

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Deborah Platt Majoras, Chairman
Orson Swindle
Thomas B. Leary
Pamela Jones Harbour
Jon Leibowitz

In the Matter of)	
)	
)	
CYTEC INDUSTRIES INC.,)	Docket No. C-
a corporation.)	
)	

DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Respondent Cytec Industries Inc. (“Cytec”) of certain assets of UCB S.A. (“UCB”), and Respondent having been furnished thereafter with a copy of the 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 Respondent 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, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order, an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of the Agreement Containing Consent Order is for settlement purposes only and does not constitute an admission by Respondent 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 Respondent has violated the said Acts and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and its Order

to Hold Separate and Maintain Assets and having accepted the executed Agreement Containing Consent Orders and placed such Agreement Containing Consent Orders 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 Cytec is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at Five Garret Mountain Plaza, West Paterson, New Jersey 07424.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent and the proceeding is in the public interest.

ORDER

I.

- A. “Cytec” means Cytec Industries Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; and its parents, joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Cytec, and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each.
- B. “UCB” means UCB S.A., a corporation organized, existing, and doing business under and by virtue of the laws of Belgium, with its registered office located at 60 Allée de la Recherche, B-1070, Brussels, Belgium; and all joint ventures, subsidiaries, divisions, groups, and affiliates controlled by UCB, including without limitation UCB Chemicals Corp. and UCB, Inc.
- C. “Surface Specialties” means the Surface Specialties business of UCB that Cytec agreed to acquire as described in the October 1, 2004, Stock and Asset Purchase Agreement between UCB S.A. and Cytec Industries Inc.
- D. “Commission” means the Federal Trade Commission.
- E. “Respondent” means Cytec Industries Inc.
- F. “Acquirer” means each Person approved by the Commission to acquire the UCB Amino Resins Business pursuant to Paragraphs II or V of this Order.

- G. “Actual Cost” means actual direct material plus actual direct labor plus allocated actual manufacturing overhead at the Suzano Amino Resins Facility, the Werndorf Amino Resins Facility and the La Llagosta Amino Resins Facility.
- H. “Acquisition” means the proposed acquisition of Surface Specialties by Cytec, as described in the October 1, 2004, Stock and Asset Purchase Agreement between UCB S.A. and Cytec Industries Inc.
- I. “Amino Resins” means products obtained through the addition of formaldehyde to urea, melamine or benzoguanamine and such products etherified with linear or branched aliphatic alcohols (C1-C18 atoms). This definition excludes the products obtained through the addition of formaldehyde to phenols (the phenolics), the products obtained through the addition of formaldehyde to carbamates (such as HF480 and Alvnovol VPN 1759) and the products obtained through the reaction of butylated urea formaldehyde with alkyds (plasticized urea formaldehyde resins).
- J. “Amino Resin Products” means all of those grades and types of Amino Resins currently being researched, developed, manufactured, marketed, or sold by UCB, and all of those grades and types of Amino Resins that have been researched, developed, manufactured, marketed, or sold by UCB or any predecessor any time within five years of the date this Order is accepted by the Commission for public comment. “Amino Resin Products” does not include formulated or combination products consisting of an Amino Resin and one or more polymers, other than Modacure™ resins.
- K. “Divestiture Agreements” means any agreement that receives the prior approval of the Commission between Respondent and an Acquirer (or between a trustee appointed pursuant to Paragraph V of this Order and an Acquirer) related to the UCB Amino Resins Business required to be divested pursuant to Paragraphs II or V of this Order and the rights or assets to be licensed or otherwise made available to the Acquirer pursuant to Paragraph II of this Order, including, but not limited to any agreement between the Respondent and the Acquirer required or permitted by or pursuant to Paragraph II.B. of this Order.
- L. “Indian Orchard Manufacturing Facility” means the industrial park owned and operated by Solutia, Inc. near Springfield, Massachusetts and the immediate vicinity.
- M. “Indian Orchard Amino Resins Facility” means buildings, structures, fixtures, equipment, machinery, and other tangible property owned, operated, leased, or otherwise within the custody or control by or on behalf of UCB and located at the Indian Orchard Manufacturing Facility used for any purpose related to the research, development, manufacture, marketing, sale, and distribution of Amino Resin Products.
- N. “Fechenheim Manufacturing Facility” means the industrial park owned by AllessaChemie GmbH near Fechenheim, Germany and the immediate vicinity.

