

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

0810265

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

In the Matter of

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition of Ciba Holding Inc. by BASF SE (“Respondent BASF”), and Respondent BASF having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent BASF 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

Respondent BASF, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondent BASF of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent BASF 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 tr

had reason to believe that Respondent BASF has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Maintain Assets, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure descri

1. Respondent BASF SE is a corporation organized, existing and doing business under a

- I. “BV Acquirer” means the Person approved by the Commission to acquire the Ciba BV Business pursuant to this Order. The BV Acquirer may be the same Person as the IB Acquirer.
- J. “BV Divestiture Agreement” means all the divestiture agreements, licenses, assignments, and other agreements entered into by the BV Acquirer and Respondent BASF pursuant to Paragraph III.
- K. “BV Effective Date” means the date on which the divestitures, licensing, and assignments, pursuant to Paragraph III, are consummated.
- L. “BV Pigments” means chromatic inorganic bismuth vanadate pigments.
- M. “BV Tolling Agreement” means the agreement entered into between the BV Acquirer and Respondent BASF under which, among other things, Respondent BASF will produce the Ciba BV Pigments for the BV Acquirer for a limited period of time, and which shall be approved by the Commission and become a part of the BV Divestiture Agreement. The BV Tolling Agreement may include, among other things, an option for the BV Acquirer to acquire, during or for a defined period after the BV Tolling Agreement, machines and equipment located at the Maastricht Plant that are Related To the manufacture of the Ciba BV Pigments.
- N. “Ciba BV Business” means:
 - 1. Ciba BV Information;
 - 2. Ciba BV Intellectual Property;
 - 3. Ciba BV Inventory, at the BV Acquirer’s option; and
 - 4. Ciba BV Packaging and Labeling Assets.
- O. “Ciba BV Contracts” means the current customer contracts for Ciba BV Pigments, and any other contracts between Ciba and other Persons to the extent they pertain to the manufacture and sale of Ciba BV Pigments. Ciba BV Contracts shall include contracts between Ciba and a customer that are not exclusively for Ciba BV Pigments, but may include other Ciba products.
- P. “Ciba BV Information” means all information owned by, or in the possession or control of, Ciba that is not in the public domain and that is Related To the research, Development, manufacture, manufacturpractur

Ciba's approvals, clearances, licenses, registrations, permits, franchises, product registrations, authorizations, or certifications issued by

PROVIDED, HOWEVER, Ciba BV Intellec

X. "Ciba IB Information" means all information owned by, or in the possession or control of, Ciba that is not in the public domain and that is Related To the research, Development, manufacture, marketing, commercialization, importation, exportation, cost, supply, sales, sales support, or use of the Ciba IB Pigments including but not limited to, information not otherwise included in the Ciba IB Intellectual Property Relating To the Ciba IB Pigments including, but not limited to, customer lists, current and historical customer purchases and data, historical data, complaints, safety history, all data and information Relating To any of Ciba's approvals, clearances, licenses, registrations, permits, franchises, product registrations, authorizations, or certifications issued by any federal, state, municipal, or foreign authority, or any third party, registrar or certification body Relating To the Ciba IB Development including, but not limited to, formulation, toxicology and epidemiology studies, filings, engineering design (2010-008-0001, Dm) filings and test results 5200, procedure, and any other information possessed by Ciba in any location Relating To Ciba IB Pigments.

"Ciba IB Intellectual Property" means all of the following Related To each Ciba IB Pigment owned by Ciba or for which Ciba has the right to sub-license to third parties as of the Acquisition Date including but not limited to:

- 1. Copyrights;
- 2. Patents;

not limited to, equipment specifications and drawings), trade secrets (including, but not

4. Terms Relating To licenses, permits, and authorizations including, but not limited to, permits for environmental, waste water, discharge and ground water withdrawal, and building.
5. A site services agreement providing for, among other things, plant security, canteen services, property taxes, workshop facilities and personnel, and warehousing services, to be provided to the BV Acquirer at or consistent with the level of services currently provided at the Maastricht Plant for the Maastricht Plant BV Leased Area.
6. Terms Relating To the disposal of waste water and sludge produced as part of the manufacturing of the Ciba BV Pigments at the Maastricht Plant.

SS. “Maastricht Plant BV Leased Area” means the areas and buildings at the Maastricht Plant, described in Exhibit C to this Order, and any other facilities or machines or areas at the Maastricht Plant reasonably necessary for manufacture, storage, and distribution of BV Pigments by the BV Acquirer, and may include areas within the Maastricht Plant BV Operational Areas.

