

Complaint

IN THE MATTER OF

HEXION LLC
AND
HUNTSMAN CORPORATIONCONSENT 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-4235; File No. 071 0212**Complaint, October 2, 2008 – Decision, November 13, 2008*

This consent order addresses the proposed acquisition of Huntsman Corporation by Hexion LLC. The companies have been primary competitors in the development, manufacture, marketing, and sale of specialty epoxy resins. In addition, Hexion is a supplier of formaldehyde to three of the four producers of methyl diisocyanate or diphenylmethane diisocyanate (MDI) in the United States, of which Huntsman is one. To address competition concerns in the specialty epoxy resin market, the order calls for Hexion to divest its specialty epoxy business to Spolek Pro Chemickou A Hutni Vyrobu or another Commission-approved buyer, including facilities in Germany and the United States and their related assets. The order requires that Hexion provide for comprehensive and timely technology transfer to the acquirer, and that Hexion license or assign to the acquirer all intellectual property related to the production of specialty epoxy resins. To address concerns that the acquisition would increase the likelihood of coordinated interaction among competitors in the MDI market, the order requires Hexion to institute procedures to ensure that its acquired MDI business not have access directly or indirectly to competitively sensitive non-public information obtained by its formaldehyde division from other MDI producers. The order prohibits Hexion from using any competitively sensitive non-public information obtained from its competitors in an anticompetitive manner. The order provides that the Commission may appoint an Interim Monitor to ensure that the respondents comply with all of their obligations and perform all of their responsibilities. If the respondents have not fully complied with the obligations to assign, grant, license, divest, transfer, deliver, or otherwise convey relevant assets as required by the order, the Commission may appoint a Divestiture Trustee to do so. The order also requires the respondents to notify the Commission of any proposed dissolution of respondents; any proposed acquisition, merger or consolidation; or any other change in respondents, if such change might affect compliance obligations arising out of the order.

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Participants

For the Commission: *Roberta S. Baruch, Wallace W. Easterling, Sebastian Lorigo, Angelike Mina, David Morris, Catharine M. Moscatelli, Phillip Runco, Jaqueline Tapp, Leonor Velaquez, and David A. Von Nirschl.*

For the Respondents: *Jonathan M. Rich and Willard K. Tom, Morgan, Lewis & Bockius LLP; and William R. Vigdor, Vinson & Elkins.*

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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 by said Acts, the Federal Trade Commission (the “Commission”), having reason to believe that respondents Hexion LLC (“Hexion”), a corporation, and Huntsman Corporation (“Huntsman”), both subject to the jurisdiction of the Commission, have agreed to an acquisition of Huntsman by Hexion 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 Hexion LLC is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 180 East Broad Street, Columbus, OH, 43215. Hexion LLC, through its Hexion Specialty Chemicals, Inc. subsidiary, is engaged in a wide variety of businesses, including the development, manufacture, marketing, and sale of specialty epoxy resins and formaldehyde.

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2. Respondent Huntsman is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 500 Huntsman Way Salt Lake City, Utah, 84108. Huntsman is a global company engaged in a wide variety of businesses, including the development, manufacture, marketing, and sale of Specialty Epoxy Resins and Methyl Diisocyanate or Diphenylmethane Diisocyanate (“MDI”).

II. JURISDICTION

3. Huntsman and Hexion 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 TRANSACTION

4. Hexion has proposed to acquire Huntsman. The acquisition agreement requires Hexion to pay approximately \$10.6 billion. Pursuant to that agreement, Hexion will acquire Huntsman shares and certain outstanding debts of Huntsman.

IV. THE RELEVANT PRODUCT MARKETS

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

A. Specialty Epoxy Resins

6. One relevant line of commerce within which to analyze the likely effects of the proposed transaction is the market for Specialty Epoxy Resins. Specialty Epoxy Resins are value added high performance epoxy resin products, including, but not limited to, blends, formulations, advanced resins, as well as

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multifunctional resins. The Specialty Epoxy resins sold into each application segment constitute distinct application specific end-use product markets. These resins are sold in conjunction with curing agents, modifiers, and other ingredients and components necessary to the use of these resins.

7. For example, Specialty Epoxy Resins are used in aerospace and wind turbine blade applications because of their heat resistance and mechanical properties. In aerospace composite applications they provide low weight, thermal reliability, and exceptional mechanical properties. Specialty Epoxy Resins are used in wind blade application because of, among other things, their low weight, tensile strength, and dimensional stability. Consequently, there are no practical and cost effective substitutes for these products. Each of the end-use application markets is highly concentrated as there are few qualified suppliers of Specialty Epoxy Resins for these applications.

8. Due to their enhanced performance, as compared to basic epoxy resins and other chemicals, Specialty Epoxy Resins are used in a wide range of demanding applications where enhanced performance is required. Due to their superior properties and cost-effectiveness, customers have stated they would not switch away from Specialty Epoxy Resins in response to a small but significant and non-transitory increase in their price.

9. The relevant geographic area within which to analyze the likely effects of the proposed transaction in the market for the production and sale of Specialty Epoxy Resins is North America. Due to the need for domestic supply and customer qualification requirements, among other impediments, customers in North America would not switch to foreign firms to any appreciable degree in response to a small but significant and non-transitory increase in their price.

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**B. The Methyl Diisocyanate or Diphenylmethane
Diisocyanate (“MDI”) Market**

10. Another relevant line of commerce within which to analyze the likely effects of the proposed transaction is the Methyl Diisocyanate or Diphenylmethane Diisocyanate (“MDI”) market. The terms Methyl Diisocyanate and Diphenylmethane Diisocyanate are synonymous. MDI is a chemical that comes in various forms, but the bulk of sales are in the polymeric form (similar to the form in which plastics are produced). MDI is used to manufacture polyurethane foam (rigid and flexible), binders, and polyurethane elastomers. It is a chemical used in various applications, including construction insulation, refrigeration, and composite wood products. Because of its desirable properties, customers have stated they would not switch to other chemicals in response to a small but significant and non-transitory increase in the price of MDI.

11. Formaldehyde is a versatile chemical and an essential ingredient used in the manufacture of MDI. It provides useful characteristics such as desirable insulating and mechanical properties. Moreover, its use in MDI provides consumers with the benefit of its desirable characteristics, while avoiding some of the harmful characteristics associated with the use of pure formaldehyde, which is a carcinogen. Formaldehyde is also used in a variety of applications other than MDI, including particle boards, oriented strand boards, laminates, and adhesives

12. The relevant geographic area within which to analyze the likely effects of the proposed transaction in the MDI market is North America. MDI imports are minimal as it is generally consumed in the geographic region in which it is produced. Moreover, it is not practical to import these products due to the deterioration of these products during transport over long distances. Consequently, there are minimal imports of MDI into North America and customers in North America would not switch

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to foreign firms to any appreciable degree in response to a small but significant and non-transitory increase in their price.

V. MARKET STRUCTURE

13. The overall market for Specialty Epoxy Resins is highly concentrated. Additionally, as stated above, each of the application specific end-use markets is also highly concentrated. Hexion and Huntsman are leading competitors in the design, manufacture, and sale of Specialty Epoxy Resins accounting for between 60 and 90 percent of sales in the various application specific end-use markets in North America. Hexion and Huntsman each had close to \$1 billion in sales of Specialty Epoxy Resins in 2007.

14. The market for MDI is highly concentrated. There are only four producers of MDI in the United States: Huntsman, Dow Chemical, BASF, and Bayer. MDI imports are minimal as it is generally consumed in the geographic region in which it is produced. Hexion supplies formaldehyde to all the U.S. MDI producers, except Dow. Consequently, the market for MDI and the formaldehyde used in its production is highly concentrated. Total U.S. sales of MDI in 2007 were approximately \$2 billion.

15. Hexion, as a supplier of formaldehyde to MDI producers, receives competitively sensitive non-public information from three of the four MDI producers in North America. Such information includes, but is not limited to, MDI production forecasts, MDI demand forecasts and updates to these forecasts on a weekly basis as well as projected long term MDI demand forecasts for the next 6 to 12 months, and schedules for periodic shutdowns of MDI production facilities.

VI. CONDITIONS OF ENTRY

16. Entry into the overall Specialty Epoxy Resins market and the various application specific end-use markets in North America

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

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

18. In the Specialty Epoxy Resins market and the various application specific end-use markets in North America, it is costly to build facilities to produce these resins and the entrant is required to incur substantial sunk costs. Respondents have portfolios of over 100 patents covering their resins, and long and costly qualification requirements and capacity constraints add to the difficulty of entry, among other things. In the MDI market, entry takes several years and is very expensive with a significant sunk cost component included in MDI entry costs.

VII. COMPETITIVE EFFECTS OF THE PROPOSED ACQUISITION

19. The effects of the transaction, 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; in the following ways, among others:

- a. by eliminating actual, direct, and substantial competition between Hexion and Huntsman in the Specialty Epoxy Resins market and the various application specific end-use markets in North America;
- b. by increasing the likelihood that Hexion will exercise market power unilaterally in the market for Specialty Epoxy

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Resins and the various application specific end-use markets in North America; and

c. by increasing the likelihood of coordinated interaction among competitors in the market for MDI.

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

21. 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 second day of October, 2008, issues its Complaint against said Respondents.

By the Commission.

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The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Hexion LLC (“Hexion”) of Respondent Huntsman Corporation (“Huntsman”), and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton

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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 said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined to accept the executed Consent Agreement and to place 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 issues its Complaint, makes the following jurisdictional findings and issues this Order to Maintain Assets:

1. Respondent Hexion LLC is a limited liability company organized, existing and doing business under and by virtue of the laws of State of Delaware, with its headquarters address c/o Hexion Specialty Chemicals, Inc., 180 East Broad Street, Columbus, Ohio 43215.

2. Respondent Huntsman Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its headquarters address at 500 Huntsman Way, Salt Lake City, Utah 84108.

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

ORDER**I.**

IT IS ORDERED that, as used in this Order to Maintain Assets, the following definitions and the definitions used in the Consent Agreement and the proposed Decision and Order (and when made final, the Decision and Order), which are incorporated herein by reference and made a part hereof, shall apply:

- A. “Hexion” means Hexion LLC, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Hexion (including, but not limited to, Hexion Specialty Chemicals, Inc., Nimbus Merger Sub Inc. and Hexion Specialty Chemicals GmbH) and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition, Hexion shall include Huntsman.
- B. “Huntsman” means Huntsman Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Huntsman, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Respondents” mean Hexion and Huntsman, individually and collectively.
- D. “Decision and Order” means the:

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1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance of a final Decision and Order by the Commission; and
 2. Final Decision and Order issued by the Commission following the issuance and service of a final Decision and Order by the Commission.
- E. “Interim Monitor” means any monitor appointed pursuant to Paragraph IV of this Order to Maintain Assets or Paragraph V of the Decision and Order.
- F. “Orders” means the Decision and Order and this Order to Maintain Assets.
- G. “Commission” means the Federal Trade Commission.
- H. “Specialty Epoxy Resin Product Business(es)” means Respondent Hexion’s business throughout the World related to all of the Specialty Epoxy Resin Products, including the research, Development, manufacture, distribution, marketing, and sale of each Specialty Epoxy Resin Product and the assets related to such business, including, but not limited to, the Specialty Epoxy Resin Product Assets.
- I. “Pre-Acquisition Marketing Plan” means any marketing or sales plan that was planned or implemented within the period immediately prior to the Acquisition and without consideration of the influence of the pending Acquisition for the Specialty Epoxy Resin Product Business.

II.

IT IS FURTHER ORDERED that from the date this Order to Maintain Assets becomes final:

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- A. Until Respondents fully transfer the Specialty Epoxy Resin Product Assets to the Acquirer, Respondents shall take such actions as are necessary to maintain the full economic viability, marketability and competitiveness of the Specialty Epoxy Resin Product Business, to minimize any risk of loss of competitive potential for the Specialty Epoxy Resin Product Business, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Specialty Epoxy Resin Product Business except for ordinary wear and tear. Respondents shall not sell, transfer, encumber or otherwise impair the Specialty Epoxy Resin Product Assets (other than in the manner prescribed in the Decision and Order) nor take any action that lessens the full economic viability, marketability or competitiveness of the Specialty Epoxy Resin Product Business.
- B. Respondent Hexion shall retain all of Respondent Hexion's, rights, title, and interest in the InfraTec Assets, until such assets are transferred by Respondent Hexion to the Acquirer pursuant to the Decision and Order.
- C. Prior to the Effective Date and as a condition precedent to the consummation of the Acquisition, Respondents shall secure all consents and waivers from all Third Parties (including, without limitation, such consents and waivers related to the InfraTec Assets) that are necessary to permit Respondents to divest the Specialty Epoxy Resin Product Assets required to be divested pursuant to the Decision and Order to the Acquirer, and/or to permit such Acquirer to continue the research, Development, manufacture, sale, marketing or distribution of the Specialty Epoxy Resin Products;

provided, however, Respondents may satisfy this requirement by certifying that the Acquirer has executed

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all such agreements directly with each of the relevant Third Parties.

