

Complaint

IN THE MATTER OF

**DOW CHEMICAL COMPANY AND
UNION CARBIDE CORP.**CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE
COMMISSION ACT*Docket C-3999; File No. 9910301
Complaint, February 5, 2001--Decision, March 15, 2001*

This consent order addresses the merger of Respondent The Dow Chemical Company -- a large, worldwide chemical company, with a particular focus on polyethylene, the world's most widely used plastic, and technologies relating to its manufacture -- and Respondent Union Carbide Corporation, also a large, worldwide chemical company and a leading developer and licensor of polyethylene process technology. The order, among other things, requires the respondents to divest and license certain intellectual property and other assets relating to polyethylene to BP Amoco plc ("BP"). The order also requires the respondents to divest Respondent Dow's worldwide businesses in ethyleneamines and ethanolamines -- families of chemicals used in products such as surfactants, personal care products, pulp and paper products, and herbicides and/or fungicides -- respectively to Huntsman International LLC and Ineos Group plc. In addition, the order requires the respondents to divest Dow's business in methyldiethanolamine ("MDEA") -- a powerful solvent used to remove unwanted compounds from gas streams, in oil refineries, natural gas plants, ammonia plants, and other facilities that handle hydrocarbon gases -- to Ineos Group plc. An accompanying Order to Maintain Assets requires the respondents to preserve the businesses they are required to divest as a viable, competitive, and ongoing operation until the divestiture is achieved.

Participants

For the Commission: *Wallace Easterling, Phillip M. Eisenstat, John Warden, Eric Elmore, Crystal Jones, Kristina Martin, April Tabor, Kavita Puri, Scott Reiter, Ronald Curtis, Linda Cunningham, Jeanine Balbach, Rhett R. Krulla, Richard Liebeskind, Arthur Strong, David von Nirschl, Jeffrey Dahnke, Roberta S. Baruch, Gorav Jindal, Jeremy Beck, J. Elizabeth Callison, David Meyer, and Jane Ruseski.*

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For the Respondents: *George Cary, Cleary, Gottlieb, Steen & Hamilton*, and *Nathan Eimer, Eimer Stahl Klevorn & Solberg*.

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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 “Commission”), having reason to believe that respondents The Dow Chemical Company (“Dow”), a corporation, and Union Carbide Corporation (“Carbide”), a corporation, both subject to the jurisdiction of the Commission, have agreed to merge, 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 Dow is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business at 2030 Dow Center, Midland, Michigan, 48674-2030. Dow is a global science and technology company that develops and manufactures a portfolio of plastic, chemical, and agricultural products and services and distributes its products to customers throughout the world.

2. Respondent Carbide is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 39 Old Ridgebury Road, Danbury Connecticut, 06817-0001. Carbide is a worldwide chemical and plastics producer.

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II. JURISDICTION

3. Dow and Carbide are, and at all times relevant herein have been, engaged in commerce as “commerce” 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 “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

III. THE PROPOSED MERGER

4. Dow and Carbide announced on August 4, 1999, that their boards of directors approved a merger agreement, pursuant to which Carbide shareholders would receive shares of Dow stock. Dow and Carbide shareholders have subsequently approved the merger.

IV. VIOLATIONS CHARGED

COUNT ONE – LINEAR LOW DENSITY POLYETHYLENE AND RELATED TECHNOLOGY

5. Paragraphs 1-4 are incorporated by reference as if fully set forth herein.

6. Polyethylene is the world’s most widely used plastic. Linear low density polyethylene (“LLDPE”) is the fastest growing type of polyethylene, and is particularly well suited for making plastic films that are both flexible and strong (but not transparent). One of the largest uses of LLDPE is in making trash bags. LLDPE sales in the United States and Canada exceeded \$3 billion in 1999.

7. LLDPE resins have distinct performance characteristics and superior physical properties, including superior strength and toughness as compared to other thermoplastics. LLDPE is used where its properties are important in applications, such as trash bags, stretch wrap, construction liners, and heavy duty sacks.

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Where LLDPE is used, it is the most cost effective resin per pound, and due to its superior properties, provides a substantial cost advantage on a volume basis.

8. LLDPE is a differentiated product with a high level of product customization. There are many distinct grades and formulations of LLDPE resins, and Dow and Carbide are leading producers of LLDPE formulations with performance characteristics that are superior to “commodity” LLDPE. These high performance resins (sold by Dow, Carbide and others, including Exxon Mobil Corporation (“Exxon”)) account for a substantial portion of the LLDPE sold each year. Dow has historically led the industry in production and sale of LLDPE polymers tailored to deliver performance characteristics demanded by many LLDPE users, and has been able to sell such “premium” LLDPE polymers at premium prices.

9. Polyethylene is produced in specialized industrial reactors, in a polymerization reaction in the presence of a catalyst. Reactor process technology, catalyst technology, LLDPE polymers themselves and applications for LLDPE polymers are all areas in which firms (including Respondents) compete by, among other things, innovating and developing technology (including patents, trade secrets and know-how) for their own use and, in some cases, for license to other LLDPE producers.

10. Dow is a leader in the polyethylene industry, both in product sales and technology. Dow produces and sells polyethylene in North America, and was the largest seller of polyethylene in the United States and Canada in 1999. Its focus is on high performance products, and it has developed a proprietary solution process and metallocene catalysts for the production of polyethylene. Carbide is also a leading producer of polyethylene and a leading developer of polyethylene technology.

11. Carbide, Dow and BP are leading developers of polyethylene reactor process technology. Carbide’s “Unipol” reactor process, in which ethylene is in gaseous state during

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polymerization (“gas phase”), is the most widely licensed and widely used polyethylene process in the world. BP’s “Innovene” process, also a gas-phase process, is the only other widely licensed process for LLDPE. Dow does not license its polyethylene reactor technology, in which ethylene is polymerized in solution. Gas phase LLDPE production is generally lower cost than solution production.

12. Polyethylene catalysts, including metallocenes, initiate the polymerization of ethylene to produce polyethylene, and these catalysts control important characteristics of the resulting polymer. Metallocene catalysts are an advanced form of catalyst which allow polyethylene producers to make polymers that have distinct advantages over polymers made with conventional catalysts, such as higher strength and enhanced processability. The technology to make and use metallocene catalysts in manufacturing LLDPE is claimed by U.S. and foreign patents owned by Dow and Exxon.

13. If metallocene catalysts were generally available to LLDPE producers, those producers likely would be able to erode Respondents’ position as leading producers of premium LLDPE polymers.

14. Carbide owns a 50% interest in Univation Technologies, LLC, a joint venture with Exxon. Univation develops and licenses metallocene catalyst technology for use in Carbide’s Unipol gas phase polyethylene process. Post-merger, Dow will become Exxon’s partner in Univation.

15. Dow uses its metallocene catalyst technology to produce LLDPE and other polymers in its proprietary solution process. In addition, prior to entering into the agreement to merge with Carbide, Dow was working with BP Amoco plc (“BP”) pursuant to a Joint Development Agreement (“JDA”) to combine Dow’s metallocene catalysts with BP’s Innovene gas phase process for producing polyethylene. Through the JDA, Dow and BP developed technology allowing the use of Dow’s metallocene

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catalysts in gas phase process reactors, and developed several metallocene-based advanced polyethylene polymers.

16. In 1999, at or about the time it agreed to merge with Carbide, Dow terminated the JDA rather than enter into a joint licensing venture to market the jointly developed technology. Dow declined to license its own metallocene catalyst technology to BP for sublicense to others. As a result of Dow's decision not to proceed with a licensing venture with BP, BP is not able to offer metallocene catalysts or the jointly developed technology to BP's process technology licensees or prospective licensees.

17. There are no economic substitutes for LLDPE in the vast majority of applications in which it is used. LLDPE constitutes a relevant product market and "line of commerce" within the meaning of the antitrust laws.

18. Metallocene catalysts are distinct from conventional polyethylene catalysts and produce polymers that have distinct advantages over polymers produced with conventional catalysts. There is no economic substitute today for metallocene catalyst technology as part of a complete LLDPE technology package. In addition, metallocene catalyst technology and metallocene-based polymers have the potential to constitute substantial competition in high performance LLDPE polymers. Metallocene catalyst technology for use in LLDPE manufacture constitutes a relevant product market and "line of commerce" within the meaning of the antitrust laws.

19. Dow and Exxon are the only firms in the world that have succeeded in developing a commercially viable metallocene catalyst technology for LLDPE, and Dow (working with BP) and Carbide (working with Exxon in Univation) are the only firms that have succeeded in developing a viable implementation of metallocene catalyst technology in gas phase polyethylene processes. Dow and Univation have the largest metallocene patent estates, and have exchanged patent immunities giving each of them freedom to operate in this area. Other firms attempting to

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develop metallocenes have not succeeded in commercializing those catalysts or in using, licensing or selling them without threat of patent infringement actions brought by Dow, Univation or Exxon. Unlike Dow and Univation, other firms seeking to develop metallocenes have not demonstrated success in persuading LLDPE producers to license their metallocene technology.

20. Even if firms that are attempting to commercialize metallocene catalyst technology succeeded in doing so, they would not be significant constraints on Dow or Univation unless and until they further developed metallocenes for use in gas phase reactors. The substantial majority of LLDPE production capacity not controlled by Respondents is gas phase, and it would take substantial time and expense for other firms to adapt metallocene catalysts for use in gas phase reactors, particularly in light of the need to invent around patents controlled by Dow or Univation.

21. Innovation through competition in research and development in LLDPE reactor process technology leads to reductions in cost, improved product properties, performance, and expansion of uses for polyethylene resin. LLDPE reactor process technology constitutes a relevant product market and “line of commerce” within the meaning of the antitrust laws.

22. The relevant geographic market and section of the country within which to analyze the likely effects of the proposed transaction in the production and sale of LLDPE is the United States and Canada. The relevant geographic market and section of the country within which to analyze the likely effects of the proposed transaction in the market for metallocene catalyst technology for use in LLDPE manufacture and in the market for LLDPE reactor process technology is the world.

23. The relevant markets would be highly concentrated as a result of the merger. Two firms (Respondents and Exxon) likely would control more than 50% of LLDPE polymer sales in North America, essentially all metallocene technology for LLDPE that

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has been commercialized to date, and a substantial share of LLDPE reactor process technology. By illustration, Respondents' technology is used in approximately 75% of the installed LLDPE capacity in the United States and Canada.

24. Entry into the relevant markets would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the merger.

25. The effects of the merger, if consummated, may be substantially to lessen competition and tend to create a monopoly in each of 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 would:

- a. eliminate actual, direct and substantial competition between Dow and Carbide and between Dow and Univation in the relevant markets;
- b. substantially reduce competition in the market for LLDPE polymers by giving Respondents an effective monopoly of metallocene catalysts for LLDPE, thereby impeding the ability of Respondents' polymer competitors to compete with Respondents;
- c. substantially reduce competition in the market for LLDPE polymers by giving Respondents control of the most widely licensed LLDPE reactor process technology, and by impairing the competitive viability of their leading competitor, thereby allowing Respondents to impede the development of LLDPE reactor process technology for the benefit of Respondents' LLDPE business;
- d. eliminate potential competition between Dow and Carbide in the market for metallocene catalyst technology for use in LLDPE manufacture;

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- e. increase barriers to entry into the relevant markets, including enhancing patent barriers in the relevant markets resulting in increased cost of LLDPE production and increased prices for LLDPE polymers;
- f. reduce innovation competition among developers of the relevant products, including the delay of, or redirection of, research and development projects in metallocene catalyst technology, LLDPE reactor process technology, LLDPE and LLDPE applications;
- g. substantially increase the level of concentration in the relevant markets and enhance the probability of coordination;
- h. permit Dow to further impair the ability of BP to compete in gas phase licensing and develop new technology and products based on its work with Dow under the JDA;
- i. increase Respondents' ability to exercise market power unilaterally in the relevant markets;
- j. allow Dow to impair Univation's ability to compete in the licensing of metallocene catalyst technology and LLDPE reactor process technology through Dow's post-merger ownership and governance interest in Univation; and
- k. eliminate BP as an actual and potential competitor in the development and licensing of metallocene catalyst technology for LLDPE manufacture.

26. The merger agreement described in Paragraph 4 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

27. The merger described in Paragraph 4, if consummated, would constitute a violation of Section 5 of the FTC Act, as

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amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

COUNT TWO – ETHYLENEAMINES

28. Paragraphs 1-27 are incorporated by reference as if fully set forth herein.

29. One relevant line of commerce in which to assess the effects of the acquisition is ethyleneamines. Ethyleneamines are a family of homologues containing nitrogen, hydrogen and carbon, formulated so that each nitrogen atom is separated from every other nitrogen atom by two carbon atoms.

30. Ethyleneamines are produced by the chemical reaction of ammonia with ethylene dichloride or by the reductive amination method. Ethyleneamines are used as chemical intermediates, used to make other chemical products, which are used in many diverse applications. There are no economic substitutes for ethyleneamines.

31. One relevant geographic area and section of the country in which to analyze the effects of the proposed acquisition in the market for ethyleneamines is the world.

32. Another relevant geographic area and section of the country in which to analyze the effects of the proposed acquisition in the market for ethyleneamines is the United States and Canada. There are no producers of ethyleneamines outside the United States and Canada to which customers located in the United States and Canada can turn for a supply of ethyleneamines which can economically supply customers in the United States and Canada.

33. Both geographic markets for ethyleneamines are highly concentrated. There are two producers of ethyleneamines in the United States and Canada, Dow and Carbide. There are six producers of ethyleneamines in the world, including both Dow and Carbide. As measured by either current sales to customers, or

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capacity available for the production of ethyleneamines, the relevant markets are highly concentrated.

34. Entry into production and marketing of ethyleneamines requires more than two years and would not be likely, timely, or sufficient to prevent anticompetitive effects in the relevant markets.

35. Dow and Carbide are actual competitors in the relevant markets.

36. The effect of the acquisition, if consummated, may be substantially to lessen competition and to 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 would:

- a. eliminate actual, direct, and substantial competition between Dow and Carbide in the relevant markets for ethyleneamines;
- b. create a monopoly in the market for ethyleneamines in the United States and Canada;
- c. increase the likelihood that Respondents will unilaterally exercise market power in the markets for ethyleneamines;
- d. substantially increase the level of concentration in the world and increase the likelihood of coordinated pricing behavior among worldwide producers of ethyleneamines;
- e. increase barriers to entry; and
- f. increase the likelihood that customers of ethyleneamines would be forced to pay higher prices.

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37. The merger agreement described in Paragraph 4 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

38. The merger described in Paragraph 4, if consummated, would constitute a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

COUNT THREE – ETHANOLAMINES

39. Paragraphs 1-38 are incorporated by reference as if fully set forth herein.

40. One relevant line of commerce in which to assess the effects of the acquisition is ethanolamines. Ethanolamines are a family of homologues produced by the reaction of ammonia and ethylene oxide, including monoethanolamine, diethanolamine, and triethanolamine. Ethanolamines are used as chemical intermediates to make other chemical products, which are used in many diverse applications. There are no economic substitutes for ethanolamines as chemical intermediates.

41. One relevant geographic area in which to analyze the effects of the proposed acquisition in the market for ethanolamines is the United States and Canada.

42. The market for ethanolamines in the United States and Canada is highly concentrated. There are three principal producers of ethanolamines, including Dow and Carbide, and two additional small producers who have very limited capacity. As measured by either current sales or capacity available for the production of ethanolamines, the relevant market is highly concentrated.

43. Entry into production and marketing of ethanolamines requires more than two years and would not be likely, timely, or sufficient to prevent anticompetitive effects in the relevant market.

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44. Dow and Carbide are actual competitors in the relevant market.

45. The effect of the merger, if consummated, may be substantially to lessen competition and tend to create a monopoly in the relevant market 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 would:

- a. eliminate actual, direct, and substantial competition between Dow and Carbide in the market for ethanolamines in the United States and Canada;
- b. substantially increase the level of concentration and increase the likelihood of coordinated pricing behavior among producers of ethanolamines;
- c. increase the likelihood that Respondents will unilaterally exercise market power in the market for ethanolamines;
- d. increase barriers to entry; and
- e. increase the likelihood that customers of ethanolamines in the United States and Canada would be forced to pay higher prices.

