Public Information, Respondents shall:
 - 1. Subject to Paragraph IV.B.2., not provide, disclose or otherwise make available any Acetochlor Non-Public Information to any of Respondents' businesses relating to the research, development, registration, manufacture, formulation, licensing, distribution, use or sale of any herbicide products; and
 - 2. Use any Acetochlor Non-Public Information solely in activities necessary for Respondents to perform their obligations pursuant to any Acetochlor Supply Agreement.
- C. Absent the prior written consent of the proprietor of any Strobilurin Non-Public Information, Respondents shall:
 - 1. Subject to Paragraph IV.C.2., not provide, disclose or otherwise make available any Strobilurin Non-Public Information to any of Respondents' businesses relating to the research, development, registration, manufacture, formulation, licensing, distribution, use or sale of any fungicide products; and

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2. Use any Strobilurin Non-Public Information solely in activities necessary for Respondents to perform their obligations pursuant to any Strobilurin Supply Agreement.
- D. Respondents shall make available Acetochlor Non-Public Information and Strobilurin Non-Public Information only to those persons employed by Respondent having a need to know and who agree in writing to be bound by the terms of this Paragraph IV.
- E. Upon the written request of any proprietor of Acetochlor Non-Public Information or Strobilurin Non-Public Information, Respondents shall return to such proprietor, within fifteen (15) days from the date the request is received, all copies, in any form whatsoever, of such information provided to Respondents.
- F. Respondents shall, within thirty (30) days from the date this Order becomes final:
1. Develop and/or maintain policies and procedures necessary to implement the requirements of this Paragraph IV and incorporate such policies and procedures into Respondents= policy and operations manuals;
 2. Conduct training for all persons employed by Respondents relating to the requirements of this Paragraph IV; and
 3. Develop and/or maintain disciplinary policies in the event any person employed by Respondents fails to comply with any of the policies relating to this Paragraph IV.

V.

IT IS FURTHER ORDERED that Respondents shall provide a copy of this Order to each of Respondents= officers,

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employees, or agents having managerial responsibility for any activity related to Respondents= obligations under Paragraphs II through IV of this Order.

VI.**IT IS FURTHER ORDERED** that:

- A. If Respondents have not divested, absolutely and in good faith the Acetochlor Assets or the Strobilurin Assets within the time and manner required by Paragraphs II and III of this Order, the Commission may at any time appoint a Divestiture Trustee to divest such assets. Such trustee may be the same person appointed by the Commission to serve as Monitor Trustee under Paragraph IV of the Order to Maintain Assets.
- B. In the event that the Commission or the Attorney General brings an action pursuant to ' 5(l) of the Federal Trade Commission Act, 15 U.S.C. ' 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to ' 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.
- C. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph VI, Respondents shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:
 - 1. The Commission shall select the Divestiture Trustee, subject to the consent of the Respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and

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divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) business days after receipt of written notice by the staff of the Commission to Respondents of the identity of any proposed trustee, Respondents shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to effect the divestiture for which he or she has been appointed.
3. Within ten (10) business days after appointment of the Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the Divestiture Trustee all rights and powers necessary to permit the trustee to effect the divestiture for which he or she has been appointed.
4. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph VI.C. 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 Divestiture 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 Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities related to assets to be divested, or to any other relevant

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information, as the trustee may request. Respondents shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The Divestiture 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, but shall divest expeditiously at no minimum price. The divestiture shall be made only to an acquirer that receives the prior approval of the Commission, and the divestiture shall be accomplished only in a manner that receives the prior approval of the Commission; *provided, however,* if the Divestiture 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 Respondents from among those approved by the Commission; provided, further, that Respondents shall select such entity within five (5) business days of receiving written notification of the Commission's approval.
7. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After

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approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the Respondent, and the trustee's power shall be terminated. The Divestiture Trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the assets.

8. Respondents shall indemnify the Divestiture Trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.
9. If the Divestiture Trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in this Paragraph VI.
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 Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures required by this Order.
11. The Divestiture Trustee shall have no obligation or authority to operate or maintain the assets to be divested.
12. The Divestiture Trustee shall report in writing to Respondents and the Commission every sixty (60) days

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concerning the trustee's efforts to accomplish the divestiture.

VII.

IT IS FURTHER ORDERED that within sixty (60) days after the date this Order becomes final and annually thereafter, on the anniversary of the date this Order becomes final, until the Order terminates, and at other times as the Commission may require, Syngenta (or Novartis and Zeneca prior to the Syngenta Formation) shall file a verified written report with the Commission setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order and the Order to Maintain Assets. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with this Order and the Order to Maintain Assets.