- D. Until Respondents fully transfer the Specialty Epoxy Resin Product Assets to the Acquirer, Respondents shall maintain the operations of the Specialty Epoxy Resin Product Business in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance of the assets of such Business) and/or as may be necessary to preserve the marketability, viability, and competitiveness of the Specialty Epoxy Resin Product Business and shall use their best efforts to preserve the existing relationships with the following: suppliers; vendors and distributors, including, but not limited to, the High Volume Accounts; customers; Agencies; employees; and others having business relations with the Specialty Epoxy Resin Product Business. Respondents' responsibilities shall include, but are not limited to, the following:
1. Respondents shall provide the Specialty Epoxy Resin Product Business with sufficient working capital to operate at least at current rates of operation, to meet all capital calls with respect to such Business and to carry on, at least at their scheduled pace, all capital projects, business plans and promotional activities for the Specialty Epoxy Resin Product Business;
 2. Respondents shall continue, at least at their scheduled pace, any additional expenditures for the Specialty Epoxy Resin Product Business authorized prior to the date the Consent Agreement was signed by Respondents including, but not limited to, all research, Development, manufacture, distribution, marketing and sales expenditures;

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3. Respondents shall provide such resources as may be necessary to respond to competition against the Specialty Epoxy Resin Products and/or to prevent any diminution in sales of the Specialty Epoxy Resin Products during and after the Acquisition process and prior to divestiture of the related Specialty Epoxy Resin Product Assets;
 4. Respondents shall provide such resources as may be necessary to maintain the competitive strength and positioning of the Specialty Epoxy Resin Products at the High Volume Accounts;
 5. Respondents shall make available for use by the Specialty Epoxy Resin Product Business funds sufficient to perform all routine maintenance and all other maintenance as may be necessary to, and all replacements of, the assets related to such business, including the Specialty Epoxy Resin Product Assets;
 6. Respondents shall provide the Specialty Epoxy Resin Product Business with such funds as are necessary to maintain the full economic viability, marketability and competitiveness of the Specialty Epoxy Resin Product Business; and
 7. Respondents shall provide such support services to the Specialty Epoxy Resin Product Business as were being provided to these Business by Respondents as of the date the Consent Agreement was signed by Respondents.
- E. Until Respondents fully transfer the Specialty Epoxy Resin Product Assets to the Acquirer, Respondents shall maintain a work force at least as equivalent in size, training, and expertise to what has been associated with the Specialty Epoxy Resin Products for the relevant

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Specialty Epoxy Resin Product's most recent Pre-Acquisition Marketing Plan.

- F. Until the Closing Date for each respective set of Specialty Epoxy Resin Product Assets, Respondents shall provide all the related Specialty Epoxy Resin Product Core Employees with reasonable financial incentives to continue in their positions and to research, Develop, and manufacture the relevant Specialty Epoxy Resin Products consistent with past practices and/or as may be necessary to preserve the marketability, viability and competitiveness of such Specialty Epoxy Resin Products pending divestiture and to ensure successful execution of the Pre-Acquisition Marketing Plans related to the relevant Specialty Epoxy Resin Products. Such incentives shall include a continuation of all employee benefits offered by Respondents until the Closing Date for the divestiture of the respective Specialty Epoxy Resin Product Assets has occurred, including regularly scheduled raises, bonuses, vesting of pension benefits (as permitted by Law), and additional incentives as may be necessary to prevent any diminution of the relevant Specialty Epoxy Resin Product's competitiveness.
- G. Respondents shall, during the Specialty Epoxy Resin Product Employee Access Period, not interfere with the hiring or employing by the relevant Acquirer of Specialty Epoxy Resin Product Core Employees, and shall remove any impediments within the control of Respondents that may deter these employees from accepting employment with such Acquirer, including, but not limited to, any noncompete provisions of employment or other contracts with Respondents that would affect the ability or incentive of those individuals to be employed by such Acquirer. In addition, Respondents shall not make any counteroffer to a Specialty Epoxy Resin Product Core Employee who

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receives a written offer of employment from the relevant Acquirer;

provided, however, subject to the conditions of continued employment prescribed in this Order, this Paragraph II.G. shall not prohibit Respondents from continuing to employ any Specialty Epoxy Resin Product Core Employee under the terms of such employee's employment with Respondents prior to the date of the written offer of employment from the Acquirer to such employee.

H. Pending divestiture of the Specialty Epoxy Resin Product Assets, Respondents shall:

1. not use, directly or indirectly, any such Confidential Business Information related to the research, Development, manufacturing, marketing, or sale of the Specialty Epoxy Resin relevant other than as necessary to comply with the following:
 - a. the requirements of the Orders;
 - b. Respondents' obligations to the Acquirer under the terms of any Remedial Agreement related to Specialty Epoxy Resin Products; or
 - c. applicable Law;
2. not disclose or convey any such Confidential Business Information, directly or indirectly, to any person except the Acquirer or other persons specifically authorized by the Acquirer to receive such information;
3. not provide, disclose or otherwise make available, directly or indirectly, any such Confidential Business Information related to the marketing or sales of the

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Specialty Epoxy Resin Products to the employees associated with business related to those Retained Products that are used or suitable for use in commerce for the same or similar purposes as the Specialty Epoxy Resin Products; and

4. shall institute procedures and requirements to ensure that the above-described employees:
 - a. do not provide, disclose or otherwise make available, directly or indirectly, any Confidential Business Information in contravention of this Order to Maintain Assets; and
 - b. do not solicit, access or use any Confidential Business Information that they are prohibited under this Order to Maintain Assets from receiving for any reason or purpose.
- I. Not later than thirty (30) days following the Effective Date, Respondents shall provide to all of Respondents' employees and other personnel who may have access to Confidential Business Information related to each of the respective Specialty Epoxy Resin Products written or electronic notification of the restrictions on the use of such information by Respondents' personnel. At the same time, if not provided earlier, Respondents shall provide a copy of such notification by e-mail with return receipt requested or similar transmission, and keep an electronic file of such receipts for one (1) year after the Closing Date. Respondents shall provide a copy of the form of such notification to the Acquirer, the Interim Monitor(s), and the Commission. Respondents shall also obtain from each employee covered by this Paragraph II.I. an agreement to abide by the applicable restrictions. Respondents shall maintain complete records of all such agreements at

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Respondents' corporate headquarters and shall provide an officer's certification to the Commission stating that such acknowledgment program has been implemented and is being complied with. Respondents shall monitor the implementation by their employees and other personnel of all applicable restrictions, and take corrective actions for the failure of such employees and personnel to comply with such restrictions or to furnish the written agreements and acknowledgments required by this Order to Maintain Assets. Respondents shall provide the Acquirer with copies of all certifications, notifications and reminders sent to Respondents' employees and other personnel.

- J. Respondents shall adhere to and abide by the Remedial Agreements (which agreements shall not vary or contradict, or be construed to vary or contradict, the terms of the Orders, it being understood that nothing in the Orders shall be construed to reduce any obligations of Respondents under such agreement(s)), which are incorporated by reference into this Order to Maintain Assets and made a part hereof.
- K. The purpose of this Order to Maintain Assets is to maintain the full economic viability, marketability and competitiveness of the Specialty Epoxy Resin Product Business through its full and complete transfer to the Acquirer, to minimize any risk of loss of competitive potential for the Specialty Epoxy Resin Product Business, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Specialty Epoxy Resin Product Assets except for ordinary wear and tear.

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

- A. For the time period after the date on which Respondents signs the Consent Agreement,
1. Respondents shall not use, directly or indirectly, any MDI Non-Public Information related to the research, Development, manufacturing, marketing, or sale of MDI Products that is obtained from an MDI Producer other than as necessary to comply with the following:
 - a. the requirements of this Orders;
 - b. Respondents' obligations to such MDI Producer under the terms of any agreement related to MDI Products; or
 - c. applicable Law;
 2. Respondents shall not disclose or convey any such MDI Non-Public Information, directly or indirectly, to any Person *except* the respective MDI Producer, other Persons specifically authorized by such MDI Producer to receive such information, and such employees of Respondent Hexion directly assigned to the FDBU;
 3. Respondents shall not provide, disclose or otherwise make available, directly or indirectly, any such MDI Non-Public Information to the employees associated with the MDI Acquired Business;
 4. Respondents shall ensure that no manager with direct line authority over the FDBU provides, discloses, or otherwise makes available, directly or indirectly, any

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MDI Non-Public Information to the employees associated with the MDI Acquired Business, including, without limitation, those employees with direct line authority over the MDI Acquired Business;

5. Respondents shall prohibit any employee associated with the FDBU from discussing with, or providing, disclosing or otherwise making available to, any employee associated with the MDI Acquired Business, directly or indirectly, any MDI Non-Public Information;
 6. Respondents shall institute procedures and requirements throughout the various entities of the Respondents to ensure the MDI Non-Public Information is protected as required by this Order to Maintain Assets.
- B. The purpose of this Paragraph III is to prevent Respondents from using the MDI Non-Public Information to the detriment of the research, Development, manufacturing, marketing, or sale of MDI Products of the MDI Producers; to the benefit of the MDI Products researched, Developed, manufactured, marketed, or sold by Respondents; or from otherwise using such information in an anticompetitive manner or in any unfair method of competition.

IV.

IT IS FURTHER ORDERED that:

- A. At any time after Respondents sign the Consent Agreement in this matter, the Commission may appoint an Interim Monitor to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by the Orders and the Remedial Agreements. The Commission may appoint one

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or more Interim Monitors to assure Respondents' compliance with the requirements of the Orders, and the related Remedial Agreements.

- B. The Commission shall select the Interim Monitor, subject to the consent of Respondent Hexion, which consent shall not be unreasonably withheld. If Respondent Hexion has not opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondent Hexion of the identity of any proposed Interim Monitor, Respondents shall be deemed to have consented to the selection of the proposed Interim Monitor.
- C. Not later than ten (10) days after the appointment of the Interim Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondents' compliance with the relevant requirements of the Orders in a manner consistent with the purposes of the Orders.
- D. If one or more Interim Monitors are appointed pursuant to this Paragraph or pursuant to the relevant provisions of the Decision and Order in this matter, Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of each Interim Monitor:
 - 1. The Interim Monitor shall have the power and authority to monitor Respondents' compliance with the divestiture and asset maintenance obligations and related requirements of the Orders, and shall exercise such power and authority and carry out the duties and

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responsibilities of the Interim Monitor in a manner consistent with the purposes of the Orders and in consultation with the Commission;

2. The Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission; and
3. The Interim Monitor shall serve until, the latter of:
 - a. the date of completion by Respondents of the divestiture of all Specialty Epoxy Resin Product Assets and the transfer of the Manufacturing Technology, Product Intellectual Property, and Product Licensed Intellectual Property in a manner that fully satisfies the requirements of the Orders; and
 - b. with respect to each Specialty Epoxy Resin Product, the date the Acquirer (or the Designee(s) of such Acquirer) has obtained all Product Approvals necessary to manufacture, market, import, export, and sell such Specialty Epoxy Resin Product and able to manufacture such Specialty Epoxy Resin Product in commercial quantities independently of Respondents;

provided, however, that, the Interim Monitor's service shall not exceed five (5) years from the date on which the Decision and Order becomes final;

provided further, that the Commission may shorten or extend this period as may be necessary or appropriate to accomplish the purposes of the Orders.

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- E. Subject to any demonstrated legally recognized privilege, the Interim Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to Respondents' compliance with their obligations under the Orders, including, but not limited to, their obligations related to the relevant assets. Respondents shall cooperate with any reasonable request of the Interim Monitor and shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondents' compliance with the Orders.
- F. The Interim Monitor 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 Interim Monitor shall have authority to employ, at the expense of the Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.
- G. Respondents shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations 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 Interim Monitor.

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- H. Respondent shall report to the Interim Monitor in accordance with the requirements of this Order to Maintain Assets and/or as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by Respondent, and any reports submitted by the Acquirer with respect to the performance of Respondent's obligations under the Orders or the Remedial Agreement(s). Within thirty (30) days from the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning performance by Respondent of its obligations under the Orders; *provided, however*, beginning one hundred twenty (120) days after Respondent has filed its final report pursuant to Paragraph VIII.C. of the related Decision and Order, and every one hundred twenty (120) days thereafter, the Interim Monitor shall report in writing to the Commission concerning progress by the Acquirer toward:
1. obtaining all of the relevant Product Approvals necessary to manufacture in commercial quantities, the Specialty Epoxy Resin Products independently of Respondents and;
 2. to secure sources of supply of the ingredients, inputs and components for the Specialty Epoxy Resin Products from entities other than Respondents.
- I. Respondents may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement;
- provided, however*, that such agreement shall not restrict the Interim Monitor from providing any information to the Commission.

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- J. The Commission may, among other things, require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Interim Monitor's duties.
- K. If the Commission determines that the Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided in this Paragraph or the relevant provisions of the Decision and Order in this matter.
- L. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders.
- M. The Interim Monitor appointed pursuant to this Order to Maintain Assets or the relevant provisions of the Decision and Order in this matter may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of the Decision and Order.

V.

