

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Timothy J. Muris, Chairman  
Sheila F. Anthony  
Mozelle W. Thompson  
Orson Swindle  
Thomas B. Leary

_____	)	
In the Matter of	)	
	)	
	)	
<b>BAYER AG,</b>	)	Docket No. C-4049
a corporation,	)	
and	)	
	)	
<b>AVENTIS S.A.,</b>	)	
a corporation.	)	
_____	)	

**ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS**

The Federal Trade Commission having initiated an investigation of the proposed acquisition by Respondent Bayer AG of the stock of Aventis CropScience Holding S.A. from Respondent Aventis S.A. and Respondents having been furnished thereafter with a copy of the draft of the 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 violation of Section 7 of the Clayton Act,

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 Hold Separate and Maintain Assets (“Hold Separate Order”):

1. Respondent Bayer AG is an Aktiengesellschaft organized, existing, and doing business under, and by virtue of, the laws of Germany with its office and principal place of business located at Werk Leverkusen, 51368v and SoddTc 0 -Tw ):

- 1.

AvTw t BS.A.nt Ba socieHold onyneesellschaft organized, existing, and doing business

- D. “ACS Product Hold Separate Business Managers” means Monty Christian, the Product Hold Separate Business Manager responsible for the Acetamiprid Business and Brian Ahrens (Agriculture) and Karl Kisner (Environmental Science), the Product Hold Separate Business Managers responsible for the Fipronil Business.
- E. “Acetamiprid Assets” means the Acetamiprid Assets as defined in Paragraph I of the Decision and Order.
- F. “Acetamiprid Business” means Respondent Aventis’ business of researching, developing, registering, formulating, manufacturing, licensing, distributing, marketing, and selling all products containing Acetamiprid, as that term is defined in the Decision and Order, including products in development, in any market anywhere in the world, prior to the Acquisition Date (and such business as conducted by Bayer after the Acquisition Date pursuant to this Order and the Order to Hold Separate), and includes the Acetamiprid Assets.
- G. “Acquisition” means the proposed acquisition described in (i) the Stock Purchase Agreement dated as of October 2, 2001, among Aventis Agriculture, Hoechst Aktiengesellschaft, and Bayer AG, and (ii) the Stock Purchase Agreement dated as of October 2, 2001, among Schering Aktiengesellschaft, SCIC Holdings LLC, and Bayer AG.
- H. “Acquisition Date” means the date of consummation of the Acquisition.
- I. “Alternative Assets” means the Additional Flucarbazone Assets, the Thiacloprid Assets, Olympus Business, the Acetamiprid Licensed Intellectual Property, the Fipronil Licensed Intellectual Property, and the Flucarbazone Licensed Intellectual Property as those terms are defined in the Decision and Order
- J. “Aventis Hold Separate Businesses” means the Acetamiprid Business and the Fipronil Business.
- K. “Bayer Global Hold Separate Manager” means Wolfgang Bieber, the manager to whom the Bayer Product Hold Separate Business Managers shall report during the Hold Separate Period and who, in turn, shall report to the Hold Separate Trustee.
- L. “Bayer Product Hold Separate Business Managers” means Gary Aagesen and Scott Fleetwood, the Product Hold Separate Business Managers responsible for the Flucarbazone Business.
- M. “Bayer Hold Separate Business” means the Flucarbazone Business.

- N. “Commission” means the Federal Trade Commission.
- O. “Consent Agreement” means the Agreement Containing Consent Orders executed by Respondents and the Commission in this matter.
- P. “Decision and Order” means:
1. until the issuance of a final Decision and Order by the Commission in this matter, the proposed Decision and Order incorporated into and made a part of the Consent Agreement; or
  2. following the issuance of a final Decision and Order by the Commission, the Decision and Order issued by the Commission.
- Q. “Effective Date of Divestiture” means the earliest date on which each and every of the divestitures required by Paragraphs II, III, IV, and V (or X, XI, and XII, if applicable) of the Decision and Order have been consummated.
- R. “Fipronil Assets” means the Fipronil Assets as defined in Paragraph I of the Decision and Order.
- S. “Fipronil Business” means Respondent Aventis’ business of researching, developing, registering, formulating, manufacturing, licensing, distributing, marketing, and selling all products containing Fipronil, including products in development, in any market anywhere in the world, prior to the Acquisition Date (and such business as conducted by Bayer after the Acquisition Date pursuant to this Hold Separate Order and the Decision and Order), and includes the Fipronil Assets.
- T. “Flucarbazone Assets” means the Flucarbazone Assets as defined in Paragraph I of the Decision and Order.
- U. “Flucarbazone Business” means Respondent Bayer’s business of researching, developing, registering, formulating, manufacturing, licensing, distributing, marketing, and selling all products containing Flucarbazone, including products in development, in any market anywhere in the world, and includes the Flucarbazone Assets.
- V. “Hold Separate Businesses” means the Acetamidiprid Business, the Fipronil Business, and the Flucarbazone Business.