VIII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondents such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of this Order.

IX.

IT IS FURTHER ORDERED that for the purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents made to their principal United States offices, Respondents shall permit any duly authorized representatives of the Commission:

- A. Access, during office hours of Respondents and in the presence of counsel, to all facilities, and access to inspect and

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copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of the Respondents relating to compliance with this Order; and

- B. Upon five (5) days' notice to Respondents and without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

X.

IT IS FURTHER ORDERED that this Order shall terminate on December 15, 2010.

By the Commission.

CONFIDENTIAL APPENDICES I-VIII

[Redacted from Public Record Version]

**Analysis of the Complaint and Proposed Consent Order to
Aid Public Comment****I. Introduction**

The Federal Trade Commission (ACommission@) has accepted for public comment an Agreement Containing Consent

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Order (Aproposed order@) with Novartis AG (ANovartis@) and AstraZeneca PLC (AZeneca@). The proposed order seeks to remedy the anticompetitive effects of the combination of Novartis=s and Zeneca=s agricultural chemical businesses. The proposed order requires Novartis to divest its worldwide fungicide business based on the strobilurin chemical class to Bayer AG and requires Zeneca to divest its worldwide corn herbicide business based on the active chemical ingredient acetochlor to Dow Agrosciences LLC.

II. Description of the Parties and the Proposed Merger

Novartis, a Swiss company, is engaged in the discovery, development, manufacture and sale of crop protection chemicals, seeds, proprietary and generic pharmaceutical products, and human and animal health products. Novartis operates its crop protection and seed businesses in the United States through a variety of subsidiaries, including Novartis US Co., Novartis Agribusiness Biotechnology Research, Inc., Novartis BCM North America, Inc., Novartis Crop Protection, Inc., Novartis Seeds, Inc., Novartis Specialty Crops, Inc., and Wilson Genetics, LLC.

Zeneca is headquartered in the United Kingdom and is also engaged in the discovery, development, manufacture and sale of crop protection chemicals and proprietary and generic pharmaceutical products. Zeneca operates its crop protection business in the United States through several subsidiaries, including Zeneca Holdings, Inc., and Zeneca Ag Products, Inc.

Pursuant to an agreement, Novartis will contribute its agricultural chemical and seed businesses and Zeneca will contribute its agricultural chemical business to a newly-formed Swiss company, Syngenta AG. The merger of these businesses will result in Syngenta having approximately \$8 billion in worldwide sales. Novartis=s shareholders will own 61 percent of Syngenta and Zeneca=s shareholders will own 39 percent. Syngenta will be organized and will do business under the laws of Switzerland.

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III. The Proposed Complaint

The proposed complaint alleges that there are several relevant lines of commerce (i.e., product markets) in which to analyze this transaction: 1) the research, development, manufacture, and sale of herbicides applied before weed emergence (Pre-emergent herbicides) for control of grassy weeds in corn; and 2) the research, development, manufacture, and sale of foliar fungicides for the treatment of diseases in cereal, citrus, cotton, peanuts, potatoes, rice, vegetables, and turf. The proposed complaint alleges that the United States is the appropriate geographic market to analyze the effects of the combination of Zeneca and Novartis agricultural chemical businesses. United States law requires that herbicides and fungicides undergo a rigorous registration process with the U.S. Environmental Protection Agency (EPA) before they may be used or sold in this country.

Corn Herbicides

Most pre-emergent herbicides used by corn growers to control grassy weeds belong to a class of chemicals known as acetanilides. The major active ingredients within this class are metolachlor, acetochlor, and dimethenamid. These products are used by growers because preventing early competition between the growing corn and grassy weeds for water and nutrients is essential to the economic production of corn. Failure to reduce weeds can significantly reduce the volume of corn produced per acre (yield) and farmers have no economic substitutes for acetanilide herbicides.

Novartis's metolachlor-based herbicides are sold under the brand names Dual and Bicep. Zeneca sells an acetochlor-based herbicide under the brand names Fultime, Surpass, Doubleplay, and TopNotch. Zeneca obtains its acetochlor for these products from a Monsanto facility in Muscatine, Iowa, pursuant to a production and registration joint venture between Zeneca and Monsanto.

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Novartis is the leading developer, manufacturer, and seller of corn herbicides for pre-emergent control of grasses in the United States. Novartis has a market share of about 50 percent. Zeneca has approximately 15 percent of sales in this market. The proposed merger would increase concentration, as measured by the HHI, by nearly 1400 points to over 4600.