IT IS FURTHER ORDERED that within thirty (30) days after the date this Order to Maintain Assets becomes final, and every thirty (30) days thereafter until Respondents have fully complied with their obligations their obligations under Paragraphs II.A. and II.B. of the related Decision and Order in this matter, 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

Order to Maintain Assets and the related Decision and Order; *provided, however*, that, after the Decision and Order in this matter becomes final, the reports due under this Order to Maintain Assets shall be consolidated with, and submitted to the Commission at the same time as, the reports required to be submitted by Respondents pursuant to Paragraph VIII of the Decision and Order.

VI.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to:

- A. any proposed dissolution of any Respondent;
- B. any proposed acquisition, merger or consolidation of any Respondent; or
- C. any other change in any Respondent including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order to Maintain Assets.

VII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order to Maintain Assets, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to any Respondent made to its principal United States offices, registered office of its United States subsidiary, or its headquarters address, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. access, during business office hours of such Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts,

Order to Maintain Assets

correspondence, memoranda and all other records and documents in the possession or under the control of such Respondent related to compliance with this Order to Maintain Assets, which copying services shall be provided by such Respondent at the request of the authorized representative(s) of the Commission and at the expense of the Respondent; and

- B. to interview officers, directors, or employees of such Respondent, who may have counsel present, regarding such matters.

VIII.

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

- A. Three (3) days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. The latter of:
 - 1. the day after the divestiture of all of the Specialty Epoxy Resin Product Assets, as required by and described in the Decision and Order, has been completed and each Interim Monitor, in consultation with Commission staff and the Acquirer, notifies the Commission that all assignments, conveyances, deliveries, grants, licenses, transactions, transfers and other transitions related to such divestitures are complete, or the Commission otherwise directs that this Order to Maintain Assets is terminated; or

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2. the day the related Decision and Order becomes final.

By the Commission.

DECISION AND ORDER

[Public Record Version]

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Hexion LLC (“Hexion”) of Respondent Huntsman Corporation (“Huntsman”), and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“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 said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents

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

1. Respondent Hexion LLC is a limited liability company organized, existing and doing business under and by virtue of the laws of State of Delaware, with its headquarters address c/o Hexion Specialty Chemicals, Inc., 180 East Broad Street, Columbus, Ohio 43215.

2. Respondent Huntsman Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its headquarters address at 500 Huntsman Way, Salt Lake City, Utah 84108.

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

ORDER**I.**

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

- A. “Hexion” means Hexion LLC, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Hexion

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(including, but not limited to, Hexion Specialty Chemicals, Inc. and Nimbus Merger Sub Inc.) and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition, Hexion shall include Huntsman.

- B. “Huntsman” means Huntsman Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Huntsman, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Respondents” mean Hexion and Huntsman, individually and collectively.
- D. “Commission” means the Federal Trade Commission.
- E. “Acquirer” means the following:
 - 1. a Person specified by name in this Order to acquire particular assets or rights that Respondents are required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order and that has been approved by the Commission to accomplish the requirements of this Order in connection with the Commission’s determination to make this Order final; or
 - 2. a Person approved by the Commission to acquire particular assets or rights that Respondents are required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order.
- F. “Acquisition” means Respondent Hexion’s acquisition of fifty percent (50%) or more of the voting securities of Respondent Huntsman.

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- G. “Agency(ies)” means any government regulatory authority or authorities in the world responsible for granting approval(s), clearance(s), qualification(s), license(s), or permit(s) for any aspect of the research, Development, manufacture, marketing, distribution, or sale of a Specialty Epoxy Resin Product or MDI Product. The term “Agency” includes, without limitation, the United States Environmental Protection Agency.
- H. “Closing Date” means the date on which Respondent(s) (or a Divestiture Trustee) consummates a transaction to assign, grant, license, divest, transfer, deliver, or otherwise convey the Specialty Epoxy Resin Product Assets to an Acquirer pursuant to this Order.
- I. “Confidential Business Information” means all information owned by, or in the possession or control of, Respondents that is not in the public domain and that is directly related to the research, Development, manufacture, marketing, commercialization, importation, exportation, cost, supply, sales, sales support, or use of the Specialty Epoxy Resin Product(s); *provided however*, that the restrictions contained in this Order regarding the use, conveyance, provision, or disclosure of “Confidential Business Information” shall not apply to the following:
1. information that subsequently falls within the public domain through no violation of this Order or breach of confidentiality or non-disclosure agreement with respect to such information by Respondents;
 2. information related to the Specialty Epoxy Resin Products that Respondent Huntsman can demonstrate it obtained without the assistance of Respondent Hexion prior to the Acquisition;

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3. information that is required by Law to be publicly disclosed;
 4. information that does not directly relate to the Specialty Epoxy Resin Product(s); or
 5. information relating to Respondents' general business strategies or practices relating to research, Development, manufacture, marketing or sales of products that does not discuss with particularity the Specialty Epoxy Resin Product(s).
- J. "Contract Manufacture" means to manufacture a Contract Manufacture Product by the Respondents or a Designee to be supplied to an Acquirer.
- K. "Contract Manufacture Product(s)" means all inputs and components of the Specialty Epoxy Resin Products, or any finished goods that are provided for resale as Specialty Epoxy Resin Products that, are not being manufactured at the Specialty Epoxy Resin Product Facilities on a regular basis as of the Closing Date, and that either are or were being manufactured by Hexion at any time on or after July 12, 2006.
- L. "Copyrights" means rights to all original works of authorship of any kind directly related to the Specialty Epoxy Resin Product(s) and any registrations and applications for registrations thereof, including, but not limited to, the following: all such rights with respect to all promotional, marketing and advertising materials, educational and training materials for the sales force, and sales forecasting models; copyrights in all process development data and reports relating to the research and Development of the Specialty Epoxy Resin Product(s) or of any materials used in the research, Development,

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manufacture, marketing or sale of the Specialty Epoxy Resin Product(s), including copyrights in all raw data, statistical programs developed (or modified in a manner material to the use or function thereof (other than through user preferences)) to analyze research data, market research data, market intelligence reports and statistical programs (if any) used for marketing and sales research; all copyrights in customer information; all records relating to employees who accept employment with the Acquirer (excluding any personnel records the transfer of which is prohibited by applicable Law); all copyrights in records, including customer lists, sales force call activity reports, vendor lists, sales data, manufacturing records, manufacturing processes, and supplier lists; all copyrights in data contained in laboratory notebooks relating to the Specialty Epoxy Resin Product(s); all copyrights in analytical and quality control data; and all correspondence with Agencies.

- M. “Designee” means any entity other than Respondents that will manufacture a Specialty Epoxy Resin Product for an Acquirer.
- N. “Development” means all research and development activities, including, without limitation, the following: test method development; stability testing; toxicology; formulation, including without limitation, customized formulation for a particular customer(s); process development; manufacturing scale-up; development-stage manufacturing; quality assurance/quality control development; statistical analysis and report writing; and conducting experiments for the purpose of obtaining any and all Product Approvals. “Develop” means to engage in Development.

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- O. “Direct Cost” means a cost not to exceed the cost of labor, material, travel and other expenditures to the extent the costs are directly incurred to provide the relevant assistance or service. “Direct Cost” to the Acquirer for its use of any of Respondents’ employees’ labor shall not exceed the average hourly wage rate for such employee; *provided, however*, in each instance where: (1) an agreement to divest relevant assets is specifically referenced and attached to this Order, and (2) such agreement becomes a Remedial Agreement for a Specialty Epoxy Resin Product, “Direct Cost” means such cost as is provided in such Remedial Agreement for that Specialty Epoxy Resin Product.
- P. “Divestiture Trustee” means the trustee appointed by the Commission pursuant to the relevant provisions of this Order.
- Q. “Domain Name” means the domain name(s) (universal resource locators), and registration(s) thereof, issued by any entity or authority that issues and maintains the domain name registration. The term “Domain Name” shall not include any trademark or service mark rights to such domain names other than the rights to the Trademarks required to be divested and shall not include those domain names listed in Appendix A.
- R. “Effective Date” means the date on which the Acquisition occurs.
- S. “Employee Information” means the following, for each Specialty Epoxy Resin Product Core Employee, as and to the extent permitted by the Law:
1. a complete and accurate list containing the name of each relevant employee (including former employees who were employed by Respondents within ninety

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(90) days of the execution date of any Remedial Agreement);

2. with respect to each such employee, the following information:
 - a. the date of hire and effective service date;
 - b. job title or position held;
 - c. a specific description of the employee's responsibilities related to the relevant Specialty Epoxy Resin Product; *provided, however*, in lieu of this description, Respondents may provide the employee's most recent performance appraisal;
 - d. the base salary or current wages;
 - e. the most recent bonus paid, aggregate annual compensation for Respondents' last fiscal year and current target or guaranteed bonus, if any;
 - f. employment status (*i.e.*, active or on leave or disability; full-time or part-time); and
 - g. any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and
3. at the Acquirer's option or the Proposed Acquirer's option (as applicable), copies of all employee benefit plans and summary plan descriptions (if any) applicable to the relevant employees.

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- T. “Expiration Date” means the earliest of the following days:
1. the day on which Respondent Hexion withdraws its tender offer for the voting securities of Respondent Huntsman;
 2. the day on which Respondent Hexion’s tender offer for the voting securities of Respondent Huntsman expires without extension or amendment by Respondent Hexion;
 3. the day on which a Third Party acquires fifty (50) percent or more of the voting securities of Respondent Huntsman; or
 4. the day six (6) months after the day on which this Order becomes final.
- U. “Formaldehyde and Derivatives Business Unit” or “FDBU” means the division within Respondent Hexion focused on the production and sale of formaldehyde and its derivatives, including Hexamine, Methaform and various other specialty chemicals produced when formaldehyde is reacted with various substances.
- V. “Formulated System” means the exact combination and proportion of epoxy resins, curing agents, reactive diluents and other components that achieves a particular set of application and end-use characteristics in a final product.
- W. “Government Entity” means any Federal, state, local or non-U.S. government, or any court, legislature, government agency, or government commission, or any judicial or regulatory authority of any government.
- X. “Hexion Stuttgart Assets” means all of Respondent Hexion’s Ownership Interest in Hexion Stuttgart, a limited

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liability company under and by virtue of the laws of the Federal Republic of Germany registered with the commercial register (*Handelsregister*) of the Local Court (*Amtsgericht*) of Stuttgart under HRB 21470.

- Y. “High Volume Account(s)” means any customer of Respondent Hexion whose annual and/or projected annual aggregate purchase amounts (on a company-wide level), in units or in dollars, of a Specialty Epoxy Resin Product in the United States from Respondent Hexion was, is, or is projected to be, among the top twenty highest of such purchase amounts by Respondent Hexion’s U.S. customers on any of the following dates: (1) the end of the last quarter that immediately preceded the date of the public announcement of the proposed Acquisition; (2) the end of the last quarter that immediately preceded the Effective Date; (3) the end of the last quarter that immediately preceded the Closing Date for the Specialty Epoxy Resin Product Assets; or 4) the end of the last quarter following the Acquisition and/or the Closing Date.
- Z. “InfraTec” means InfraTec Duisburg GmbH, a corporation organized, existing, and doing business under and by virtue of the laws of the Federal Republic of Germany, with its offices and principal place of business located at Varziner Strasse 49, 47138 Duisburg, Federal Republic of Germany. The term “InfraTec” shall include any Person in which Respondent Hexion holds an Ownership Interest and that: (1) holds or controls assets related to and located at the facility located at Varziner Strasse 49, 47138, at Duisburg, Federal Republic of Germany, such facility is identified in under the term “Specialty Epoxy Resin Product Facilities” in this Order, and (2) provides site services to that facility.

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- AA. “InfraTec Assets” means all of Respondent Hexion’s Ownership Interest in InfraTec. The term “InfraTec Assets” shall include, without limitation, all of Respondent Hexion’s Ownership Interest in InfraTec that Respondent Hexion held as of August 2, 2007, *i.e.*, that Ownership Interest representing seventy (70) percent of the total ownership of InfraTec.
- BB. “Interim Monitor” means any monitor appointed pursuant to Paragraph V of this Order or Paragraph IV of the related Order to Maintain Assets.
- CC. “Law” means all laws, statutes, rules, regulations, ordinances, and other pronouncements by any Government Entity having the effect of law.
- DD. “Manufacturing Employees” means all salaried employees of Respondent Hexion who have directly participated in the planning, design, implementation or operational management of the Manufacturing Technology of the Specialty Epoxy Resin Products (irrespective of the portion of working time involved unless such participation consisted solely of oversight of legal, accounting, tax or financial compliance) within the three (3) year period immediately prior to the Closing Date.
- EE. “Manufacturing Equipment” means all fixtures, equipment (including, without limitation technical equipment and computers), and machinery that is or has been used at the Specialty Epoxy Resin Product Facilities at any time since April 29, 2005, in the research, Development, or manufacture of a Specialty Epoxy Resin Product and that is suitable for use in the research, Development, or manufacture of a Specialty Epoxy Resin Product as of the Effective Date.
- FF. “Manufacturing Technology” means:

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1. all technology, trade secrets, know-how, and proprietary information (whether patented, patentable or otherwise) related to the manufacture of the Specialty Epoxy Resin Product(s), including, but not limited to, the following: all product specifications, processes, product designs, plans, trade secrets, ideas, concepts, manufacturing, engineering, and other manuals and drawings, standard operating procedures, flow diagrams, chemical safety, quality assurance, quality control, research records, compositions, annual product reviews, regulatory communications, control history, current and historical information associated with compliance with Agency regulations, and labeling and all other information related to the manufacturing process, and supplier lists; tabulations, chemical descriptions and specifications of, all raw materials inputs, components, and ingredients related to the Specialty Epoxy Resin Products; and
2. for those instances in which the manufacturing equipment is not readily available from a Third Party, at the Acquirer's option, all such equipment used to manufacture the Specialty Epoxy Resin Product(s).

