

Complaint

IN THE MATTER OF

**AEA INVESTORS 2006 FUND, L.P.,
HHI HOLDING CORPORATION,
AND
HOUGHTON INTERNATIONAL, INC.**

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE
COMMISSION ACT

*Docket No. C-4297; File No. 081 0245
Filed August 26, 2010 — Decision, August 26, 2010*

The consent order addresses allegations that the proposed acquisition of S.A. Stuart GmbH (“Stuart”) by Houghton International, Inc. (“Houghton”) would result in decreased innovation in the market for aluminum hot rolling oil (“AHRO”) in North America and higher prices for AHRO to U.S. consumers. Under the consent order, Houghton is required to divest Stuart’s AHRO business to Quaker Chemical Corporation and provide transitional services to ensure a smooth transfer of AHRO assets. Under the consent order, the Commission will appoint a trustee to oversee the divestiture and a trustee to monitor compliance with the terms of the order.

Participants

For the *Commission*: Anna Chehtova, Mike Clark, Rebecca Dick, Robert E. Friedman, James Frost, Amanda Hamilton, Mark D. Seidman, Justin Stewart-Teitelbaum, and Jodie Williams.

For the *Respondents*: Charles F. (Rick) Rule, Cadwalader, Wickersham & Taft LLP; and Peter Guryan, Fried, Frank, Harris, Shriver & Jacobson LLP.

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission (“Commission”), having reason to believe that Respondent AEA Investors 2006 Fund, L.P., Respondent HII Holding Corporation and Respondent Houghton International, Inc. (“Houghton”), violated Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act (“FTC Act”), as amended, 15

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U.S.C. § 45, by purchasing D.A. Stuart Holding GmbH (“Stuart”) from Wilh. Werhahn KG (“Werhahn”), 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 AND JURISDICTION

A. AEA

1. Respondent AEA is a limited partnership organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 55 East 52nd Street, New York, New York 10055.

2. Respondent AEA is a person subject to the jurisdiction of the Commission.

3. Respondent AEA is, and at all times relevant herein has been, engaged in commerce as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12.

4. Respondent AEA is a person whose business is in or affects commerce as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

B. HII Holding Corporation

5. Respondent HII Holding Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at Madison and Van Buren Avenues, Valley Forge, Pennsylvania 19482-0930.

6. HII Holding Corporation is a subsidiary of Respondent AEA.

7. HII Holding Corporation now owns all outstanding voting securities of Stuart.

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8. HII Holding Corporation is a corporation subject to the jurisdiction of the Commission.

9. HII Holding Corporation is, and at all times relevant herein has been, engaged in commerce as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12.

10. HII Holding Corporation is a corporation whose business is in or affects commerce as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

C. Houghton International, Inc.

11. Houghton is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at Madison and Van Buren Avenues, Valley Forge, Pennsylvania 19482-0930.

12. Houghton is a wholly-owned subsidiary of HII Holding Corporation.

13. Houghton is an international manufacturer of specialty chemicals and a provider of chemical management services for the metalworking industry. Houghton’s major product lines include fluids used in metal cutting, fluid power (hydraulics) and metal rolling. Houghton is engaged in the sale of aluminum hot rolling oil (“AHRO”) and associated technical support services.

14. Houghton is, and at all times relevant herein has been, engaged in commerce as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12.

15. Houghton is a corporation whose business is in or affects commerce as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

16. Respondents AEA, HII Holding Corporation, and Houghton International, Inc. hereinafter are collectively referred to as “Respondents.”

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II. THE ACQUISITION

17. On July 3, 2008, Respondents entered into a Share Purchase Agreement (“Agreement”) with Werhahn and Stuart VV to acquire all of the outstanding voting securities of Stuart (“Acquisition”).

18. The Acquisition combined the two largest producers of AHRO.

III. THE RELEVANT MARKET

A. Product Market

19. The relevant product market in which to analyze the competitive effects of the Acquisition is the production and sale of AHRO and associated technical support services. AHRO is an indispensable element in the production of hot rolled aluminum plate and hot rolled aluminum sheet.

20. There are no products or services that are reasonably interchangeable with or viable substitutes for AHRO and its associated technical support services.

B. Geographic Market

21. The relevant geographic market for analyzing the effects of the Acquisition is North America. North American customers are unlikely to purchase AHRO and associated technical support services from suppliers located overseas due to the high cost of transporting these products by marine vessel and the long lead times associated with the marine transport of AHRO.

IV. MARKET PARTICIPANTS AND CONCENTRATION

22. Five firms produce AHRO in North America. Two large aluminum hot mill customers partially supply their own AHRO needs and three firms produce AHRO commercially. The Acquisition reduces the total number of producers from five to four.

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23. The Acquisition greatly increases concentration in the relevant market. Stuart and Houghton together control approximately 75% of the North American market for AHRO.

V. ANTICOMPETITIVE EFFECTS

24. The proposed acquisition may substantially lessen competition in the following ways, among others:

- a. by eliminating actual, direct and substantial competition between Houghton and Stuart in the sale of AHRO and associated technical support services in the relevant market;
- b. by combining the two dominant suppliers of AHRO and associated technical support services in the United States, thereby substantially increasing concentration in the already concentrated market for the sale of AHRO and associated technical support services in North America;
- c. by eliminating Stuart as the closest substitute to Houghton for AHRO and associated technical support services in North America;
- d. by increasing the likelihood that a combined Houghton and Stuart will unilaterally exercise market power in the sale and distribution of AHRO and associated technical support services;

each of which increases the likelihood that prices for AHRO and associated technical support services will increase above competitive levels, and that competition for the sale of AHRO and associated technical support services is likely to decrease in the relevant market.

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VI. ENTRY CONDITIONS

25. Entry into the relevant markets is difficult and would not be likely, timely or sufficient to remedy the anticompetitive effects of the proposed acquisition.

VII. VIOLATIONS

26. The allegations contained in paragraphs 1-25 are repeated and realleged as though fully set forth here.

27. Respondents' acquisition of Stuart substantially lessened competition in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. §18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

28. The Agreement described in paragraph 17 constitutes a violation of Section 5 of the FTC Act, 15 U.S.C. § 45, as amended.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this complaint to be signed by the Secretary and its official seal to be affixed hereto, at Washington, D.C., this twenty-sixth day of August, 2010.

By the Commission.

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The Federal Trade Commission ("Commission"), having initiated an investigation of the consummated acquisition of D.A. Stuart Holding GmbH ("D.A. Stuart") by Respondent AEA Investors 2006 Fund, L.P. ("AEA"), the parent of Respondent HII Holding Corporation ("HII"), which in turn is the parent of Respondent Houghton International, Inc. (collectively referred to as "Respondents"), from Wilh. Werhahn KG ("Werhahn"), and

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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 which, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“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 have violated the said Acts and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint 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 AEA Investors 2006 Fund, L.P., is a limited partnership organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 55 East 52nd Street, New York, New York 10055. AEA is the parent of Respondent HII Holding Corporation and the ultimate parent entity of Houghton International, Inc.
2. Respondent HII Holding Corporation is a corporation organized, existing, and doing business under and by

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virtue of the laws of the State of Delaware, with its offices and principal place of business located at Madison and Van Buren Avenues, Valley Forge, Pennsylvania 19482-0930. Houghton International, Inc., is a wholly-owned subsidiary of HII Holding Corporation.