46. The merger agreement described in Paragraph 4 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

47. The merger described in Paragraph 4, if consummated, would constitute a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

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**COUNT FOUR – MDEA BASED GAS TREATING
PRODUCTS**

48. Paragraphs 1-47 are incorporated by reference as if fully set forth herein.

49. One relevant line of commerce in which to assess the effects of the acquisition is methyldiethanolamine (“MDEA”) based gas treating products.

50. MDEA, either alone or blended with other chemicals, is used in a wide variety of settings to remove impurities such as sulphur and carbon dioxide from hydrocarbon gas streams. When used to remove impurities from hydrocarbon gas streams, the sale of MDEA is branded and combined with engineering services that can include the design of the equipment used to treat the gas stream, monitoring the effectiveness of the gas treatment over time, and maintaining the optimum blend of MDEA and other chemicals. There are no economic substitutes for MDEA based gas treating products in the treatment of hydrocarbon gas streams.

51. Because of the high economic cost of failure of a hydrocarbon gas treating product, consumers of MDEA based gas treating products cannot economically substitute commodity MDEA for use in treatment of hydrocarbon gas streams.

52. One relevant geographic area in which to analyze the effects of the proposed acquisition in the market for MDEA based gas treating products is the United States and Canada.

53. The market for MDEA based gas treating products in the United States and Canada is highly concentrated, as measured by current sales. There are only two developers and producers of MDEA based gas treating products in the United States and Canada who offer a wide array of products to treat gas with different levels of impurities.

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54. Entry into development and marketing of MDEA based products for the treating of hydrocarbon gasses requires more than two years and would not be likely, timely, or sufficient to prevent anticompetitive effects in the relevant market. Because of the high economic cost of failure of a hydrocarbon gas treating product, consumers of MDEA based gas treating products would be reluctant to accept a supplier that does not have an established reputation and a recognized brand MDEA based product for the treating of hydrocarbon gas streams.

55. Dow and Carbide are actual competitors in the relevant market.

56. The effect of the Acquisition, if consummated, may be substantially to lessen competition and to tend to create a monopoly in the relevant market 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 would:

- a. eliminate actual, direct, and substantial competition between Dow and Carbide in the United States and Canada market for MDEA based gas treating products;
- b. increase the likelihood of coordinated pricing behavior among United States and Canada producers of MDEA based gas treating products;
- c. increase the likelihood that Respondents will unilaterally exercise market power in the United States and Canada market for MDEA based gas treating products; and
- d. increase the likelihood that United States and Canada customers of MDEA based gas treating products would be forced to pay higher prices.

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57. The merger agreement described in Paragraph 4 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

58. The merger described in Paragraph 4, if consummated, would constitute a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this fifth day of February, 2001, issues its Complaint against said Respondents.

Decision and Order

DECISION AND ORDER

The Federal Trade Commission ("the Commission"), having initiated an investigation of the proposed acquisition by The Dow Chemical Company ("Dow") of Union Carbide Corporation ("Union Carbide"), collectively hereinafter sometimes referred to as "Respondents," including Union Carbide's interest in Univation Technologies LLC, and Respondents having been furnished with a copy of a draft complaint that the Bureau of Competition has presented to the Commission for its consideration and which, if issued by the Commission, would charge Dow and Union Carbide with violations of the Clayton Act and Federal Trade Commission Act; and

Respondents Dow and Union Carbide and their attorneys, and counsel for the Commission having thereafter executed an agreement containing consent order, an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that 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 (Appendix A), 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 Decision and Order ("Order"):

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1. Respondent The Dow Chemical Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal executive offices located at 2030 Dow Center, Midland, Michigan 48674.

2. Respondent Union Carbide Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal executive offices located at 39 Old Ridgebury Road, Danbury, Connecticut 06817.

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

ORDER

I.

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

A. The following terms shall mean the following entities:

1. "Dow" means The Dow Chemical Company, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by The Dow Chemical Company, and the respective directors, officers, employees, agents and representatives, successors, and assigns of each. Dow does not include Union Carbide Corporation or Univation.

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

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Union Carbide does not include Dow. Union Carbide does not include Univation.

3. “Univation” means Univation Technologies, LLC, a limited liability company organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 555 San Felipe Road, Suite 1950, Houston, Texas 77056.

4. “Respondents” means Dow and Union Carbide individually and collectively.

5. “Commission” means the Federal Trade Commission.

6. “Asahi” means Asahi Chemical Industry Co., Ltd., a foreign corporation, existing and doing business under and by virtue of the laws of Japan, with its offices and principal place of business located at 1-2, Yuraku-cho, 1-chome, Chiyoda-ku, Tokyo 100, Japan, its subsidiaries, divisions, groups and affiliates.

7. “BP” means BP Amoco p.l.c., a foreign corporation, existing and doing business under and by virtue of the laws of England and Wales, with its offices and principal executive offices located at Britannic House, 1 Finsbury Circus, London EC2M, England, its subsidiaries, divisions, groups and affiliates. BP’s principal U.S. office is located at 200 East Randolph Drive, Chicago, Illinois 60601-7125.

8. “Exxon” or “Exxon Mobil” means Exxon Mobil Corporation, a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its offices and principal place of business located at 5959 Las Colinas Boulevard, Irving, Texas 75039-2298, its subsidiaries, divisions, groups and affiliates. Exxon does not include Univation.

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9. “Huntsman” means Huntsman International LLC, a limited liability company, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 500 Huntsman Way, Salt Lake City, Utah 84108, and its subsidiaries, divisions, groups, and affiliates.

10. “Ineos” means Ineos Group plc and its subsidiaries, divisions, groups and affiliates, including Ineos L.L.C., a limited liability company organized, existing and doing business under and by virtue of the laws of the State of Louisiana, with its offices and principal place of business located at 701 Poydras Street, Suite 5000, New Orleans, Louisiana 70139.

11. “Mitsui” means Mitsui Chemicals, Inc., a foreign corporation, existing and doing business under and by virtue of the laws of Japan, with offices and principal place of business located at 2-5 Kasumigaseki, 3-chome, Chiyoda-ku, Tokyo, Japan, its subsidiaries, divisions, groups and affiliates. Mitsui’s principal U.S. office is located at Mitsui Petrochemicals (America), First Interstate Bank Plaza, 1000 Louisiana, Suite 5696, Houston, Texas 77002.

12. “Albemarle” means Albemarle Corporation, a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its offices and principal place of business located at 330 South Fourth St., Richmond, Virginia 23210.

13. “Boulder Scientific” means Boulder Scientific Company, a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its offices and principal place of business located at 598 Third St., Mead, Colorado 80542.

B. “Acquirer” means any person or business that purchases the Dow Global Ethyleneamines Business, the Dow Global

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Ethanolamines Business, the Dow Gas Spec MDEA Business, or the Dow Gas Phase Metallocene PE Assets pursuant to this Order. Acquirer includes BP, Huntsman and/or Ineos.

C. “Acquisition” means the acquisition by Dow of assets or voting shares of Union Carbide that is reportable under the Hart-Scott-Rodino Antitrust Improvements Act.

D. “AEEA” means aminoethylethanolamines.

E. “AEEA Plant” means Dow’s AEEA production facility located at the Freeport Site.

F. “Asahi Agreement Patent Rights” means all rights conveyed to Dow, pursuant to the Joint Development Agreement, dated July 21, 1995, as amended, and the Technology Commercial Agreement, dated February 26, 1998, as amended, both between Asahi Chemical Industry Co., Ltd. and Dow, to make, use, and sell, and to sublicense any person to make, use and sell, Ethylene Polymers in a Gas Phase PE Process.

G. “BisCP Metallocene Catalyst” means Metallocene Catalyst containing in its preactivated state two Cyclic Moieties wherein for each of the Cyclic Moieties three or more adjacent atoms comprising a portion of a ring of the Cyclic Moiety are π -bonded to the same metal atom and the three or more adjacent atoms are within normal bonding distance of the metal atom and wherein the Cyclic Moieties may be the same or different, symmetric or asymmetric, unbridged or bridged to each other.

H. “BP Confidential Information” means (1) information regarding the Dow Gas Phase Metallocene PE Assets, (2) information regarding BP’s Innovene Gas Phase PE Process, and (3) information subject to any confidentiality or secrecy obligation, received by Dow from or on behalf of BP regarding Metallocene Technology, Gas Phase PE Process technology, or Ethylene Polymers, *provided, however*, that BP Confidential

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Information shall not include information, other than Dow Gas Phase PE Technology, that is:

1. public knowledge at the date of receipt by Dow, or that prior to Dow's use of such information, becomes public knowledge through no act or failure to act on the part of Dow;
2. already known, without obligation of confidentiality, to Dow at the date of its receipt;
3. subsequently lawfully acquired from third parties or affiliates to the extent that Dow has the right to use or disclose it without obligations of confidentiality; or
4. required to be disclosed due to operation of law or an order of a court or other governmental authority, *provided* that Dow shall first notify BP of such requirement and use reasonable efforts to preserve the confidentiality of the information required to be disclosed and to limit disclosure of such information to that legally required.

I. "BP Divestiture and License Agreement" means the Divestiture and License Agreement between Dow and BP dated as of January 19, 2001, providing, *inter alia*, for the sale of the Dow Gas Phase Metallocene PE Assets to BP, and the grant of the Enhanced Gas-Phase Metallocene Licenses & Immunities to BP.

J. "BP-Dow-Chevron Agreement" means the Single Site Metallocene Catalyst Co-Operation and Exploitation Agreement dated September 8, 1998, by and between BP, Dow and Chevron Chemical Company LLC, as amended.

K. "BP-Dow JDA" means the Joint Development Agreement dated January 30, 1995, by and between BP and Dow, as amended.

L. "BP-Dow Joint Development Program" means all research and development activity taken by Dow or BP, individually or

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jointly, pursuant to, in furtherance of, or in performance of the BP-Dow JDA.

M. “Businesses and Assets To Be Divested” means

1. the Dow Global Ethyleneamines Business;
2. the Dow Global Ethanolamines Business;
3. the Dow Gas Phase Metallocene PE Assets; and
4. the Dow Gas Spec MDEA Business.

N. “Castmate” means CASTMATE and MORMATE ceramic processing additives produced by blending ethyleneamines, latex, and water, and any other products comprising ethyleneamines and, optionally, latex and water, sold for use in the manufacture of ceramic articles as a processing additive and managed by the same persons in Freeport, Texas who manage the Dow Global Ethyleneamines Business.

O. “Catalyst Technology” means technology relating to PE Catalyst or to the production, preparation and use of PE Catalysts, PE Catalyst Support or PE Catalyst Systems.

P. “Combined Technology” means technology (including without limitation Patents and Know-How) developed in the course of the BP-Dow Joint Development Program, whether or not patentable, including all technical data and information generated individually or jointly by Dow or BP in the course of the BP-Dow Joint Development Program; all Ethylene Polymers produced in the course of the BP-Dow Joint Development Program; any individual or joint invention, improvement or discovery, whether or not patentable, which was made or conceived in the course of the BP-Dow Joint Development Program and technology developed in the course of the BP-Dow Joint Development Program for use and/or manufacture of any Combined Technology Catalyst; and all laboratory records,

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reports, technical data and information generated in the course of the BP-Dow Joint Development Program; excluding, however, ownership of technology developed by Dow prior to, or not in the course of, the BP-Dow Joint Development Program.

Q. “Combined Technology Catalyst” means any Metallocene Catalyst System (including activators, supports or scavenging agents) made or conceived in the course of the BP-Dow Joint Development Program, including any improvements upon Introduced Dow Metallocene Catalyst Systems, which improvements were made or conceived in the course of the BP-Dow Joint Development Program, but excluding the Introduced Dow Metallocene Catalyst Systems.

R. “Combined Technology Patents” means all Patents claiming inventions that are Combined Technology that are owned by Dow or BP, including the patents listed in Confidential Appendix B hereto.

S. “Cyclic Moiety” means a cyclopentadienyl (C_5H_5) moiety and/or any other type of cyclic compound including, for example, but not limited to, a cyclohexadienyl moiety, a pyrolyl moiety, a phospholyl moiety, a boratabenzene moiety, etc.; wherein each of these moieties and/or compounds may be unsubstituted or substituted with anything and in any manner (including, but not limited to, ring or multi-ring structures such as indenyl, fluorenyl, or other ring structures).

T. “Dedicated Gas Phase Metallocene PE Assets” means:

1. the two agitated dry phase reactors that are owned by Dow, that have been used by Dow for testing of Metallocene Catalyst Systems in a Gas-Phase PE Process for making Ethylene Polymers, and that have been located at Freeport, Texas and Midland, Michigan; and
2. all of Dow’s rights, title and interest in the BP-Dow-Chevron Agreement, and all Dow’s rights, title and interest in

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all sole or joint inventions, improvements or discoveries, whether or not patentable, that were made or conceived in the course of the BP-Dow-Chevron Agreement program, including any Know-How and any Patents claiming the same, and including any improvements upon Introduced Dow Metallocene Catalyst Systems, which improvements were made or conceived in the course of the BP-Dow -Chevron Agreement program, but excluding the Introduced Dow Metallocene Catalyst Systems.

U. “Density” means density in grams per cubic centimeter as measured by the most recent version of ASTM D-1505 (as of the Effective Date of Divestiture, ASTM D-1505-98) using specimens prepared by the procedure described in ASTM D-1928, Procedure C.

V. “Divestiture Agreements” means the Huntsman Agreement, the Ineos Agreement, the BP Divestiture and License Agreement, any New Ethyleneamines Divestiture Agreement, any New Ethanolamines Divestiture Agreement, and any New Gas Spec MDEA Divestiture Agreement.

W. “Dow Appendix C Employees” means Dow Employees listed on Confidential Appendix C of this Order and such other Dow employees who, during any twelve-month period since January 1, 1995, devoted 50 work days to Combined Technology or to the BP-Dow Joint Development Program or to any combination thereof.

X. “Dow Gas Phase Metallocene PE Assets” means:

1. all Dow’s rights, title and interest in the BP-Dow JDA, and all Dow’s rights, title and interest in all Combined Technology, and Combined Technology Patents;
2. the Dedicated Gas Phase Metallocene PE Assets;
3. the Dow Gas Phase PE Patents;

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4. all research materials, technical information, management information systems, software, inventions, specifications, designs, drawings, processes and quality control data of Dow related solely to Metallocene Technology for use in a Gas-Phase PE Process or to Dow Gas Phase PE Technology that are recorded in written or electronic form as of the date the Commission accepts this Order for public comment;

5. all interest in and to the contracts entered into in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, licensors, licensees, consignors and consignees, and rights under warranties and guarantees, express or implied of Dow related solely to Metallocene Technology for use in a Gas-Phase PE Process or to Dow Gas Phase PE Technology, except the Univation Settlement Agreement; and

6. all documents, books, records, and files, written or electronic, of Dow related solely to Metallocene Technology for use in a Gas-Phase PE Process or Dow Gas Phase PE Technology, except the Univation Settlement Agreement and information provided to Dow by or on behalf of Univation, Union Carbide, and Exxon Mobil either prior to or after the effective date of such Univation Settlement Agreement.

Y. “Dow Gas Phase PE Patents” means all Patents owned by Dow having a priority date or filing date on or before the date on which the Commission accepts this Order for public comment, all claims of which are limited to (i) Metallocene Technology that can only be used in a Gas Phase PE Process for Ethylene Polymers; (ii) Metallocene Catalyst Systems or components of Metallocene Catalyst Systems that can only be used in Gas Phase PE Processes for Ethylene Polymers; (iii) a process for using such Metallocene Catalyst Systems or components in a Gas Phase PE Process to make Ethylene Polymers; or (iv) Ethylene Polymers made only by such a Gas Phase PE Process, including the patents listed in Confidential Appendix D hereto.

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Z. “Dow Gas Phase PE Technology” means all Know-How owned by Dow and developed before the date on which the Commission accepts this Order for public comment, that is limited to (i) Metallocene Technology that can only be used in a Gas Phase Process for Ethylene Polymers; (ii) Metallocene Catalyst Systems or components of Metallocene Catalyst Systems that can only be used in Gas Phase PE Processes for Ethylene Polymers; (iii) a process for using such Metallocene Catalyst Systems or components in a Gas Phase PE Process to make Ethylene Polymers; or (iv) Ethylene Polymers made only by such a Gas Phase PE Process.