GG. "Marketing and Business Development Employees" means all management level employees of Respondent Hexion who directly have participated (irrespective of the portion of working time involved) in the marketing, contracting, or promotion of the Product(s) within the three (3) year period immediately prior to the Closing Date. These employees include, without limitation, all management level employees having any responsibilities in the areas of sales management, brand management, sales training, market research, business development,

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epoxy resin and related specialty markets, but excluding administrative assistants.

HH. “Marketing Materials” means all marketing materials used specifically in the marketing or sale of a Specialty Epoxy Resin Product(s) prior to and as of the Closing Date, including, without limitation, all advertising materials, training materials, product data, mailing lists, sales materials (*e.g.*, sales call reports, vendor lists, sales data), marketing information (*e.g.*, competitor information, research data, market intelligence reports, statistical programs (if any) used for marketing and sales research), customer information (including customer net purchases information to be provided on the basis of either dollars and/or units for each month, quarter or year), sales forecasting models, educational materials, and advertising and display materials, speaker lists, promotional and marketing materials, Website content and advertising and display materials, artwork for the production of packaging components, television masters and other similar materials related to the Specialty Epoxy Resin Product(s).

II. “MDI Acquired Business” means the business of researching, Developing, manufacturing, marketing, exporting and/or selling MDI Products that Respondent Hexion acquires from Respondent Huntsman pursuant to the Acquisition.

JJ. “MDI Non-Public Information” means all information that is not in the public domain relating to an MDI Producer’s business related to MDI Products, including, without limitation, customer lists, price lists, marketing plans, production plans, contracts, expansion projects, cost information, marketing methods, competitively sensitive data or information, and all other information not available to the public.

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KK. “MDI Producer” means any Person that researches, Develops, manufactures, markets, imports, exports or sells any MDI Product other than the Respondents.

LL. “MDI Product(s)” or “MDI” means methylene diphenyl diisocyanate and/or diphenylmethane diisocyanate.

MM. “Order to Maintain Assets” means the Order to Maintain Assets incorporated into and made a part of the Agreement Containing Consent Orders.

NN. “Ownership Interest” means any and all rights, title, and interest, present or contingent, of the Respondent(s) to hold any voting or nonvoting stock, share capital, equity, assets or other interests or beneficial ownership in a specified entity or specified asset(s).

OO. “Patents” means all patents, patent applications, including provisional patent applications, invention disclosures, certificates of invention and applications for certificates of invention and statutory invention registrations, in each case existing as of the Closing Date (*except* where this Order specifies a different time), and includes all reissues, additions, divisions, continuations, continuations-in-part, supplementary protection certificates, extensions and reexaminations thereof, all inventions disclosed therein, and all rights therein provided by international treaties and conventions, related to any product of or owned by Respondents as of the Closing Date (*except* where this Order specifies a different time).

PP. “Person” means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, joint venture, or other business or Government Entity, and any subsidiaries, divisions, groups or affiliates thereof.

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QQ. “Product Approval(s)” means any approvals, registrations, permits, licenses, consents, authorizations, and other approvals, and pending applications and requests therefor, required by applicable Agencies related to the research, Development, manufacture, distribution, finishing, packaging, marketing, sale, storage or transport of the product.

RR. “Product Assumed Contracts” means all of the following contracts or agreements (copies of each such contract to be provided to the Acquirer on or before the relevant Closing Date and segregated in a manner that clearly identifies the purpose(s) of each such contract):

1. that make specific reference to the Specialty Epoxy Resin Product(s) and pursuant to which any Third Party purchases, or has the option to purchase, the Specialty Epoxy Resin Product(s) from Respondent Hexion;
2. pursuant to which Respondent Hexion purchases raw materials, inputs, components, or other necessary ingredient(s) or had planned to purchase the raw materials(s), inputs, components or other necessary ingredient(s) from any Third Party for use in connection with the manufacture of the Specialty Epoxy Resin Product(s);
3. relating to any experiments or scientific studies involving the Specialty Epoxy Resin Product(s);
4. with universities or other research institutions for the use of the Specialty Epoxy Resin Product(s) in scientific research;

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5. relating to the particularized marketing of the Specialty Epoxy Resin Product(s) or educational matters relating solely to the Specialty Epoxy Resin Product(s);
6. pursuant to which a Third Party manufactures or packages the Specialty Epoxy Resin Product(s) on behalf of Respondent Hexion;
7. pursuant to which a Third Party provides the Manufacturing Technology related to the Specialty Epoxy Resin Product(s) to Respondent Hexion;
8. pursuant to which a Third Party is licensed by Respondent Hexion to use the Manufacturing Technology;
9. constituting confidentiality agreements involving the Specialty Epoxy Resin Product(s);
10. involving any royalty, licensing, or similar arrangement involving the Specialty Epoxy Resin Product(s);
11. pursuant to which a Third Party provides any specialized services necessary to the research, Development, manufacture or distribution of the Specialty Epoxy Resin Products to Respondent Hexion including, but not limited to, consultation arrangements;
12. pursuant to which any Third Party collaborates with Respondent Hexion in the performance of research, Development, marketing, distribution or selling of the Specialty Epoxy Resin Product(s) or the Specialty Epoxy Resin Product(s) business;

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13. pursuant to which any entity that is, in whole or in part, owned by a Third Party, provides management services related to infrastructure expansion within, utility services within, transportation into or out of, or logistical support services within, any of the Specialty Epoxy Resin Product Facilities; and/or

provided, however, that where any such contract or agreement also relates to a Retained Product(s), Respondent Hexion shall assign the Acquirer all such rights under the contract or agreement as are related to the Specialty Epoxy Resin Product(s), but concurrently may retain similar rights for the purposes of the Retained Product(s).

SS. “Product Intellectual Property” means all of the following related to each Specialty Epoxy Resin Product (other than Product Licensed Intellectual Property):

1. Patents;
2. Copyrights;
3. Software;
4. Trademarks;
5. Trade Dress;
6. trade secrets, know-how, utility models, design rights, techniques, data, inventions, practices, recipes, raw material specifications, process descriptions, quality control methods in process and in final Specialty Epoxy Resin Products, protocols, methods and other confidential or proprietary technical, business, research, Development and other information, and all rights in any jurisdiction to limit the use or disclosure

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thereof, other than Product Licensed Intellectual Property;

7. rights to obtain and file for patents and copyrights and registrations thereof; and
8. rights to sue and recover damages or obtain injunctive relief for infringement, dilution, misappropriation, violation or breach of any of the foregoing;

provided, however, “Product Intellectual Property” does not include the corporate names or corporate trade dress of “Hexion” or “Huntsman”, or the corporate names or corporate trade dress of any other corporations or companies owned or controlled by Respondents or the related logos thereof;

provided further, however, Product Intellectual Property expressly includes all customer specific product formulations for Specialty Epoxy Resin Products, licenses from customers related to the manufacture of products for that specific customer, and all proprietary and/or trade secret information related to a particular customer.

TT. “Product Licensed Intellectual Property” means the following:

1. Patents that are related to a Specialty Epoxy Resin Product that Respondent Hexion can demonstrate have been routinely used, prior to the Effective Date, by Respondent Hexion for a Retained Product(s) that:
 - a. has been marketed or sold on an extensive basis by Respondent Hexion within the two-year period immediately preceding the Acquisition; or

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- b. for which, prior to the announcement of the Acquisition, there was an approved marketing plan to market or sell such a Retained Product on an extensive basis by Respondent Hexion; and
2. trade secrets, know-how, utility models, design rights, techniques, data, inventions, practices, methods, and other confidential or proprietary technical, business, research, Development, and other information, and all rights in the to limit the use or disclosure thereof, that are related to a Specialty Epoxy Resin Product and that Respondents can demonstrate have been routinely used, prior to the Effective Date, by Respondent Hexion for a Retained Product(s) that:
- a. has been marketed or sold on an extensive basis by Respondent Hexion within the two-year period immediately preceding the Acquisition; or
 - b. for which, prior to the announcement of the Acquisition, there was an approved marketing plan to market or sell such a Retained Product on an extensive basis by Respondent Hexion;

provided however, that, in cases where the aggregate retail sales in dollars of the Retained Product(s) within the two-year period immediately preceding the Acquisition collectively are less than the aggregate retail sales in dollars within the same period of the Specialty Epoxy Resin Product(s) collectively, the above-described intellectual property shall be considered, at the Acquirer's option, to be Product Intellectual Property and, thereby, subject to assignment to the Acquirer; *provided further, however*, that in such cases, Respondents may take a license back from the Acquirer for such intellectual property for use in connection with the Retained Products and

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such a license to Respondents may be perpetual, fully paid-up and royalty-free license(s) with rights to sublicense;

provided further, however, Product Licensed Intellectual Property expressly excludes all customer specific product formulations for Specialty Epoxy Resin Products, licenses from customers related to the manufacture of products for that specific customer, and all proprietary and/or trade secret information related to a particular customer as such property is exclusively Product Intellectual Property.

UU. “Proposed Acquirer” means an entity proposed by Respondents (or a Divestiture Trustee) to the Commission and submitted for the approval of the Commission to become the Acquirer of particular assets required to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed by Respondents pursuant to this Order.

VV. “Remedial Agreement(s)” means the following:

1. any agreement between Respondents and an Acquirer that is specifically referenced and attached to this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets or rights to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and that has been approved by the Commission to accomplish the requirements of the Order in connection with the Commission’s determination to make this Order final;
2. any agreement between Respondents and a Third Party to effect the assignment of assets or rights of Respondents related to a Specialty Epoxy Resin

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Product to the benefit of an Acquirer that is specifically referenced and attached to this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, that has been approved by the Commission to accomplish the requirements of the Order in connection with the Commission's determination to make this Order final;

3. any agreement between Respondents and an Acquirer (or between a Divestiture Trustee and an Acquirer) that has been approved by the Commission to accomplish the requirements of this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets or rights to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and that has been approved by the Commission to accomplish the requirements of this Order; and/or
4. any agreement between Respondents and a Third Party to effect the assignment of assets or rights of Respondents related to a Specialty Epoxy Resin Product to the benefit of an Acquirer that has been approved by the Commission to accomplish the requirements of this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto.

WW. "Research and Development Employees" means all salaried employees of Respondents who directly have participated in the research, Development, or regulatory approval process, or clinical studies of the Specialty Epoxy Resin Products (irrespective of the portion of working time involved, unless such participation consisted solely of oversight of legal, accounting, tax or financial compliance) within the three (3) year period immediately prior to the Closing Date.

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XX. “Research and Development Records” means all research and development records relating to Specialty Epoxy Resin Products including, but not limited to:

1. inventory of research and development records, research history, research efforts, research notebooks, research reports, technical service reports, testing methods, invention disclosures, and know how related to the Specialty Epoxy Resin Products;
2. all correspondence to Respondent Hexion from Agencies and from Respondent Hexion to the Agencies relating to Product Approval(s) submitted by, on behalf of, or acquired by, Respondent Hexion related to the Specialty Epoxy Resin Products;
3. annual and periodic reports related to the above-described Product Approval(s), including any safety update reports;
4. Agency-approved product labeling related to the Specialty Epoxy Resin Products;
5. currently used product usage instructions, including, without limitation, package inserts related to the Specialty Epoxy Resin Products;
6. Agency-approved circulars and information related to the Specialty Epoxy Resin Products;
7. reports relating to the protection of human safety and health related to the manufacture or use of the Specialty Epoxy Resin Products;

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8. reports relating to the protection of the environment related to the manufacture or use of the Specialty Epoxy Resin Products;
9. summary of product complaints from customers related to the Specialty Epoxy Resin Products; and
10. product recall reports filed with any Agency related to the Specialty Epoxy Resin Products.

YY. “Retained Product” means any product(s) manufactured by Respondent Hexion prior to the Effective Date at any site owned or operated by Respondent Hexion prior to the Effective Date other than the Specialty Epoxy Resin Product Facilities.

ZZ. “Sales Employees” means all employees of Respondent Hexion who directly have participated (irrespective of the portion of working time involved) in the marketing or promotion of the Specialty Epoxy Resin Product(s) directly to customers within the three (3) year period immediately prior to the Closing Date. This includes employees trained to perform such sales activity for a Specialty Epoxy Resin Product within the three (3) year period immediately prior to the Closing Date.

AAA. “Software” means computer programs related to the Specialty Epoxy Resin Product(s), including all software implementations of algorithms, models, and methodologies whether in source code or object code form, databases and compilations, including any and all data and collections of data, all documentation, including user manuals and training materials, related to any of the foregoing and the content and information contained on any Website; *provided, however*, that “Software” does not include software that is readily purchasable or licensable from sources other than the Respondents and which has

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not been modified in a manner material to the use or function thereof (other than through user preference settings).