3. Respondent Houghton International, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its offices and principal place of business located at Madison and Van Buren Avenues, Valley Forge, Pennsylvania 19482-0930.
4. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of Respondents, and this proceeding is in the public interest.

ORDER**I.**

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

- A. “AEA” means AEA Investors 2006 Fund, L.P., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by AEA (including, but not limited to, HII and Houghton), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “HII” means HII Holding Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by HII (including, but not limited to, Houghton), and the respective directors, officers,

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employees, agents, representatives, successors, and assigns of each.

- C. “Houghton” means Houghton International, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Houghton, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- D. “Respondents” means AEA, HII, and Houghton.
- E. “Acquisition” means the acquisition accomplished pursuant to the July 3, 2008, Share Purchase Agreement between Stuart VV GmbH and Wilh. Werhahn KG, on the one hand, and Houghton International Inc. and HII Holding Corp, on the other hand, whereby AEA acquired D.A. Stuart.
- F. “Actual Cost” means a cost not to exceed the cost of direct labor, direct material used, travel, and other expenditures to the extent the costs are directly incurred to provide the Products; *provided, however*, that in each instance where (1) an agreement to divest assets is specifically referenced and attached to this Order, and (2) such agreement becomes a Remedial Agreement, “Actual Cost” means such cost as is provided in such Remedial Agreement.
- G. “Agreement to Hold Separate” means the agreement executed by and between Respondents and the Commission’s staff on September 8, 2008, requiring Respondents to hold “D.A. Stuart’s Aluminum Business,” as that term is defined in the Agreement to Hold Separate, separate and apart from and independent of Respondent’s business and to maintain the viability, marketability, and competitiveness of “D.A. Stuart’s Aluminum Business” until the Agreement terminates pursuant to the agreed-upon conditions. As used in this Order, the term “Held Separate Business” means “D.A. Stuart’s Aluminum

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Business” as defined in the Agreement to Hold Separate. The Agreement to Hold Separate is attached hereto as Non-Public Appendix A.

- H. “Books and Records” means all originals and all copies of any operating, financial or other books, records, documents, data and files relating to the D.A. Stuart AHRO Business, including, without limitation: Customer files and records, Customer lists, Customer product specifications, Customer purchasing histories, Customer service and support materials, Customer Approvals and Information; accounting records; credit records and information; correspondence; research and development data and files; production records; distributor files; vendor files, vendor lists; advertising, promotional and marketing materials, including website content; sales materials; records relating to any Relevant Employees who accept employment with the Commission-approved Acquirer; educational materials; technical information, data bases, and other documents, information, and files of any kind, regardless whether the document, information, or files are stored or maintained in traditional paper format, by means of electronic, optical, or magnetic media or devices, photographic or video images, or any other format or media;

provided, however, that where documents or other materials included in the Books and Records to be divested with the D.A. Stuart AHRO Business contain information: (1) that relates both to the D.A. Stuart AHRO Business and to Respondents’ retained assets, products or businesses and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the D.A. Stuart AHRO Business; or (2) for which the relevant party has a legal obligation to retain the original copies, the relevant party shall be required to provide only copies or relevant excerpts of the documents and materials containing this information. In instances where such copies are provided to the Commission-approved

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Acquirer, the relevant party shall provide the Commission-approved Acquirer access to original documents under circumstances where copies of the documents are insufficient for evidentiary or regulatory purposes. The purpose of this proviso is to ensure that Respondents provide the Commission-approved Acquirer with the above-described information without requiring Respondents to completely divest information that, in content, also relates to retained assets, products or businesses.

- I. “Closing Date” means the date on which Respondents (or a Divestiture Trustee) and a Commission-approved Acquirer consummate a transaction to comply with Paragraph II. (or Paragraph VI.) of this Order.
- J. “Commission” means the Federal Trade Commission.
- K. “Commission-approved Acquirer” means the following:
 - 1. Quaker, if Quaker has been approved by the Commission to acquire the Divestiture Assets pursuant to Paragraph II. of this Order in connection with the Commission’s determination to make this Order final; or
 - 2. a Person that receives the prior approval of the Commission to acquire the Divestiture Assets pursuant to Paragraph II. or Paragraph VI. of this Order.
- L. “Confidential Business Information” means any non-public, competitively sensitive, or proprietary marketing and sales information relating to the D.A. Stuart AHRO Business that is not independently known to a Person from sources other than the Person to which the information pertains, and includes, but is not limited to, pricing information, marketing methods, market intelligence, competitor product information, commercial information, management system information, business processes and practices,

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customer communications, bidding practices and information, procurement practices and information, supplier qualification and approval practices and information, and training practices; *provided, however*, that where documents or other materials included in the Confidential Business Information to be divested with the Divestiture Assets contain information: (1) that relates both to the D.A. Stuart AHRO Business and to Respondents' retained assets, products or businesses and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the D.A. Stuart AHRO Business; or (2) for which the relevant party has a legal obligation to retain the original copies, the relevant party shall be required to provide only copies or relevant excerpts of the documents and materials containing this information; *provided further, however*, that Confidential Business Information does not include any information that (i) was or becomes generally available to the public other than as a result of disclosure by such Person, (ii) was available, or becomes available, to such Person on a non-confidential basis, but only if, to the knowledge of such Person, the source of such information is not in breach of a contractual, legal, fiduciary, or other obligation to maintain the confidentiality of the information, (iii) is required by Law to be publicly disclosed, or (iv) is protected by the attorney work product, attorney-client, joint defense or other privilege prepared in connection with the Acquisition and relating to any United States, state, or foreign antitrust or competition Laws. Confidential Business Information includes information regardless of the form in which it is conveyed, including written and electronic versions. The purpose of this proviso is to ensure that Respondents provide the Commission-approved Acquirer with the above-described information without requiring Respondents to completely divest information that, in content, also relates to retained assets, products or businesses. For the avoidance of doubt and notwithstanding the foregoing, "Confidential Business Information" shall

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not include any information that is related to the research, development, design, formulation, manufacturing, or technical service or support of the Products, including but not limited to information relating to trials conducted anywhere in the world; such information shall be subject to the requirements and obligations of this Order relating to “Intellectual Property.”