TT. “Maastricht Plant BV Operational Areas” means the:

1. areas appurtenant to and used in the operation of the Maastricht Plant BV Leased Area including, but not limited to, loading and unloading areas, and storage areas for inputs and inventory, at the Maastricht Plant, excluding any such facilities or machines or areas exclusively used for the manufacture, storage, or distribution of products other than Ciba BV Pigments;
2. areas for the use of employees working at the areas leased pursuant to the Maastricht Plant BV Lease Agreement, similar to those areas available to Respondent BASF employees working at the Maastricht Plant, including, but not limited to, exits and entrances, parking areas, machine rooms, work rooms, break rooms, bathrooms, and locker rooms;
3. existing easements and rights of way relating to the leased areas; and
4. related facilities required for the storage and transfer of products produced at the Maastricht Plant BV Leased Area by the BV Acquirer.

UU. “Patents” means all patents, patent applications, including provisional patent applications, invention disclosures, certificates of invention and applications for certificates of invention and statutory invention registrations, in each case existing as of the Acquisition Date, and includes all reissues, additions, divisions, continuations, continuations-in-part, supplementary protection certificates, extensions and reexaminations thereof, all inventions disclosed therein, and all rights therein provided by international treaties and conventions, Related To any product of or owned by Ciba as of the Acquisition Date.

- VV. "Person" means any natural person, partnership, corporation, association, trust, joint venture, government, government agency, division, or department, or other business or legal entity.
- WW. "Relating To" or "Related To" means pertaining in any way to, and is not limited to that which pertains exclusively to or primarily to.
- XX. "Software" means computer programs Related To the production of the Ciba BV Pigments or the Ciba IB Pigments, respectively, including all software implementations of algorithms, models, and methodologies whether in source code or object code form, databases and compilations, including any and all data and collections of data, all documentation, including user manuals and training materials, Related To any of the foregoing and the content and information contained on any website; *PROVIDED, HOWEVER*, that Software does not include software that is readily purchasable or licensable from sources other than Respondent BASF and which has not been modified in a manner material to the use or function thereof (other than through user preference settings). *PROVIDED, FURTHER, HOWEVER*, that Software to be divested as part of the Ciba IB Business shall mean only that software specifically applicable to the production of the Ciba IB Pigments at the IB Acquirer's production facility.
- YY. "Trade Dress" means the current trade dress of a particular product or Person including, without limitation, product packaging, logos, and the lettering of the product trade name, brand name, or corporate name.
- ZZ. "Trademark(s)" means all proprietary names or designations, trademarks, service marks, trade names, and brand names, including registrations and applications for registration therefor (and all renewals, modifications, and extensions thereof) and all common law rights, and the goodwill symbolized thereby and associated therewith, for the Ciba IB Pigments or the Ciba BV Pigments.

II.

IT IS FURTHER ORDERED that, within six (6) months of the date on which this Order becomes final:

- A. Respondent BASF shall divest the Ciba IB Business, assign the Ciba IB Intermediate Supply Contract and Ciba IB Contracts, and enter into a fully paid-up, irrevocable, royalty-free, non-exclusive license for the BASF Blue RS-OPT Intellectual Property, absolutely and in good faith, at no minimum price, only to an IB Acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission.

The IB Divestiture Agreement (which shall include, among other things, the divestiture agreement, the assignments, and license) between Respondent BASF and the IB Acquirer shall not vary or contradict, or be construed to vary or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or be

- B. Respondent BASF shall, at the IB Acquirer's option, agree to amend the Ciba IB Intermediate Supply Contract to allow the IB Acquirer, within six (6) months after the IB Effective Date, to renegotiate the terms of the Ciba IB Intermediate Supply Contract including, but not limited to, duration, price, and termination terms.
- C. Respondent BASF shall enter into an IB Finishing Agreement, absolutely and in good faith, at no minimum price, only with an IB Acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission. The IB Finishing Agreement shall become a part of the IB Divestiture Agreement.
- D. During the term of the IB Finishing Agreement:
1. Respondent BASF shall not terminate the IB Finishing Agreement before the end of the term approved by the Commission without:
 - a. the written agreement of the IB Acquirer and thirty (30) days prior notice to the Commission; or,
 - b. in the case of a proposed unilateral termination by Respondent BASF due to an alleged breach of an agreement by the IB Acquirer, sixty (60) days notice of such termination. *PROVIDED, HOWEVER*, such sixty (60) days notice shall only be given after the parties have:
 - (1) attempted to settle the dispute between themselves, and
 - (2) engaged in arbitration and received an arbitrator's decision, or
 - (3) received a final court decision after all appeals.
 2. Respondent BASF shall take such actions as are necessary to prevent the destruction, removal, wasting, deterioration, or impairment of the facilities and machines Related To the finishing of the Ciba IB Pigments; *PROVIDED, HOWEVER*, Respondent BASF shall give the IB Acquirer sixty (60) days prior notice of any facility maintenance, including ordinary and regular maintenance, when such maintenance may affect Respondent BASF's obligations under the IB Finishing Agreement; *PROVIDED, FURTHER, HOWEVER*, in the event Respondent BASF cannot give the IB Acquirer sixty (60) days prior notice, then Respondent BASF must notify the IB Acquirer as soon as it first notifies any persons at the Huningue Plant regarding maintenance or problems that may affect Respondent BASF's obligations under the IB Finishing Agreement.
 3. Respondent BASF shall allow employees of the IB Acquirer, with reasonable notice, access at the Huningue Plant to the:
 - a. facilities, laboratories, and machines that finish the Ciba IB Pigments, and