BBB. “Specialty Epoxy Resin Products” means, all non-commodity, value-added, epoxy resin products, including, without limitation, epoxy novolacs, glycidyl amines, cycloaliphatic, mono and multifunctional reactive diluents, curing agents, specialty blends, solutions, Formulated Systems and brominated resins (including all such specialty epoxy resin products identified in Appendix B), Developed, in Development, researched, manufactured, marketed or sold by Respondent Hexion at the Specialty Epoxy Resin Product Facilities at any time since May 27, 2005.

CCC. “Specialty Epoxy Resin Product Assets” means all of Respondent Hexion’s rights, title and interest in and to all assets throughout the World related to Respondent Hexion’s business related to the Specialty Epoxy Resin Products to the extent legally transferable, including the research, Development, manufacture, distribution, marketing, and sale of the Specialty Epoxy Resin Products, including, without limitation,

1. all Product Intellectual Property related to the Specialty Epoxy Resin Product(s);
2. perpetual, fully paid-up and royalty-free license(s) with rights to sublicense to all Product Licensed Intellectual Property to use, make, distribute, offer for sale, promote, advertise, sell, import, export, or have used, made, distributed, offered for sale, promoted, advertised, sold, imported, or exported the Specialty Epoxy Resin Product(s);

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3. all Product Approvals related to the Specialty Epoxy Resin Product(s);
4. all Manufacturing Technology related to the Specialty Epoxy Resin Product(s);
5. all Marketing Materials related to the Specialty Epoxy Resin Product(s);
6. all Website(s) related to the Specialty Epoxy Resin Product(s);
7. all Product Development Reports related to the Specialty Epoxy Resin Product(s);
8. at the Acquirer's option, all Product Assumed Contracts related to the Specialty Epoxy Resin Product(s) (copies to be provided to the Acquirer on or before the Closing Date);
9. a list of all customers and/or targeted customers for the Specialty Epoxy Resin Product(s) and the net sales (in either units or dollars) of the Specialty Epoxy Resin Products to such customers on either an annual, quarterly, or monthly basis including, but not limited to, a separate list specifying the above-described information for the High Volume Accounts and including the name of the employee(s) for each High Volume Account that is or has been responsible for the purchase of the Specialty Epoxy Resin Products on behalf of the High Volume Account and his or her business contact information;
10. at the Acquirer's option and to the extent approved by the Commission in the relevant Remedial Agreement, all inventory in existence as of the Closing Date, including, but not limited to, raw materials, supplies,

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operating materials, packaging materials, work-in-process, finished goods and merchandise, and other items of inventory related to the Specialty Epoxy Resin Product(s);

11. copies of all unfilled customer purchase orders for the Specialty Epoxy Resin Product(s) as of the Closing Date, to be provided to the Acquirer not later than two (2) days after the Closing Date;
12. at the Acquirer's option, subject to any rights of the customer, all unfilled customer purchase orders for the Specialty Epoxy Resin Products;
13. the Specialty Epoxy Resin Product Facilities;
14. the InfraTec Assets;
15. the Hexion Stuttgart Assets; and
16. all of the Respondents' books and records, customer files, customer lists and records, vendor files, vendor lists and records, cost files and records, credit information, distribution records, business records and plans, studies, surveys, and files related to the foregoing or to the Specialty Epoxy Resin Product(s);

provided however, that in cases in which documents or other materials included in the relevant assets to be divested contain information: (1) that relates both to the Specialty Epoxy Resin Product(s) and to other products or businesses of the Respondents and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the Specialty Epoxy Resin Product(s); or (2) for which the relevant party has a legal obligation to retain the original copies, the relevant party shall be required to

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provide only copies or relevant excerpts of the documents and materials containing this information. In instances where such copies are provided to the Acquirer, the relevant party shall provide such Acquirer access to original documents under circumstances where copies of documents are insufficient for evidentiary or regulatory purposes. The purpose of this proviso is to ensure that Respondents provide the Acquirer with the above-described information without requiring Respondents completely to divest themselves of information that, in content, also relates to Retained Product(s).

DDD. “Specialty Epoxy Resin Product Core Employees” means the Marketing and Business Development Employees, Manufacturing Employees, Research and Development Employees, and the Sales Employees.

EEE. “Specialty Epoxy Resin Product Divestiture Agreements” means the following agreements:

1. “Master Agreement” by and among Hexion Specialty Chemicals, Inc., and Hexion Specialty Chemicals GmbH, as sellers, CHS Resins, A.S., as buyer, and Spolek Pro Chemickou A Hutni Výrobu, Akciová Společnost, dated as of September 19, 2008, and all amendments, exhibits, attachments, agreements, and schedules thereto;
2. “Raw Materials Supply Agreement” by and among Spolek Pro Chemickou A Hutni Výrobu, Akciová Společnost and Hexion Specialty Chemicals, Inc. dated as of September 19, 2008, and all amendments, exhibits, attachments, agreements, and schedules thereto; and
3. “Transitional Services Agreement” by and among Hexion Specialty Chemicals, Inc. and Hexion

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Specialty Chemicals GmbH, and CH.S. Resins, A.S., as buyer, dated as of September 19, 2008, and all amendments, exhibits, attachments, agreements, and schedules thereto; related to the Specialty Epoxy Resin Product Assets that have been approved by the Commission to accomplish the requirements of this Order. The Specialty Epoxy Resin Product Divestiture Agreements are attached to this Order and contained in non-public Appendix C.

FFF. "Specialty Epoxy Resin Product Facilities" means all assets comprising each of the facilities of Respondent Hexion identified below, including, without limitation, all of the following: real estate; buildings; warehouses; storage tanks; structures; Product Manufacturing Equipment; other equipment; machinery; tools; spare parts; personal property; furniture; fixtures; supplies associated with each particular facility; and other tangible property, owned, leased, or operated on or behalf of Hexion and located at the locations identified below,

1. located at Varziner Strasse 49, 47138, Duisburg, Federal Republic of Germany (but shall *exclude* only that portion of the facility primarily related to the manufacture of formaldehyde or phenolic resin, such exclusion only to apply to the extent that such portion of the facility is not or has not been used by Respondent Hexion in the manufacture of Specialty Epoxy Resin Products);
2. 16122 River Road, West Site, Norco, Louisiana 70079 (but shall *exclude* only that portion of the facility used by Respondent Hexion to the manufacture epichlorohydrin, allyl chloride, calcium chloride and other chlorine based chemicals);

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3. 8600 West 71st Street, Bedford Park, Illinois 60501;
and
4. 12650 Directors Drive, Suite 100, Houston, Texas
77477.

GGG. “Specialty Epoxy Resin Product Releasee(s)” means the Acquirer or any entity controlled by or under common control with such Acquirer, or any licensees, sublicensees, manufacturers, suppliers, distributors, and customers of such Acquirer, or of such Acquirer-affiliated entities.

HHH. “Spolek” means Spolek Pro Chemickou A Hutni Výrobu, Akciova Společnost, a corporation organized, existing, and doing business under and by virtue of the laws of the Czech Republic, with its offices and principal place of business located at Revoluční 1930/86, 400 32 Ústí nad Labem, Czech Republic. The term “Spolek” shall include CH.S. Resins, A.S., a subsidiary of Spolek Pro Chemickou A Hutni Výrobu, Akciova Společnost.

III. “Supply Cost” means a cost not to exceed the manufacturer’s average direct per unit cost in United States dollars of manufacturing the Specialty Epoxy Resin Product, or raw material or ingredients related to a Specialty Epoxy Resin Product, for the twelve (12) month period immediately preceding the Effective Date. “Supply Cost” shall expressly exclude any intracompany business transfer profit; *provided, however*, that in each instance where: (1) an agreement to Contract Manufacture is specifically referenced and attached to this Order, and (2) such agreement becomes a Remedial Agreement for a Specialty Epoxy Resin Product, “Supply Cost” means the cost as specified in such Remedial Agreement for that Specialty Epoxy Resin Product.

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JJJ. “Third Party(ies)” means any Person other than the following: Respondents or the Acquirer for the affected assets, rights and Specialty Epoxy Resin Product(s). The term “Third Party(ies)” shall include, without limitation, any Person holding an Ownership Interest in InfraTec other than Respondent Hexion.

KKK. “Trade Dress” means the current trade dress of the Specialty Epoxy Resin Product, including, without limitation, product packaging, and the lettering of the product trade name or brand name.

LLL. “Trademark(s)” means all proprietary names or designations, trademarks, service marks, trade names, and brand names, including registrations and applications for registration therefor (and all renewals, modifications, and extensions thereof) and all common law rights, and the goodwill symbolized thereby and associated therewith, for the Specialty Epoxy Resin Product(s). The term “Trademarks” includes the following trademarks: BakeliteTM, EPONTM, EPONOLTM, HELOXYTM, and EPI-REZTM.

MMM. “Website” means the content of the Website(s) located at the Domain Names, the Domain Names, and all copyrights in such Website(s), to the extent owned by Respondents; *provided, however*, “Website” shall not include the following: (1) content owned by Third Parties and other intellectual property not owned by Respondents that are incorporated in such Website(s), such as stock photographs used in the Website(s), *except* to the extent that Respondents can convey their rights, if any, therein; or (2) content unrelated to the product(s).

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

- A. Not later than ten (10) days after the Effective Date, Respondents shall divest the Specialty Epoxy Resin Product Assets, absolutely and in good faith, to Spolek pursuant to, and in accordance with, the Specialty Epoxy Resin Product Divestiture Agreements (which agreements shall not vary or contradict, or be construed to vary or contradict, the terms of this Order, it being understood that this Order shall not be construed to reduce any rights or benefits of Spolek or to reduce any obligations of Respondents under such agreements), and each such agreement, if it becomes a Remedial Agreement related to the Specialty Epoxy Resin Product Assets, respectively, is incorporated by reference into this Order and made a part hereof;

provided, however, that if Respondents have divested the Specialty Epoxy Resin Product Assets to Spolek prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that Spolek is not an acceptable purchaser of the Specialty Epoxy Resin Product Assets then Respondents shall immediately rescind the transaction with Spolek, in whole or in part, as directed by the Commission, and shall divest the Specialty Epoxy Resin Product Assets, as is relevant, within one hundred eighty (180) days from the date the Order becomes final, absolutely and in good faith, at no minimum price, to an Acquirer(s) and only in a manner that receives the prior approval of the Commission;

provided further, that if Respondents have divested the Specialty Epoxy Resin Product Assets to Spolek prior to the date this Order becomes final, and if, at the time the

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Commission determines to make this Order final, the Commission notifies Respondents that the manner in which the divestiture was accomplished is not acceptable, the Commission may direct Respondents, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture of the Specialty Epoxy Resin Product Assets to Spolek (including, but not limited to, entering into additional agreements or arrangements) as the Commission may determine are necessary to satisfy the requirements of this Order.

- B. Prior to the Effective Date and as a condition precedent to the consummation of the Acquisition, Respondents shall secure all consents and waivers from all Third Parties (including, without limitation, such consents and waivers related to the InfraTec Assets) that are necessary to permit Respondents to divest the Specialty Epoxy Resin Product Assets required to be divested pursuant to this Order to the Acquirer, and/or to permit such Acquirer to continue the research, Development, manufacture, sale, marketing or distribution of the Specialty Epoxy Resin Products;

provided, however, Respondents may satisfy this requirement by certifying that the Acquirer has executed all such agreements directly with each of the relevant Third Parties.

- C. Respondents shall transfer the Manufacturing Technology to the Acquirer in an organized, comprehensive, complete, useful, timely, and meaningful manner. Respondents shall, *inter alia*:
1. designate employees of Respondents knowledgeable with respect to such Manufacturing Technology to a committee for the purposes of communicating directly with such Acquirer and the Interim Monitor (if any has

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been appointed) for the purposes of effecting such transfer;

2. prepare technology transfer protocols and transfer acceptance criteria for both the processes and analytical methods related to the Specialty Epoxy Resin Products, such protocols and acceptance criteria to be subject to the approval of the Acquirer;
3. prepare and implement a detailed technological transfer plan that contains, *inter alia*, the transfer of all relevant information, all appropriate documentation, all other materials, and projected time lines for the delivery of all Manufacturing Technology to the Acquirer; and
4. upon reasonable written notice and request from the Acquirer to Respondents, provide in a timely manner, at no greater than Direct Cost, assistance and advice to enable the Acquirer (or the Designee of the Acquirer) to:
 - a. manufacture the Specialty Epoxy Resin Products in the same quality achieved by the Respondents and in commercial quantities;
 - b. obtain any Product Approvals necessary for the Acquirer to manufacture, sell, market or distribute the Specialty Epoxy Resin Products; and
 - c. receive, integrate, and use such Manufacturing Technology.