AA. The “Dow Gas Spec MDEA Business” means all of Dow’s right, title, and interest in all assets and businesses relating to the research, development, sale, and distribution of Gas Spec MDEA in the United States and Canada, including, without limitation, the following:

1. all customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, technical information, dedicated management information systems, information contained in management information systems, rights to software, technology, know-how, ongoing research and development, specifications, designs, drawings, processes and quality control data;
2. at Acquirer’s option, and with the concurrence of the Commission, a Supply Contract pursuant to which Dow will provide to an Acquirer MDEA on commercially reasonable terms that achieve the purposes of this Order;
3. all intellectual property rights, including but not limited to Patents, Patent rights, licenses, formulas, mixes, molds, inventions, copyrights, trade secrets, know-how, trademarks, and trade names;
4. all raw material and finished product inventories and goods in process;

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

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

7. all separately maintained, and all relevant portions of not separately maintained, books, records and files;

8. all applicable federal, state, and local regulatory agency registrations, permits, and applications, and all documents related thereto, to the extent permitted by law; and

9. all items of prepaid expense arising on or after August 1, 2000.

Provided, however, that the Dow Gas Spec MDEA Business does not include the following:

10. any plant facilities, machinery, fixtures, equipment, vehicles, transportation and storage facilities, furniture, tools, supplies, stores, spare parts, and other property (other than the laboratory and software used by the Dow Gas Spec MDEA Business) that relate to the manufacture of MDEA and MMEA, including Dow's MDEA and MMEA manufacturing facilities;

11. intellectual property used solely for the manufacture of MDEA and MMEA;

12. real property at the Freeport Site, Plaquemine Site or any other Dow location;

13. customer lists, files, information and records for customers located outside of the United States and Canada; and

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14. the assets listed in Confidential Appendix E of this Order.

Provided, however, that if Dow divests the Dow Gas Spec MDEA Business to Ineos pursuant to Paragraph IV of this Order, the definition of the Dow Gas Spec MDEA Business includes, but shall not be limited by, the assets conveyed by the Ineos Agreement.

AB. The “Dow Global Ethanolamines Business” means all of Dow’s right, title, and interest in all assets and businesses in the world relating to the research, development, manufacture, sale, and distribution of Ethanolamines, including, without limitation, the following:

1. all plant facilities, machinery, fixtures, equipment, vehicles, transportation and storage facilities, furniture, tools, supplies, stores, spare parts, and other tangible personal property related to Ethanolamines and located at a facility owned and operated by Dow at Block 55 of the Plaquemine Site, as well as any easements necessary to operate these facilities as an Ethanolamines business;
2. at Acquirer’s option, and with the concurrence of the Commission, a Supply Contract for EO;
3. at Acquirer’s option, and with the concurrence of the Commission, a contract or contracts pursuant to which Dow will provide to an Acquirer certain services related to Ethanolamines, including one or more of the following: maintenance, environmental, liquid waste disposal, computer, safety, security, transportation, or other services related to Ethanolamines;
4. at Acquirer’s option, and with the concurrence of the Commission, a contract or contracts pursuant to which Dow will provide to an Acquirer certain utilities related to

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Ethanolamines, including one or more of the following: water, electricity, sewer, or other utilities related to Ethanolamines;

5. a lease, license, or other rights in real property at the Plaquemine Site sufficient for the operation of the Dow Global Ethanolamines Business in the manner in which such business has been operated in the past and as such business may be operated in the future in a manner consistent with the purposes of this Order;

6. all customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, technical information, dedicated management information systems, information contained in management information systems, rights to software, technology, know-how, ongoing research and development, specifications, designs, drawings, processes and quality control data;

7. all intellectual property rights, including but not limited to Patents, Patent rights, licenses, formulas, mixes, inventions, copyrights, trade secrets, know-how, trademarks, and trade names;

8. all raw material and finished product inventories and goods in process;

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

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

11. all separately maintained, and all relevant portions of not separately maintained, books, records and files;

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12. rights to operate under all applicable federal, state, and local regulatory agency registrations, permits, and applications, and all documents related thereto, to the extent permitted by law; and

13. all items of prepaid expense arising on or after August 1, 2000.

Provided, however, that the Dow Global Ethanolamines Business does not include the following:

14. assets or businesses solely for the production or sale of products other than Ethanolamines including any downstream products into which Ethanolamines are an input;

15. production facilities used to manufacture EO;

16. a fee simple interest in any real property, including the real property underlying the Ethanolamines manufacturing facility at the Plaquemine Site; and

17. the assets listed in Confidential Appendix E of this Order.

Provided, however, that if Dow divests the Dow Global Ethanolamines Business to Ineos pursuant to Paragraph III of this Order, the definition of the Dow Global Ethanolamines Business includes, but shall not be limited by, the assets conveyed by the Ineos Agreement.

AC. The “Dow Global Ethyleneamines Business” means all of Dow’s right, title, and interest in all assets and businesses in the world relating to the research, development, manufacture, sale, and distribution of Ethyleneamines, AEEA, and Castmate, including, without limitation, the following:

1. all plant facilities, machinery, fixtures, equipment, vehicles, transportation and storage facilities, furniture, tools,

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supplies, stores, spare parts, and other tangible personal property related to Ethyleneamines and located at a facility owned and operated by Dow at Block A-3800 of the Freeport Site, as well as any easements necessary to operate these facilities as an Ethyleneamines business;

2. all plant facilities, machinery, fixtures, equipment, vehicles, transportation and storage facilities, furniture, tools, supplies, stores, spare parts, and other tangible personal property related to and located at the AEEA Plant at the Freeport Site, as well as any easements necessary to operate the facilities as an AEEA business;

3. a lease, license, or other rights in real property at the Freeport Site sufficient for the operation of the Dow Global Ethyleneamines Business in the manner in which such business has been operated in the past and as such business may be operated in the future in a manner consistent with the purposes of this Order;

4. at Acquirer's option, and with the concurrence of the Commission, a Supply Contract for ethylene dichloride and caustic;

5. at Acquirer's option, and with the concurrence of the Commission, a contract or contracts pursuant to which Dow will provide to an Acquirer certain services related to Ethyleneamines, including one or more of the following: maintenance, environmental, liquid waste disposal, computer, safety, security, transportation, and other services related to Ethyleneamines;

6. at Acquirer's option, and with the concurrence of the Commission, a contract or contracts pursuant to which Dow will provide to an Acquirer certain utilities related to Ethyleneamines, including one or more of the following: water, electricity, sewer, and other utilities related to Ethyleneamines;

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7. an option to purchase, at cost, including capital charges consistent with those charged to other Dow businesses, up to thirty (30) million pounds of Ethyleneamines annually from the Terneuzen Plant;

8. all customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, technical information, dedicated management information systems, information contained in management information systems, rights to software, technology, know-how, ongoing research and development, specifications, designs, drawings, processes and quality control data;

9. all intellectual property rights, including but not limited to Patents, Patent rights, licenses, formulas, mixes, inventions, copyrights, trade secrets, know-how, trademarks, and trade names;

10. all raw material and finished product inventories and goods in process;

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

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

13. all separately maintained, and all relevant portions of not separately maintained, books, records and files;

14. rights to operate under all applicable federal, state, and local regulatory agency registrations, permits, and applications, and all documents related thereto to the extent permitted by law; and

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15. the confidentiality agreements entered into by or on behalf of Dow in connection with the sale of the Dow Global Ethyleneamines Business, related to any third party bid to purchase the assets of the Dow Global Ethyleneamines Business in connection with the sale of the Dow Global Ethyleneamines Business, to the extent that assignment or disclosure of such confidentiality agreements to Acquirer would not constitute a breach thereof.

Provided, however, that the Dow Global Ethyleneamines Business does not include the following:

16. assets or businesses solely for the production or sale of (i) any downstream products into which Ethyleneamines are an input, except Castmate; or (ii) any other products other than Ethyleneamines.

17. production facilities used to manufacture ethylene dichloride, ethylene, chlorine, or caustic;

18. the Terneuzen Plant;

19. production facilities used to manufacture Castmate;

20. a fee simple interest in any real property, including the real property underlying the Ethyleneamines, the AEEA, and the Castmate manufacturing facilities at the Freeport Site; and

21. the assets listed in Confidential Appendix F of this Order.

Provided, however, that if Dow divests the Dow Global Ethyleneamines Business to Huntsman pursuant to Paragraph II of this Order, the definition of the Dow Global Ethyleneamines Business includes, but shall not be limited by, the assets conveyed by the Huntsman Agreement.

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AD. “Dow Metallocene Background Patents” means any claims in Patents owned by Dow having a priority date or filing date on or before two years after the date on which the Order becomes final which claims are directed to inventions conceived prior to the date of the Acquisition, which cover: (i) Metallocene Technology for use in a Gas Phase PE Process to make Ethylene Polymers; (ii) Metallocene Catalyst Systems or components of Metallocene Catalyst Systems for use in a Gas Phase PE Process to make Ethylene Polymers, including without limitation Introduced Dow Metallocene Catalyst Systems; (iii) a process for using Metallocene Catalyst Systems or components thereof in a Gas Phase PE Process to make Ethylene Polymers; (iv) Ethylene Polymers made by a Gas Phase PE Process; or (v) the application of Ethylene Polymers made by a Gas Phase PE Process, including without limitation the patents listed in Confidential Appendix G hereto, *provided, however*, that Dow Metallocene Background Patents do not include patent claims to chemical modifications of Ethylene Polymers, and *further provided* that Dow Metallocene Background Patents do not include Dow Metallocene Background Patents Requiring Third Party Consent or Patents acquired by Dow on or after the date of the Acquisition.

AE. “Dow Metallocene Background Patents Requiring Third Party Consent” means any claims in Patents owned by Dow that Dow cannot license to BP without securing the consent of or paying compensation to a third party (other than Univation, Exxon Mobil, or Union Carbide), having a priority date or filing date on or before two years after the date on which the Order becomes final which claims are directed to inventions conceived prior to the date of the Acquisition, which cover: (i) Metallocene Technology for use in a Gas Phase PE Process to make Ethylene Polymers; (ii) Metallocene Catalyst Systems or components of Metallocene Catalyst Systems for use in a Gas Phase PE Process to make Ethylene Polymers, including without limitation Introduced Dow Metallocene Catalyst Systems; (iii) a process for using Metallocene Catalyst Systems or components thereof in a Gas Phase PE Process to make Ethylene Polymers; (iv) Ethylene Polymers made by a Gas Phase PE Process; or (v) the application

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of Ethylene Polymers made by a Gas Phase PE Process, including without limitation the patents listed in Confidential Appendix H hereto, *provided, however*, that Dow Metallocene Background Patents Requiring Third Party Consent do not include patent claims to chemical modifications of Ethylene Polymers or Patents acquired by Dow on or after the date of the Acquisition.

AF. “Effective Date of Divestiture” means the date upon which Respondents close a transaction to divest or transfer relevant assets pursuant to this Order.

AG. “Enhanced Gas Phase Metallocene Licenses & Immunities” means

1. the Gas Phase Metallocene Licenses & Immunities;
2. a paid up, worldwide, irrevocable, nonexclusive license, providing immunity from suit and right to sublicense, under the Univation Settlement Patent Rights and the Supplemental Univation Patent Rights to make, use, sell, offer for sale and import MPE Resins made by polymerization in a Gas Phase PE Process; *provided, however* that as a condition of the grants under the Univation Settlement Patent Rights, BP may agree to abide by the terms and conditions of the BP Divestiture and License Agreement, including without limitation Section 2.1.3, Section 3.1.2, and Section 3.1.3;
3. a paid up, worldwide, irrevocable, nonexclusive license, providing immunity from suit and right to sublicense, under the Mitsui License Agreement Patent Rights, *provided, however*, that as a condition of the grants under the Mitsui License Agreement Patent Rights, BP may agree to abide by the terms and conditions of the Patent License Agreement between Dow and Mitsui Chemicals, Inc. signed July 29, 1999, including any amendments or supplemental agreements; and

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4. a paid up, worldwide, irrevocable, nonexclusive license, providing immunity from suit and right to sublicense, under the Asahi Agreement Patent Rights.

AH. "EO" means ethylene oxide.

AI. "Ethanolamines" means each and every homologue produced by the reaction of ammonia and ethylene oxide, including monoethanolamine, diethanolamine, triethanolamine, and higher molecular weight amines.

AJ. "Ethyleneamines" means each and every homologue containing nitrogen, hydrogen and carbon, formulated so that each nitrogen atom is separated from every other nitrogen atom by two carbon atoms. These compounds are produced by the chemical reaction of ammonia with ethylene dichloride or by the reductive amination method. Ethyleneamines include, without limitation, AEEA.

AK. "Ethylene Polymers" or PE mean homopolymers of ethylene and copolymers and interpolymers composed of at least thirty mol percent (30 mol %) ethylene, with the remaining monomers consisting of one or more monounsaturated, acyclic, alpha-olefin hydrocarbon comonomers, but including no more than twenty-five mol percent (25 mol %) propylene.

AL. "Foreign Counterpart Patents" means (i) a patent or patent application that has a common claim of priority with or claims priority from another specific patent, and (ii) commonly owned applications and patents filed in other countries claiming substantially the same subject matter as the specific patent but without a claim of priority to any prior application in another country.

AM. "Freeport Site" means Dow's manufacturing facilities in Freeport, Texas.

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AN. “Gas Phase PE Process” means a low-pressure polymerization process using any Catalyst Technology which results in Ethylene Polymer formation in the form of solid polymer particles suspended in a medium that is substantially gaseous under the conditions of the polymerization.

AO. “Gas Phase Metallocene Licenses & Immunities” means a paid up, world-wide, irrevocable, non-exclusive patent license, providing immunity from suit, for use with the Dow Gas Phase Metallocene PE Assets or other BP-owned Metallocene Technology,

1. to develop, make or have made, use, license and sell Metallocene Technology and Metallocene Catalyst Systems, or any component thereof, for use in a Gas Phase PE Process under the Dow Metallocene Background Patents;

2. to make, use, sell, offer for sale and import Ethylene Polymers made by polymerization in a Gas Phase PE Process under the Dow Metallocene Background Patents, *provided, however,* that Dow Metallocene Background Patents do not include Patent claims to chemical modifications of Ethylene Polymers;

3. to sublicense the foregoing rights to any person, without notice to or approval by Respondents; and

4. to develop or have developed, by practice of the Dow Metallocene Background Patents, technology for making Ethylene Polymers made by polymerization in a Gas Phase PE Process, including but not limited to the right to develop or have developed Combined Technology and Dow Gas Phase PE Patents.

AP. “Gas Spec MDEA” means methyldiethanolamine sold for use in treating gas streams to remove impurities, whether sold alone or blended with other chemicals.

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AQ. “Huntsman Agreement” means the Amended and Restated Asset Purchase Agreement between Huntsman and Dow entered into as of August 1, 2000, calling for the sale of the Dow Global Ethyleneamines Business to Huntsman, including:

1. the Payment and Performance Guaranty Agreement;
2. the Amended and Restated Site Service Agreement;
3. the Amended and Restated Computerized Process Control Software Agreement;
4. the Amended and Restated Environmental Systems Separation and Services Agreement;
5. the Labor Services Agreement;
6. the Amended and Restated Freeport Ground Lease and License Agreement;
7. the Contract Manufacturing Agreement;
8. the Know-How License Agreement;
9. the Supply Agreement;
10. the Raw Material Supply Agreement;
11. the Exchange Agreement;
12. the Reductive Amination Technology License Agreement; and
13. the Novation Agreement.

AR. “Ineos Agreement” means the Asset Purchase Agreement between Ineos and Dow entered into on or about July 31, 2000, as amended, calling for the sale of the Dow Global Ethanolamines

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Business and the Dow Gas Spec MDEA Business to Ineos including:

1. Payment and Performance Guaranty;
2. the Site Service Agreement;
3. the Plaquemine Servitude Agreement;
4. the Operating Services Agreement;
5. the EO Supply Agreement;
6. the Computerized Process Control Software Agreement;
7. the GAS/SPEC Supply Agreement; and
8. the Consent Agreement, Dow and Dow Diamond.