b. areas where finished Ciba IB Pigments are stored and distributed.

PROVIDED, HOWEVER, Respondent BASF may restrict access to the machines finishing the Ciba IB Pigments during such time, if any, as those machines are being used to produce other products.

E. Respondent BASF shall, at the IB Acquirer's option, provide electronic access to extracted information Relating To the production, storage, and distribution of the Ciba IB Pigments.

F. Respondent BASF shall, not later than the IB Effective Date and at the IB Acquirer's option, enter into one or more transition services agreements for the provision of services to be provided by Respondent BASF to the IB Acquirer. Such agreements shall be subject to the prior approval of the Commission and become a part of the IB Divestiture Agreement.

1. Such agreements may include, but are not limited to:

a. an agreement for technical assistance. Such transition services agreements may have a duration extending throughout, or for a defined period beyond, the term of the IB Finishing Agreement and may include, among other things, assistance in the establishment of Ciba IB Pigment finishing machinery and production of the Ciba IB Pigments at the IB Acquirer's facility.

b. an agreement granting the IB Acquirer the right to use, for a period from six (6) to twelve (12) months from the IB Effective Date, the Ciba IB Packaging and Labeling Assets, *PROVIDED, HOWEVER*, Respondent BASF may require that the IB Acquirer alter such packaging and labeling to make clear that the IB Acquirer is the seller of that product by, among other things, affixing a label to such packaging.

2. Respondent BASF shall not terminate any transition services agreement before the end of the term approved by the Commission without:

a. the written agreement of the IB Acquirer and thirty (30) days prior notice to the Commission; or,

b. in the case of a proposed unilateral termination by Respondent BASF due to an alleged breach of an agreement by the IB Acquirer, sixty (60) days notice of such termination. *PROVIDED, HOWEVER*, such sixty (60) days notice shall only be given after the parties have:

(1) attempted to settle the dispute between themselves, and

(2) engaged in arbitration and received an arbitrator's decision, or

(3) received a final court decision after all appeals.

- G. The purposes of this Paragraph II of the Order are: (1) to ensure the continuation of the Ciba IB Business as a going concern in the same manner in which it conducted business as of the date the Consent Agreement is signed, (2) to ensure that the IB Acquirer has the intention and ability to produce the Ciba IB Pigments at facilities independent of Respondent BASF, similar to Ciba's independent production of Ciba IB Pigments, (3) to allow the IB Acquirer, using the IB Finishing Agreement, a sufficient amount of time to replicate the certifications and approvals (currently required by Persons acquiring Ciba IB Pigments from the Huningue Plant) for the manufacture of IB Pigments at another manufacturing facility, and (4) to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED

PROVIDED, HOWEVER, with respect to assets that are to be divested or agreements entered into pursuant to this paragraph at the BV Acquirer's option, Respondent BASF need not divest

6. a site services agreement providing for, among other things, plant security, canteen services, property taxes, workshop facilities and personnel, and warehousing services, to be provided to the BV Acquirer at or consistent with the level of services currently provided at the Maastricht Plant for the Maastricht Plant BV Leased Area; and
7. an agreement Relating To the disposal of waste water and sludge produced as part of the manufacturing of the Ciba BV Pigments at the Maastricht Plant.