D. Respondents shall:

1. upon reasonable written notice and request from the Acquirer to Respondents, Respondents shall Contract

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Manufacture and deliver to the Acquirer, in a timely manner and under reasonable terms and conditions, a supply of each of the Contract Manufacture Products at Respondents' Supply Cost, for a period of time sufficient to allow the Acquirer (or the Designee of the Acquirer) to:

- a. obtain all of the relevant Product Approvals necessary to manufacture in commercial quantities, the Contract Manufacture Products independently of Respondents; and
 - b. secure sources of supply of the ingredients, inputs and components for the Contract Manufacture Products from entities other than Respondents;
2. make representations and warranties to the Acquirer that the Contract Manufacture Product(s) supplied through Contract Manufacture pursuant to a Remedial Agreement meet the specifications of the relevant customers;
3. for the Contract Manufacture Products supplied by Respondents, Respondents shall agree to indemnify, defend and hold the Acquirer harmless from any and all suits, claims, actions, demands, liabilities, expenses or losses alleged to result from the failure of the product(s) supplied to the Acquirer pursuant to a Remedial Agreement by Respondents to meet customer specifications. This obligation may be made contingent upon the Acquirer giving Respondents prompt, adequate notice of such claim and cooperating fully in the defense of such claim. The Remedial Agreement shall be consistent with the obligations assumed by Respondents under this Order; *provided, however*, that Respondents may reserve the right to control the defense of any such litigation, including the

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right to settle the litigation, so long as such settlement is consistent with Respondents' responsibilities to supply the Contract Manufacture Products in the manner required by this Order; *provided further*, that this obligation shall not require Respondents to be liable for any negligent act or omission of the Acquirer or for any representations and warranties, express or implied, made by the Acquirer that exceed the representations and warranties made by Respondents to the Acquirer;

4. make representations and warranties to the Acquirer that Respondents shall hold harmless and indemnify the Acquirer for any liabilities or loss of profits resulting from the failure by Respondents to deliver the products in a timely manner as required by the Remedial Agreement(s) unless Respondents can demonstrate that their failure was entirely beyond the control of Respondents and in no part the result of negligence or willful misconduct by Respondents;
5. during the term of the Contract Manufacture between Respondents and the Acquirer, upon request of the Acquirer or Interim Monitor (if any has been appointed), make available to the Acquirer and the Interim Monitor (if any has been appointed) all records that relate to the manufacture of the Contract Manufacture Products that are generated or created after the Closing Date;
6. during the term of the Contract Manufacture between Respondents and the Acquirer, maintain manufacturing facilities necessary to manufacture each of the Contract Manufacture Products; and
7. during the term of the Contract Manufacture between Respondents and the Acquirer, provide consultation

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with knowledgeable employees of Respondents and training, at the request of the Acquirer and at a facility chosen by the Acquirer, for the purposes of enabling the Acquirer (or the Designee of the Acquirer) to obtain all Product Approvals to manufacture Specialty Epoxy Resin Products manufactured with or from or that use or include the Contract Manufacture Products in the same quality achieved by the Respondents and in commercial quantities, and in a manner consistent with the relevant customer specifications, independently of Respondents, and sufficient to satisfy management of the Acquirer that its personnel (or the Designee's personnel) are adequately trained in the manufacture of Specialty Epoxy Resin Products manufactured with or from or that use or include the Contract Manufacture Products

The foregoing provisions, II.D.1. - 7., shall remain in effect with respect to each Contract Manufacture Product until the date the earliest of the following dates: (1) the date that the Acquirer (or the Designee(s) of such Acquirer) is able to manufacture such Contract Manufacture Product in commercial quantities, in a manner consistent with the relevant customer specifications, independently of Respondents; or (2) the date five (5) years from the date on which this Order becomes final.

E. Respondents shall:

1. submit to the Acquirer, at Respondents' expense, all Confidential Business Information;
2. deliver such Confidential Business Information as follows:

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- a. in good faith;
 - b. in a timely manner, *i.e.*, as soon as practicable, avoiding any delays in transmission of the respective information; and
 - c. in a manner that ensures its completeness and accuracy and that fully preserves its usefulness;
3. pending complete delivery of all such Confidential Business Information to the Acquirer, provide the Acquirer and the Interim Monitor (if any has been appointed) with access to all such Confidential Business Information and employees who possess or are able to locate such information for the purposes of identifying the books, records, and files directly related to the Specialty Epoxy Resin Product(s) that contain such Confidential Business Information and facilitating the delivery in a manner consistent with this Order;
4. not use, directly or indirectly, any such Confidential Business Information related to the research, Development, manufacturing, marketing, or sale of the Specialty Epoxy Resin relevant other than as necessary to comply with the following:
 - a. the requirements of this Order;
 - b. Respondents' obligations to the Acquirer under the terms of any Remedial Agreement related to Specialty Epoxy Resin; or
 - c. applicable Law;
5. not disclose or convey any such Confidential Business Information, directly or indirectly, to any person

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except the Acquirer or other persons specifically authorized by the Acquirer to receive such information; and

6. not provide, disclose or otherwise make available, directly or indirectly, any such Confidential Business Information related to the marketing or sales of the Specialty Epoxy Resin Products to the employees associated with business related to those Retained Products that are used or suitable for use in commerce for the same or similar purposes as the Specialty Epoxy Resin Products.
- F. Respondents shall not enforce any agreement against a Third Party or the Acquirer to the extent that such agreement may limit or otherwise impair the ability of the Acquirer to acquire the Manufacturing Technology, Product Intellectual Property, or Product Licensed Intellectual Property related to the relevant Specialty Epoxy Resin Product(s) from the Third Party. Such agreements include, but are not limited to, agreements with respect to the disclosure of Confidential Business Information related to such Manufacturing Technology, Product Intellectual Property and Product Licensed Intellectual Property.
- G. Not later than ten (10) days after the Closing Date, Respondents shall grant a release to each Third Party that is subject to an agreement as described in Paragraph II.F. that allows the Third Party to provide the relevant Manufacturing Technology, Product Intellectual Property, or Product Licensed Intellectual Property to the Acquirer. Within five (5) days of the execution of each such release, Respondents shall provide a copy of the release to the Acquirer for the relevant assets.

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H. Respondents shall:

1. for each Specialty Epoxy Resin Product, for a period of at least eighteen (18) months from the relevant Closing Date, provide the Acquirer with the opportunity to enter into employment contracts with the Specialty Epoxy Resin Product Core Employees. Each of these periods is hereinafter referred to as the “Specialty Epoxy Resin Product Core Employee Access Period(s)”;
2. not later than the earlier of the following dates: (1) ten (10) days after notice by staff of the Commission to Respondents to provide the Product Employee Information; or (2) ten (10) days after the relevant Closing Date, provide the Acquirer or the relevant Proposed Acquirer with the Product Employee Information related to the relevant Specialty Epoxy Resin Product Core Employees. Failure by Respondents to provide the Product Employee Information for any Specialty Epoxy Resin Product Core Employee within the time provided herein shall extend the Specialty Epoxy Resin Product Core Employee Access Period(s) with respect to that employee in an amount equal to the delay;
3. during the Specialty Epoxy Resin Product Core Employee Access Period(s), not interfere with the hiring or employing by the Acquirer of the Specialty Epoxy Resin Product Core Employees related to the particular Specialty Epoxy Resin Products and assets acquired by such Acquirer, and remove any impediments within the control of Respondents that may deter these employees from accepting employment with the Acquirer, including, but not limited to, any noncompete or nondisclosure provision of employment with respect to a Specialty Epoxy Resin Product or other contracts with Respondents that

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would affect the ability or incentive of those individuals to be employed by the Acquirer. In addition, Respondents shall not make any counteroffer to such a Specialty Epoxy Resin Product Core Employee who has received a written offer of employment from the Acquirer;

provided, however, that, subject to the conditions of continued employment prescribed in this Order, this Paragraph II.H.3. shall not prohibit Respondents from continuing to employ any Specialty Epoxy Resin Product Core Employee under the terms of such employee's employment with Respondents prior to the date of the written offer of employment from the Acquirer to such employee;

4. until the Closing Date, provide all Specialty Epoxy Resin Product Core Employees with reasonable financial incentives to continue in their positions and to research, Develop, and manufacture the Specialty Epoxy Resin Product(s) consistent with past practices and/or as may be necessary to preserve the marketability, viability and competitiveness of the Specialty Epoxy Resin Product(s) and to ensure successful execution of the pre-Acquisition plans for such Specialty Epoxy Resin Product(s). Such incentives shall include a continuation of all employee compensation and benefits offered by Respondent Hexion until the Closing Date(s) for the divestiture of the Specialty Epoxy Resin Product Assets has occurred, including regularly scheduled raises, bonuses, and vesting of pension benefits (as permitted by Law);

provided, however, that, subject to those conditions of continued employment prescribed in this Order, this

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Order does not require nor shall be construed to require Respondents to terminate the employment of any employee or to prevent Respondents from continuing to employ the Specialty Epoxy Resin Product Core Employees in connection with the Acquisition; and

5. for a period of one (1) year from the relevant Closing Date, not:
 - a. directly or indirectly, solicit or otherwise attempt to induce any employee of the Acquirer with any amount of responsibility related to a Specialty Epoxy Resin Product (“Specialty Epoxy Resin Product Employee”) to terminate his or her employment relationship with the Acquirer; or
 - b. hire any Specialty Epoxy Resin Product Employee; *provided, however,* Respondents may hire any former Specialty Epoxy Resin Product Employee whose employment has been terminated by the Acquirer or who independently applies for employment with Respondent, as long as such employee was not solicited in violation of the nonsolicitation requirements contained herein;

provided, however, Respondents may do the following: (1) advertise for employees in newspapers, trade publications or other media not targeted specifically at the Specialty Epoxy Resin Product Employees; or (2) hire a Specialty Epoxy Resin Product Employee who contacts Respondents on his or her own initiative without any direct or indirect solicitation or encouragement from Respondents.

- I. Respondents shall require, as a condition of continued employment post-divestiture of the assets required to be

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divested pursuant to this Order, that each Specialty Epoxy Resin Product Core Employee retained by Respondent, the direct supervisor(s) of any such employee, and any other employee retained by Respondents and designated by the Interim Monitor (if applicable) sign a confidentiality agreement pursuant to which such employee shall be required to maintain all Confidential Business Information related to the Specialty Epoxy Resin Products as strictly confidential, including the nondisclosure of such information to all other employees, executives or other personnel of Respondents (other than as necessary to comply with the requirements of this Order).

- J. Not later than thirty (30) days after the Effective Date, Respondents shall provide written notification of the restrictions on the use of the Confidential Business Information related to the Specialty Epoxy Resin Products by Respondents' personnel to all of Respondents' employees who:
1. are or were directly involved in the research, Development, manufacturing, distribution, sale or marketing of each of the relevant Specialty Epoxy Resin Products;
 2. are directly involved in the research, Development, manufacturing, distribution, sale or marketing of Retained Products that are used or suitable for use in commerce for the same or similar purposes as the relevant Specialty Epoxy Resin Products; and/or
 3. may have Confidential Business Information related to the Specialty Epoxy Resin Products.

Respondents shall give such notification by e-mail with return receipt requested or similar transmission, and keep a

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file of such receipts for one (1) year after the relevant Closing Date. Respondents shall provide a copy of such notification to the Acquirer. Respondents shall maintain complete records of all such agreements at Respondents headquarters address within the United States and shall provide an officer's certification to the Commission stating that such acknowledgment program has been implemented and is being complied with. Respondents shall provide the Acquirer with copies of all certifications, notifications and reminders sent to Respondents' personnel.

K. Until Respondents complete the divestitures required by Paragraph II.A. and fully transfer the related Manufacturing Technology to the Acquirer(s),

1. Respondents shall take such actions as are necessary to:
 - a. maintain the full economic viability and marketability of the businesses associated with each Specialty Epoxy Resin Product;
 - b. minimize any risk of loss of competitive potential for such business;
 - c. prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets related to each Specialty Epoxy Resin Product;
 - d. ensure the assets required to be divested are transferred to the Acquirer in a manner without disruption, delay, or impairment of the regulatory approval processes related to the business associated with each Specialty Epoxy Resin Product;

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- e. ensure the completeness of the transfer of the Manufacturing Technology; and
- 2. Respondents shall not sell, transfer, encumber or otherwise impair the assets required to be divested (other than in the manner prescribed in this Order) nor take any action that lessens the full economic viability, marketability, or competitiveness of the businesses associated with each Specialty Epoxy Resin Product.
- L. Respondents shall not join, file, prosecute or maintain any suit, in law or equity, against the Acquirer(s) or the Specialty Epoxy Resin Product Releasee(s) for the research, Development, manufacture, use, import, export, distribution, or sale of the Specialty Epoxy Resin Product(s) under the following:
 - 1. any Patent owned or licensed by Respondents as of the Effective Date that claims a method of making, using, or administering, or a composition of matter, relating to a Specialty Epoxy Resin Product, or that claims a device relating to the use thereof;
 - 2. any Patent owned or licensed at any time after the Effective Date by Respondents that claim any aspect of the research, Development, manufacture, use, import, export, distribution, or sale of a Specialty Epoxy Resin Product, other than such Patents that claim inventions conceived by and reduced to practice after the Effective Date;

if such suit would have the potential to interfere with the Acquirer's freedom to practice the following: (1) the research, Development, or manufacture of a particular Specialty Epoxy Resin Product; or (2) the use within, import into, export from, or the supply, distribution, or sale within, the United States of a particular Specialty

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Epoxy Resin Product. Respondents shall also covenant to the Acquirer that as a condition of any assignment, transfer, or license to a Third Party of the above-described Patents, the Third Party shall agree to provide a covenant whereby the Third Party covenants not to sue the Acquirer or the related Specialty Epoxy Resin Product Releasee(s) under such Patents, if the suit would have the potential to interfere with the Acquirer's freedom to practice the following: (1) the research, Development, or manufacture of a particular Specialty Epoxy Resin Product; or (2) the use within, import into, export from, or the supply, distribution, or sale within, the United States of a particular Specialty Epoxy Resin Product.