Fungicides

Foliar fungicides, which are applied predominantly to the foliage of plants, contain active chemical ingredients that kill or inhibit the growth of organisms that cause disease. Each crop has an EPA approved fungicide and label restrictions on the fungicide for one crop prohibit its use on another. Therefore, a grower with a disease problem on rice cannot turn to a fungicide labeled only for use on peanuts.

The most significant recent development in foliar fungicides has been the introduction of a new class of fungicides known as strobilurins. Fungicides of this class are effective against a broad spectrum of diseases on a wide variety of crops and are more environmentally friendly than most traditional fungicides. The effectiveness and environmental profile of strobilurin fungicides have created strong demand for the products among growers. Strobilurins introduced to the market have quickly achieved significant market share and have taken sales away from traditional foliar fungicides. Zeneca's azoxystrobin fungicides and Novartis's trifloxystrobin fungicides are both strobilurins and are in direct competition.

Novartis obtained U.S. registration for its trifloxystrobin fungicides in 2000. They are sold under the brands Flint and Compass. In addition, Novartis sells a combination product of propiconazole and trifloxystrobin under the brand Stratego. Zeneca's azoxystrobin fungicides, which were registered in the

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U.S. in 1997, are sold under the brands Abound, Heritage, and Quadris.

Zeneca and Novartis, along with BASF Corporation, are the only companies with strobilurin fungicides registered for sale in the United States. No company other than Zeneca, Novartis, or BASF is likely to introduce a new strobilurin fungicide into the U.S. market within the next three or four years.

Novartis and Zeneca are the leading sellers of foliar fungicides in the U.S. market, and account for a combined total of approximately 40% of yearly sales. Typically, for a given plant, there are only two or three significant sellers of these fungicides. In cereals, peanuts, potatoes, rice, and turf, sales by the top two or three fungicide sellers range from nearly 70% to more than 90% of all sales. In vegetables, the top five account for 70%.

According to the Commission's complaint, entry into the relevant markets would not be timely, likely, or sufficient in its magnitude, character, and scope to deter or counteract anticompetitive effects of the merger. The need for extensive research and development and registration requirements create long lead times for the introduction of new products. Developing a new herbicide or fungicide can take six to ten years from the time when a potentially attractive active ingredient is identified. Extensive testing in the field is necessary to evaluate efficacy and use requirements. In addition, several years of testing for negative environmental and toxicological impact is necessary to achieve registration. Finally, patents and other intellectual property create large and potentially insurmountable barriers to entry.

The complaint alleges that if the proposed transaction were consummated, it may substantially lessen competition or tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. ' 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. ' 45. Specifically the merger will in both relevant markets:

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- a. eliminate Zeneca and Novartis as substantial, independent competitors;
- b. eliminate actual, direct, and substantial competition between Zeneca and Novartis;
- c. reduce innovation competition among researchers and developers of herbicides and fungicides, including the reduction in, delay of, or redirection of research and development projects;
- d. increase the level of concentration in the relevant markets;
- e. increase barriers to entry into the relevant markets;
- f. increase the merged firm=s ability to exercise market power unilaterally by combining two of the three closest substitutes in each of the markets; and
- g. increase the likelihood and degree of coordinated interaction between or among competitors in the markets.

IV. Terms of the Agreement Containing Consent Order

The proposed order is designed to remedy the alleged anticompetitive effects of the proposed merger. Under the terms of the proposed order, Proposed Respondent Zeneca will divest its worldwide acetochlor herbicide business to Dow AgroSciences LLC, a wholly-owned subsidiary of Dow Chemical Company. Specifically, Zeneca will divest to Dow Agro the intellectual property, know-how, registrations, trademarks, rights to technical assistance, and rights under the joint venture contracts with Monsanto that are necessary to the manufacture and sale of acetochlor-based corn herbicides. Zeneca is also required to provide certain services and inputs on a transitional basis.

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Dow Agro is a Delaware corporation with its principal place of business in Indianapolis, Indiana. Dow Agro provides pest management, agricultural, and biotechnology products worldwide and had 1999 sales of more than \$2 billion. Dow Agro sells numerous herbicides, but it does not produce a product with acetochlor as an active ingredient.

Proposed Respondent Novartis will divest its worldwide strobilurin fungicide business to Bayer AG. Specifically, Novartis will divest its trifloxystrobin production facilities in MuttENZ, Switzerland, and intellectual property, know-how, and registrations, and trademarks necessary to manufacture the divested strobilurin fungicides. Novartis is required to provide certain services and inputs on a transitional basis.