- W. “Hold Separate Business Assets” means the Acetamiprid Assets, Fipronil Assets, and Flucarbazono Assets.
- X. “Hold Separate Order” means this Order to Hold Separate and Maintain Assets.
- Y. “Hold Separate Period” means the time period during which the Hold Separate is in effect, which shall begin no later than ten (10) days after the date the Hold Separate Order becomes final and terminate pursuant to Paragraph V. hereof.
- Z. “Hold Separate Trustee” means Richard Gilmore, the individual appointed pursuant to Paragraph II.D.1 of this Hold Separate Order.
- AA. “Material Confidential Information” means competitively sensitive or proprietary information not independently known to an entity from sources other than the entity to which the information pertains, and includes, but is not limited to, all customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets.
- BB. “Product Development Managers” means the individuals appointed to manage the development of the respective products within the Hold Separate Businesses during the Hold Separate Period.
- CC.



- D. Respondents shall hold the Hold Separate Businesses separate, apart, and independent in the following manner:
1. Richard Gilmore shall serve as Hold Separate Trustee, pursuant to the agreement executed by the Hold Separate Trustee and Respondents and attached as Confidential Appendix A (“trustee agreement”).
    - a. The trustee agreement shall require that, no later than ten (10) days after this Hold Separate Order becomes final, Respondents transfer to the Hold Separate Trustee all rights, powers, and authorities necessary to permit the Hold Separate Trustee to perform his/her duties and responsibilities, pursuant to this Hold Separate Order and consistent with the purposes of the Decision and Order.
    - b. No later than ten (10) days after this Hold Separate Order becomes final, Respondents shall, pursuant to the trustee agreement, transfer to the Hold Separate Trustee all rights, powers, and authorities necessary to permit the Hold Separate Trustee to perform his/her duties and responsibilities, pursuant to this Hold Separate Order and consistent with the purposes of the Decision and Order.
    - c. The Hold Separate Trustee shall have the responsibility, consistent with the terms of this Hold Separate Order and the Decision and Order, for monitoring the organization of the Hold Separate Businesses; for maintaining the independence of the Hold Separate Businesses; and for monitoring Respondents’ compliance with their obligations pursuant to this Hold Separate Order and the Decision and Order.
    - d. The Hold Separate Trustee shall have full and complete access to all personnel, books, records, documents and facilities of the Hold Separate Businesses or to any other relevant information as the Hold Separate Trustee may reasonably request, including, but not limited to, all documents and records kept by Respondents in the ordinary course of business that relate to the Hold Separate Businesses. Respondents shall develop such financial or other information as the Hold Separate Trustee may request and shall cooperate with the Hold Separate Trustee. Respondents shall take no action to interfere with or impede the Hold Separate Trustee’s ability to monitor Respondents’ compliance with this Hold Separate Order and the Decision and Order or otherwise to perform his/her duties and responsibilities consistent with the terms of this Hold Separate Order.

- e. The Hold Separate Trustee shall have the authority to employ, at the cost and expense of Bayer, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Hold Separate Trustee's duties and responsibilities.



2. No later than five (5) days after this Hold Separate Order becomes final, Respondents shall, subject to the approval of the Commission, enter into

Product Hold Separate Business Managers responsible for the Flucarbazone Business shall report directly and exclusively to the Bayer Global Hold Separate Manager. Each of the Product Hold Separate Business Managers shall manage his or her part of the Hold Separate Businesses independently of the management of Respondents. During the term of this Hold Separate, the Product Hold Separate Business Managers shall not be involved, in any way, in the operations of the other businesses of Respondents.