C. If the BV Acquirer leases the Maastricht Plant BV Leased Area:

- c. Respondent BASF shall, at the BV Acquirer's option, provide electronic access to extracted information Relating To the production, storage, and distribution of the Ciba BV Pigments.
- E. Respondent BASF shall enter, not later than the BV Effective Date and at the BV Acquirer's option, into one or more transition services agreements for the provision of services to be provided by Respondent BASF to the BV Acquirer. Such agreements shall be subject to the prior approval of the Commission and become a part of the BV Divestiture Agreement.
 1. Such agreements may include, but are not limited to:
 - a. an agreement for technical assistance. If there is a BV Tolling Agreement, such transition services agreements may have a duration extending throughout, or for a defined period beyond, the term of the BV Tolling Agreement and may include, among other things, assistance in the establishment of Ciba BV Pigment machinery and production of the Ciba BV Pigment at the BV Acquirer's facility.
 - b. an agreement granting the BV Acquirer the right to use, for a period from six (6) to twelve (12) months from the BV Effective Date, the Ciba BV Packaging and Labeling Assets, *PROVIDED, HOWEVER*, Respondent BASF may require that the BV Acquirer must alter such packaging and labeling to make clear that the BV Acquirer is the seller of that product by, among other things, affixing a label to such packaging.
 2. Respondent BASF shall not terminate any transition services agreement before the end of the term approved by the Commission without:
 - a. the written agreement of the BV Acquirer and thirty (30) days prior notice to the Commission; or,
 - b. in the case of a proposed unilateral termination by Respondent BASF due to an alleged breach of an agreement by the BV Acquirer, sixty (60) days notice of such termination. *PROVIDED, HOWEVER*, such sixty (60) days notice shall only be given after the parties have:
 - (1) attempted to settle the dispute between themselves, and
 - (2) engaged in arbitration and received an arbitrator's decision, or
 - (3) received a final court decision after all appeals.
- F. The purposes of this Paragraph III of the Order are: (1) to ensure the continuation of the Ciba BV Business as a going concern in the same manner in which it conducted business as of the date the Consent Agreement is signed, (2) to ensure that the BV Acquirer has the

intention and ability to produce the Ciba BV Pigments at facilities independent of Respondent BASF, similar to Ciba's independent production of Ciba BV Pigments, or as an independent producer of Ciba BV Pigments at facilities owned at the Maastricht Plant, (3) to allow the BV Acquirer, if it chooses to enter into a BV Tolling Agreement, to do so for a sufficient amount of time to replicate the certifications and approvals (currently required by Persons acquiring Ciba BV Pigments from the Maastricht Plant) for the manufacture of BV Pigments at another manufacturing facility, and (4) to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

IV.

IT IS FURTHER ORDERED that:

- A. Respondent BASF and Respondent BASF's employees shall not (1) during or after the term of the BV Tolling Agreement, if applicable, or (2) during or after the term of the Maastricht

~~Plant. Respondent Ciba to produce Ciba BV Pigments at facilities independent of Respondent BASF, similar to Ciba's independent production of Ciba BV Pigments, or as an independent producer of Ciba BV Pigments at facilities owned at the Maastricht Plant, (3) to allow the BV Acquirer, if it chooses to enter into a BV Tolling Agreement, to do so for a sufficient amount of time to replicate the certifications and approvals (currently required by Persons acquiring Ciba BV Pigments from the Maastricht Plant) for the manufacture of BV Pigments at another manufacturing facility, and (4) to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.~~

7. To the extent necessary

purposes of the Order and in consultation with the Commission including, but not limited to:

- a. Assuring that Respondent BASF expeditiously complies with all of its obligations and performs all of its responsibilities as required by this Order; and
- b. Monitoring any agreements between Respondent BASF and either the IB Acquirer or the BV Acquirer.

2. The Monitor shall act in a fiduciary

- E. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with the perform

Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondent BASF to comply with this Order.

- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent BASF, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent BASF has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondent BASF of the identity of any proposed Divestiture Trustee, Respondent BASF 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, Respondent BASF shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestitures required by this Order.
- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph VI, Respondent BASF 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 divest the Ciba IB Business and enter into the IB Finishing Agreement, and/or divest the Ciba BV Business, and either divest or lease the Maastricht Plant BV Leased Area, or enter into the BV Tolling Agreement, and enter into all agreements, licenses and assignments as described in Paragraphs II and III of this Order.
 - 2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to divest the Ciba IB Business and enter into the IB Finishing Agreement, and/or divest the Ciba BV Business, and either divest or lease the Maastricht Plant BV Leased Area, or enter into the BV Tolling Agreement, and enter into all agreements, licenses and assignments as described in Paragraphs II and III of this Order, absolutely and in good faith, at no minimum price, to one or more acquirers that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period or periods may be extended by the Commission; *PROVIDED, HOWEVER*, the Commission may extend the divestiture period only two (2) times.
 - 3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities related to

preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, malfeasance, 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 act in a fiduciary capacity for the benefit of the Commission.
 9. The Divestiture Trustee shall report in writing to Respondent BASF and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
 10. Respondent BASF may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *PROVIDED, HOWEVER*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
 11. The Commission may, among other things, require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.
- 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 obligations under Paragraphs II and III of this Order.
- G. The Divestiture Trustee(s) appointed pursuant to Paragraph VI of this Order may be the same Person appointed as the Monitor pursuant to Paragraph V of this Order.