- M. “Consent Agreement” means the Agreement Containing Consent Order executed by Respondents on May 28, 2010.
- N. “Customer” means any Person that is a direct or indirect purchaser of any D.A. Stuart AHRO Business Product(s) in the United States (including all U.S. territories and possessions).
- O. “Customer Approvals and Information” means, with respect to any D.A. Stuart AHRO Business Product(s):
 - 1. all consents, authorizations and other approvals, and pending applications and requests therefore, required by any Customer applicable or related to the research, development, manufacture, finishing, packaging, distribution, marketing or sale of any D. A. Stuart AHRO Business Product(s); and
 - 2. all underlying information, data, filings, reports, correspondence or other materials used to obtain or apply for any of the foregoing, including, without limitation, all data submitted to and all correspondence with the Customer or any other Person.
- P. “DAS AHRO Intellectual Property” means all rights, title and interest, worldwide, without limitation, in and to all Intellectual Property relating to the D.A. Stuart AHRO Business Product(s) or otherwise relating to or used in connection with the research, development, design, formulation, manufacturing, or technical service or support for, all D.A. Stuart AHRO Business

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Products by D.A. Stuart prior to the Acquisition and any improvements or additions thereto designed, developed, formulated or tested after the Acquisition by Respondents, including, but not limited to, all DAS AHRO Intermediate Component IP; *provided, however*, that Houghton shall have a right to obtain a license from the Commission-approved Acquirer to use the Licensor Intellectual Property to manufacture aluminum hot rolling oils for sale and use solely outside the United States (and its territories and possessions), pursuant to a Remedial Agreement; *provided further, however*, that notwithstanding the foregoing, and for the avoidance of doubt, Respondents shall not manufacture, use or sell or attempt to replicate, reverse engineer or otherwise produce any Intermediate Components, or any Products containing or using any Intermediate Components or any DAS AHRO Intermediate Component IP, except insofar as such Intermediate Components or Products containing or using Intermediate Components or DAS AHRO Intermediate Component IP are either: (i) produced by Respondents solely to be supplied to the Commission-approved Acquirer or to the Respondents pursuant to a Remedial Agreement for a limited transitional period after the Closing Date; and/or (ii) supplied to Respondents by the Commission-approved Acquirer pursuant to a Remedial Agreement;

- Q. “DAS AHRO Intermediate Component IP” means all Intellectual Property and Confidential Business Information relating to the Intermediate Components owned or used by D.A. Stuart prior to the Acquisition, and any improvements or additions thereto designed, developed, formulated or tested after the Acquisition.
- R. “D.A. Stuart” means D.A. Stuart Holding GmbH, a limited liability company incorporated under the laws of Germany with its offices and principal place of business located at Königsstrasse 1, 41460 Neuss, Germany.

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- S. “D.A. Stuart AHRO Business” means all of Respondents’ rights, title and interest in and to all of the following business, property and assets, tangible and intangible, relating to or used in the aluminum hot rolling oil business of D.A. Stuart in the United States (including all U.S. territories and possessions) as it existed prior to the Acquisition, together with any improvements or additions thereto after the Acquisition, including, but modifying in specified respects, “D.A. Stuart’s Aluminum Business” as held separate and apart from and independent of Houghton pursuant to the terms of the Agreement to Hold Separate, and also including, but not limited to:
1. the Held Separate Business;
 2. contracts, including Customer contracts in the United States (including all U.S. territories and possessions) to the extent related to the D.A. Stuart AHRO Business Products, and all of the former D.A. Stuart’s rights, titles, and interests in and to the contracts entered into in the ordinary course of business with suppliers, sales representatives, distributors, and agents (all in the United States) to the extent related to the D.A. Stuart AHRO Business Products;
 3. at the Commission-approved Acquirer’s option, all tangible personal property used in or relating solely to the D.A. Stuart AHRO Business, or otherwise provided for in a Remedial Agreement, including, but not limited to field and laboratory equipment;
 4. all Books and Records;
 5. all Confidential Business Information; and
 6. all consents, licenses, certificates, registrations or permits issued, granted, given or otherwise made available by or under the authority of any Governmental Entity or pursuant to any legal

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requirement, and all pending applications therefore or renewals thereof;

Provided, however, that the D.A. Stuart AHRO Business shall not include:

1. any real property interests (including fee simple and leasehold interests), except as provided for in the Quaker Lease Agreement;
2. any tangible personal property not used in or relating solely to the D.A. Stuart AHRO Business;
3. any right to use any name or logo of Houghton or of its predecessors or affiliates or its business, or any variant or derivative thereof, including but not limited to “Houghton International Inc.,” “Houghton International,” “Houghton,” “Houghton Intl,” “D.A. Stuart Company,” “D.A. Stuart,” “Stuart,” “Rolkleen,” or “Rollshield”;
4. the Products: Alushield 150-IBC and Alushield 150-SW;
5. any tangible or intangible property or assets owned or controlled by Respondents or in which Respondents had any right, title, or interest in prior to the Acquisition, except Confidential Business Information or DAS AHRO Intellectual Property;
6. Intellectual Property, except DAS AHRO Intellectual Property;
7. any assets used to provide administrative or support services, including accounting, finance, accounts payable, accounts receivable, credit, human resources, purchasing, shipping, and information technology, relating to retained assets, products or businesses, except as provided for in any Transition Services Agreement;

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8. field and laboratory, testing, or test evaluation equipment relating to retained assets, products or businesses, except those identified in Section 2.2(d) of the Quaker Asset Purchase Agreement;
9. any manufacturing or production facilities or plants, including the former D.A. Stuart's manufacturing facility located in Detroit, Michigan, and any related assets physically located or used at such facilities, except any such assets identified in the Quaker Asset Purchase Agreement;
10. any raw materials or inventories of work in process;
11. any cash and cash equivalents (including marketable securities and short term investments), securities, negotiable instruments and deposits held by Respondents or relating to the D.A. Stuart AHRO Business, in lock boxes, in financial institutions or elsewhere; or
12. any current and prior insurance policies of Respondents or rights of any nature with respect thereto, including all insurance recoveries thereunder and rights to assert claims with respect to any such insurance recoveries.

For the avoidance of doubt and notwithstanding the foregoing: (i) D.A. Stuart AHRO Business shall include Confidential Business Information, and (ii) DAS AHRO Intellectual Property shall be included within the Divestiture Assets, which Respondents shall divest in accordance with the terms of this Order.

- T. "D.A. Stuart AHRO Business Product(s)" means all Products with respect to which D.A. Stuart was engaged in the research, development, design, formulation, manufacture, distribution, marketing or sale prior to the Acquisition, and includes all Products researched, developed, designed, formulated,

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manufactured, distributed, marketed, or sold after the Acquisition.

- U. “D.A. Stuart Dedicated Aluminum Employees” means the individuals identified and described in the Agreement to Hold Separate with responsibilities for Product Management/Marketing, R&D, and Sales/Technical Support, and any persons who replace or have replaced those individuals consistent with the terms of the Agreement to Hold Separate who are identified in Non-Public Appendix B to this Order.
- V. “Designee(s)” means any Person other than a Respondent that has been designated by a Commission-approved Acquirer to manufacture a Product for that Commission-approved Acquirer.
- W. “Divestiture Assets” means D.A. Stuart AHRO Business and DAS AHRO Intellectual Property.
- X. “Divestiture Trustee” means a trustee appointed by the Commission pursuant to Paragraph VI.A. of this Order.
- Y. “Governmental Entity(ies)” means any federal, state, local, or non-U.S. government; any court, legislature, governmental agency or governmental commission; or any judicial or regulatory authority of any government.
- Z. “Held Separate Business” means D.A. Stuart’s Aluminum Business as defined in the Agreement to Hold Separate to mean, inter alia, the business of D.A. Stuart in the United States as it existed prior to the Acquisition, of designing, formulating, manufacturing and selling hot rolling lubricants, coolants, and additives, or components thereof, used in the process of flat hot rolling of aluminum or any aluminum alloy in the United States, and as held separate and apart from and independent of Houghton, with maintained viability, marketability, and competitiveness, pursuant to the terms of the Agreement to Hold Separate.