- d. In the event the ACS Global Hold Separate Manager, the Bayer Global Hold Separate Manager, or any of the Product Hold Separate Business Managers cease to act as the ACS Global Hold Separate Manager, the Bayer Global Hold Separate Manager, or the Product Hold Separate Business Manager, the Hold Separate Trustee shall select a substitute manager, after consultation with the staff of the Commission, and transfer to the substitute manager all rights, powers and authorities necessary to permit the substitute manager to perform his/her duties and responsibilities, pursuant to this Hold Separate Order.
- e. The ACS Global Hold Separate Manager and the Bayer Hold Separate Manager shall have no financial interests affected by Respondents' revenues, profits or profit margins, except that the individual manager's compensation for managing the respective Hold Separate Businesses may include economic incentives dependent on the financial performance of their respective businesses if there are also sufficient incentives for the ACS Global Hold Separate Manager and the Bayer Hold Separate Manager to operate the business at no less than current rates of operation (including, but not limited to, current rates of production and sales) and to achieve the objectives of this Hold Separate Order.
- f. The Product Hold Separate Business Managers shall have no financial interests affected by Respondents' revenues, profits or profit margins, except that the individual Product Hold Separate Business Manager's compensation for managing his/her part of the Hold Separate Businesses may include economic incentives dependent on the financial performance of their respective business line if there are also sufficient incentives for the Product Hold Separate Business Managers to operate the business at no less than current rates of operation

(including, but not limited to, current rates of production and sales) and to achieve the objectives of this Hold Separate Order.

- g. The ACS Global Hold Separate Manager and the Bayer Global Hold Separate Manager shall make no material changes in the present operation of the Hold Separate Businesses except with the approval of the Hold Separate Trustee.
- h. The ACS Global Hold Separate Manager and the Bayer Global Hold Separate Manager shall have the authority, with the approval of the Hold Separate Trustee, to remove employees and replace them with others of similar experience or skills. If any person ceases to act or fails to act diligently and consistent with the purposes of the Hold Separate Order, the ACS Global Hold Separate Manager and the Bayer Global Hold Separate Manager, in consultation with the Hold Separate Trustee, may request Respondents to, and Respondents shall, appoint a substitute person, which person the respective manager and the Hold Separate Trustee shall have the right to approve or disapprove.
- i. The ACS Global Hold Separate Manager and the Bayer Global Hold Separate Manager may employ, in addition to those employees within the Hold Separate Businesses, such employees as are reasonably necessary to assist them in managing and operating the Hold Separate Businesses, including, without limitation, those providing administrative services, such as finance personnel, information technology personnel, employee relations personnel, legal services personnel, public relations personnel, regulatory personnel, supply personnel, earnings consolidation and analysis personnel, business performance personnel, and customer relations personnel.
- j. Each Product Hold Separate Business Manager shall have the responsibility and resources to implement existing sales, marketing, research and development, product registration, and product development plans relating to their products or to modify, with the concurrence of the respective ACS Global Hold Separate Manager or the Bayer Global Hold Separate Manager, and the approval of the Hold Separate Trustee, existing plans consistent with previously approved goals and objectives. The managers shall not have access to any other of Respondents' confidential marketing materials, including

without limitation, Bayer CropScience confidential marketing materials, during the Hold Separate Period.

- k. Each Product Hold Separate Business Manager, with the concurrence of the respective ACS Global Hold Separate Manager or Bayer Global Hold Separate Manager, shall appoint the relevant Product Development Managers for each of the Hold Separate Businesses as identified in Confidential Appendix B. In all instances, the manager appointed shall be an individual with the necessary experience and expertise in the particular product. This individual shall have the responsibility to oversee development of products within the individual Hold Separate Businesses during the Hold Separate Period. This person shall not have access to the ongoing research and development operations of Bayer that are not related to the Hold Separate Businesses during the Hold Separate Period.
- l. During the Hold Separate Period, the Bayer and Aventis sales forces will continue to operate in substantially the same manner as they were prior to closing of the Acquisition. Provided, however, that Respondents may integrate their crop protection sales forces after August 1, 2002; provided further, however, that: (1) the individual Product Hold Separate Business Managers will be responsible for overseeing sales of the products in the Hold Separate Businesses; (2) sales representatives responsible for sales in the Aventis Hold Separate Businesses shall have no access to Material Confidential Information relating to the Bayer Hold Separate Business; and (3) sales representatives responsible for sales in the Bayer Hold Separate Business shall have no access to Material Confidential Information relating to the Aventis Hold Separate Businesses. For crop protection and Non-Agricultural Use products, however, Respondents may initiate cross-training for their sales forces starting at the time of closing of the Acquisition; provided, however, that no training will be provided on the products of the Hold Separate Businesses or their competing products.
- m. The Hold Separate Trustee shall be permitted, in consultation with the Commission staff, to remove any of the managers for cause. Within fifteen (15) days after such removal, Respondents shall appoint a replacement manager, subject to the approval of the Hold Separate Trustee, on the same terms and conditions as provided in paragraph II..D.1. of this Hold Separate.