- O. “Fechenheim Amino Resins Facility” means buildings, structures, fixtures, equipment, machinery, and other tangible property owned or operated by or on behalf of UCB and located at the Fechenheim Manufacturing Facility used for any purpose related to the research, development, manufacture, marketing, sale, and distribution of Amino Resin Products.
- P. “Fechenheim Additives” means the additives listed on Exhibit A to this Order, together with any improvements.
- Q. “Fechenheim Additives Business” means:
1. the buildings, structures, fixtures, equipment, machinery, and other tangible property owned or operated by or on behalf of UCB and located at the Fechenheim Manufacturing Facility used for any purpose related to the research, development, manufacture, marketing, sale, and distribution of Fechenheim Additives;
 2. the books, records, and files (whether stored in electronic, magnetic, paper, or any other format) located at the Fechenheim Manufacturing Facility that are related to the research, development, manufacture, marketing, sale, and distribution of the Fechenheim Additives;
 3. all of UCB’s rights in intellectual property that is used exclusively in the research, development, manufacture, marketing, sale, and distribution of Fechenheim Additives;
 4. all of UCB’s rights in any tolling agreement pursuant to which AllessaChemie GmbH produces Fechenheim Additives; and
 5. a perpetual, non-exclusive, royalty-free license, limited to the field of Fechenheim Additives, to all of UCB’s other intellectual property, as of the date this Order is accepted by the Commission for public comment, used in the research, development, manufacture, marketing, sale, and distribution of Fechenheim Additives, with a right to sub-license customers for use in connection with products the customer purchases from the Acquirer.
- R. “LaSalle Toll Agreement” means the January 31, 2003, agreement between UCB Chemicals Corp. and UCB, Inc. and Solutia Canada Inc. relating to the toll manufacture of Amino Resin Products for UCB at Solutia Canada Inc.’s manufacturing site in LaSalle, Quebec.
- S. “Divestiture Trustee” means the divestiture trustee(s) appointed pursuant to Paragraph V. of this Order.

- T. “Effective Date of Divestiture” means the date on which the divestiture of the UCB Amino Resins Business to the Acquirer is consummated.
- U. “Hold Separate” means the Order to Hold Separate and Maintain Assets incorporated into and made a part of the Agreement Containing Consent Orders.
- V. “La Llagosta Amino Resins Facility” means the buildings, structures, fixtures, equipment, machinery, and other tangible property owned or operated by or on behalf of UCB and located at the industrial facility owned by Surface Specialties at La Llagosta, Spain.
- W. “Monitor Trustee” means the trustee appointed pursuant to Paragraph IV. of this Order.
- X. “Confidential Business Information” means any information relating to the UCB Amino Resins Business or the Fechenheim Additives Business (but excluding the assets that are described in Paragraph I.Q.5 in the definition of that business) (before or after the divestiture required by Paragraph II of this Order) that is not in the public domain, including, but not limited to:
1. all contracts, sales call reports, customer purchase orders, customer product specifications and requirements, records of historical customer purchases, customer correspondence, customer information, invoices, payment records, customer records, and customer files (whether stored in electronic, magnetic, paper, or any other format) relating to the UCB Amino Resins Business, or the sale of Amino Resins to any customers anywhere in the world at any time within five (5) years of the date this Order is accepted by the Commission for public comment; and,
 2. all know-how, trade secrets, ongoing research and development, research materials, technical information, data of any kind (whether stored in electronic, magnetic, paper, or any other format) relating to the research, development, manufacture, marketing, or sale of Amino Resins anywhere in the world.

Confidential Business Information shall not include: (i) information that subsequently falls within the public domain through no violation of this Order by Respondent or breach of a confidentiality or non-disclosure agreement with respect to such information; (ii) information in the Respondent’s possession as of the date hereof that was not obtained from UCB pursuant to the Confidentiality Agreement dated February 20, 2004, between Cytec and UCB; (iii) information independently developed by Respondent without reference to or use of information that Respondent obtained from the UCB Amino Resins Business after February 20, 2004; (iv) information that is required by law to be disclosed; (v) information that may be contained in documents or databases that also contain Confidential Business Information but does not relate to the UCB Amino Resins Business; or (vi) information relating to the Fechenheim Additives Business that

is currently used in UCB's additives business outside Fechenheim.