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- AA. “Intellectual Property” means, without limitation: (1) Know-How; (2) Patents; (3) Trade Names and Marks; (4) all copyrights, copyright registrations and applications, in both published works and unpublished works, including domain names, the content of website(s) located at the domain names, and all copyrights in such website(s); and (5) all rights in any jurisdiction anywhere in the world to sue and recover damages or obtain injunctive relief for infringement, dilution, misappropriation, violation, or breach, or otherwise to limit the use or disclosure of any of the foregoing.
- BB. “Interim Monitor” means a monitor appointed by the Commission pursuant to Paragraph V. of this Order.
- CC. “Intermediate Components” means chemical compositions of esters and emulsifiers designated: Code 556A, Code 566A and Code 18-16.
- DD. “Know-How” means all know-how, technology, technical information, data, trade secrets, proprietary information and knowledge, recipes, formulas, formulations, blend specifications, processes, procedures, practices, standards, methods, techniques, specifications, manuals, protocols, engineering, data, raw material specifications, product development records, customer specifications, equipment (including repair and maintenance information), tooling, spare parts, processes, procedures, product development records, quality assurance and quality-control practices and information and documentation, competitor information, inventions, research and test procedures and information, regulatory communications, and all other information relating to or used in connection with the research, development, design, formulation, manufacturing, or technical service or support for, Products, and all rights in any jurisdiction to limit the use or disclosure thereof, anywhere in the world.

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- EE. “Law(s)” means all laws, statutes, rules, regulations, ordinances, and other pronouncements having the effect of law.
- FF. “Licensor Intellectual Property” means (1) the formulations, research, development, and related manufacturing information for the aluminum hot rolling products listed in Non-Public Appendix C, (2) U.S. Patent No. 6,060,438, and (3) any Know-How owned by D.A. Stuart as of September 8, 2008, and any improvements thereon as of the Closing Date, relating to the design, research, development, formulation, and manufacture of hot rolling lubricants, coolants, and additives, or components thereof used in the process of flat hot rolling of aluminum or any aluminum alloy for use solely outside the United States (and its territories and possessions); *provided, however*, and for the avoidance of doubt, “Licensor Intellectual Property” does not include (1) any rights within the United States (including all U.S. territories and possessions) except those rights to use to manufacture as provided for in Section 3.1 of the Quaker License agreement, or (2) any rights to DAS AHRO Intermediate Component IP anywhere in the world.
- GG. “Order” means the Decision and Order.
- HH. “Patent(s)” means all patents, patents pending, patent applications and statutory invention registrations, including reissues, divisions, continuations, continuations-in-part, substitutions, supplementary protection certificates, extensions and reexaminations thereof, all inventions disclosed therein, all rights therein provided by international treaties and conventions, and all rights to obtain and file for patents and registrations thereto, anywhere in the world.
- II. “Person” means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, or other business entity,

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and any subsidiaries, divisions, groups or affiliates thereof.

- JJ. “Product(s)” means lubricants, coolants, and additives or components thereof used in the hot rolling of aluminum plates or sheets of any alloy.
- KK. “Quaker” means Quaker Chemical Corporation, a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at One Quaker Park, 901 Hector Street, Conshohocken, Pennsylvania 19428-0809.
- LL. “Quaker Divestiture Agreements” means the following, which are referenced in and attached to this Order as Non-Public Appendix D:
1. Asset Purchase and Sale Agreement by and among Quaker Chemical Corporation and Houghton International, Inc., dated May 28, 2010, and all amendments, exhibits, attachments, agreements and schedules thereto (“Quaker Asset Purchase Agreement”);
 2. Transition Services Agreement by and among Quaker Chemical Corporation and Houghton International, Inc., dated May 28, 2010, which is attached as Exhibit A to the Quaker Asset Purchase Agreement, and all amendments, exhibits, attachments, agreements and schedules thereto (“Quaker Transition Services Agreement”);
 3. License Agreement by and among Quaker Chemical Corporation and Houghton International, Inc., dated May 28, 2010, which is attached as Exhibit B to the Quaker Asset Purchase Agreement, and all amendments, exhibits, attachments, agreements and schedules thereto (“Quaker License Agreement”);

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4. Supply Agreement by and among Quaker Chemical Corporation and Houghton International, Inc., dated May 28, 2010, and all amendments, exhibits, attachments, agreements and schedules thereto (“Quaker Supply Agreement”);
5. Quaker Lease Agreement; and
6. all other agreements by and among Quaker and Houghton, including all amendments, exhibits, attachments, agreements and schedules thereto, related to the divestiture of the Divestiture Assets.

MM. “Quaker Lease Agreement” means

NN. “Relevant Employees” means the Manager and D.A. Stuart Dedicated Aluminum Employees.

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

1. Quaker Divestiture Agreements that have been approved by the Commission to accomplish the requirements of this Order in connection with the Commission’s determination to make this Order final; and/or
2. any agreement(s) between Respondents and a Commission-approved Acquirer (or between a Divestiture Trustee and a Commission-approved Acquirer), and all amendments, exhibits, attachments, agreements, and schedules thereto, related to divestiture of the Divestiture Assets that have been approved by the Commission to accomplish the requirements of this Order.

PP. “Technical Support” means, without limitation, all capabilities to provide customer-specific technical expertise, Product modification, Product tailoring, Product tweaking, Product performance advice, equipment assessment, on-site Product assistance, off-

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site Product assistance, and general Product issue-solving and trouble-shooting.

- QQ. “Termination Date” means the date on which Respondents’ provision of Transition Services to the Commission-approved Acquirer (including Quaker) pursuant to a Transition Services Agreement (including, but not limited to, the Quaker Transition Services Agreement if it is approved by the Commission in connection with the Commission’s determination to make this Order final) terminates or has terminated.
- RR. “Third Party(ies)” means any Person other than the following: (1) the Respondents, or (2) the Commission-approved Acquirer.
- SS. “Trade Names and Marks” means all trade names, commercial names and brand names, all registered and unregistered trademarks, service marks, including registrations and applications for registration thereof (and all renewals, modifications, and extensions thereof), trade dress, logos, and appellations, geographical indications or designations, domain name(s), universal resource locators (“URL”), and registrations thereof issued by any Person, Governmental Entity(ies) or authority that issues and maintains the domain name registration, and all rights related thereto under common law and otherwise, and the goodwill symbolized by and associated therewith, anywhere in the world.
- TT. “Transition Services” means any transitional manufacturing, supply, Technical Support, or other services necessary for the continued manufacture, development, use, import, distribution, marketing, or sale of the D.A. Stuart AHRO Business Products by the Commission-approved Acquirer
- UU. “Transition Services Agreement(s)” means any transitional agreement or arrangement entered into by and between the Respondents and a Commission-

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approved Acquirer to provide Transition Services that receives the prior approval of the Commission and thereby becomes a Remedial Agreement, or that is otherwise approved by the Commission in connection with the Commission's determination to make this Order final, including, but not limited to, the Quaker Transition Services Agreement included as part of the Quaker Divestiture Agreements if it is approved by the Commission in connection with the Commission's determination to make this Order final and thereby becomes a Remedial Agreement.