Bayer is organized and based in Germany. Bayer is a global company that operates in four business segments: healthcare, agriculture, polymers, and chemicals. In 1999, it had sales of over \$20 billion. Bayer does not sell or produce a strobilurin fungicide approved by the EPA.

The order requires both Zeneca and Novartis to provide opportunities for Dow Agro and Bayer to enter into employment contracts with the individuals that are key to the operation of the divested businesses and must remove any contractual limits to deter these individuals from accepting employment with Bayer or Dow Agro. Zeneca and Novartis are also prohibited from making employment offers to these employees for a period of one year.

Proposed Respondents must divest the assets no later than ten business days after the formation of Syngenta or ten days after gaining necessary foreign governmental approvals for the transfer of the divested assets. The order requires, however, that the divestitures must be made within six months from the date the Commission places the proposed order on the public record for comment. The Commission has issued an Order to Maintain Assets that requires Zeneca, Novartis, and Syngenta to preserve the assets as an ongoing business pending the divestitures.

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To ensure that Proposed Respondents expeditiously and completely divest their respective businesses to Dow Agro and Bayer and maintain the assets pending divestiture, the Commission is allowed to appoint a trustee. The trustee will report to the Commission on Proposed Respondents' compliance with their obligations under the Order and the Order to Maintain Assets every sixty days for a period of six months from the date Respondents sign the consent agreement and annually until expiration of the initial term for the supply agreements.

Proposed Respondents must provide the Commission with a report of compliance with the proposed order within sixty days after the proposed order becomes final and every ninety days thereafter until they have complied with their divestiture obligations. Respondents are also required to provide annual reports during the term of the proposed order.

In the event that Proposed Respondents fail to divest the assets within the time allotted, the proposed order enables the Commission to appoint a trustee to divest any assets necessary to satisfy the requirements of the proposed order. Appointment of a trustee is in addition to civil penalties and other relief available from Proposed Respondents for non-compliance with any provision of the proposed order.

V. Opportunity for Public Comment

The proposed order has been placed on the public record for thirty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the proposed order and the comments received and will decide whether it should withdraw from the proposed order or make it final. By accepting the proposed order subject to final approval, the Commission anticipates that the competitive problems alleged in the proposed complaint will be resolved. The purpose of this analysis is to invite public comment on the

Analysis to Aid Public Comment

proposed order, including the proposed divestitures, to aid the Commission in its determination of whether to make the proposed order final. This analysis is not intended to constitute an official interpretation of the proposed order, nor is it intended to modify the terms of the proposed order in any way.

Complaint

IN THE MATTER OF

THE BOEING COMPANYCONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT*Docket C-3992; File No. 0010092**Complaint, December 29, 2000--Decision, December 29, 2000*

This consent order addresses the \$3.75 billion acquisition by The Boeing Company of Hughes Space and Communications from General Motors Corporation. The complaint alleges that the transaction, if consummated, would give Boeing anticompetitive advantages in the markets for satellites and satellite technologies and systems engineering and technical assistance ("SETA") services to the United States Department of Defense. The order prohibits respondent from performing certain SETA services for the classified program in the future. To prevent the exchange of anticompetitive information the order also requires respondent to use non-public SETA services information only its capacity as provider of technical assistance to DoD, or for the provision of SETA services not prohibited by the Order and erect a Firewall between its SETA services division and Boeing's satellite division. In addition, respondent is required to assist DoD in transferring the SETA services to one of its own research and development centers by providing technical assistance, at the request of DoD, for a period not to exceed one year and providing to DoD all documents relating to certain SETA services that Boeing has received in its role as SETA contractor. The order also prohibits Respondent's satellite business from providing any non-public launch information to Respondent's launch vehicle business, and likewise providing any non-public information from its launch vehicle business to its satellite business. The order requires that for any satellite manufactured by Boeing/Hughes prior to the date the agreement becomes final, Boeing must provide satellite interface information, to any launch vehicle supplier within thirty days from the date Boeing receives a request for such information and provide satellite interface information relating to any of its satellite buses, models, or product lines manufactured after the date this agreement becomes final, to any launch vehicle supplier that requests such information or to whom Boeing previously supplied satellite interface information. For each satellite manufactured for the United States Government, Boeing shall only be required to provide satellite interface information to any launch vehicle supplier specified by the United States Government. In addition, the order requires Boeing/Hughes to provide satellite interface information to any launch vehicle supplier specified by any satellite