- Y. "Person" means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, joint venture, or other business or governmental entity.
- Z. "Primarily Related," when used to determine the appropriate allocation of an intangible asset between the UCB Amino Resins Business and the other Surface Specialties businesses listed in Paragraph I.AA.35, means:
1. For an asset that has commercial application, that more than fifty percent (50%) of the revenue derived from sales of products that make use of the asset were in calendar year 2004 attributable to products sold by the other Surface Specialties businesses; and
 2. For an asset that does not have commercial application as of the date this Order is accepted by the Commission for public comment, that the primary inventor of the asset was employed by one or more of those other Surface Specialties businesses.
- AA. "UCB Amino Resins Business" means all assets of the UCB Surface Specialties Business anywhere in the world relating to the research, development, marketing, sale, and production of Amino Resin Products, including, but not limited to:
1. the Indian Orchard Amino Resins Facility and the Fechenheim Amino Resins Facility;
 2. an assignment of all of UCB's rights and obligations to the LaSalle Toll Agreement;
 3. an assignment of all of UCB's rights and obligations to all contracts with Solutia that relate solely to the research, development, marketing, sale, and production of Amino Resin Products;
 4. with respect to any contracts with Solutia that relate to the research, development, marketing, sale and production of both Amino Resin Products and other products, an assignment or other transfer (in a manner approved by the Commission) of all of UCB's rights and obligations under such contracts that relate to the research, development, marketing, sale, and production of Amino Resin Products;
 5. all real property (together with appurtenances, licenses, and permits) used for any purpose related to the research, development, manufacture, marketing, sale, and distribution of Amino Resins;

6. all patents, patent applications, copyrights, trademarks, trade names, owned by UCB, or that UCB has acquired any rights to use, that are related to the research, development, manufacture, marketing, sale, or use of Amino Resins;
7. all know-how, trade secrets, ongoing research and development, research materials, technical information, data of any kind (whether stored in electronic, magnetic, paper, or any other format), management information systems, information contained in management information systems, software, inventions, quality control data, test data, technological know-how, licenses, assignments, registrations, submissions, approvals, technology, specifications, designs, drawings, processes, recipes, protocols, and formulas, and all other intellectual property rights or confidential business information (in whatever form or medium), relating to the research, development, manufacture, marketing, or sale, and use of Amino Resins;
8. all contracts relating to the research, manufacture, marketing, or sale, and use of Amino Resins entered into with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, employees, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees, and joint venture partners;
9. all governmental approvals, consents, licenses, permits, waivers, or other authorizations relating to the Indian Orchard Amino Resins Facility or the Fechenheim Amino Resins Facility;
10. all warranties and guarantees, express or implied, relating to any tangible or intangible asset, including the Indian Orchard Amino Resins Facility and the Fechenheim Amino Resins Facility, related to the research, development, manufacture, marketing, sale, and use of Amino Resins;
11. all customer lists, vendor lists, catalogs, sales promotion literature, and advertising materials relating to the research, development, manufacture, marketing, sale, and use of Amino Resins;
12. all contracts, sales call reports, customer purchase orders, customer product specifications and requirements, records of historical customer purchases, customer correspondence, customer information, information relating to customer qualification of Amino Resin Products, invoices, payment records, customer records, and customer files (whether stored in electronic, magnetic, paper, or any other format) relating to the UCB Amino Resins Business, or the sale of Amino Resins to any customers anywhere in the world at any time in the last 5 years;
13. all books, records, and files (whether stored in electronic, magnetic, paper, or any other format) relating to Amino Resins Products, together with access to any

records Respondent retains to the extent necessary to permit the Acquirer to comply with applicable law or to defend itself against claims made on the basis of any liability it assumes in connection with its acquisition of the UCB Amino Resins Business and the Fechenheim Additives Business;

14. all plant facilities, machinery, equipment, furniture, fixtures, tools, vehicles, transportation and storage facilities, and supplies relating to the research, development, manufacture, marketing, sale, and use of Amino Resins;
15. all rights in and to inventories of products, raw materials, supplies and parts, including work-in-process and finished goods relating to the research, development, manufacture, marketing, sale, and use of Amino Resins;
16. all items of prepaid expense relating to the research, development, manufacture, marketing, sale, and use of Amino Resins; and
17. any other tangible or intangible assets relating to the research and development, manufacture, marketing, distribution, or sale of Amino Resins that are reasonably necessary, in the sole discretion of the Commission, to operate the UCB Amino Resins business in a scope and manner to achieve the purposes of this Order or sufficient to remedy the harm to competition alleged in the Complaint.

Provided, however, that the UCB Amino Resins Business does not include any of the following:

18. the Werndorf Amino Resins Facility;
19. the La Llagosta Amino Resins Facility;
20. the Suzano Amino Resins Facility;
21. any assets used exclusively for the five (5) years prior to the date this Order is accepted by the Commission for public comment for the research, development, manufacture, marketing, or sale of products other than Amino Resin Products;
22. any assets described in paragraphs I.AA.5, 10, 14 or 16 at or relating to the Werndorf Amino Resins Facility, the La Llagosta Amino Resins Facility, or the Suzano Amino Resins Facility;
23. All governmental approvals, consents, licenses, permits, waivers, or other authorizations relating to the Werndorf Amino Resins Facility, the La Llagosta Amino Resins Facility, or the Suzano Amino Resins Facility;
24. Any rights in or to inventories of products, raw materials, supplies or parts, including work-in-process, but not including finished goods, to the extent they

relate to the manufacture of Amino Resins at the Werndorf Amino Resins Facility, the La Llagosta Amino Resins Facility, or the Suzano Amino Resins Facility;