VII.

IT IS FURTHER ORDERED that:

- A. Beginning from the Acquisition Date until ninety (90) days after each of the IB Effective Date and the BV Effective Date, Respondent BASF shall, in a manner consistent with local labor laws:
1. facilitate employment interviews between each Designated IB Employee and the IB Acquirer, and between each Designated BV Employee and the BV Acquirer, including providing the names and contact information for such employees and allowing such employees reasonable opportunity to interview with the IB Acquirer or the BV Acquirer, respectively, and shall not discourage such employee from participating in such interviews;
 2. not interfere in employment negotiations between each Designated IB Employee and the IB Acquirer, or between each Designated BV Employee and the BV Acquirer;
 3. with respect to each Designated IB Employee or Designated BV Employee who receives an offer of employment from the IB Acquirer or BV Acquirer, respectively:
 - a. not prevent, prohibit, or restrict, or threaten to prevent, prohibit, or restrict:
 - (1) the Designated IB Employee from being employed by the IB Acquirer, and shall not offer any incentive to the Designated IB Employee to decline employment with the IB Acquirer; or
 - (2) the Designated BV Employee from being employed by the BV Acquirer, and shall not offer any incentive to the Designated BV Employee to decline employment with the BV Acquirer.
 - b. cooperate with:
 - (1) the IB Acquirer in effecting transfer of the Designated IB Employee to the employ of the IB Acquirer, if the Designated IB Employee accepts an offer of employment from the IB Acquirer; or
 - (2) the BV Acquirer in effecting transfer of the Designated BV Employee to the employ of the BV Acquirer, if the Designated BV Employee accepts an offer of employment from the BV Acquirer;
 - c. eliminate any contractual provisions or other restrictions entered into or imposed by Respondent BASF that would otherwise prevent the Designated IB Employee or

Designated BV Employee from being employed by the IB Acquirer or BV Acquirer, respectively;

- d. eliminate any confidentiality restrictions that would prevent:
 - (1) the Designated IB Employee who accepts employment with the IB Acquirer from using or transferring to the IB Acquirer any information Relating To the operation of the Ciba IB Business; or
 - (2) the Designated BV Employee who accepts employment with the BV Acquirer from using or transferring to the BV Acquirer any information Relating To the operation of the Ciba BV Business.
- e. unless alternative arrangements are agreed upon with the IB Acquirer or BV Acquirer, retain the obliga

newspapers, trade publications, websites, or other media not targeted specifica

803.20), Respondent BASF shall not consummate the transaction until thirty day

indirectly, acquired any assets used, at the time of the acquisition, in the design, manufacture, production, or sale of BV Pigments or IB Pigments in or into areas other than the United States. Respondent BASF shall include a description of such acquisitions including, but not limited to, the identity of the Person or assets acquired, the location of the Person or assets, and a detailed description of the assets or Person and its BV Pigments or IB Pigments sales or manufacturing.

X.

IT IS FURTHER ORDERED that Respondent BASF shall notify the Commission at least thirty (30) days prior to any proposed:

- A. dissolution of the Respondent BASF;
- B. acquisition, merger or consolidation of Respondent BASF; or
- C. other change in the Respondent BASF, 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.

XI.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondent BASF, Respondent BASF shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

- A. access, during business office hours of Respondent BASF 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 Respondent BASF related to compliance with this Order, which copying services shall be provided by Respondent BASF at its expense; and
- B. to interview officers, directors, or employees of Respondent BASF, who may have counsel present, regarding such matters.

XII.

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

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED:

CONFIDENTIAL EXHIBIT A
DESIGNATED CIBA BV EMPLOYEES

[Redacted From the Public Record Version, But Incorporated By Reference]

CONFIDENTIAL EXHIBIT B
DESIGNATED CIBA IB EMPLOYEES

[Redacted From the Public Record Version, But Incorporated By Reference]

CONFIDENTIAL EXHIBIT C
MAASTRICHT PLANT BV LEASED AREA

[Redacted From the Public Record Version, But Incorporated By Reference]

CONFIDENTIAL EXHIBIT D
MONITOR AGREEMENT

[Redacted From the Public Record Version, But Incorporated By Reference]