- M. Upon reasonable written notice and request from an Acquirer to Respondent, Respondent shall provide, in a timely manner, at no greater than Direct Cost, assistance of knowledgeable employees of Respondent to assist that Acquirer to defend against, respond to, or otherwise participate in any litigation related to the Product Intellectual Property related to any of the Specialty Epoxy Resin Products, if such litigation would have the potential to interfere with the Acquirer's freedom to practice the following: (1) the research, Development, or manufacture of the Specialty Epoxy Resin Products; or (2) the use within, import into, export from, or the supply, distribution, or sale within the United States.
- N. Within eighteen (18) months of the Closing Date, Respondents shall either license or assign any and all intellectual property to the Acquirer that constitutes either Product Intellectual Property or Product Licensed Intellectual Property that the Acquirer, with the concurrence of the Interim Monitor, identifies as being necessary to the conduct of the business associated with the Specialty Epoxy Resin Product (as such business had been conducted by Respondent Hexion prior to the

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Effective Date) and that was not listed and/or included in the intellectual property that was licensed or assigned to the Acquirer pursuant to the Remedial Agreements previously submitted by Respondents to the Commission.

- O. For any patent infringement suit in which either Respondent is alleged to have infringed a Patent of a Third Party prior to the Closing Date or for such suit as such Respondent has prepared or is preparing as of the Closing Date to defend against such infringement claim(s), and where such a suit would have the potential to interfere with the Acquirer's freedom to practice the following: (1) the research, Development, or manufacture of a particular Specialty Epoxy Resin Product; or (2) the use within, import into, export from, or the supply, distribution, or sale within, the United States of the relevant Specialty Epoxy Resin Products, Respondents shall:
1. cooperate with the Acquirer and provide any and all necessary technical and legal assistance, documentation and witnesses from Respondents in connection with obtaining resolution of any pending patent litigation involving such Specialty Epoxy Resin Product;
 2. waive conflicts of interest, if any, to allow either Respondents' outside legal counsel to represent the Acquirer in any ongoing patent litigation involving such Specialty Epoxy Resin Product; and
 3. permit the transfer to the Acquirer of all of the litigation files and any related attorney work-product in the possession of Respondents' outside counsel relating to such Specialty Epoxy Resin Product.

P. Respondents shall not:

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1. use the Product Trademarks related to the Specialty Epoxy Resin Products or any mark confusingly similar to such Product Trademarks, as a trademark, trade name, or service mark;
2. attempt to register such Product Trademarks;
3. attempt to register any mark confusingly similar to such Product Trademarks;
4. challenge or interfere with the Acquirer(s)'s use and registration of such Product Trademarks; or
5. challenge or interfere with the Acquirer(s)'s efforts to enforce their trademark registrations for and trademark rights in such Product Trademarks against Third Parties;

provided, however, that this Order shall not preclude Respondents from continuing to use those trademarks, tradenames, or service marks related to the Retained Products as of the Effective Date.

- Q. Respondents shall not seek, directly or indirectly, pursuant to any dispute resolution mechanism incorporated in any Remedial Agreement, or in any agreement related to any of the Specialty Epoxy Resin Products a decision the result of which would be inconsistent with the terms of this Order and/or the remedial purposes thereof.
- R. The purpose of the divestiture of the Specialty Epoxy Resin Product Assets and the transfer of the Manufacturing Technology related to the Specialty Epoxy Resin Products, respectively, and the related obligations imposed on the Respondents by this Order is:

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1. to ensure the continued use of the Specialty Epoxy Resin Product Assets in the research, Development, manufacture, use, import, export, distribution, and sale of each of the respective Specialty Epoxy Resin Products;
2. to provide for the future use of the Specialty Epoxy Resin Product Assets for the research, Development, manufacture, use, import, export, distribution, and sale of each of the respective Specialty Epoxy Resin Products;
3. to create a viable and effective competitor, who is independent of the Respondents in the research, Development, manufacture, use, import, export, distribution, or sale of each of the Specialty Epoxy Resin Products; and
4. to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint in a timely and sufficient manner.

III.

A. For the time period after the Effective Date,

1. Respondents shall not use, directly or indirectly, any MDI Non-Public Information related to the research, Development, manufacturing, marketing, or sale of MDI Products that is obtained from an MDI Producer other than as necessary to comply with the following:
 - a. the requirements of this Order;

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- b. Respondents' obligations to such MDI Producer under the terms of any agreement related to MDI Products; or
 - c. applicable Law;
2. Respondents shall not disclose or convey any such MDI Non-Public Information, directly or indirectly, to any Person *except* the respective MDI Producer, other Persons specifically authorized by such MDI Producer to receive such information, and such employees of Respondent Hexion directly assigned to the FDBU;
 3. Respondents shall not provide, disclose or otherwise make available, directly or indirectly, any such MDI Non-Public Information to the employees associated with the MDI Acquired Business;
 4. Respondents shall ensure that no manager with direct line authority over the FDBU provides, discloses, or otherwise makes available, directly or indirectly, any MDI Non-Public Information to the employees associated with the MDI Acquired Business, including, without limitation, those employees with direct line authority over the MDI Acquired Business;
 5. Respondents shall prohibit any employee associated with the FDBU from discussing with, or providing, disclosing or otherwise making available to, any employee associated with the MDI Acquired Business, directly or indirectly, any MDI Non-Public Information;
 6. Respondents shall institute procedures and requirements throughout the various entities of the Respondents to ensure the MDI Non-Public Information is protected as required by this Order.

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- B. The purpose of this Paragraph III is to prevent Respondents from using the MDI Non-Public Information to the detriment of the research, Development, manufacturing, marketing, or sale of MDI Products of the MDI Producers; to the benefit of the MDI Products researched, Developed, manufactured, marketed, or sold by Respondents; or from otherwise using such information in an anticompetitive manner or in any unfair method of competition.

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

- A. If Respondent Hexion does not acquire more than fifty (50) percent of the voting securities of Respondent Huntsman on or before the Expiration Date, then Respondent Hexion shall divest, absolutely and in good faith, all of its Ownership Interest in Respondent Huntsman on the New York Stock Exchange, or such other securities exchange as the voting securities of Respondent Huntsman are registered to be traded on, within six (6) months of the Expiration Date to a Person that holds not more than one (1) percent of the voting securities of Respondent Hexion.
- B. Pending the divestiture described in Paragraph IV.A., Respondent Hexion shall not, directly or indirectly:
1. exercise dominion or control over, or otherwise seek to influence, the management, direction or supervision of the business of Respondent Huntsman including, but not limited to, any participation in the formulation, determination or direction of any business decisions of Respondent Huntsman;

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2. propose corporate action requiring the approval of Respondent Huntsman shareholders;
3. nominate, or any other way seek to or obtain representation on the Board of Directors of Respondent Huntsman;
4. have any of their directors, officers or employees serve simultaneously as an officer or director of Respondent Huntsman;
5. exercise any voting rights attached to any Ownership Interest in Respondent Huntsman, *provided, however*, that in any matter to be voted on by the shareholders of Respondent Huntsman, Respondent Hexion shall cast the votes related to their Ownership Interest in each class of Respondent Huntsman stock in an amount and manner proportional to the vote of all other votes cast by other Respondent Huntsman shareholders entitled to vote on such matter;
6. seek or obtain access to any confidential, proprietary, or other non-public information of Respondent Huntsman relating to the research, Development, manufacture, distribution, sale, and marketing of products that have the same or similar uses or applications as the Specialty Epoxy Resin Products researched, Developed, manufactured, distributed, sold, or marketed by Respondent Hexion; *provided, however*, that this shall not be construed to prohibit Respondent Hexion from seeking or obtaining discovery in any litigation or other proceeding to resolve a claim between Respondent Hexion and Respondent Huntsman in accordance with the procedures of the forum before which the dispute is pending. With respect to any such discovery, Respondent Hexion shall enter into a protective order to prevent any information from being used for any

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purpose other than providing legal representation or evidence as to the particular dispute and to prevent any information from being disclosed to any person(s) not necessary to the resolution of such dispute; or

7. take any action or omit to take any action in a manner that would be incompatible with the status of Respondent Hexion as a passive investor in Respondent Huntsman.

The requirements of this Paragraph IV.B. shall continue and remain in effect so long as Respondent Hexion retains any Ownership Interest in Respondent Huntsman.

- C. The purpose of the requirements of Paragraph IV is to ensure that, if the Acquisition does not occur, Respondent Hexion will not seek to exert, or exert influence upon, the business operations of Respondent Huntsman.

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

- A. At any time after Respondents sign the Consent Agreement in this matter, the Commission may appoint a monitor ("Interim Monitor") to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order, the Order to Maintain Assets, and the Remedial Agreements.
- B. The Commission shall select the Interim Monitor, subject to the consent of Respondent Hexion, which consent shall not be unreasonably withheld. If Respondent Hexion has not opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after notice by the staff of the

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Commission to Respondent Hexion of the identity of any proposed Interim Monitor, Respondents shall be deemed to have consented to the selection of the proposed Interim Monitor.

- C. Not later than ten (10) days after the appointment of the Interim Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondents' compliance with the relevant requirements of the Order in a manner consistent with the purposes of the Order.
- D. If an Interim Monitor is appointed, Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Interim Monitor:
 - 1. the Interim Monitor shall have the power and authority to monitor Respondents' compliance with the divestiture and asset maintenance obligations and related requirements of the Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner consistent with the purposes of the Order and in consultation with the Commission;
 - 2. the Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission; and
 - 3. the Interim Monitor shall serve until, the latter of:
 - a. the date of completion by Respondents of the divestiture of all Specialty Epoxy Resin Product Assets and the transfer of the Manufacturing Technology, Product Intellectual Property, and

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Product Licensed Intellectual Property in a manner that fully satisfies the requirements of this Order; and

- b. with respect to each Specialty Epoxy Resin Product, the date the Acquirer (or the Designee(s) of such Acquirer) has obtained all Product Approvals necessary to manufacture, market, import, export, and sell such Specialty Epoxy Resin Product and able to manufacture such Specialty Epoxy Resin Product in commercial quantities independently of Respondents;

provided, however, that the Interim Monitor's service shall not exceed five (5) years from the date on which this Order becomes final;

provided further, that the Commission may shorten or extend this period as may be necessary or appropriate to accomplish the purposes of the Orders.

- E. Subject to any demonstrated legally recognized privilege, the Interim Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to Respondents' compliance with their obligations under the Order, including, but not limited to, their obligations related to the relevant assets. Respondents shall cooperate with any reasonable request of the Interim Monitor and shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondents' compliance with the Order.

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- F. The Interim Monitor shall serve, without bond or other security, at the expense of Respondent, on such reasonable and customary terms and conditions as the Commission may set. The Interim Monitor shall have authority to employ, at the expense of Respondent, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.
- G. Respondents shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations 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 Interim Monitor.
- H. Respondent shall report to the Interim Monitor in accordance with the requirements of this Order and/or as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by Respondent, and any reports submitted by the Acquirer with respect to the performance of Respondent's obligations under the Order or the Remedial Agreement(s). Within thirty (30) days from the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning performance by Respondent of its obligations under the Order; *provided, however*, beginning one hundred twenty (120) days after Respondent has filed its final report pursuant to Paragraph VIII.C., and every one hundred twenty (120) days thereafter, the Interim

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Monitor shall report in writing to the Commission concerning progress by the Acquirer toward:

1. obtaining all of the relevant Product Approvals necessary to manufacture in commercial quantities, the Specialty Epoxy Resin Products independently of Respondents and;
 2. to secure sources of supply of the ingredients, inputs and components for the Specialty Epoxy Resin Products from entities other than Respondents.
- I. Respondents may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Interim Monitor from providing any information to the Commission.
- J. The Commission may, among other things, require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Interim Monitor's duties.
- K. If the Commission determines that the Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided in this Paragraph.
- L. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Order.