AS. “Introduced Dow Metallocene Catalyst Systems” means Dow Metallocene Catalyst Systems provided by Dow to BP for evaluation in the BP-Dow Joint Development Program or provided by Dow to Chevron or BP for evaluation in accordance with the BP-Dow-Chevron Agreement.

AT. “Know-How” means all technological, technical, scientific, chemical, biological, regulatory and marketing materials and information used to develop, make, use, sell, offer for sale, import or seek regulatory approval in any country to market, make, use, sell, offer for sale, or import a product, including without limitation all: formulae; trade secrets; inventions; techniques; intellectual property whether or not patentable; discoveries; compounds; and compositions of matter; research data; technical data and information; testing data; regulatory files; statistical analyses; analytical data; specifications; designs; drawings; processes; testing and quality assurance/quality control data; manufacturing data and information; regulatory

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submissions; and any other information and experience, whether recorded on paper or electronically.

AU. “MDEA” means methyldiethanolamine.

AV. “Metallocene Catalyst” means an organometallic compound containing at least one Cyclic Moiety wherein three or more adjacent atoms comprising a portion of a ring of the Cyclic Moiety are π -bonded to a metal atom and the three or more adjacent atoms are within normal bonding distance of the metal atom.

AW. “Metallocene Catalyst System” means any Metallocene Catalyst or any combination of any Metallocene Catalyst and any activator, scavenging agent or PE Catalyst Support.

AX. “Metallocene Catalyst Technology” means all Patents and Know-How pertaining to the manufacture, use or sale of Metallocene Catalyst Systems useful in the manufacture of Ethylene Polymers, including, but not limited to, recipes, manufacturing procedures, synthesis techniques and supports.

AY. “Metallocene Process Technology” means all Patents and Know-How pertaining to the manufacture of Ethylene Polymers (specifically excluding solution and slurry process technology) including, but not limited to, feed specifications; operating conditions; control procedures; start-up, shutdown, and transitioning procedures; and any equipment requirements applicable where a Metallocene Catalyst is used.

AZ. “Metallocene Product Technology” means all Patents and Know-How pertaining to Ethylene Polymers, including, but not limited to, structure-property relationships, use of product additives, processing (such as extrusion, molding and film fabrication techniques) to convert Ethylene Polymers into end use form, and end-use applications.

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BA. “Metallocene Technology” means Metallocene Catalyst Technology, Metallocene Process Technology and Metallocene Product Technology.

BB. “Mitsui License Agreement Patent Rights” means all rights under all Patent claims and Patents of Mitsui conveyed to Dow, or any rights that would have been available to a Licensing Entity to be established by Dow and BP, for sublicensing of Ethylene Polymers made with Metallocene Catalyst Systems in a Gas Phase PE Process pursuant to the Patent License Agreement between Dow and Mitsui Chemicals, Inc., signed July 29, 1999, including any amendments or supplemental agreements.

BC. “MonoCP Metallocene Catalyst” means Metallocene Catalyst containing in its preactivated state one, but not more than one, Cyclic Moiety wherein three or more adjacent atoms comprising a portion of a ring of the Cyclic Moiety are π -bonded to the metal atom and the three or more adjacent atoms are within normal bonding distance of the metal atom and wherein the Cyclic Moiety can be either unbridged or bridged to the metal atom through at least one substituent; provided however, that a MonoCP Metallocene Catalyst may contain in its preactivated state other Cyclic Moieties which do not meet the requirement of having three or more adjacent atoms comprising a portion of a ring of the other Cyclic Moiety π -bonded to the same metal atom (i.e., the same specific atom in the complex, as opposed to a second metal atom, for example, in a dimer structure) as the first Cyclic Moiety and the three or more adjacent atoms are within normal bonding distance of the metal atom.

BD. “MPE Resin” means homopolymers of ethylene and copolymers of at least seventy-five percent (75%) by weight ethylene with a remaining amount of monomer consisting of one or more monounsaturated, acyclic, alpha-olefin hydrocarbon comonomers, said polymers having a Density of 0.910 g/cc or more or such lower Density as in the future may be brought within the scope of the field of the Univation venture, as expanded from

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time to time, and are manufactured with one or more Metallocene Catalyst Systems.

BE. “New Ethanolamines Divestiture Agreement” means all agreements for the sale of the Dow Global Ethanolamines Business other than the Ineos Agreement and includes any divestiture agreement entered into by a trustee pursuant to Paragraph X of this Order.

BF. “New Ethyleneamines Divestiture Agreement” means all agreements for the sale of the Dow Global Ethyleneamines Business other than the Huntsman Agreement and includes any divestiture agreement entered into by a trustee pursuant to Paragraph X of this Order.

BG. “New Gas Spec MDEA Divestiture Agreement” means all agreements for the sale of the Dow Gas Spec MDEA Business other than the Ineos Agreement and includes any divestiture agreement entered into by a trustee pursuant to Paragraph X of this Order.

BH. “Non-Public Confidential Information” means any non-public information either relating to the Dow Global Ethyleneamines Business, the Dow Global Ethanolamines Business, or the Dow Gas Spec MDEA Business prior to their divestiture pursuant to Paragraphs II, III, IV, or X of this Order and/or relating to the operation of the Dow Global Ethyleneamines Business, the Dow Global Ethanolamines Business, or the Dow Gas Spec MDEA Business by any Acquirer after such business is divested pursuant to Paragraphs II, III, IV, or X of this Order. Non-Public Confidential Information shall not include:

(1) information that is public knowledge at the date of receipt by Dow, or that prior to Dow’s use of such information, becomes public knowledge through no act or failure to act on the part of Dow; (2) information which Respondents develop independently and without using, directly or indirectly, any information obtained from any current or former agents or employees of Dow whose

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duties related directly to the Dow Global Ethyleneamines Business, the Dow Global Ethanolamines Business, or the Dow Gas Spec MDEA Business; (3) information which subsequently becomes known to Respondents from a third party not in breach of a confidentiality obligation; (4) information that has uses or applications in Respondents' other businesses and is not competitively significant to the Dow Global Ethyleneamines Business, the Dow Global Ethanolamines Business, or the Dow Gas Spec MDEA Business; and (5) information that is conveyed or licensed to Respondents under the Huntsman Agreement, the Ineos Agreement, any New Ethyleneamines Divestiture Agreement, any New Ethanolamines Divestiture Agreement, or any New Gas Spec MDEA Divestiture Agreement.

BI. "Patents" mean all patents, patents pending, patent applications and statutory invention registrations, including reissues, divisions, continuations, continuations-in-part, supplementary protection certificates, extensions and reexaminations thereof, all inventions, claimed or which may later be claimed therein, all rights therein provided by international treaties and conventions, and all rights to obtain and file for patents and registrations thereto in the world.

BJ. "PE Catalyst" means supported and unsupported catalyst components for use in production of Ethylene Polymers.

BK. "PE Catalyst Support" means preformed support components or support carriers for use with PE Catalysts.

BL. "PE Catalyst Systems" means combinations of PE Catalyst and PE Catalyst Support or activator component designed, developed, used, or suitable for use for the production of Ethylene Polymers.

BM. "PE Technology" means technology relating to Ethylene Polymers, to the production and use thereof, and to the preparation and use of Catalyst Systems.

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BN. “Plaquemine Site” means Dow’s manufacturing facilities in Plaquemine, Louisiana.

BO. “Respondents’ Ethanolamines Business” means the worldwide ethanolamines business conducted by Respondents after the Dow Global Ethanolamines Business is divested pursuant to Paragraph III or Paragraph X of this Order, including all employees, officers, directors, and agents of Respondents whose duties relate to Respondents’ Ethanolamines Business.

BP. “Respondents’ Ethyleneamines Business” means the worldwide ethyleneamines business conducted by Respondents after the Dow Global Ethyleneamines Business is divested pursuant to Paragraph II or Paragraph X of this Order, including all employees, officers, directors, and agents of Respondents whose duties relate to Respondents’ Ethyleneamines Business.

BQ. “Respondents’ MDEA Business” means the worldwide MDEA business conducted by Respondents after the Dow Gas Spec MDEA Business is divested pursuant to Paragraph IV or Paragraph X of this Order, including all employees, officers, directors, and agents of Respondents whose duties relate to Respondents’ MDEA Business.

BR. “Respondents’ Support Contact” means Respondents’ designee under Paragraph V of this Order.

BS. “Respondents’ Support Personnel” means Respondents’ employees who are: (i) responsible for providing services and inputs to the Dow Global Ethyleneamines Business, the Dow Global Ethanolamines Business, or the Dow Gas Spec MDEA Business after such businesses are divested pursuant to paragraphs II, III, IV, or X of this Order, and (ii) exposed to competitively sensitive information relating to the Dow Global Ethyleneamines Business, the Dow Global Ethanolamines Business, or the Dow Gas Spec MDEA Business, including, but not limited to information about cost, price, quantity, customers, product

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specifications, terms of sale, production planning/forecasting and communications with the Acquirers of such businesses.

BT. “Supplemental Univation Patent Rights” means the following rights:

1. a royalty free, nonexclusive, irrevocable, worldwide (except for Korea and Japan, which restriction expires on December 31, 2004) license within the Univation Field, with the right to sublicense, under U.S. Patent Nos. 5,405,922 and 5,462,999 (including all U.S. divisionals, continuations, continuations-in-part, reissues or reexaminations that are pending on or after January 1, 2001), European Patent No. 89691 and any Foreign Counterpart Patents to make, have made, offer for sale, sell, import, or use MonoCP Metallocene Catalysts; *provided, however*, that no rights are granted under U.S. Patent Nos. 5,405,922 and 5,462,999 and European Patent No. 89691 and their Foreign Counterpart patents to make, have made, offer for sale, sell, import or use BisCP Metallocene Catalysts and no rights are granted for any mixed PE Catalyst Systems that contain BisCP Metallocene Catalysts;
2. a royalty free, nonexclusive, irrevocable, worldwide license within the Univation Field to practice under any claim in any Exxon or Univation Patent that would be licensed to Dow or Dow Affiliates under the Univation Settlement Agreement but for the inclusion in the claim of “Catalyst Support Technology,” as “Dow Affiliates” and “Catalyst Support Technology” are used in the Univation Settlement Agreement;
3. a royalty free, nonexclusive, irrevocable, worldwide license within the Univation Field, with a right to sublicense to resin producers of MPE Resins made with MonoCP Metallocene Catalysts licensed by BP to use MonoCP Metallocene Catalysts (i) under every patent claim that Univation was, is or will be empowered to grant at any time from December 4, 2000 until the date of the Acquisition, and

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(ii) under every patent claim that Univation would have been empowered to grant if such patent claim existed as of the date of the Acquisition but only for any patent claim that is included in a patent application filed on or before June 15, 2001, or that claims priority in whole or part from a patent application filed on or before June 15, 2001, for each such patent claim covering either:

- (a) a polymer composition or article where a MPE Resin satisfies all the limitations of one or more claimed components of the composition or article recited in the patent claim;
- (b) an end use for a MPE Resin; or
- (c) an application for a MPE Resin;

where such patent claim is in a patent or patent application (including reissues or reexaminations of such patents) owned or controlled by Univation (which includes Union Carbide and Exxon Mobil patents). Any use rights granted by BP pursuant to this subsection to a resin producer shall be extendible by such resin producer to its customers for use with these MPE Resins. The rights to be granted to BP pursuant to this subsection shall only apply where each of the following conditions are met: (i) one or more MonoCP Metallocene Catalysts (but in no event any BisCP Metallocene Catalysts) are used in a Gas Phase Process to make those MPE Resins present in the polymer composition, article, end use or application; and (ii) the presence of such MPE Resins made with MonoCP Metallocene Catalyst or MonoCP Metallocene Catalysts in such polymer, composition, end use, article or application satisfies at least one limitation in the patent claim directed to a polymer composition or article or a material element of the patent claims to an end use or application. Nothing in this subsection shall be construed to grant rights or a license to a composition, end use, article or application where MPE Resins are present merely to present a defense to patent

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infringement. The rights to be granted in accordance with this subsection are limited to patent claims expressly requiring Ethylene Polymers in the field of the Univation venture (as provided in the Univation Reorganization Agreement), polymer compositions or end uses, regardless of whether or not the patent claim recites a limitation to Metallocene Catalysts. No additional rights are granted to or to be implied in any patented processes, operations or equipment for producing an Ethylene Polymer, or for components of catalysts; and

4. a royalty free, nonexclusive, irrevocable, worldwide license with a right to sublicense, under Univation LCB Patents to make, have made, offer for sale, sell, import and use MPE Resins within the Univation Field made with MonoCP Metallocene Catalysts; *provided, however*, that no rights are granted to make, have made, offer for sale, sell, import or use MPE Resins made using BisCP Metallocene Catalysts and no rights are granted for any mixed PE Catalyst Systems that contain BisCP Metallocene Catalysts.

BU. “Supply Contract” means a contract by which Dow sells, swaps, toll manufactures, converts, transfers, or otherwise provides an Acquirer with inputs, products, or other materials at the Freeport Site or the Plaquemine Site in connection with the Dow Global Ethyleneamines Business, the Dow Global Ethanolamines Business, or the Dow Gas Spec MDEA Business.

BV. “Support Personnel for the Dow Gas Phase Metallocene PE Assets” means employees of Dow who (1) are responsible for providing services to BP under a research service agreement negotiated pursuant to the BP Divestiture and License Agreement and
(2) are exposed to competitively sensitive information relating to the Dow Gas Phase Metallocene PE Assets.

BW. “Terneuzen Plant” means Dow’s existing Ethyleneamines plant, including any terminals Dow uses as

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storage facilities or for raw materials, in Terneuzen, The Netherlands.

BX. “Unipol Process Technology for Ethylene Polymers” and “Unipol Gas Phase PE Process” mean all Patents and Know-How owned or controlled by Union Carbide within the field of the Univation venture (as provided in the Univation Reorganization Agreement) in a Gas-Phase PE Process pertaining to the production of Ethylene Polymers.

BY. “Unipol Gas Phase PE Technology Business” means: (i) the Union Carbide business for the licensing and sale of Unipol Process Technology for Ethylene Polymers within the field of the Univation venture (as provided in the Univation Reorganization Agreement), including the right to sublicense others, and all administrative, management, and research and development responsibilities relating thereto; *provided, however*, that to the extent agreed by Respondents and Exxon Mobil in the Univation Reorganization Agreement, “Unipol Gas Phase PE Process Technology Business” does not include the right to receive lump sum, running royalties, fees, or other licensing income under license and technology purchase agreements signed before August 8, 1996, and (ii) the Union Carbide business for the sale to third parties of PE Catalyst Systems for Ethylene Polymers within the field of the Univation venture (as provided in the Univation Reorganization Agreement) by Union Carbide that is not part of Univation as of the date on which the Commission accepts for public comment the Agreement Containing Consent Order, including the exclusive right to sell and sub-license such PE Catalyst Systems to third parties, and all administrative, management, and research and development responsibilities for such PE Catalyst Systems; *provided, however*, that to the extent agreed by Respondents and Exxon Mobil in the Univation Reorganization Agreement, the “Unipol Gas Phase PE Technology Business” does not include (a) the manufacturing assets owned by Union Carbide that produce PE Catalysts and PE Catalyst Systems; or (b) the right to receive lump sum, running royalty, fees, purchase price, lease price, or other income for the

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sale of conventional PE Catalyst Systems to Univation pursuant to the Univation Reorganization Agreement or to licensees who will continue to pay lump sum, running royalty fees, or other licensing income to Union Carbide rather than Univation under license and technology purchase agreements signed before August 8, 1996.

BZ. “Univation Field” means, for purposes of this Order, (1) development, manufacture, marketing and sale of Metallocene Catalyst Systems to make MPE Resins in a Gas Phase PE Process, and (2) development of Metallocene Technology and technology pertaining to Metallocene Catalyst Systems and licensing thereof to any person for manufacture of MPE Resins in a Gas Phase PE Process for the sale and use by such person, but the Univation Field specifically excludes the development and licensing of technology relating to: (i) power transfer fluids, lubricants and/or lubricant additive systems (except for use as a processing aid and/or additive in polyolefins); (ii) fuel additive systems; and (iii) additive, compounding or other post-reactor technology related to wire and cable applications.