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

- A. Not later than ten (10) days after the date this Order becomes final, Respondents shall divest the Divestiture Assets, absolutely and in good faith to Quaker, pursuant to and in accordance with the Quaker Divestiture Agreements (which agreements shall not limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that this Order shall not be construed to reduce any rights or benefits of Quaker or to reduce any obligations of Respondents under such agreements), and each such agreement, if it becomes a Remedial Agreement related to the divestiture of the D.A. Stuart AHRO Business to Quaker, is incorporated by reference into this Order and made a part hereof; *Provided, however*, that:
1. if Respondents have divested the Divestiture Assets to Quaker 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 Quaker is not an acceptable acquirer of the Divestiture Assets, then Respondents shall immediately rescind the transaction with Quaker and shall divest the Divestiture Assets to a Commission-

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approved Acquirer no later than six (6) months from the date the Order becomes final, absolutely and in good faith, at no minimum price, and only in a manner that receives the prior approval of the Commission; or

2. if the Respondents have divested the Divestiture Assets to Quaker prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies the Respondents that the manner in which the divestiture was accomplished is not acceptable, the Commission may direct the Respondents, or appoint a Divestiture Trustee, pursuant to Paragraph VI. of this Order, to effect such modifications to the manner of divesting Divestiture Asset to Quaker (including, but not limited to, entering into additional agreements or arrangements) as may be necessary to satisfy the requirements of this Order.
- B. Notwithstanding the timing requirement in Paragraph II.A., above, Respondents shall submit all Confidential Business Information relating to the D.A. Stuart AHRO Business to Quaker in good faith, in a timely manner (i.e., as soon as practicable, avoiding any delays in transmission of the respective information); and in a manner that ensures its completeness and accuracy and that fully preserves its usefulness.
- C. Prior to the Closing Date, Respondents shall secure all consents and waivers from all Third Parties that are necessary for Respondents to divest the Divestiture Assets and/or to grant any license(s) to a Commission-approved Acquirer to assure the continued use, research, development, manufacture, marketing, distribution, sale, or import of the D.A. Stuart AHRO Business Products by the Commission-approved Acquirer (or the Designee(s) of the Commission-approved Acquirer); *provided, however,* that Respondents may satisfy this requirement by certifying that such Commission-approved Acquirer has executed

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

- D. Until the divestiture of the Divestiture Assets and pursuant to the Agreement to Hold Separate, Respondents shall continue to hold D.A. Stuart's AHRO Business separate, apart, and independent of Houghton and take all steps necessary to ensure that D.A. Stuart's AHRO Business is maintained and operated as a separate and independent competitor in the business of designing, formulating, and selling lubricants, coolants, and additives, or components thereof used in the process of hot rolling aluminum sheet and aluminum plate; and Respondents shall continue to take such steps as are necessary to maintain, and assure the continued maintenance of, the viability, marketability, and competitiveness of D.A. Stuart's AHRO Business and the DAS AHRO Intellectual Property, including without limitation, DAS AHRO Intermediate Component IP, and to prevent the destruction, removal, wasting, deterioration, or impairment of D.A. Stuart's AHRO Business and the DAS AHRO Intellectual Property, except for ordinary wear and tear, and the disposition of inventory and other assets in the ordinary course of business and shall not sell, transfer, encumber, or otherwise impair D.A. Stuart's AHRO Business, the DAS AHRO Intellectual Property, including, without limitation, the DAS AHRO Intermediate Component IP; *provided, however*, that if Respondents have divested the Divestiture Assets to Quaker, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that Quaker is not an acceptable acquirer of the Divestiture Assets and Respondents are required to rescind the transaction with Quaker pursuant to Paragraph II.A.1. of this Order, Respondents shall comply with the terms of this Paragraph II.D. and with paragraphs 1-11 of the Agreement to Hold Separate until divestiture of the Divestiture Assets to a Commission-approved Acquirer.

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- E. In the event that the Quaker Transition Services Agreement becomes a Remedial Agreement:
1. any extensions of the Transition Period (as defined in such agreement) during which Respondent shall provide Transition Services to Quaker shall be at the sole option of Quaker; *provided, however*, that any manufacturing, supply or other services provided by Respondents to Quaker pursuant to the Quaker Transition Services Agreement shall not be extended and shall not otherwise continue beyond a total period of two (2) years after the Closing Date without the prior approval of the Commission;
 2. Respondents shall notify the Commission in writing of the Termination Date with respect to the provision of Transition Services to Quaker pursuant to the Quaker Transition Services Agreement; and,
 3. as a limited exception to the prohibitions and requirements of Paragraph IV. of this Order, Respondents shall be permitted to use DAS AHRO Intellectual Property and the Confidential Business Information, and have continued access to copies of Books and Records only pursuant to, and subject to the approval of the Commission, a restricted and limited license to use only as necessary to perform Respondents' obligations pursuant to the Quaker Transition Services Agreement, and then only during the term of the Quaker Transition Services Agreement and only for the limited purposes of complying with the Quaker Transition Services Agreement; *Provided, however*, that Respondents shall:
 - a. immediately following the Termination Date, transfer and deliver expeditiously all DAS AHRO Intellectual Property, Confidential Business Information, and Books and Records

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(and all copies thereof) to Quaker, in a manner that ensures the completeness and accuracy of such documents, information, materials and Intellectual Property and that fully preserves their usefulness, and remove completely all DAS AHRO Intellectual Property and Confidential Business Information, including without limitation all DAS AHRO Intermediate Component IP, from Respondents' possession, custody and control;

- b. complete such transfer and delivery to Quaker and removal from Respondents' possession, custody and control within thirty (30) days of the Termination Date; and
 - c. no later than ten (10) days after completing such transfer, delivery, and removal, submit a report to the Commission describing how Respondents have complied with the requirements of this Paragraph II.E.3., and certifying under oath to the Commission that all such documents, information, materials and Intellectual Property have been transferred, delivered, and removed, as required, and that none is in the possession, custody or control of or retained by Respondents.
- F. If the Commission-approved Acquirer is not Quaker, at the option of the Commission-approved Acquirer Respondents shall enter into appropriate Transition Services Agreement(s) to provide Transition Services to the Commission-approved Acquirer, subject to the approval of the Commission, for a period not to exceed two (2) years after the Closing Date, at no more than Respondents' Actual Cost; *provided, however*, that Respondents shall not modify or amend such Transition Services Agreement(s), and shall not continue to provide manufacturing, supply or other services to the Commission-approved Acquirer beyond the two (2) year period provided by this Paragraph

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without the prior approval of the Commission; *provided further*, that as a limited exception to the prohibitions and requirements of Paragraph IV. of this Order, Respondents shall:

1. be permitted to use DAS AHRO Intellectual Property and Confidential Business Information and have access to copies of Books and Records only pursuant to, and subject to the approval of the Commission, a restricted and limited license to use only as necessary to perform Respondents' obligations pursuant to the Transition Services Agreement(s), and then only during the term of the Transition Services Agreement(s) and only for the limited purposes of the Transition Services Agreement(s); and
 2. following the Termination Date, shall fully comply with the requirements of Paragraph II.E.3. of this Order regarding, *inter alia*, the expeditious transfer and delivery to the Commission-approved Acquirer of all DAS AHRO Intellectual Property, Confidential Business Information, and Books and Records (and all copies thereof), the submission of a report to the Commission, and the certification under oath to the Commission that all documents, materials, information and Intellectual Property have been transferred, delivered, and removed, as required, and that none is in the possession, custody or control of or retained by Respondents.
- G. The purpose of the divestiture of the Divestiture Assets and the additional requirements in this Order is to ensure the continuation of D.A. Stuart's AHRO Business as a viable, on-going, independent and competitive business, in the same line of commerce in which D.A. Stuart's AHRO Business was engaged at the time of the Acquisition, including, but not limited to, worldwide rights to and the ability to enforce worldwide all DAS AHRO Intellectual Property, by a firm with sufficient ability and an equivalent incentive to invest and compete in that line of commerce that

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D.A. Stuart's AHRO Business had before the Acquisition, in order to remedy the lessening of competition alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that Respondents shall:

- A. Not later than fifteen (15) days after signing the Remedial Agreement, provide an opportunity for the Commission-approved Acquirer:
 - 1. to meet personally, and outside the presence or hearing of any employee or agent of any Respondent, with any one or more of the Relevant Employees; and
 - 2. to make offers of employment to any one or more of the Relevant Employees;
- B. Not interfere, directly or indirectly, with the hiring or employing by the Commission-approved Acquirer of Relevant Employees;
- C. Remove any impediments or incentives within the control of Respondents that may deter Relevant Employees from accepting employment with the Commission-approved Acquirer, including, but not limited to, any non-compete provisions of employment or other contracts with Respondents that would affect the ability or incentive of those individuals to be employed by the Commission-approved Acquirer, and shall not make any counteroffer to a Relevant Employee who receives a written offer of employment from the Commission-approved Acquirer; *provided, however*, that nothing in this Order shall be construed to require Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of any employee;

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- D. Provide all Relevant Employees with reasonable financial incentives to continue in their positions until the Closing Date. Such incentives shall include, but are not limited to, a continuation, until the Closing Date, of all employee benefits, including regularly scheduled raises, bonuses, and vesting of pension benefits (as permitted by Law and for those Relevant Employees covered by a pension plan), offered by Respondents; and
- E. Not, for a period of one (1) year following the Closing Date, directly or indirectly, solicit or otherwise attempt to induce any of the Relevant Employees to terminate his or her employment with the Commission-approved Acquirer; *provided, however*, that Respondents may:
 - 1. advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at Relevant Employees; or
 - 2. hire Relevant Employees who apply for employment with Respondents, as long as such employees were not solicited by Respondents in violation of this Paragraph III.E.; *provided further, however*, that this Paragraph III.E. shall not prohibit Respondents from making offers of employment to or employing any Relevant Employee if the Commission-approved Acquirer has notified Respondents in writing that the Commission-approved Acquirer does not intend to make an offer of employment to that employee, or where such an offer has been made and the employee has declined the offer.

IV.

IT IS FURTHER ORDERED that:

- A. Respondents shall not use, solicit, or access, directly or indirectly, any DAS AHRO Intellectual Property or

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Confidential Business Information, and shall not disclose, provide, discuss, exchange, circulate, convey, or otherwise furnish such DAS AHRO Intellectual Property or Confidential Business Information, directly or indirectly, to or with any Person other than:

1. as necessary to comply with the requirements of this Order, or
 2. consistent with the limited exception permitted by Paragraph II.E.3. of this Order and pursuant to a Remedial Agreement, including without limitation the Quaker Transition Services Agreement (or any other Transition Services Agreement(s) with a Commission-approved Acquirer other than Quaker); *provided, however*, that Respondents shall be permitted to use the Licensor Intellectual Property but only in a manner that is consistent with the requirements of this Order.
- B. Respondents shall not, directly or indirectly, attempt to replicate, reverse engineer or otherwise produce any Intermediate Components; *provided, however*, that Respondents may continue to produce Intermediate Components for a limited transitional period after the Closing Date consistent with the Transition Services Agreement or the Supply Agreement.
- C. Prior to the Closing Date, Respondents shall provide written notification of the restrictions, prohibitions and requirements of Paragraphs IV.A. and B. of this Order to all of Respondents' personnel (i) who are or were involved in the provision of Transition Services to a Commission-approved Acquirer (including Quaker) pursuant to a Transition Services Agreement, or (ii) who otherwise had access to or possession, custody or control of any DAS AHRO Intellectual Property or Confidential Business Information prior to the Termination Date. Respondents may provide such notification by e-mail with return receipt requested or similar transmission, and must keep a file of any

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receipts or acknowledgments for one (1) year after the Closing Date. Respondents shall provide a copy of such notification to the Commission-approved Acquirer. Respondents shall maintain complete records of all such notifications at 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 provide the Commission-approved Acquirer with copies of all certifications, notifications and reminders sent to Respondents' personnel.

- D. Within thirty (30) days after the Termination Date, Respondents shall:
1. require, as a condition of continued employment post-divestiture, that each of Respondents' employees who had access to or possession, custody or control of any DAS AHRO Intellectual Property or Confidential Business Information sign a confidentiality agreement that complies with the restrictions, prohibitions and requirements of this Order and prohibits Respondents' employees from using or disclosing DAS AHRO Intellectual Property or Confidential Business Information in connection with Respondents' Products or businesses; and
 2. institute procedures and requirements and take such actions as are necessary to ensure that Respondents' personnel comply with the restrictions, prohibitions and requirements of this Paragraph IV. , including all actions that Respondents would take to protect their own trade secrets and confidential information.

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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 and the Remedial Agreements.
- B. The Commission shall select the Interim Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondents 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 this Order in a manner consistent with the purposes of this 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 this Order, and shall exercise such power and authority and carry out

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the duties and responsibilities of the Interim Monitor in a manner consistent with the purposes of this Order and in consultation with the Commission.

2. The Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission.
3. The Interim Monitor shall serve until the later of:
 - a. the completion by Respondents of the divestiture of the Divestiture Assets and the termination of the Quaker Transition Services Agreement (or any other Transition Services Agreement with a Commission-approved Acquirer), pursuant to this Order in a manner that fully satisfies the requirements of this Order and notification by the Commission-approved Acquirer to the Interim Monitor that it (or its Designee(s)) is fully capable of producing the D.A. Stuart AHRO Business Products acquired pursuant to a Remedial Agreement independently of Respondents; or
 - b. the completion by Respondents of their obligation to provide Transition Services to the Commission-approved Acquirer;

provided, however, that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purpose of this Order.

4. 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 its obligations under this Order, including, but not limited to, its obligations related to the relevant assets.

