

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: William E. Kovacic, Chairman
Pamela Jones Harbour
Jon Leibowitz
J. Thomas Rosch

In the Matter of)

HEXION LLC,)
a limited liability company;)

and)

HUNTSMAN CORPORATION,)
a corporation.)

Docket No. C-4235

ORDER TO MAINTAIN ASSETS

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

1. Respondent Hexion LLC is a limited liability company organized, existing and doing business under and by virtue of the laws of State of Delaware, with its headquarters address c/o Hexion Specialty Chemicals, Inc., 180 East Broad Street, Columbus, Ohio 43215.
2. Respondent Huntsman Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its headquarters address at 500 Huntsman Way, Salt Lake City, Utah 84108.
3. The Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

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

- A. "Hexion" means Hexion LLC, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint venturers, subsidiaries, and affiliates.

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

II.

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

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

distribution of the Specialty Epoxy Resin Products;

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

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

6. Respondents shall provide the Specialty Epoxy Resin Product Business with such funds as are necessary to maintain the full economic viability, marketability and competitiveness of the Specialty Epoxy Resin Product Business; and
 7. Respondents shall provide such support services to the Specialty Epoxy Resin Product Business as were being provided to these Business by Respondents as of the date the Consent Agreement was signed by Respondents.
- E. Until Respondents fully transfer the Specialty Epoxy Resin Product Assets to the Acquirer, Respondents shall maintain a work force at least as equivalent in size, training, and expertise to what has been associated with the Specialty Epoxy Resin Products for the relevant Specialty Epoxy Resin Product's most recent Pre-Acquisition Marketing Plan.
- F. Until the Closing Date for each respective set of Specialty Epoxy Resin Product Assets, Respondents shall provide all the related Specialty Epoxy Resin Product Core Employees with reasonable financial incentives to continue in their positions and to research, Develop, and manufacture the relevant Specialty Epoxy Resin Products consistent with past practices and/or as may be necessary to preserve the marketability, viability and competitiveness of such Specialty Epoxy Resin Products pending divestiture and to ensure successful execution of the Pre-Acquisition Marketing Plans related to the relevant Specialty Epoxy Resin Products. Such incentives shall include a continuation of all employee benefits offered by Respondents until the Closing Date for the divestiture of the respective Specialty Epoxy Resin Product Assets has occurred, including regularly scheduled raises, bonuses, vesting of pension benefits (as permitted by Law), and additional incentives as may be necessary to prevent any diminution of the relevant Specialty Epoxy Resin Product's competitiveness.
- G. Respondents shall, during the Specialty Epoxy Resin Product Employee Access Period, not interfere with the hiring or employing by the relevant Acquirer of Specialty Epoxy Resin Product Core Employees, and shall remove any impediments within the control of Respondents that may deter these employees from accepting employment with such Acquirer, including, but not limited to, any noncompete provisions of employment or other contracts with Respondents that would affect the ability or incentive of those individuals to be employed by such Acquirer. In addition, Respondents shall not make any counteroffer to a Specialty Epoxy Resin Product Core Employee who receives a written offer of employment from the relevant Acquirer;

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

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

1. not use, directly or indirectly, any such Confidential Business Information related to the research, Development, manufacturing, marketing, or sale of the Specialty Epoxy Resin relevant other than as necessary to comply with the following:
 - a. the requirements of the Orders;
 - b. Respondents' obligations to the Acquirer under the terms of any Remedial Agreement related to Specialty Epoxy Resin Products; or
 - c. applicable Law;
2. not disclose or convey any such Confidential Business Information, directly or indirectly, to any person except the Acquirer or other persons specifically authorized by the Acquirer to receive such information;
3. not provide, disclose or otherwise make available, directly or indirectly, any such Confidential Business Information related to the marketing or sales of the Specialty Epoxy Resin Products to the employees associated with business related to those Retained Products that are used or suitable for use in commerce for the same or similar purposes as the Specialty Epoxy Resin Products; and
4. shall institute procedures and requirements to ensure that the above-described employees:
 - a. do not provide, disclose or otherwise make available, directly or indirectly, any Confidential Business Information in contravention of this Order to Maintain Assets; and
 - b. do not solicit, access or use any Confidential Business Information that they are prohibited under this Order to Maintain Assets from receiving for any reason or purpose.