CA. “Univation LCB Patents” means the independent claims and claims dependent thereon of all patents (which for this definition shall include utility model and other forms of petty patents) and patent applications throughout the world owned or controlled by Univation, where such patents and applications are based in whole or part upon patent applications filed prior to June 15, 2001, including:

- (i) reissues or reexaminations of such patents, and
- (ii) patents issuing from applications claiming benefit of priority in whole or in part from applications for these patents regardless of when filed;

but only including the independent and dependent claims of such patents, patent applications, reexamined patents and reissued patents satisfying the additional requirement of the independent claim being limited (either expressly or inherently) to require a

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polymer which has long chain branches (“LCB”) greater than or equal to 0.01 per 1000 carbon atoms (but does not include LCBs formed by a free radical polymerization process). Notwithstanding the foregoing, where there is a dependent claim that is expressly or inherently limited to require LCB polymers as specified above in this definition, but the claim(s) antecedent to such dependent claim are not so limited, the defined term “Univation LCB Patents” shall include such dependent claim(s) if the antecedent claims are determined to be invalid or not patentable or unenforceable upon a final, non-appealable, non-reviewable order. Subject to the next sentence, the defined term “Univation LCB Patents” includes the rights under any patents and patent applications meeting the other criteria of this definition owned or controlled by Univation as of June 15, 1999 or within two years of June 15, 1999, regardless as to whether Univation subsequently assigns or transfers such patents or patent applications to any third party. The defined term “Univation LCB Patents” does not include patents which Univation did not have the right to grant to BP without the agreement of or accounting to a third party (not including Exxon Mobil or Union Carbide) as of June 15, 1999, and does not obtain the right to grant to BP within two years of June 15, 1999. To the extent Univation must obtain the agreement of or account to a third party, Univation shall use good faith efforts (Univation need not offer value to the third party unless BP reaches agreement with Univation on reimbursement) to obtain the relevant rights for BP from the third party.

CB. “Univation Reorganization Agreement” means the Univation Reorganization Agreement dated December 4, 2000, by and among Exxon Mobil, Dow, Union Carbide, and Univation, as amended.

CC. “Univation Settlement Agreement” means the Settlement Agreement between Dow and Univation dated June 15, 1999, as amended.

CD. “Univation Settlement Patent Rights” means all rights under all patent claims of Univation conveyed to Dow to make

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MPE Resins in a Gas-Phase PE Process, and to use, and sell such MPE Resins, and right to sub-license, pursuant to the Univation Settlement Agreement, as amended by the Univation Reorganization Agreement to provide sub-licensing rights to BP.

II.

IT IS FURTHER ORDERED that:

A. Dow shall divest, absolutely and in good faith, at no minimum price, the Dow Global Ethyleneamines Business as an ongoing business.

B. The divestiture shall be made to Huntsman no later than ten (10) days after the date on which this Order becomes final, in accordance with the Huntsman Agreement (which agreement shall not vary or contradict the terms of this Order or the Order to Maintain Assets). *Provided, however*, that if, at the time the Commission determines to make the Order final, the Commission notifies Respondents that Huntsman is not an acceptable acquirer, or the Huntsman Agreement is not an acceptable manner of divestiture, then Dow shall immediately rescind the transaction with Huntsman and shall divest the Dow Global Ethyleneamines Business, within six (6) months after the date on which the Order becomes final, to an Acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission.

C. The purpose of the divestiture of the Dow Global Ethyleneamines Business is to ensure the continued operation of the Dow Global Ethyleneamines Business in the same businesses in which the assets and businesses of the Dow Global Ethyleneamines Business are engaged at the time of the Acquisition, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

D. Pending divestiture of the Dow Global Ethyleneamines Business, Dow shall take such actions as are necessary to maintain

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the viability and marketability of the Dow Global Ethyleneamines Business and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Dow Global Ethyleneamines Business, except for ordinary wear and tear.

E. Dow shall comply with all terms of the Order to Maintain Assets, attached to this Order and made a part hereof as Appendix A. The Order to Maintain Assets shall continue in effect until such time as Dow has divested each of the Businesses and Assets to be Divested as required by this Order.

F. Respondents shall use Non-Public Confidential Information relating to the Dow Global Ethyleneamines Business only (i) in the performance of Respondents' obligations under this Order or the Huntsman Agreement or any New Ethyleneamines Divestiture Agreement; or (ii) for the purpose of complying with Respondents' financial, tax reporting, legal, health, safety, and environmental obligations.

G. Respondents shall not, absent the prior written consent of an Acquirer of the Dow Global Ethyleneamines Business, provide, disclose or otherwise make available any Non-Public Confidential Information relating to the Dow Global Ethyleneamines Business to persons who are not Respondents' Support Personnel for the Dow Global Ethyleneamines Business, except for the purpose of complying with Respondents' financial, tax reporting, legal, health, safety and environmental obligations.

H. Respondents shall comply with the terms of the Huntsman Agreement (if Respondents divest pursuant to the Huntsman Agreement) or the New Ethyleneamines Divestiture Agreement (if Respondents, or a trustee, divest pursuant to Paragraph II or Paragraph X of this Order to an Acquirer other than Huntsman), which terms are incorporated by reference into this Order, and made a part hereof. Any failure by Respondents to comply with the Huntsman Agreement or the New Ethyleneamines Divestiture Agreement shall constitute a failure to comply with this Order.

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III.

IT IS FURTHER ORDERED that:

A. Dow shall divest, absolutely and in good faith, at no minimum price, the Dow Global Ethanolamines Business as an ongoing business.

B. The divestiture shall be made to Ineos no later than ten (10) days after the date on which this Order becomes final, in accordance with the Ineos Agreement (which agreement shall not vary or contradict the terms of this Order or the Order to Maintain Assets). *Provided, however*, that if, at the time the Commission determines to make the Order final, the Commission notifies Respondents that Ineos is not an acceptable acquirer, or the Ineos Agreement is not an acceptable manner of divestiture, then Dow shall immediately rescind the transaction with Ineos and shall divest the Dow Global Ethanolamines Business, within six (6) months after the date on which the Order becomes final, to an acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission.

C. The purpose of the divestiture of the Dow Global Ethanolamines Business is to ensure the continued operation of the Dow Global Ethanolamines Business in the same businesses in which the assets and businesses of the Dow Global Ethanolamines Business are engaged at the time of the Acquisition, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

D. Pending divestiture of the Dow Global Ethanolamines Business, Dow shall take such actions as are necessary to maintain the viability and marketability of the Dow Global Ethanolamines Business and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Dow Global Ethanolamines Business, except for ordinary wear and tear.

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E. Dow shall comply with all terms of the Order to Maintain Assets, attached to this Order and made a part hereof as Appendix A. The Order to Maintain Assets shall continue in effect until such time as Dow has divested each of the Businesses and Assets to be Divested as required by this Order.

F. Respondents shall use Non-Public Confidential Information relating to the Dow Global Ethanolamines Business only (i) in the performance of Respondents' obligations under this Order or the Ineos Agreement or any New Ethanolamines Divestiture Agreement; or (ii) for the purpose of complying with Respondents' financial, tax reporting, legal, health, safety, and environmental obligations.

G. Respondents shall not, absent the prior written consent of an Acquirer of the Dow Global Ethanolamines Business provide, disclose or otherwise make available any Non-Public Confidential Information relating to the Dow Global Ethanolamines Business to persons who are not Respondents' Support Personnel for the Dow Global Ethanolamines Business, except for the purpose of complying with Respondents' financial, tax reporting, legal, health, safety and environmental obligations.

H. Respondents shall comply with the terms of the Ineos Agreement (if Respondents divest pursuant to the Ineos Agreement) or the New Ethanolamines Divestiture Agreement (if Respondents, or a trustee, divest pursuant to Paragraph III or Paragraph X of this Order to an Acquirer other than Ineos), which terms are incorporated by reference into this Order, and made a part hereof. Any failure by Respondents to comply with the Ineos Agreement or the New Ethanolamines Divestiture Agreement shall constitute a failure to comply with this Order.

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IV.

IT IS FURTHER ORDERED that:

A. Dow shall divest, absolutely and in good faith, at no minimum price, the Dow Gas Spec MDEA Business as an ongoing business.

B. The divestiture shall be made to Ineos no later than ten (10) days after the date on which this Order becomes final, in accordance with the Ineos Agreement (which agreement shall not vary or contradict the terms of this Order or the Order to Maintain Assets). *Provided, however*, that if, at the time the Commission determines to make the Order final, the Commission notifies Respondents that Ineos is not an acceptable acquirer, or the Ineos Agreement is not an acceptable manner of divestiture, then Dow shall immediately rescind the transaction with Ineos and shall divest the Dow Gas Spec MDEA Business, within six (6) months after the date on which the Order becomes final, to an acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission.

C. The purpose of the divestiture of the Dow Gas Spec MDEA Business is to ensure the continued operation of the Dow Gas Spec MDEA Business, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

D. Pending divestiture of the Dow Gas Spec MDEA Business, Dow shall take such actions as are necessary to maintain the viability and marketability of the Dow Gas Spec MDEA Business and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Dow Gas Spec MDEA Business except for ordinary wear and tear.

E. Respondents shall use Non-Public Confidential Information relating to the Dow Gas Spec MDEA Business only (i) in the

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performance of Respondents' obligations under this Order or the Ineos Agreement or any New Gas Spec MDEA Divestiture Agreement; or (ii) for the purpose of complying with Respondents' financial, tax reporting, health, safety, and environmental obligations.

F. Respondents shall not, absent the prior written consent of an Acquirer of the Dow Gas Spec MDEA Business, provide, disclose or otherwise make available any Non-Public Confidential Information relating to the Dow Gas Spec MDEA Business to persons who are not Respondents' Support Personnel for the Dow Gas Spec MDEA Business, except for the purpose of complying with Respondents' financial, tax reporting, legal, health, safety and environmental obligations.

G. Dow shall comply with all terms of the Order to Maintain Assets, attached to this Order and made a part hereof as Appendix A. The Order to Maintain Assets shall continue in effect until such time as Dow has divested each of the Businesses and Assets to be Divested as required by this Order.

H. Respondents shall comply with the terms of the Ineos Agreement (if Respondents divest pursuant to the Ineos Agreement) or the New Gas Spec MDEA Divestiture Agreement (if Respondents, or a trustee, divest pursuant to Paragraph IV or Paragraph X of this Order to an Acquirer other than Ineos), which terms are incorporated by reference into this Order, and made a part hereof. Any failure by Respondents to comply with the Ineos Agreement or the New Gas Spec MDEA Divestiture Agreement shall constitute a failure to comply with this Order.

V.

IT IS FURTHER ORDERED that within thirty (30) days from the date on which the Respondents sign the Consent Agreement:

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A. Respondents shall take steps to ensure that all of Respondents' Support Personnel comply with Paragraphs II, III, and IV of this Order. Such steps shall include, without limitation:

1. distribution of this Order to Respondents' Support Personnel, and to the agents and employees of Respondents' Ethyleneamines Business, Respondents' Ethanolamines Business, and Respondents' MDEA Business;
2. development of procedures, policies, and practices relating to the receipt, identification, custody, use, and disposal of any Non-Public Confidential Information;
3. dissemination of such procedures, policies, and practices;
4. periodic in-person training of initial and future Respondents' Support Personnel;
5. periodic in-person training of agents and employees of Respondents' Ethyleneamines Business, Respondents' Ethanolamines Business, and Respondents' MDEA Business;
6. development of new procedures, or incorporation of procedures into existing measures, to be used in the event Respondents' Support Personnel fail to comply with Respondents' obligations under this Order, such procedures sufficient to create reasonable incentives for such personnel to perform Respondents' obligations in good faith and to deter such personnel from failing to perform Respondents' obligations; and
7. development of new procedures, or incorporation of procedures into existing measures, to deter agents and employees of Respondents' Ethyleneamines Business, Respondents' Ethanolamines Business, and Respondents' MDEA Business from receiving, retaining, or using any Non-Public Confidential Information.

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B. Respondents shall designate a person, whose duties both at the time of such person's initial designation and for the duration of this Order, do not include responsibility for or participation in Respondents' Ethyleneamines Business, Respondents' Ethanolamines Business, and Respondents' MDEA Business, to serve as Respondents' Support Contact. The duties of Respondents' Support Contact shall include:

1. monitoring Respondents' performance of the Huntsman Agreement, the Ineos Agreement, any New Ethyleneamines Divestiture Agreement, any New Ethanolamines Divestiture Agreement, or any New Gas Spec MDEA Divestiture Agreement;
2. maintaining a complete and accurate master list of the names of all of Respondents' Support Personnel;
3. providing such assistance as requested by the Monitor Trustee to obtain information and documents, or arrange interviews with Respondents' Support Personnel, relating to Respondents' performance of its obligations under this Order or the Huntsman Agreement, Ineos Agreement, any New Ethyleneamines Divestiture Agreement, any New Ethanolamines Divestiture Agreement, or any New Gas Spec MDEA Divestiture Agreement; and
4. preparing or supervising the preparation of such reports or data compilations relating to Respondents' performance of its obligations under this Order or the Huntsman Agreement, Ineos Agreement, any New Ethyleneamines Divestiture Agreement, any New Ethanolamines Divestiture Agreement, or any New Gas Spec MDEA Divestiture Agreement as requested by the Monitor Trustee.

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VI.

IT IS FURTHER ORDERED that:

A. Respondents shall divest the Dow Gas Phase Metallocene PE Assets, to BP, absolutely and in good faith and at no minimum price, in accordance with the BP Divestiture and License Agreement (which agreement shall not vary or contradict the terms of this Order).

B. Respondents shall:

1. Grant to BP the Enhanced Gas Phase Metallocene Licenses & Immunities, in accordance with the BP Divestiture and License Agreement (which agreement shall not vary or contradict the terms of this Order), and

2. With respect to each Dow Metallocene Background Patent Requiring Third Party Consent, (a) use best efforts to obtain any third party consent needed to grant to BP a license and immunity to such Dow Metallocene Background Patent Requiring Third Party Consent at least as broad as that granted to Gas Phase Metallocene Licenses & Immunities that do not require such consent; and (b) promptly (i) identify to BP each party whose consent is required; (ii) disclose to BP all rights and obligations of Dow and the third party with respect to the Patent; (iii) with respect to BP and its licensees, waive its claims of confidentiality or secrecy and all of its contract rights (exclusivity, noncompetition or other) limiting BP's use of the Patent; and (iv) cooperate and assist BP in securing the license and immunity; *provided, however*, that Dow may limit any waiver with respect to disclosure of confidential information to information relevant to Metallocene Technology for production of Ethylene Polymers through a Gas Phase PE Process, and *provided further*, that Dow may pass on to BP the obligation to pay a royalty or fee to the third party.

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C. The divestiture of the Dow Gas Phase Metallocene PE Assets, and the grant of the Enhanced Gas Phase Metallocene Licenses & Immunities, shall be made to BP within three (3) days after the Commission accepts the Order for public comment, as to all intellectual property rights, and within thirty (30) days after the Commission accepts the Order for public comment, as to all tangible assets, in accordance with the BP Divestiture and License Agreement (which agreement shall not vary or contradict the terms of this Order or the Order to Maintain Assets), *provided, however,* that as consideration for the grant of the Enhanced Gas Phase Metallocene Licenses & Immunities, BP may agree to grant to Univation certain licenses with sublicensing rights in accordance with the BP Divestiture and License Agreement and the Univation Reorganization Agreement, including without limitation licenses with sublicensing rights under Dow's Metallocene Background Patents and Dow's Gas Phase PE Patents.