3. The Hold Separate Businesses shall be staffed with sufficient employees to maintain the viability and competitiveness of the Hold Separate Businesses. Employees of the Hold Separate Businesses shall include (i) all personnel performing responsibilities primarily in connection with any of the Hold Separate Businesses as of the date Respondents executed the Consent Agreement, and (ii) any persons hired from other sources. To the extent that any employees of the Hold Separate Businesses leave or have left the Hold Separate Businesses prior to the Effective Date of Divestiture, the ACS Global Hold Separate Manager, the Bayer Global Hold Separate Manager, or Product Hold Separate Business Managers, as applicable, with the approval of the Hold Separate Trustee, may replace departing or departed employees with

- (3) Human resources administrative services, including but not limited to labor relations support;
- (4) Environmental health and safety services, which develops corporate policies and ensures compliance with federal and state regulations and corporate policies;
- (5) Security services;
- (6) Preparation of tax returns; and
- (7)

5. Bayer shall cause the Hold Separate Trustee, the ACS Global Hold Separate Manager, the Bayer Global Hold Separate Manager, the Product Hold Separate Business Managers, and each employee of the Hold Separate Businesses having access to Material Confidential Information to submit to the Commission a signed statement that the individual will maintain the confidentiality required by the terms and conditions of this Hold Separate. These individuals must retain and maintain all Material Confidential Information relating to the Hold Separate Businesses on a confidential basis and, except as is permitted by this Hold Separate Order, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any of Respondents' businesses other than the Hold Separate Business. These persons shall not be involved in any way in the management, production, distribution, sales, marketing, and financial operations of the competing products of Respondents.
6. No later than ten (10) days after the date this Hold Separate becomes final, Bayer shall establish written procedures, subject to the approval of the Hold Separate Trustee, covering the management, maintenance, and independence of the Hold Separate Businesses consistent with the provisions of this Hold Separate Order.
7. No later than five (5) days after the date this Hold Separate Order becomes final, Bayer shall circulate to employees of the Hold Separate Businesses a notice of this Hold Separate Order and Decision and Order, and shall circulate to its employees a notice in the form attached as Attachment A.
8. The Hold Separate Trustee, the ACS Global Hold Separate Manager, the Bayer Global Hold Separate Manager, and the Product Hold Separate Business Managers shall serve, without bond or other security, at the cost and expense of Bayer, on reasonable and customary terms commensurate with the person's experience and responsibilities.
9. Bayer shall indemnify the Hold Separate Trustee, the ACS Global Hold Separate Manager, the Bayer Global Hold Separate Manager, and the Product Hold Separate Business Managers and hold each harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Hold Separate Trustee's, the ACS Global Hold Separate Manager, the Bayer Global Hold Separate Manager, or the Product Hold Separate Business Managers' duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense

of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Hold Separate Trustee, the ACS Global Hold Separate Manager, the Bayer Global Hold Separate Manager, or the Product Hold Separate Business Managers.

10. Bayer shall provide the Hold Separate Businesses with sufficient financial resources:
  - a. as are appropriate in the judgment of the ACS Global Hold Separate Manager and the Bayer Global Hold Separate Manager (in connection with the respective Hold Separate Businesses), with the concurrence of the Hold Separate Trustee, to operate the Hold Separate Businesses at least at current rates of operation to carry on, at least at their scheduled pace, all capital projects, business plans and promotional activities found in the Hold Separate Businesses most recent budget; provided that failure to achieve production or sales goals projected in the Hold Separate Businesses respective budgets shall not be deemed to be a violation of this Hold Separate;
  - b. to continue, at least at their scheduled pace, any additional expenditures for the Hold Separate Businesses authorized prior to the date the Consent Agreement was signed by Respondents;
  - c. to perform all maintenance to, and replacements of, the assets of the Hold Separate Businesses; and
  - d. to maintain the viability, competitive vigor, and marketability of the Hold Separate Businesses.
  - e. Such financial resources to be provided to the Hold Separate Businesses shall include, but shall not be limited to, (i) general funds, (ii) capital, (iii) working capital, and (iv) reimbursement for any operating losses, capital losses, or other losses; provided, however, that, consistent with the purposes of the Decision and Order, the ACS Global Hold Separate Manager or the Bayer Global Hold Separate Manager, as appropriate, may reduce in scale or pace any capital or research and development project, or substitute any capital or research and development project for another of the same cost.