I. Not later than thirty (30) days following the Effective Date, Respondents shall provide to all of Respondents' employees and other personnel who may have access to Confidential Business Information related to each of the respective Specialty Epoxy Resin Products written or electronic notification of the restrictions on the use of such information by Respondents' personnel. At the same time, if not provided earlier, Respondents shall provide a copy of such notification by e-mail with return receipt requested or similar transmission, and keep an electronic file of such receipts for one (1) year after the Closing Date. Respondents shall provide a copy of the form of such notification to the Acquirer, the Interim Monitor(s), and the Commission. Respondents shall also obtain from each employee covered by this Paragraph II.I. an agreement to abide by the applicable restrictions. Respondents shall maintain complete records of all such agreements at

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

3. Respondents shall not provide, disclose or otherwise make available, directly or indirectly, any such MDI Non-Public Information to the employees associated with the MDI Acquired Business;
 4. Respondents shall ensure that no manager with direct line authority over the FDBU provides, discloses, or otherwise makes available, directly or indirectly, any MDI Non-Public Information to the employees associated with the MDI Acquired Business, including, without limitation, those employees with direct line authority over the MDI Acquired Business;
 5. Respondents shall prohibit any employee associated with the FDBU from discussing with, or providing, disclosing or otherwise making available to, any employee associated with the MDI Acquired Business, directly or indirectly, any MDI Non-Public Information;
 6. Respondents shall institute procedures and requirements throughout the various entities of the Respondents to ensure the MDI Non-Public Information is protected as required by this Order to Maintain Assets.
- B. The purpose of this Paragraph III is to prevent Respondents from using the MDI Non-Public Information to the detriment of the research, Development, manufacturing, marketing, or sale of MDI Products of the MDI Producers; to the benefit of the MDI Products researched, Developed, manufactured, marketed, or sold by Respondents; or from otherwise using such information in an anticompetitive manner or in any unfair method of competition.

IV.

IT IS FURTHER ORDERED that:

- A. At any time after Respondents sign the Consent Agreement in this matter, the Commission may appoint an Interim Monitor to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by the Orders and the Remedial Agreements. The Commission may appoint one or more Interim Monitors to assure Respondents' compliance with the requirements of the Orders, and the related Remedial Agreements.
- B. The Commission shall select the Interim Monitor, subject to the consent of Respondent Hexion, which consent shall not be unreasonably withheld. If Respondent Hexion has not opposed, in w

- E. Subject to any demonstrated legally recognized privilege, the Interim Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to Respondents' compliance with their obligations under the Orders, including, but not limited to, their obligations related to the relevant assets. Respondents shall cooperate with any reasonable request of the Interim Monitor and shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondents' compliance with the Orders.
- F. The Interim Monitor shall serve, without bond or other security, at the expense of Respondents on such reasonable and customary terms and conditions as the Commission may set. The Interim Monitor shall have authority to employ, at the expense of the Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.
- G. Respondents shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Interim Monitor.
- H. Respondent shall report to the Interim Monitor in accordance with the requirements of this Order to Maintain Assets and/or as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by Respondent, and any reports submitted by the Acquirer with respect to the performance of Respondent's obligations under the Orders or the Remedial Agreement(s). Within thirty (30) days from the date the Interim Monitor receives the

customary confidentiality agreement;

provided, however, that such agreement shall not restrict the Interim Monitor from providing any information to the Commission.

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

VI.

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

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

VII.

IT IS FURTHER ORDERED

B. The latter of:

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