D. Respondents shall use BP Confidential Information relating to the Dow Gas Phase Metallocene PE Assets only (a) in the performance of Respondents' obligations under this Order or the BP Divestiture and License Agreement, (b) for the purpose of complying with Respondents' financial, tax reporting, legal, health, safety, and environmental obligations, or (c) as permitted by license or other written agreement with, or written consent from, BP. Respondents shall not, absent the prior written consent of BP, provide, disclose or otherwise make available any BP Confidential Information to persons who are not Support Personnel for the Dow Gas Phase Metallocene PE Assets, except as permitted in the preceding sentence.

E. Respondents shall comply with the terms of the BP Divestiture and License Agreement, which terms are incorporated by reference into this Order, and made a part hereof. Any failure by Respondents to comply with the BP Divestiture and License Agreement shall constitute a failure to comply with this Order.

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F. Dow shall, to the extent requested by BP, upon the divestiture of the Dow Gas Phase Metallocene PE Assets: (i) disclose and provide to BP on a nonexclusive basis, all research materials, technical information, management information systems, software, inventions, specifications, designs, drawings, processes and quality control data of Dow related to Metallocene Technology for use in a Gas-Phase PE Process or to Dow Gas Phase PE Technology to the extent that any of the foregoing are recorded in research notebooks, written memoranda, or electronic form as of the date the Commission accepts this Order for public comment, (ii) disclose and provide to BP on a nonexclusive basis, all documents, books, records, and files of Dow related to Metallocene Technology for use in a Gas-Phase PE Process or to Dow Gas Phase PE Technology to the extent that any of the foregoing are recorded in research notebooks, written memoranda, or electronic form as of the date the Commission accepts this Order for public comment, except the Univation Settlement Agreement and information provided to Dow by or on behalf of Univation, Exxon Mobil, or Union Carbide either prior to or after the effective date of such Univation Settlement Agreement; and (iii) make available to BP on a nonexclusive basis rights under contracts entered into in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, licensors, licensees, consignors and consignees, and rights under warranties and guarantees, express or implied of Dow related to Metallocene Technology for use in a Gas-Phase PE Process.

G. Upon execution of the BP Divestiture and License Agreement, Dow shall make available for inspection by BP, to the extent permissible under applicable laws, the personnel files and other documentation relating to Dow Appendix C Employees, as requested by BP within one year after execution of the BP Divestiture and License Agreement.

H. Dow shall provide BP with the opportunity to hire or enter into employment contracts with Dow Appendix C Employees; Dow shall not interfere with the hiring or employing by BP of

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Dow Appendix C Employees; Dow shall not offer any incentive to such employees to decline employment with BP or to accept other employment with Respondents; Dow shall not make any counteroffer to any such employee who receives a written offer of employment from BP; and Dow shall remove any impediments that may deter such employees from accepting employment with BP, including, but not limited to, waiver of any non-compete or confidentiality provisions of employment contracts that would affect the ability or incentive of any such individual to be employed by BP; *provided, however*, that Dow may limit any waiver with respect to disclosure of confidential information to information relevant to Metallocene Technology for production of MPE Resin through a Gas-Phase PE Process and to information that does not waive obligations of Dow to third parties other than Exxon Mobil and Univation.

I. Dow shall provide all Dow Appendix C Employees with reasonable financial incentives to continue in their positions until completion of the divestiture of the Dow Gas Phase Metallocene PE Assets. Such incentives shall include a continuation of all employee benefits offered by Dow until the divestiture has been completed, including regularly scheduled raises and bonuses, and a vesting of all pension benefits (as permitted by law). In addition, Dow shall provide to each such employee to whom BP extends a written offer of employment incentives to accept employment with BP within ninety days following the completion of the divestiture. Such incentives shall include payment by Dow for the benefit of the employees of all accrued bonuses, pensions and other accrued benefits to which such employees are entitled as of the date of the divestiture. Dow shall not impose any loss of pension benefits on employees hired by BP to which such employees are entitled, at the time of consummation of the Acquisition, under Respondents' pension plans as administered under ERISA.

J. During the one-year period following the divestiture, Respondents shall not, directly or indirectly, hire, attempt to hire, or enter into any arrangement for the services of any former Dow

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employees hired or employed by BP that have any amount of responsibility relating to the Dow Gas Phase Metallocene PE Assets, unless the individual's employment has been terminated by BP.

K. Respondents shall not use, nor assist Univation or Exxon in using, any BP Confidential Information for the purpose of filing, prosecuting, encouraging, supporting, or inducing any patent infringement action against BP or its licensees by any person, including Respondents.

L. Respondents shall not disclose to any third party, Univation or Exxon, any BP Confidential Information without the prior consent of BP, except for the purpose of complying with Respondents' financial, tax reporting, legal, health, safety and environmental obligations.

M. Respondents shall not permit:

1. Any Dow employee listed in Category 1 of Confidential Appendix I to participate or direct any research or other activity by Dow, Union Carbide or Univation for the purpose of development, improvement or discovery of MPE Resins in a Unipol Gas Phase PE Process for one year from the date on which the Commission accepts this Order for public comment; and

2. Any Dow employee listed in Category 2 of Confidential Appendix I to participate or direct any research or other activity by Dow, Union Carbide or Univation for the purpose of development, improvement or discovery of MPE Resins (i) in a Unipol Gas Phase PE Process for two years from the date on which the Commission accepts this Order for public comment; or (ii) in a slurry loop process for one year from the date on which the Commission accepts this Order for public comment.

N. Dow shall, upon the divestiture of the Dow Gas Phase Metallocene PE Assets, (i) identify to BP every supplier to Dow

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of Introduced Dow Metallocene Catalyst Systems, Combined Technology Catalyst, and components thereof, (ii) expressly authorize each such supplier (including without limitation Albemarle and Boulder Scientific) notwithstanding any confidentiality, non-compete, or exclusivity agreement with Dow, to develop, manufacture, and supply Metallocene Catalyst Systems and components thereof to BP for use in a Gas Phase PE Process, as requested by BP, and to enter into confidentiality agreements with BP regarding such development, manufacture, or supply; and (iii) as required by BP, assist and facilitate BP in securing supplies of Metallocene Catalyst Systems for BP and its licensees for use in a Gas Phase PE Process.

O. The purpose of the divestiture of the Dow Gas Phase Metallocene PE Assets, and of the further remedies provided for in this Paragraph VI, is to ensure the continued operation of the Dow Gas Phase Metallocene PE Assets in the same businesses in which the Dow Gas Phase Metallocene PE Assets are engaged at the time of the Acquisition; to ensure that BP (or such other Acquirer as the Commission may approve) is a viable and competitive participant in the markets for licensing PE Technology and Metallocene Catalyst Systems, and for the development of PE Technology and Metallocene Catalyst Systems; and to remedy the lessening of competition resulting from the Acquisition, as alleged in the Commission's complaint.

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

A. At the time of consummation of the Acquisition, Respondents shall contribute the Unipol Gas Phase PE Technology Business to Univation.

B. At the time of consummation of the Acquisition, Respondents shall grant to Univation, with the right to sublicense others, the Unipol Process Technology for Ethylene Polymers, and shall provide that upon termination or dissolution of Univation, at

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any time and for any reason or no reason, or transfer of control or any equity interest in Univation from Exxon Mobil to Respondents, Exxon (or Exxon's successor in interest other than Respondents) shall retain nonexclusive rights to the Unipol Process Technology for Ethylene Polymers and to all technology owned or controlled by Univation, including the right to sublicense to others, and to develop, use or license Unipol Process Technology for Ethylene Polymers with any PE Catalyst Systems, any agreement between Respondents and Exxon to the contrary notwithstanding.

C. Respondents shall not require Exxon to make royalty payments to Univation for Metallocene Catalyst Technology in an amount exceeding Respondents' royalty payments to Univation for Metallocene Catalyst Technology, calculated on a calendar year basis.

D. Dow, when it becomes part owner of Univation, shall support and use its best efforts (including without limitation by vote of its management, directors or shares) (i) to assure that Univation takes no action inconsistent with Respondents' obligations under this Order, and (ii) in support of any proposal by Exxon Mobil to expand the Univation Field to include Density down to 0.900 grams per cubic centimeter.

VIII.

IT IS FURTHER ORDERED that Respondents shall comply with all terms of the Order to Maintain Assets, attached to this Order and made a part hereof as Appendix A, which Order shall continue in effect until such time as Respondents have divested each of the Businesses and Assets To Be Divested as required by this Order.

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IX.**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 monitor Respondents' compliance with the terms of this Order and the Divestiture Agreement(s) made a part of this Order.

B. If one or more Monitor Trustees are appointed pursuant to Paragraph IX.A. of this Order, Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of each 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 and the Divestiture Agreement(s) 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 this Order and in consultation with the Commission.

3. Within ten (10) days after appointment of the Monitor Trustee, Respondents shall execute an 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 and the relevant Divestiture Agreement(s)

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in a manner consistent with the purposes of this Order. 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 the earlier of: (i) the expiration of this Order pursuant to Paragraph XIV; or (ii) the expiration of all the terms that comprise the Divestiture Agreement(s).

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 and the Divestiture Agreement(s), 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 and the Divestiture Agreement(s).

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

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(including the duties of the Monitor Trustee's employees), including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from 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 IX.

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 and the Divestiture Agreement(s).

10. The Monitor Trustee shall report in writing to the Commission concerning Respondents' compliance with this Order and the Divestiture Agreement(s) every ninety days for a period of two years from the date Respondents sign the Consent Agreement and annually thereafter on the anniversary of the date this Order becomes final during the remainder of the Monitor Trustee's period of appointment, and at such other times as representatives of the Commission may request.

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

A. If Respondents have not divested, absolutely and in good faith and with the Commission's prior approval, each of the Businesses and Assets to Be Divested within the time periods required by this Order, the Commission may appoint a trustee to divest any of the Businesses and Assets to Be Divested that have

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not been divested (“the Remaining Businesses and Assets to Be Divested”). In the event that the Commission or the Attorney General brings an action pursuant to § 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*l*), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a trustee in such action to divest the Remaining Businesses and Assets to Be Divested. 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 Respondents to comply with this Order.

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

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

D. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Remaining Businesses and Assets to Be Divested.

E. Within ten (10) days after appointment of the trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights

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and powers necessary to permit the trustee to effect the divestitures required by this Order.

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

G. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Remaining Businesses and Assets to Be Divested or to any other relevant information, as the trustee may request. Respondents shall develop such financial or other information as such trustee may 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.

H. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously at no minimum price. The divestiture shall be made in the manner and to the acquirer or acquirers as set out in Paragraphs II, III, IV, and VI of this Order; *provided, however*, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by Respondents from among those approved by the Commission; *provided further, however*, that Respondents shall

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

I. The trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Respondents such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the Respondents, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Remaining Businesses and Assets to Be Divested.

J. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

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

L. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee

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issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures required by this Order.

M. In the event that the trustee determines that he or she is unable to divest the Remaining Businesses and Assets to Be Divested in a manner consistent with the Commission's purpose as described in Paragraphs II, III, IV, and VI, the trustee may divest such additional ancillary assets related to the Businesses and Assets to Be Divested and effect such arrangements as are necessary to satisfy the requirements of this Order.

N. The trustee shall have no obligation or authority to operate or maintain the Remaining Businesses and Assets to Be Divested.

O. The trustee shall report in writing to Respondents and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture, until the Businesses and Assets to be Divested have been divested.

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

A. Within thirty (30) days after Respondents sign the Consent Agreement and every thirty (30) days thereafter until thirty (30) days after Respondents have divested the Dow Global Ethyleneamines Business, the Dow Global Ethanolamines Business, the Dow Gas Spec MDEA Business, and the Dow Gas Phase Metallocene PE Assets, as required by the provisions of Paragraphs II, III, IV, VI, and VII of this Order, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with Paragraphs II, III, IV, VI, and VII of this Order. 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 Paragraphs II, III, IV, VI, and VII of the Order, including a description of all substantive contacts or negotiations for the

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divestiture and the identity of all parties contacted. Respondents shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture; and

B. Within thirty (30) days after the Respondents sign the Agreement Containing Consent Order and every six (6) months thereafter until the earlier of: (i) the third anniversary of the date of this Order; or (ii) expiration of all the terms of all the contracts that comprise the Huntsman Agreement, the Ineos Agreement, the BP Divestiture and License Agreement, any New Ethyleneamines Divestiture Agreement, any New Ethanolamines Divestiture Agreement, or any New Gas Spec MDEA Divestiture Agreement, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with the Huntsman Agreement, the Ineos Agreement, the BP Divestiture and License Agreement, any New Ethyleneamines Divestiture Agreement, any New Ethanolamines Divestiture Agreement, any New Gas Spec MDEA Divestiture Agreement. Respondents shall submit such compliance reports on an annual basis beginning on the fourth anniversary of the date of this Order until the earlier of: (i) the tenth anniversary of the date of this Order; or (ii) expiration of all the terms of the all the contracts that comprise the Huntsman Agreement, the Ineos Agreement, the BP Divestiture and License Agreement, any New Ethyleneamines Divestiture Agreement, any New Ethanolamines Divestiture Agreement, or any New Gas Spec MDEA Divestiture Agreement. All compliance reports submitted by Respondents shall identify and describe in reasonable detail all disputes (including, but not limited to, any allegation or claim that any person is in breach of its obligations under this Order, including but not limited to any contracts incorporated into this Order) with either the Interim Trustee or Acquirer.

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XII.

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, 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 the Order.

XIII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, upon written request, Respondents shall permit any duly authorized representative of the Commission:

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

B. Upon five days' notice to Respondents and without restraint or interference from them, to interview in the presence of counsel, officers, directors, employees, agents or independent contractors of Respondents.

XIV.

IT IS FURTHER ORDERED that this Order shall terminate on March 15, 2011.

By the Commission.

Decision and Order

APPENDIX A: ORDER TO MAINTAIN ASSETS

CONFIDENTIAL APPENDICES B-D
[Redacted from Public Record Version]

CONFIDENTIAL APPENDICES G-I
[Redacted from Public Record Version]

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CONFIDENTIAL APPENDIX E
Public VersionAssets Excluded from the Definitions of the
Dow Global Ethanolamines Business and the
Dow Gas Spec MDEA Business

1. All current assets, including without limitation, all cash, cash equivalents and other short-term investments, prepaid rent, prepaid supplies, advances and other prepaid expenses and deposits and accounts or notes receivable, of the Dow Global Ethanolamines Business and the Dow Gas Spec MDEA Business, excluding inventory ("Current Assets"), that were in existence prior to August 1, 2000 or that result from collections, disposals or realizations of Current Assets that were in existence prior to August 1, 2000;
2. all assets sold or otherwise disposed of in the ordinary course of business and not in violation of any provisions of the Ineos Agreement, any New Ethanolamines Divestiture Agreement or any New Gas Spec MDEA Divestiture Agreement during the period from the date of such agreements until the divestiture of the Dow Global Ethanolamines Business and the Dow Gas Spec MDEA Business;
3. intellectual property that is not unique to the Dow Global Ethanolamines Business or the Dow Gas Spec MDEA Business and has general uses or applications in Respondents' other businesses, provided however, that, to the extent such intellectual property is used in the Dow Global Ethanolamines Business or the Dow Gas Spec MDEA Business, Dow shall grant Acquirer a nonexclusive, worldwide license to use such intellectual property in the operation of the Dow Global Ethanolamines Business or the Dow Gas Spec MDEA Business, as the case may be;
4. any insurance policies or insurance coverage (or assumed coverage);

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5. any rights pursuant to any agreement or contract between Dow and any of its affiliates;
6. employment agreements between Dow and any employees of the Dow Global Ethanolamines Business or the Dow Gas Spec MDEA Business;
7. all buildings and equipment (other than laboratory equipment and software relating to the Gas Spec laboratory) relating to the manufacture of MDEA and MMEA (including Gas Spec products), including the MDEA and MMEA production facilities located at the Freeport Site;
8. all rights, including the right to use, in or to any the trade name and trademark whether or not registered in any country in the world which includes the term "DOW" or the DOW DIAMOND design;
9. the services of employees of the Dow Global Ethanolamines Business who are not transferring to the Acquirer;
10. the services of employees of the Dow Gas Spec MDEA Business who are not transferring to the Acquirer;
11. all refunds, rebates or similar payments of taxes to the extent such taxes were paid by or on behalf of Dow prior to August 1, 2000;
12. all tax returns of Dow;
13. any books and records that Dow is required by law to retain so long as Dow delivers at least one copy thereof to Acquirer;
14. any rights of Dow under the Ineos Agreement, any New Ethanolamines Divestiture Agreement or any New Dow Gas Spec MDEA Divestiture Agreement;