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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 this Order.

5. 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.
6. 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 misfeasance, gross negligence, willful or wanton acts, or bad faith by the Interim Monitor.
7. Respondents 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 Respondents, and any reports submitted by the Commission-approved Acquirer with respect to the performance of Respondents' obligations under this Order or the Remedial Agreement. Within thirty (30) days from the date

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the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning performance by Respondents of their obligations under this Order.

- E. 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.
- F. 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.
- G. 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 V.
- H. 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 this Order.
- I. 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.

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

- A. If Respondents have not fully complied with the obligations imposed by this Order, the Commission may appoint a trustee (“Divestiture Trustee”) to divest the Divestiture Assets and comply with Respondents’ other obligations in a manner that satisfies the requirements of this Order. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to divest the required assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph VI.A. 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 Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondents to comply with this Order.
- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, and stated in writing their reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents 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

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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 effectuate the divestiture required by, and satisfy the additional obligations imposed 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 effectuate the divestiture required by, and satisfy the additional obligations imposed by, this Order.
 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) year period, the Divestiture Trustee has submitted a plan to satisfy the obligations of Paragraph II. or believes that such can be achieved within a reasonable time, the period may be extended by the Commission, or, in the case of a court-appointed Divestiture Trustee, by the court; *provided, however*, that the Commission may extend the 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 divested 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

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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 caused by Respondents shall extend the time under this Paragraph VI.D. 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 Divestiture Trustee shall divest to the acquiring entity selected by Respondents from among those approved by the Commission; *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 Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The

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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 Respondents, 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 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 misfeasance, 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.
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.
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

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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 VI.
- 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 additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.
- G. The Divestiture Trustee appointed pursuant to this Paragraph VI. may be the same person appointed as Interim Monitor pursuant to the relevant provisions of this Order.

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

- A. Any Remedial Agreement shall not limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of any Commission-approved Acquirer or to reduce any obligations of Respondents under such agreements.
- B. Each Remedial Agreement, if approved by the Commission, shall be incorporated by reference into this Order and made a part hereof.
- C. Respondents shall comply with all terms of each Remedial Agreement, and any breach by Respondents of any term of the Remedial Agreement shall constitute a failure to comply with this Order. If any term of the Remedial Agreement varies from the terms

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of this Order (“Order Term”), then to the extent that Respondents cannot fully comply with both terms, the Order Term shall determine Respondents’ obligations under this Order.

- D. Respondents shall not modify or amend any material term of any Remedial Agreement without the prior approval of the Commission. Any material modification of the Remedial Agreement between the date the Commission approves the Remedial Agreement and the Closing Date, without the prior approval of the Commission, or any failure to meet any material condition precedent to closing (whether waived or not), shall constitute a violation of this Order. Notwithstanding any paragraph, section, or other provision of the Remedial Agreement, for a period of five (5) years after the Closing Date, any modification of a Remedial Agreement, without the approval of the Commission, shall constitute a failure to comply with this Order. Respondents shall provide written notice to the Commission not more than five (5) days after any modification (material or otherwise) of the Remedial Agreement, or after any failure to meet any condition precedent (material or otherwise) to closing (whether waived or not).

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

- A. Within thirty (30) days after the date this Order becomes final, and every sixty (60) days thereafter until Respondents have divested the Divestiture Assets and the Quaker Transition Services Agreement (or any other Transition Services Agreement with a Commission-approved Acquirer) has terminated, 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 same time a copy of its report concerning compliance with this Order to the Interim Monitor, if

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any Interim Monitor has been appointed. Respondents shall include in its reports, among other things that are required from time to time:

1. a full description of the efforts being made to comply with the relevant Paragraphs of this Order;
2. if Quaker is not approved by the Commission pursuant to Paragraph II.A., a description of all substantive contacts or negotiations related to the divestiture of the Divestiture Assets and the identity of all parties contacted and copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning completing their obligations pursuant to Paragraph II. of this Order;
3. a description of all DAS AHRO Intellectual Property and Confidential Business Information required to be delivered to the Commission-approved Acquirer;
4. a detailed plan to deliver all DAS AHRO Intellectual Property and Confidential Business Information required to be delivered to the Commission-approved Acquirer and any updates or changes to such plan;
5. a description of all DAS AHRO Intellectual Property and Confidential Business Information delivered to the Commission-approved Acquirer, including the type of information delivered, method of delivery, and date(s) of delivery, and updates as to what has been delivered;
6. a description of the DAS AHRO Intellectual Property and Confidential Business Information retained, if any, the reasons why it was retained, and a projected date(s) of delivery;

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7. a description of all assistance provided to the Commission-approved Acquirer during the reporting period; and,
 8. the Termination Date, including the required certification under oath regarding Respondents' compliance with the requirements of Paragraph II.E.3. (or Paragraph II.F.2., as applicable).
- B. One (1) year after the Order becomes final, annually for the next nine years on the anniversary of the Order date, 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 they have complied and are complying with the Order.

IX.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed (1) dissolution of the Respondents, (2) acquisition, merger or consolidation of Respondents, or (3) any other change in the Respondents that may affect compliance obligations arising out of this Order, including, but not limited to, assignment, the creation or dissolution of subsidiaries, or any other change in Respondents.

X.

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 Respondents, Respondents shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

- A. Access, during business office hours of the Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of the Respondents related to

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compliance with this Order, which copying services shall be provided by the Respondents at their expense; and

- B. To interview officers, directors, or employees of the Respondents, who may have counsel present, regarding such matters.

XI.

IT IS FURTHER ORDERED that this Order shall terminate ten (10) years from the date on which this Order becomes final.

By the Commission.

**ANALYSIS OF AGREEMENT CONTAINING CONSENT
ORDERS TO AID PUBLIC COMMENT**

I. Introduction

The Federal Trade Commission (“Commission”) has accepted for public comment, subject to final approval, an Agreement Containing Consent Order (“Consent Agreement”) from AEA Investors 2006 Fund, L.P., HII Holding Corporation, and Houghton International, Inc. (“Houghton”), (collectively “Respondents”). The purpose of the proposed Consent Agreement is to remedy the anticompetitive effects that would otherwise result from Respondents’ acquisition of the Aluminum Hot Rolling Oil (“AHRO”) business of D.A. Stuart GmbH (“Stuart”). Under the terms of the agreement, Respondents will divest the U.S. AHRO business of Stuart to Quaker Chemical Corporation (“Quaker”). The proposed consent also requires Respondents to divest related intellectual property rights necessary to ensure that Quaker will be able to quickly and fully

Analysis to Aid Public Comment

replicate the competition that would have been eliminated by the acquisition.

The proposed Consent Agreement has been placed on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the proposed Consent Agreement again, and will decide whether it should withdraw from the proposed Consent Agreement or make the accompanying Decision and Order (“Order”) final.

On July 3, 2008, Respondents proposed to acquire all outstanding Stuart voting securities. The Commission’s complaint alleges that the acquisition by Respondents of Stuart’s AHRO business violates 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, by eliminating an actual, direct and substantial competitor from the market for AHRO in North America. The proposed Consent Agreement would remedy the alleged violations by requiring a divestiture that will replace the competition that otherwise would be lost in this market as a result of the acquisition.