11. Except for the ACS Global Hold Separate Manager, the Bayer Global Hold Separate Manager, the Product Hold Separate Business Managers, employees of the Hold Separate Businesses, and support services employees involved in providing services to the Hold Separate Businesses pursuant to Paragraph II.D.4., and except to the extent provided in Paragraph II.A., Respondents shall not permit any other of its employees, officers, or directors to be involved in the operations of the Hold Separate Businesses.
12. Respondents shall not, during the Hold Separate Period, offer employees of any of the Hold Separate Businesses positions with Respondents. The acquirer approved by the Commission pursuant to the Decision and Order shall have the option of offering employment to any employees of any of the Hold Separate Businesses. Respondents shall not interfere with the employment, by the Commission-approved acquirer, of such employees; shall not offer any incentive to such employees to decline employment with the Commission-approved acquirer or to accept other employment with the Respondents; and shall remove any impediments that may deter such employees from accepting employment with the Commission-approved acquirer including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts that would affect the ability of such employees to be employed by the Commission-approved acquirer, and the payment, or the transfer for the account of the employee, of all current and accrued bonuses, pensions and other current and accrued benefits to which such employees would otherwise have been entitled had they remained in the employment of the Respondents.
13. For a period of one (1) year commencing on the Effective Date of Divestiture, Respondents shall not employ or make offers of employment to employees of any of the Hold Separate Businesses who have accepted offers of employment with the Commission-approved acquirer unless the individual employee has been terminated by the acquirer.
14. Notwithstanding the requirements of Paragraph II.D.12., Respondents shall offer a bonus or severance to employees included in the Hold Separate Businesses that continue their employment with the Hold Separate Businesses until termination of the Hold Separate Period (in addition to any other bonus or severance to which the employees would otherwise be entitled).
15. Bayer shall assure that employees of the Hold Separate Businesses receive, during the Hold Separate Period, their salaries, all current and accrued bonuses, pensions and other current and accrued benefits to which those employees would otherwise have been entitled.

16. Except as required by law, and except to the extent that necessary information is exchanged in the course of consummating the Acquisition, negotiating agreements to divest assets pursuant to the Decision and Order and engaging in related due diligence; complying with this Hold Separate Order or the Decision and Order; overseeing compliance with policies and standards concerning the safety, health and environmental aspects of the operations of the Hold Separate Businesses and the integrity of the Hold Separate Businesses' financial controls; defending legal claims, investigations or enforcement actions threatened or brought against the Hold Separate Businesses; or obtaining legal advice, Respondents' employees (excluding support services employees involved in providing support to the Hold Separate Businesses pursuant to Paragraph II.D.4.) shall not receive, or have access to, or use or continue to use any Material Confidential Information, not in the public domain, of the Hold Separate Businesses. Nor shall the ACS Global Hold Separate Manager, the Bayer Global Hold Separate Manager, the Product Hold Separate Business Managers, or employees of the Hold Separate Businesses receive or have access to, or use or continue to use, any Material Confidential Information not in the public domain about Respondents and relating to Respondents' businesses, except such information as is related to the Hold Separate Businesses. Respondents may receive aggregate financial and operational information relating to the Hold Separate Businesses only to the extent necessary to allow Respondents to prepare consolidated financial reports, tax returns, reports required by securities laws, and personnel reports, or otherwise meet reporting obligations imposed by law. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph.
  
17. Respondents and the Hold Separate Businesses shall jointly implement, and at all times during the Hold Separate Period maintain in operation, a system, as approved by the Hold Separate Trustee, of access and data controls to prevent unauthorized access to or dissemination of Material Confidential Information of the Hold Separate Businesses, including, but not limited to, the opportunity by the Hold Separate Trustee, on terms and conditions agreed to with Respondents, to audit Respondents' networks and systems to verify compliance with this Hold Separate Order.







**TRUSTEE AGREEMENT**

[Redacted From Public Record Version]

**[Redacted From Public Record Version]**