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15. the real property underlying Block 55 of the Plaquemine Site and any other real property;
16. all correspondence and documents, including the confidentiality agreements entered into by Dow in connection with the sale of the Dow Global Ethanolamines Business and Dow Gas Spec MDEA Business, related to any third party bid to purchase the Dow Global Ethanolamines Business or the Dow Gas Spec MDEA Business;
17. any permit used, required or necessary for aspects of the businesses of Dow other than the Dow Global Ethanolamines Business or the Dow Gas Spec MDEA Business regardless of whether such permit also covers the operations of these businesses;
18. assets, properties or rights of Union Carbide or rights of Dow vis-à-vis Union Carbide (it being understood and agreed that Dow and Union Carbide may conduct ethanolamines and gas-treating businesses after consummation of the Acquisition);
19. all terminals owned by Dow, and all terminals used by Dow in any business other than the Dow Global Ethanolamines Business;
20. all terminals owned by Dow, and all terminals used by Dow in any business other than the Dow Gas Spec MDEA Business;
21. [redacted - confidential information]
22. [redacted - confidential information]
23. agreements, contracts, licenses, leases of personal property, indentures, mortgages, instruments, security interests, purchase and sale orders and other similar arrangements, commitments or understandings that are related to

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businesses other than the Dow Global Ethanolamines Business or the Dow Gas Spec MDEA Business;

24. [redacted - confidential information]
25. the identity of any customers of Dow's gas-treating business other than the customers of the Dow Gas Spec MDEA Business;
26. all tangible property that is not used in the Dow Global Ethanolamines Business or the Dow Gas Spec MDEA Business;
27. any intellectual property that is licensed to the Acquirer as part of the divestiture of the Dow Global Ethanolamines Business or the Dow Gas Spec MDEA Business;
28. [redacted - confidential information]
29. any patents, patent applications, inventions, trade secrets, know-how, formulae or other intellectual property owned by Dow relating to the manufacture, formulation, sale or use of MDEA or MMEA otherwise than for use or sale in gas-processing either or both (a) under the trademarks GAS/SPEC CS Plus Solvent or GAS/SPEC SS (with or without additional symbols) or (b) using the GAS/SPEC formulations;
30. [redacted - confidential information]
31. any collective bargaining agreements;
32. [redacted - confidential information]; and
33. [redacted - confidential information]

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CONFIDENTIAL APPENDIX F
Public VersionAssets Excluded from the Definition of the
Dow Global Ethyleneamines Business

1. Assets, properties and rights of Dow related to the operation of the Terneuzen Plant and any terminals Dow uses as storage facilities in The Netherlands, including raw materials located at the Terneuzen Plant, but not including: (i) assets relating to the sale or marketing (as opposed to production) of Ethyleneamines at the Terneuzen Plant; (ii) intellectual property used to manufacture Ethyleneamines; (iii) all certifications, registrations and similar rights held by Dow that are necessary to enable Acquirer to fulfill its obligations under contracts involving the delivery of Ethyleneamines produced at the Terneuzen Plant; and (iv) all customer lists relating to sales of Ethyleneamines produced at the Terneuzen Plant and associated customer files, and all contracts with customers and distributors of the Terneuzen Plant;
2. all current assets (other than inventory), including without limitation, all cash, cash equivalents, and other short-term investments, prepaid rent, prepaid supplies, advances and other prepaid expenses and deposits and accounts or notes receivable;
3. raw materials inventory located at the Terneuzen Plant;
4. the following assets of Dow's Castmate business:
 - a. all tangible assets (other than books and records), including personal property such as machinery, mobile and immobile equipment, furniture, furnishings, vehicles, tools, tooling, dies, stores, parts, supplies and other tangible personal property, used to manufacture Castmate (but not Ethyleneamines or AEEA);

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- b. Dow's inventory of latex and any contracts for the supply of latex, in each case used to manufacture Castmate; and
 - c. engineering spare parts and lab equipment (other than lab equipment dedicated to Castmate or related to Castmate and Ethyleneamines, taken together) used to manufacture Castmate;
- 5. all assets sold or otherwise disposed of to unaffiliated third parties or, prior to the Acquisition, Union Carbide in the ordinary course of business and not in violation of any provisions of the Huntsman Agreement or any New Ethyleneamines Agreement during the period from the date of such agreements until the closing date of the divestiture of the Dow Global Ethyleneamines Business;
 - 6. intellectual property that is not unique to the Dow Global Ethyleneamines Business and has general uses or applications in Respondents' other businesses, provided however, that, to the extent such intellectual property is used in the Dow Global Ethyleneamines Business, Dow shall grant Acquirer a nonexclusive, worldwide license to use such intellectual property in the operation of the Dow Global Ethyleneamines Business;
 - 7. any insurance policies or insurance coverage (or assumed coverage);
 - 8. any rights pursuant to any agreement or contract between Dow and any of its affiliates;
 - 9. all receivables and payables with Dow;
 - 10. all rights, including the right to use, in or to any trade name and trademark whether or not registered in any country in the world which includes the term "DOW" or the DOW DIAMOND design;

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11. services of employees of the Dow Global Ethyleneamines Business who are not transferring to the Acquirer;
12. all refunds, rebates or similar payments of taxes to the extent such taxes were paid by or on behalf of Dow;
13. all tax returns of Dow;
14. any books and records that Dow is required by law to retain, so long as Dow delivers at least one copy thereof to the Acquirer of the Dow Global Ethyleneamines Business;
15. any rights of Dow under the Huntsman Agreement or any New Ethyleneamines Agreement;
16. the real property underlying the A-3800 Block and the A-3400 Block of the Freeport Site;
17. all correspondence and documents, including the confidentiality agreements entered into by Dow in connection with the sale of the Dow Global Ethyleneamines Business related to any third party bid to purchase the Dow Global Ethyleneamines Business; provided however that:
(i) Dow shall take all actions necessary to enforce such confidentiality agreements on behalf of Acquirer; and (ii) to the extent the assignment or disclosure of such confidentiality agreements to Acquirer would not constitute a breach, Dow shall assign or transfer such confidentiality agreements to Acquirer, as provided in the Order;
18. [redacted - confidential information]
19. any permit, authorization or approval used, required or necessary for aspects of businesses of Dow other than the Dow Global Ethyleneamines Business regardless of whether such permit, authorization or approval also covers operations of the Dow Global Ethyleneamines Business;

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20. assets, properties or rights of Union Carbide or rights of Dow vis-à-vis Union Carbide (it being understood and agreed that Dow or Union Carbide may conduct an ethyleneamines and AEEA business after consummation of the Acquisition);
21. [redacted - confidential information]
22. [redacted - confidential information]
23. [redacted - confidential information]
24. all collective bargaining agreements; and
25. [redacted - confidential information]

Order

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent The Dow Chemical Company (“Dow”) of Respondent Union Carbide Corporation (“Union Carbide”), and Respondents having been furnished thereafter with a draft of Complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge the 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 (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of the 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 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 this Order to Maintain Assets:

1. Respondent The Dow Chemical Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, having its principal offices at 2030 Dow Center, Midland, Michigan 48674.

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2. Respondent Union Carbide Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal executive offices located at 39 Old Ridgebury Road, Danbury, Connecticut 06817.

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

I.

IT IS ORDERED that, as used in this Order to Maintain Assets, the definitions used in the attached Decision and Order shall apply, and that, for purposes of this Order to Maintain Assets, the following definitions shall also apply:

- A. “Persons with Access to Non-Public Confidential Information” means (1) Respondents’ Support Personnel, (2) employees of Respondents who were employees of the Dow Global Ethyleneamines Business, the Dow Global Ethanolamines Business, or the Dow Gas Spec MDEA Business during any time since January 1, 1998, as well as (3) any other employees of Respondents who had access to Non-Public Confidential Information during any time since January 1, 1998.
- B “Decision and Order” means the Decision and Order, incorporated into and made a part of the Consent Agreement.

II.

IT IS FURTHER ORDERED that:

- A. From the date Respondents sign the Consent Agreement until the Effective Date of Divestiture, Respondents shall:
 - 1. Maintain the Businesses and Assets to Be Divested in substantially the same condition (except for normal wear

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and tear) existing at the time Respondents sign the Consent Agreement and take such action that is consistent with the past practices of Respondents in connection with the Businesses and Assets to Be Divested and is taken in the ordinary course of the normal day-to-day operations of Respondents;

2. Keep available the services of the current officers, employees, and agents of the Businesses and Assets to Be Divested; and maintain the relations and good will with suppliers, customers, landlords, creditors, employees, agents, and others having business relationships with the Businesses and Assets to Be Divested; and
 3. Preserve the Businesses and Assets to Be Divested intact as an ongoing business and 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 Businesses and Assets to Be Divested would be diminished.
- B. Respondents shall adhere to and abide by the Divestiture Agreements incorporated by reference into this Order to Maintain Assets and made a part hereof.
- C. From the date Respondents sign the Consent Agreement until the date this Order to Maintain Assets terminates pursuant to Paragraph VII:
1. Respondents shall not assign Persons with Access to Non-Public Confidential Information to any employment positions or duties relating to Respondents' Ethyleneamines Business, Respondents' Ethanolamines Business, or Respondents' MDEA Business.
 2. Respondents' Ethyleneamines Business, Respondents' Ethanolamines Business, or Respondents' MDEA Business shall not retain, request, receive, solicit, accept,

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nor seek to obtain, any Non-Public Confidential Information.

III.

IT IS FURTHER ORDERED that:

1. At any time after Respondents sign the Consent Agreement, the Commission may appoint one or more Persons to serve as Monitor Trustee to monitor Respondents' compliance with the terms of this Order to Maintain Assets, Decision and Order, and the Divestiture Agreement(s) made a part of this Order.
2. If one or more Monitor Trustees are appointed pursuant to Paragraph III of this Order to Maintain Assets, Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of each 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) 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 the Order to Maintain Assets, Decision and Order and the Divestiture Agreement(s) 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 the Order to Maintain Assets and in consultation with the Commission.

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3. Within ten (10) days after appointment of the Monitor Trustee, Respondents shall execute an 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 the Order to Maintain Assets, Decision and Order and the Divestiture Agreement(s), in a manner consistent with the purposes of such orders and agreements. 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 for such time as is necessary to monitor Respondents' compliance with the provisions of this Order to Maintain Assets.
5. The Monitor Trustee shall have full and complete access to Respondents' books, records, documents, personnel, facilities and technical information relating to compliance with the Order to Maintain Assets, Decision and Order and the Divestiture Agreement(s), 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, Decision and Order and the Divestiture Agreement(s).
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

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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 the duties of the Monitor Trustee's employees), including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from 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 III.
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, Decision and Order and the Divestiture Agreement(s).
10. The Monitor Trustee shall report to the Commission in writing concerning compliance by Respondents with the provisions of this Order to Maintain Assets, Decision and Order and Divestiture Agreement(s), within twenty (20) days from the date of appointment and every thirty (30) days thereafter during the

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remainder of the Monitor Trustee's period of appointment, and at such other time as representatives of the Commission may request.

3. The Monitor Trustee(s) appointed pursuant to Paragraph III.A. of this Order to Maintain Assets may be the same person(s) appointed as Monitor Trustee(s) pursuant to Paragraph IX.A. of the Decision and Order, and/or as divestiture trustee(s) pursuant to Paragraph X.A. of the Decision and Order in this matter.

IV.

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, 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 the Decision and Order or this Order to Maintain Assets.

V.

IT IS FURTHER ORDERED that within thirty (30) days after Respondents sign the Consent Agreement and every thirty (30) days thereafter until thirty (30) days after Respondents have divested the Dow Global Ethyleneamines Business, the Dow Global Ethanolamines Business, the Dow Gas Spec MDEA Business, and the Dow Gas Phase Metallocene PE Assets, as required by the provisions of Paragraphs II, III, IV, VI, and VII of the Decision and Order, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order to Maintain Assets and the Decision and Order. 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 Paragraphs II, III, IV, VI, and VII of the Decision and Order, including a

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description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondents shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

VI.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order to Maintain Assets, upon written request, Respondents shall permit any duly authorized representative of the Commission:

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

B. Upon five days' notice to Respondents and without restraint or interference from them, to interview in the presence of counsel, officers, directors, employees, agents or independent contractors of Respondents.

VII.

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

1. 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
2. such time as all Businesses and Assets to Be Divested have been divested pursuant to the terms of the Consent Agreement.

By the Commission.

Analysis

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

Issued when the Commission tentatively approved a proposed consent order on February 5, 2001

I. Introduction

The Federal Trade Commission (“Commission”) has accepted for public comment a Decision and Order (“Order”), pursuant to an Agreement Containing Consent Orders (“Consent Agreement”), against The Dow Chemical Company (“Dow”) and Union Carbide Corporation (“Carbide”) (collectively “Respondents”). The Order is intended to resolve anticompetitive effects stemming from the proposed merger of Dow and Carbide (the “Merger”). As described below, the Order seeks to remedy anticompetitive effects of the merger in polyethylene, ethyleneamines, ethanolamines and methyldiethanolamine (“MDEA”). The Order remedies those anticompetitive effects by requiring Respondents to divest and license certain intellectual property and other assets relating to polyethylene to BP Amoco plc (“BP”); to divest Dow’s worldwide businesses in ethyleneamines to Huntsman International LLC (“Huntsman”); and to divest Dow’s worldwide ethanolamines business and its MDEA business in the United States and Canada to Ineos Group plc (“Ineos”). The Commission has also issued an Order to Maintain Assets that requires Respondents to preserve the businesses they are required to divest as a viable, competitive, and ongoing operation until the divestiture is achieved.

The Order, if finally issued by the Commission, would settle charges that the Merger may have substantially lessened competition in the markets for polyethylene and polyethylene technology, ethyleneamines, ethanolamines and MDEA. The Commission has reason to believe that the Merger would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. The proposed complaint, described below, relates the basis for this belief.

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II. Description of the Parties and the Proposed Merger

Dow, headquartered in Midland, Michigan, is a large, worldwide chemical company, with particular strength in polyethylene, the world's most widely used plastic, and in key technologies relating to the manufacture of polyethylene. Carbide, headquartered in Danbury, Connecticut, is also a large, worldwide chemical company, and a leading developer and licensor of polyethylene process technology.

Pursuant to a merger agreement dated August 8, 1999, Dow and Carbide propose to merge in a transaction pursuant to which Carbide shareholders would exchange their shares for shares of Dow.

III. The Proposed Complaint

According to the Commission's proposed complaint, the merger would substantially reduce competition in four lines of commerce: linear low density polyethylene ("LLDPE") in the United States and Canada, and related technology (both metallocene catalysts and reactor processes) worldwide; the worldwide market for metallocene catalysts for use in producing LLDPE; the worldwide market for LLDPE reactor process technology; the worldwide market for ethyleneamines; the worldwide market for ethanolamines; and the market for branded MDEA in the United States and Canada.

A. Count One: Polyethylene

The proposed complaint alleges that the merger would substantially reduce competition in polyethylene. Three interrelated polyethylene markets are affected by the merger: (1) LLDPE in the United States and Canada; (2) metallocene catalysts for LLDPE production worldwide; and (3) LLDPE reactor process technology worldwide. As alleged in the proposed complaint and described below, the reduction or elimination of competition in metallocene catalyst technology, resulting from the merger, in turn

Analysis

reduces competition in LLDPE itself and in LLDPE reactor process technology. The reduction in competition in LLDPE process technology in turn further reduces competition in LLDPE.

Polyethylene is the world's most widely used plastic, and LLDPE is the fastest growing type of polyethylene. LLDPE is particularly well suited for applications that require both flexibility and strength. One of the most significant uses of LLDPE is in making trash bags, and LLDPE is used to make bags out of plastic films that are strong, thin and puncture resistant. Dow and Carbide are leading producers of LLDPE in the United States and Canada, and throughout the world.