II. The Parties

AEA Investors 2006 Fund, L.P., controls HII Holding Corporation, which in turn owns 100 percent of Houghton. Houghton is a specialty chemicals manufacturer and management services provider headquartered in Valley Forge, Pennsylvania. Houghton produces a variety of specialty chemicals in its three United States production facilities, including fluids for metal cutting, fluid power (hydraulics), and metal rolling, including AHRO. Houghton is the largest seller of AHRO in North America.

Stuart was a wholly-owned subsidiary of Wilh. Werhahn KG, a German holding company. Stuart was a metalworking fluids manufacturer and management service provider headquartered in Warrenville, Illinois. Stuart manufactured metalworking fluids, including AHROs, in its Warrenville, Illinois, and Detroit, Michigan, facilities. Prior to the merger, Stuart was the second largest seller of AHRO in North America.

Analysis to Aid Public Comment

Quaker, the proposed buyer of Stuart's AHRO assets, is a leading global provider of process and specialty chemicals. It also offers chemical management services. Based in Conshohocken, Pennsylvania, Quaker reported total 2007 worldwide revenues of \$546 million. Quaker currently holds a very small share of the North American AHRO market.

III. Aluminum Hot Rolling Oil

AHRO is a critical input to an industrial process known as the "hot rolling" of aluminum alloy. Hot rolling creates large coils or plates of flat rolled aluminum stock, which are production inputs for a diverse variety of products such as beverage cans, automobile parts, building products like window frames and rain gutters, as well as a variety of aerospace and defense products.

As the mill operates, AHRO provides both cooling and lubrication to the metal stock. A modern aluminum hot mill must maintain extremely narrow manufacturing tolerances, and the correct AHRO formulation is critical to both the quality of the finished product and the efficient operation of the mill.

The relevant product market is AHRO and associated technical support services. AHRO customers require custom-formulated AHRO designed to reflect the unique specifications of their particular facility and also require their AHRO supplier to provide on-going, high-level technical support. AHRO customers would not switch to lubricants used to roll other metals or to other, unrelated lubricants in the event of a small but significant price increase.

The relevant geographic market is limited to North America. Customers in the U.S. are unlikely to utilize an AHRO supplier without domestic manufacturing and support capabilities. Both Houghton and Stuart maintained separate manufacturing facilities in Europe and Asia as well as in North America and very little product is shipped overseas due to high transportation costs and the long lead times required to transport these products by marine vessel.

Analysis to Aid Public Comment

The relevant market is highly concentrated, and the acquisition increased market concentration significantly, eliminating substantial and direct competition between the two most significant AHRO producers. The acquisition also resulted in Houghton controlling roughly 75% of the North American market for AHRO.

Evidence of head-to-head competition eliminated by the acquisition supports the anticompetitive implications of such dramatic increases in concentration. Customers benefitted from the rivalry between Houghton and Stuart in the form of lower prices, improved products and better service. Left unremedied, the acquisition likely would cause anticompetitive harm by enabling Houghton to profit by unilaterally raising the prices of AHRO, as well as reducing its incentive to improve quality and provide better service.

New suppliers are unlikely to enter this market to deter or counteract the anticompetitive effects of the acquisition. Quaker tried without much success to enter the North American market for AHRO in the late 1990s, but largely abandoned those efforts. Technological requirements, high customer switching costs and reputation pose substantial barriers to entrants attempting to sell AHRO to North American customers. As a result, new entry sufficient to achieve a significant market impact is unlikely to occur in a timely manner.

IV. The Proposed Consent Agreement

The Consent Agreement remedies the anticompetitive effects of the acquisition by requiring the divestiture of Stuart's U.S. AHRO Business to a Commission-Approved Acquirer. Quaker has agreed to purchase this business. Specifically, the proposed Consent Agreement requires divestiture of Stuart's AHRO customer contracts, business information and all of Stuart's AHRO-related intellectual property, including all the formulations and technical information that are necessary to compete independently and effectively. Quaker has also reached employment agreements with all the key Stuart AHRO employees, ensuring that Stuart's existing AHRO capabilities are transferred to Quaker.

Analysis to Aid Public Comment

The proposed Consent Agreement contains several provisions designed to ensure that the divestiture is successful. First, it requires Houghton to provide transitional services to Quaker or another Commission-approved buyer. These transition services will facilitate a smooth transition of Stuart's U.S. AHRO business to the acquirer, and ensure continued and uninterrupted competition during the transition. Second, if Respondents fail to divest Stuart's U.S. AHRO business to a Commission-approved buyer, the proposed Consent Agreement permits the Commission to appoint a trustee to divest the assets. Third, the proposed Consent agreement requires Respondents to remove any contractual impediments that may deter the former Stuart AHRO employees from accepting employment with the Commission-approved buyer. Fourth, the proposed Consent Agreement permits the Commission to appoint an interim monitor to oversee compliance with the Agreement's provisions. Quaker and Houghton have also entered into a short-term non-compete agreement. This agreement protects Quaker from losing its U.S. AHRO customers to Houghton until after Houghton completes its obligations to provide transitional services to Quaker.

Respondents are required to hold the Stuart U.S. AHRO business separate and apart from Houghton's AHRO business and maintain that business until it can be divested to a Commission-approved acquirer.

V. Opportunity for Public Comment

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

Analysis to Aid Public Comment

This analysis is not intended to constitute an official interpretation of the Proposed Order, nor is it intended to modify the terms of the Proposed Order in any way.

Complaint

IN THE MATTER OF

NUFARM LIMITEDCONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE
COMMISSION ACT

Docket No. C-4298; File No. 081 0130
Filed September 7, 2010 — Decision, September 7, 2010

The complaint alleges that Nufarm Limited's 2008 acquisition of A.H. Marks Holding Limited injured competition in the U.S. market for three types of phenoxy herbicides, MCPA, MCPP-p, and 2,4DB, which are widely used on grass, and wheat, barley, peanut, and alfalfa crops. The complaint alleges that the acquisition created a monopoly in the markets for MCPA and MCPP-p markets and substantially increased concentration in the 2,4DB market. The consent order requires Nufarm to divest A.H. Marks' MCPA rights and assets to a new competitor, Albaugh, Inc.; and to divest A.H. Marks' MCPP-p rights and assets to a second new competitor, PBI Gordon Co. The consent order also requires Nufarm to modify certain agreements related to MCPA and 2,4DB, in order to facilitate Albaugh and PBI Gordon's transition into the U.S. market. The consent order permits the Commission to appoint a trustee to ensure the assets are divested.

Participants

For the *Commission*: Jonathan Platt and Nancy Turnblacer.

For the *Respondent*: Steve Kowal, K&L Gates LLP; and David Stetler, Stetler and Duffy, Ltd.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission ("Commission"), having reason to believe that Respondent Nufarm Limited ("Nufarm"), a corporation subject to the jurisdiction of the Commission, entered into an agreement, in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, pursuant to which Nufarm acquired all the shares of A.H. Marks Holding Limited ("A. H. Marks") in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18,