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- M. The Interim Monitor appointed pursuant to this Order may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of this Order

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

- A. If Respondents have not fully complied with the obligations to assign, grant, license, divest, transfer, deliver or otherwise convey relevant assets as required by this Order, the Commission may appoint a trustee (“Divestiture Trustee”) to assign, grant, license, divest, transfer, deliver or otherwise convey the assets required to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed pursuant to each of the relevant Paragraphs in a manner that satisfies the requirements of each such Paragraph. 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 Divestiture Trustee in such action to assign, grant, license, divest, transfer, deliver or otherwise convey the relevant assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture 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 Divestiture 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. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent Hexion, which

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

- C. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestiture required by this Order.
- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
 - 1. subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver or otherwise convey the assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed;
 - 2. the Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the one (1)

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year period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission; *provided, however*, the Commission may extend the divestiture period only two (2) times;

3. subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture 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 Divestiture Trustee, by the court;
4. the Divestiture Trustee shall use commercially reasonable 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 and at no minimum price. The divestiture shall be made in the manner and to an Acquirer as required by this Order; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the

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Divestiture Trustee shall divest to the acquiring entity selected by Respondents from among those approved by the Commission; and, *provided further, however*, that Respondents shall select such entity within five (5) days after receiving notification of the Commission's approval;

5. the Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondent, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order;
6. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in

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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 Divestiture Trustee;

7. the Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order; *provided, however,* that the Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Interim Monitor pursuant to the relevant provisions of the Order to Maintain Assets in this matter;
 8. the Divestiture Trustee shall report in writing to Respondents and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture; and
 9. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however,* such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
- E. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph.
- F. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such

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

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

With respect to Confidential Business Information, Respondents shall assure that, in any instance wherein their counsel (including in-house counsel under appropriate confidentiality arrangements) either retains unredacted copies of documents or other materials provided to the Acquirer(s) or accesses original documents (under circumstances where copies of documents are insufficient or otherwise unavailable) provided to the Acquirer(s), that Respondents' counsel does so only in order to do the following:

- A. comply with any Remedial Agreement, this Order, any Law (including, without limitation, any requirement to obtain regulatory licenses or approvals, and rules promulgated by the Commission), any data retention requirement of any applicable Government Entity, or any taxation requirements; or
- B. defend against, respond to, or otherwise participate in any litigation, investigation, audit, process, subpoena or other proceeding relating to the divestiture or any other aspect of the Specialty Epoxy Resin Products or assets and businesses associated with those products; *provided, however,* that Respondents may disclose such information as necessary for the purposes set forth in this Paragraph pursuant to an appropriate confidentiality order, agreement or arrangement;

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provided, however, that pursuant to this Paragraph VII, Respondents shall: (1) require those who view such unredacted documents or other materials to enter into confidentiality agreements with the Acquirer (but shall not be deemed to have violated this requirement if the Acquirer withholds such agreement unreasonably); and (2) use their best efforts to obtain a protective order to protect the confidentiality of such information during any adjudication.

VIII.

IT IS FURTHER ORDERED that:

- A. Within five (5) days of Respondent Hexion securing the Third Party consent and waiver related to the InfraTec Assets, as required pursuant to Paragraph II.B., Respondent Hexion shall submit to the Commission a copy of such consent and waiver.
- B. Within five (5) days of the Acquisition, Respondents shall submit to the Commission a letter certifying the date on which the Acquisition occurred.
- C. Within thirty (30) days after the date this Order becomes final, and every sixty (60) days thereafter until Respondents have fully complied with the following:
 - 1. Paragraphs II.A , II.B., II.C., II.E., II.G., II.J.; and
 - 2. and all of their responsibilities to render transitional services to the Acquirer as provided by this Order and the Remedial Agreement(s);

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 this Order. Respondents shall submit at the

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same time a copy of their report concerning compliance with this Order to the Interim Monitor, if any Interim Monitor has been appointed. Respondents shall include in their reports, among other things that are required from time to time, a full description of the efforts being made to comply with the relevant Paragraphs of the Order, including a full description of all substantive contacts or negotiations related to the divestiture of the relevant assets and the identity of all Persons contacted, including copies of all written communications to and from such Persons, all internal memoranda, and all reports and recommendations concerning completing the obligations.

- D. One (1) year after the date this Order becomes final, annually for the next nine years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with the Order.

IX.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to:

- A. any proposed dissolution of Respondents;
- B. any proposed acquisition, merger or consolidation of Respondents; or
- C. any other change in Respondents, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

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

- A. Any Remedial Agreement shall be deemed incorporated into this Order.
- B. Any failure by Respondents to comply with any term of such Remedial Agreement shall constitute a failure to comply with this Order.
- C. Respondents shall include in each Remedial Agreement related to each of the Specialty Epoxy Resin Products a specific reference to this Order, the remedial purposes thereof, and provisions to reflect the full scope and breadth of Respondents' obligations to the Acquirer(s) pursuant to this Order.
- D. Respondents shall also include in each Remedial Agreement a representation from the Acquirer that such Acquirer shall use commercially reasonable efforts to secure the Product Approval(s) necessary to manufacture, or to have manufactured by a Third Party, in commercial quantities, each such Specialty Epoxy Resin Product and to have any such manufacture to be independent of Respondents, all as soon as reasonably practicable.
- E. Respondents shall not modify or amend any of the terms of any Remedial Agreement without the prior approval of the Commission.

XI.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to any Respondent made to its principal

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United States offices, registered office of its United States subsidiary, or its headquarters address, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. access, during business office hours of such Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of such Respondent related to compliance with this Order, which copying services shall be provided by such Respondent at the request of the authorized representative(s) of the Commission and at the expense of the Respondent; and
- B. to interview officers, directors, or employees of such Respondent, who may have counsel present, regarding such matters.

XII.

IT IS FURTHER ORDERED that this Order shall terminate on November 13, 2018.

By the Commission.

**APPENDIX A
EXCLUDED DOMAIN NAMES**

**[Redacted From the Public Record
But Incorporated By Reference]**

Analysis to Aid Public Comment

**APPENDIX B
SPECIALTY EPOXY RESIN PRODUCTS**

**[Redacted From the Public Record
But Incorporated By Reference]**

**NON-PUBLIC APPENDIX C
SPECIALTY EPOXY RESIN PRODUCT
DIVESTITURE AGREEMENTS**

**[Redacted From the Public Record
But Incorporated By Reference]**

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC
COMMENT**

I. Introduction

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Order from Hexion LLC and Huntsman Corporation (“Respondents”). The Consent Agreement is intended to resolve anticompetitive effects stemming from Hexion LLC’s (“Hexion”) proposed acquisition of Huntsman Corporation (“Huntsman”). The Consent Agreement includes a proposed Decision and Order that requires

Analysis to Aid Public Comment

Respondent Hexion to divest its Specialty Epoxy Resin Product Business, which includes the research, development, manufacture, distribution, marketing, and sale of each Specialty Epoxy Resin Product; its Stuttgart (Germany) Assets; and other assets related to such business, including, but not limited to, Duisburg (Germany), parts of Norco (Louisiana), Bedford Park (Illinois), and Houston (Texas); among other things. The proposed Decision and Order also requires the licensing of all Hexion intellectual property related to the production of Specialty Epoxy Resins. The Decision and Order calls for divestiture of Hexion's Specialty Epoxy Business to Spolek Pro Chemickou A Hutni Vyrobu ("Spolek or Spolchemie"), or another Commission-approved buyer in the event that Spolek is determined not to be acceptable.

Additionally, the Decision and Order requires Hexion to institute procedures to ensure that the methylene diphenyl diisocyanate (also referred to as diphenylmethane diisocyanate) ("MDI") business it acquired from Huntsman not have access directly or indirectly to competitively sensitive non-public information obtained by its formaldehyde division.

The proposed Consent Agreement and Decision and Order are designed to address competition concerns in the Specialty Epoxy Resin and MDI markets. The Consent Agreement, if finally accepted by the Commission, would settle charges that the proposed acquisition may substantially lessen competition in the various application specific end-use markets for Specialty Epoxy Resins and the market for MDI. The Commission has reason to believe that Respondent's proposed acquisition would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

Analysis to Aid Public Comment

II. The Proposed Complaint

According to the Commission's proposed complaint, the relevant product markets in which to analyze the effects of Huntsman's sale of assets to Hexion are the markets for the development, manufacture, and sale of Specialty Epoxy Resins, various application specific end-use markets in North America in which these resins are used, and the market for MDI.

Specialty epoxy resins are value added high performance epoxy resin products, including, but not limited to, blends, formulations, advanced resins, and multifunctional resins. Specialty Epoxy Resins are used with curing agents, modifiers, and other ingredients and components necessary to the use of these resins. Specialty Epoxy Resins are used in demanding applications where enhanced performance is required, such as aerospace composites, wind turbine blades, and electric power generation applications. The relevant geographic market is North America. Additionally, Specialty Epoxy resins sold into each application segment constitute distinct application specific end-use product markets.

MDI is a diisocyanate chemical used in various applications, including construction insulation, refrigeration, and composite wood products. Formaldehyde, a versatile chemical, is an essential ingredient used in the manufacture of MDI. It provides useful characteristics such as desirable insulating and mechanical properties, while avoiding many of the harmful characteristics associated with the use of pure formaldehyde, which is a carcinogen. The relevant geographic market is North America.

The proposed complaint alleges that the various application specific end-use markets for Specialty Epoxy Resins in North America and the market for MDI are highly concentrated. Hexion and Huntsman have been the primary competitors in the market for Specialty Epoxy Resins for many years. According to the proposed complaint, Hexion and Huntsman account for between

Analysis to Aid Public Comment

90 and 60 percent of sales in the various application specific end-use markets in North America. They each had close to \$1 billion in sales of Specialty Epoxy Resins in 2007. There are only four producers of MDI in the United States: Huntsman, Dow Chemical, BASF, and Bayer. MDI imports are minimal, and Hexion provides formaldehyde to all MDI producers in the U.S., except Dow. Hexion, as a supplier of formaldehyde to MDI producers, receives competitively sensitive non-public information from three of the four MDI producers. Such information includes MDI production forecasts, MDI demand forecasts and updates to these forecasts on a weekly basis, MDI projected long term forecasts, and schedules for periodic shutdowns of MDI production facilities supplied by Hexion. Thus, the market for MDI and the formaldehyde used in its production is highly concentrated. Total U.S. sales of MDI in 2007 were approximately \$2 billion.

The proposed complaint alleges that the proposed acquisition would reduce competition for Specialty Epoxy Resins in the various application specific end-use markets in North America by eliminating direct competition between these two companies, and by increasing the likelihood that unilateral market power will be exercised. As to MDI, the complaint alleges that the likelihood of coordinated interaction among competitors is increased as a result of the proposed acquisition.

III. Terms of the Proposed Order

Under the proposed Decision and Order, Hexion will divest its Specialty Epoxy Resins Business, and related assets, to Spolek within ten (10) days after Hexion acquires Huntsman. Spolek, based in the Czech Republic, develops, manufactures, and markets a wide range of commodity or basic epoxy resins. The divestiture will allow Spolek to enter the Specialty Epoxy Resins market. Similar to Hexion, post-divestiture Spolek will participate

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in both the commodity and Specialty Epoxy Resins markets, which will position Spolek to compete effectively in the market.

The proposed Decision and Order requires Hexion to divest its Duisburg, Germany; Stuttgart, Germany; Norco, Louisiana; Bedford Park, Illinois; and Houston, Texas facilities and their related assets. This will provide Spolek all assets and know-how necessary for the research, development, production and sale of Specialty Epoxy Resins.

In addition, the proposed Decision and Order requires Hexion to institute procedures to ensure that its acquired MDI business not have access directly, or indirectly, to competitively sensitive non-public information obtained by its formaldehyde division. The Decision and Order prohibits Hexion from using any competitively sensitive non-public information obtained from its competitors in an anticompetitive manner.

IV. Opportunity for Public Comment

The proposed Decision and Order has been placed on the public record for thirty (30) days to receive comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will review the Consent Agreement and comments received and decide whether to withdraw its agreement or make final the Consent Agreement's proposed Order.

The purpose of this analysis is to facilitate public comment on the proposed Decision and Order. This analysis is not intended to constitute an official interpretation of the Consent Agreement and the proposed Decision and Order.

Complaint

IN THE MATTER OF

DICK'S SPORTING GOODS, INC.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS
OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket C-4240; File No. 071 0196
Complaint, November 18, 2008 – Decision, November 18, 2008*

This consent order addresses an agreement between Golf Galaxy, Inc., a wholly owned subsidiary of Dick's Sporting Goods, Inc., and Golf Town Canada Inc. The original 1998 agreement between the two provided that Golf Galaxy would provide consulting services to Golf Canada, which wished to launch a chain of golf superstores in Canada similar to the Golf Galaxy stores in the United States. Golf Galaxy and Golf Canada entered into an amended agreement in 2004 that extended the duration of the restraints on competition beyond the expiration dates contemplated in the 1998 agreement. The proposed order enjoins Golf Galaxy from dividing or allocating markets for the retail sale of golf merchandise. In addition, the order prevents Golf Galaxy from enforcing any non-compete provision beyond the date originally provided for in the 1998 agreement. More specifically, the provision of the 2004 agreement prohibiting Golf Canada from operating any retail store in the United States will no longer be enforceable as of October 8, 2009. The prohibition on Golf Canada's engaging in any business outside of Canada that competes with or is similar to the business of Golf Galaxy will also no longer be enforceable. The order would not interfere with Golf Galaxy's ability to enter into written agreements to allocate or divide markets, customers, contracts, lines of commerce, or geographic territories in connection with the sale of golf merchandise where such agreement is reasonably related to a lawful consulting arrangement or lawful joint venture agreement; and is reasonably necessary to achieve such agreement's procompetitive benefits.

Participants

For the *Commission*: Jeffrey H. Fischer, Geoffrey M. Green, Melanie Sabo, and Melissa Westman-Cherry.

For the *Respondent*: Wendy Newton, Buchanan Ingersoll & Rooney PC.