The proposed complaint alleges that LLDPE is a differentiated product, and that Dow and Carbide are among the LLDPE producers that have succeeded in developing specialty, high performance polymers demanded by significant users of LLDPE (notably makers of branded trash bags and cast stretch film).¹ Dow has historically led the industry in production and sale of premium LLDPE polymers tailored to deliver performance characteristics demanded by many LLDPE users, and has been able to sell premium LLDPE at premium prices.

Polyethylene is made in polymerization reactions in the presence of a catalyst. Both the reactor technology and the catalyst technology are patented, and both Dow and Carbide are leading developers of reactor technology. Carbide's reactor technology, called "Unipol," is the world's most widely licensed

¹ In a differentiated product market, the merger of firms whose products are closer substitutes is more likely to result in a significant lessening of competition, because sales that (pre-merger) one of the merging parties would have lost to the other, in the event of a price increase, would now be retained by the merged firm. U.S. Dep't of Justice & Federal Trade Comm'n, *Horizontal Merger Guidelines* § 2.21; *FTC v. Swedish Match*, slip op. 33-34 (D.D.C. Dec. 14, 2000) (Civ. No. 00-1501 TFH).

Analysis

polyethylene process technology. The other significant licensed LLDPE technology is “Innovene,” owned by BP. Both Unipol and Innovene make polyethylene in a process in which ethylene is in a gaseous form during polymerization (“gas phase”). Dow’s reactor technology, which Dow does not license, polymerizes ethylene in solution. The large majority of LLDPE reactor capacity is gas phase rather than solution.

Dow and Exxon Mobil Corp. (“Exxon”) have succeeded in developing and commercializing “metallocene” catalysts, which represent a significant advance over conventional LLDPE catalysts. The proposed complaint alleges that, if metallocene catalysts were generally available to LLDPE producers, those producers likely would be able to erode Dow’s position as the world’s leading producer of premium LLDPE polymers.

Both Dow and Exxon entered into joint ventures with the leading gas technology firms (BP and Carbide, respectively) to develop and commercialize metallocene catalysts for use in gas reactors. Both the Dow/BP joint development program and the Exxon/Carbide joint venture, Univation Technologies LLC (“Univation”), succeeded in adapting metallocene catalysts for use in gas reactors; both sought to license that technology to other gas-process LLDPE producers; and both indeed sold licenses to metallocene catalysts for gas reactors.

In 1999, however, Dow entered into an agreement to merge with Carbide, which would result in Dow becoming a partner with Exxon in Univation. As alleged in the proposed complaint, at or about the time Dow entered into the merger agreement with Carbide, Dow determined that it would not continue its joint development program with BP, and that it would not license its metallocene catalyst to BP (with rights to sublicense), thereby effectively terminating any ability by BP to license metallocene catalysts in competition with Univation (in which Dow would, as a result of the merger, succeed to Carbide’s interest).

Analysis

The proposed complaint alleges that each of the polyethylene markets would be highly concentrated as a result of the merger. The proposed complaint further alleges that Dow and Carbide are direct and significant actual competitors in the market for LLDPE in the United States and Canada; that Dow and Carbide (through Univation) are direct and significant actual competitors in the market for metallocene catalyst technology worldwide; and that Dow and Carbide are actual and potential competitors in the market for LLDPE process technology worldwide. The proposed complaint further alleges that, as part of its course of dealing in connection with the merger, Dow's actions terminating the Dow/BP joint development program and refusing to license metallocene catalysts to BP significantly reduced competition in LLDPE process technology by impairing BP's ability to compete in that market.² The proposed complaint also alleges that entry into the relevant markets would not be timely, likely, or sufficient to deter or offset adverse effects of the acquisition on competition.

The proposed complaint alleges that Respondents' merger would eliminate actual or potential, direct, and substantial competition between Respondents in the relevant markets. Elimination of this competition would likely result in increased prices for LLDPE polymers, metallocene technology licenses and LLDPE process technology licenses; and lessened innovation in each of these markets. Specifically, by eliminating BP as an

² The Commission can, under Section 5 of the FTC Act, 15 U.S.C. § 45, infer that facially independent actions or agreements nonetheless constitute intertwined events that should be considered together for the purpose of evaluating whether their effect constitutes a violation of the Act. *SKF Industries, Inc.*, 94 F.T.C. 6, 95 (1979). The proposed complaint alleges that Dow's decision to enter into the merger agreement with Carbide, and its decisions (1) to allow the Dow/BP joint development agreement to expire by its terms and (2) not to license its metallocene technology to BP, are sufficiently related to consider together in examining the effects of the merger.

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alternative source of metallocene catalysts for Dow's competitors (the majority of which use gas phase LLDPE reactor technology), and by acquiring Carbide's interest in Univation, Dow would be in a position to impede the development, licensing and use of metallocene catalysts and thereby benefit Dow's own polyethylene business. The merger (and the related termination of the BP/Dow joint development agreement) would also lessen BP's ability to compete with Univation in polyethylene process technology, and thereby further impair competition in polyethylene.

B. Count Two: Ethyleneamines

Ethyleneamines are a family of chemicals containing at least one ethylene and one amine molecule and are used in a broad variety of applications, including lubricating oil additives, chelating agents, wet-strength resins, epoxy curing agents, surfactants, personal care products, pulp and paper products, and fungicides. Dow and Carbide are the only producers of ethyleneamines in the United States and Canada, and together sold approximately \$170 million worth of ethyleneamines in 1999. There are no cost-effective substitutes for ethyleneamines in the end-uses for which they are used.

Dow and Carbide compete in the United States and Canada in the production and sale of ethyleneamines, and also compete outside the United States and Canada. The proposed complaint alleges that the United States and Canada constitute a properly defined geographic market, and that the world also constitutes a properly defined geographic market. Whether the market is defined as the United States and Canada (in which Dow and Carbide are the only producers) or the world (in which the market is highly concentrated, and Dow and Carbide combined would have more than 50% of worldwide capacity), the merger would result in a highly concentrated market, and concentration would increase substantially. The proposed complaint alleges that entry would not be timely, likely or sufficient to constrain an anticompetitive price increase or reduction in output.

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C. Count Three: Ethanolamines

Ethanolamines are a family of chemicals, comprising monoethanolamine (“MEA”), diethanolamine (“DEA”), and triethanolamine (“TEA”), made by reacting ethylene oxide and ammonia. Ethanolamines are used in a broad variety of applications, including the production of ethyleneamines, and in surfactants, personal care products, herbicides, oil and gas refining applications, pharmaceuticals and fabric softeners. The proposed complaint alleges that there are no cost-effective substitutes for ethanolamines in the end-uses for which they are used, and that the proper geographic market to analyze the effect of the merger on the sale of ethanolamines is the United States and Canada.

Carbide and Dow are the largest and third largest producers, respectively, of ethanolamines in the United States and Canada. As a result of the merger, proposed Respondents would have more than 60% of sales in the relevant market, and two firms would have more than 90%. The proposed complaint alleges that entry would be unlikely to remedy the likely anticompetitive effects of the merger.

D. Count Four: MDEA-Based Gas Treating Products

Methyldiethanolamine (“MDEA”) is a powerful solvent used in gas treating to remove unwanted compounds from gas streams. MDEA is used in oil refineries, natural gas plants, ammonia plants and other facilities that handle hydrocarbon gases. While some MDEA is sold alone, a substantial portion of the MDEA sold in the United States and Canada is sold blended with additives and other chemicals, including ethanolamines, and is sold on a branded basis. Branded MDEA is often sold bundled with engineering services relating to gas treating.

The proposed complaint alleges that MDEA-based gas treating products constitute a relevant product market and that the United States and Canada constitute a relevant geographic market. As alleged in the proposed complaint, because of the high cost

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associated with failure of gas treating products, customers that purchase MDEA-based gas treating products would be unlikely to substitute commodity MDEA in the event of a small but significant, nontransitory price increase of MDEA-based gas treating products. Dow and Carbide are the two largest sellers of MDEA-based gas treating products. As a result of the merger, Respondents would have approximately 60% of the relevant market, and three firms would have approximately 90% of that market. The proposed complaint alleges that entry is unlikely to counteract the competition lost by the merger.

IV. Terms of the Agreement Containing Consent Order

The proposed Order is designed to remedy the anticompetitive effects of the merger in the markets alleged in the proposed complaint, as described below.

A. Polyethylene

The proposed Order would remedy the anticompetitive effects of the merger by (1) allowing BP to develop and license metallocene catalysts to the majority of LLDPE producers worldwide, *i.e.*, those that make LLDPE in gas phase reactors, without being subject to patent claims by Dow, Univation or Exxon; and (2) enabling Exxon to develop and license metallocene catalysts and Unipol reactor process technology independently of Dow, should Dow's participation in Univation frustrate Exxon's interest in developing and licensing that technology.

Section VI of the proposed Order would enable BP to develop and license metallocene catalysts by (1) divesting to BP Dow's interest in the intellectual property developed jointly by Dow and BP, to which BP's rights were uncertain as a result of Dow's decision to terminate the joint development effort without resolving the ownership of those rights; (2) divesting Dow's remaining intellectual property (and related assets) specific to the gas phase process; (3) licensing Dow's metallocene catalyst

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technology to BP, with the right to sublicense that technology; and (4) licensing to BP, with rights to sublicense, Exxon patents controlled by Univation that otherwise would expose BP's efforts to develop, commercialize and license metallocene catalysts to infringement suit brought by Exxon or Univation. The divestiture and license would be made pursuant to a Divestiture and License Agreement executed by Dow and BP, which agreement is incorporated in and made part of the proposed Order.³

The purpose of the divestiture and license of intellectual property and related assets to BP is to enable BP to compete with Univation in developing, commercializing and licensing metallocene technology, remedying the anticompetitive effect in the market for metallocene catalyst technology. Moreover, by allowing BP to offer metallocene catalysts in connection with licenses of its Innovene gas phase reactor technology, the proposed Order is intended to preserve the viability of that technology as an alternative to Carbide's Unipol technology (which, through Univation, can offer metallocene technology). By preserving competition in both metallocene catalyst technology and LLDPE reactor process technology, the proposed order would allow BP licensees (or future licensees) in the United States and Canada to obtain metallocene catalysts from a source not controlled by Dow, thereby preserving metallocenes as a threat to Dow's premium polymer business, and providing a reactor process technology solution (including metallocenes) independent of Respondents.

Section VII of the proposed Order enables Exxon to retain rights, including the right to sublicense, in all Univation technology and in Carbide's Unipol process should the Univation venture be dissolved or should Dow come to control the Univation venture. The grant of this right to Exxon provides additional

³ That Divestiture and License Agreement is confidential and is not being placed on the public record. However, that Agreement may not contradict the terms of the proposed Order.

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remedy to the anticompetitive effects alleged in the proposed complaint by allowing Exxon to develop and license the Unipol process independently of Dow, should Dow seek to impede Univation's licensing business for the benefit of Dow's polyethylene business.

B. Ethyleneamines

The provisions of Section II of the proposed Order would remedy the anticompetitive effects in the markets for ethyleneamines, as alleged in Count Two of the proposed complaint, by requiring proposed Respondents to divest Dow's global ethyleneamines business to Huntsman, a worldwide producer of chemicals and plastics, including ethylene derivatives. Huntsman does not today produce ethyleneamines.

If the Commission, at the time that it makes the proposed Order final, notifies Respondents that it does not approve of the proposed divestiture to Huntsman, or the manner of the divestiture, the proposed Order provides that Respondents would rescind the sale to Huntsman and divest Dow's global ethyleneamines business within six months to an acquirer approved by the Commission and in a manner approved by the Commission. If Respondents did not complete the divestiture in that period, a trustee would be appointed who, upon Commission approval, would have the authority to divest Dow's global ethyleneamines business to a Commission-approved acquirer.

C. Ethanolamines

The provisions of Section III of the proposed Order would remedy the anticompetitive effects in the markets for ethanolamines, as alleged in Count Three of the proposed complaint, by requiring proposed Respondents to divest Dow's global ethanolamines business to Ineos, a producer of ethylene derivatives and other chemicals, which does not today produce ethanolamines.

If the Commission, at the time that it makes the proposed Order final, notifies Respondents that it does not approve of the

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proposed divestiture to Ineos, or the manner of the divestiture, the proposed Order provides that Respondents would rescind the sale to Ineos and divest Dow's global ethanolamines business within six months to an acquirer approved by the Commission and in a manner approved by the Commission. If Respondents did not complete the divestiture in that period, a trustee would be appointed who, upon Commission approval, would have the authority to divest Dow's global ethanolamines business to a Commission-approved acquirer.

D. MDEA-Based Gas Treating Products

The provisions of Section IV of the proposed Order would remedy the anticompetitive effects in the markets for MDEA-based gas treating products, as alleged in Count Four of the proposed complaint, by requiring proposed Respondents to divest Dow's "Gas Spec" MDEA business to Ineos.

If the Commission, at the time that it makes the proposed Order final, notifies Respondents that it does not approve of the proposed divestiture to Ineos, or the manner of the divestiture, the proposed Order provides that Respondents would rescind the sale to Ineos and divest Dow's Gas Spec MDEA business within six months to an acquirer approved by the Commission and in a manner approved by the Commission. If Respondents did not complete the divestiture in that period, a trustee would be appointed who, upon Commission approval, would have the authority to divest Dow's Gas Spec MDEA business to a Commission-approved acquirer.

E. Other Provisions of the Proposed Order

The proposed Order requires Respondents to provide the Commission with an initial report setting forth in detail the manner in which Respondents will comply with the provisions relating to the divestiture of assets. The proposed Order further requires Respondents to provide the Commission with a report of compliance with the Order within thirty (30) days following the

Analysis

date the Order becomes final and every thirty (30) days thereafter until they have complied with the terms of the Order.

F. The Order To Maintain Assets

Respondents have also agreed to the entry of an Order to Maintain Assets, which has been entered by the Commission and is effective immediately. The Order to Maintain Assets requires Respondents to preserve the ethyleneamine, ethanolamine and MDEA businesses that they are required to divest as viable and competitive businesses and conduct the businesses in the ordinary course of business until those businesses are divested to the Commission-approved acquirer. The Order to Maintain Assets also requires Respondents to preserve and maintain the polyethylene assets to be divested and licensed to BP.

V. Opportunity for Public Comment

The proposed Order has been placed on the public record for thirty (30) 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 proposed Order, including the proposed divestiture, 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

EL PASO ENERGY CORPORATION, ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-3996; File No. 0010086
Complaint, January 29, 2001--Decision, March 19, 2001*

This consent order addresses the acquisition by Respondent El Paso Energy Corporation -- a firm engaged in the transportation, gathering, processing, and storage of natural gas; the marketing of natural gas, power, and other energy-related commodities; power generation; the development and operation of energy infrastructure facilities worldwide; and the domestic exploration and production of natural gas and oil -- of Respondent The Coastal Corporation, a diversified energy and petroleum products company that explores for, produces, gathers, processes, transports, stores, markets and sells natural gas throughout the United States, and is also engaged in refining, marketing, and distributing petroleum products; coal mining; and marketing power. The order, among other things, requires the respondents to divest their interests in (1) the Gulfstream Natural Gas System to Duke Energy and Williams Gas Pipeline; (2) the Empire Pipeline to Westcoast Energy; (3) the Green Canyon and Tarpon Pipelines to Williams Field Services; (4) the Manta Ray, Nautilus, and Nemo Pipelines to Enterprise Products; and (5) the Stingray Pipeline to Shell Gas Transmission and Enterprise Products. The order also requires the respondents to divest their interests in the Midwestern Gas Transmission Pipeline, the UTOS Pipelines, and the Iroquois Pipeline to acquirers approved by the Commission. In addition, the order requires Respondent Dominion Resources -- which already owns sixteen percent of the Iroquois Pipeline -- to provide the Commission with advance notice before increasing its interest in that pipeline.

Participants

For the Commission: *John C. Weber, Art Nolan, Mark Menna, Stephen Y. Wu, Robert E. Friedman, Kenton A. James, Alison M Chin, Evelyn Boynton, William R. Vigdor, Phillip L. Broyles, Daniel P. Ducore, Jeff Dahnke, Geary A. Gessler, Jeffrey H. Fischer and Daniel O'Brien.*