25. The patents and patent applications set forth on Exhibit B to this Order;
26. The laboratory equipment at the Indian Orchard Manufacturing Facility set forth on Exhibit C to this Order;
27. Any assets transferred, retired, or disposed of during the Hold Separate period in the ordinary course of business;
28. Assets of any benefit plans allocable to the UCB Amino Resins Employees, to the extent the Acquirer does not assume liabilities associated with those plans prior to the Effective Date;
29. The UCBTM and Surface SpecialtiesTM marks and any derivatives thereof;
30. Any personnel records of UCB and Surface Specialties employees other than UCB Amino Resin Employees;
31. UCB's and Surface Specialties' corporate and regional headquarters;
32. Any management information systems (but not including Confidential Business Information that may reside on those systems), including hardware and software used by UCB or Surface Specialties prior to the Effective Date to provide services to UCB or Surface Specialties, that were not solely related to the UCB Amino Resins Business, including but not limited to all assets used by UCB and/or Surface Specialties to provide transition services to Cytec and to the UCB Amino Resins Business under the transition services agreement to be entered into between UCB and Cytec in connection with the Acquisition;
33. Assets of any UCB or Surface Specialties corporate service function that is not solely related to the UCB Amino Resins Business and all sales offices that are not solely related to the UCB Amino Resins Business;
34. Any and all cash and cash equivalents;
35. Any intangible asset that has not been used in the research, development, manufacture, marketing, distribution, or sale of Amino Resins in the two years preceding the date the Order is accepted by the Commission for public comment and that is Primarily Related to any of the following Surface Specialties Businesses: Radcure, alkyd, acrylic, urethane and epoxy coating resins, powder

coating resins, adhesives, and additives (other than Fechenheim Additives and Modacure™);

36. Any tax returns of any Surface Specialties entity, Cytec or any affiliate of Cytec;
 37. All insurance policies relating to the UCB Amino Resins Business and any right to proceeds thereunder;
 38. Any asset that Cytec did not acquire as part of its acquisition of Surface Specialties.
- BB. “UCB Amino Resins Employees” means the people listed on Exhibit D to this Order, together with any other current full-time employees of Surface Specialties as of the Effective Date of Divestiture who, at any time within two years prior to the Effective Date of Divestiture of the UCB Amino Resins Business, were employed by the UCB Amino Resins Business or supported the UCB Amino Resins Business, excluding sales, distribution, technical service, customer service, legal, accounting, or other purely administrative support personnel.
- CC. “UCB Amino Resins Production Information” means all information relating to the past, present, planned, developed, or researched production of each grade of Amino Resins Products anywhere in the world, including pursuant to the LaSalle Toll Agreement, and includes all proprietary and public information relating to the specifications for each grade of Amino Resins Products, the raw material formulations, the operating conditions, the finishing process, the equipment cleaning procedures, plant maintenance information, the specifications for the manufacturing equipment, and any other information which relates to past, present, planned, developed, or researched production by UCB of any grades of Amino Resin Products in the ordinary course of business.
- DD. “Suzano Amino Resins Facility” means buildings, structures, fixtures, equipment, machinery, and other tangible property owned or operated by or on behalf of UCB and located at the industrial facility owned by Surface Specialties in Suzano, Brazil.
- EE. “Werndorf Amino Resins Facility” means buildings, structures, fixtures, equipment, machinery, and other tangible property owned or operated by or on behalf of UCB and located at the industrial facility owned by Surface Specialties in Werndorf, Austria.

II.

IT IS FURTHER ORDERED that:

- A. Respondent shall, no later than one hundred and eighty (180) days from the date upon which this Order is accepted by the Commission for public comment, divest the UCB

Amino Resins Business and the Fechenheim Additives Business, absolutely and in good faith and at no minimum price, to an Acquirer that receives the prior approval of the Commission, and in a manner that receives the prior approval of the Commission .

- B. At the option of the Acquirer (to be exercised no later than the time the Acquirer signs agreements with Respondent to effect the acquisition of the UCB Amino Resins Business) and subject to the approval of the Commission:
1. Respondent shall enter into an agreement with the Acquirer requiring Respondent to sell and provide Acquirer with a supply of all, or any one or more, of the Amino Resin Products produced at one or more of the La Llagosta Amino Resins Facility, Suzano Amino Resins Facility, and Werndorf Amino Resins Facility at any time within five (5) years of the date this Order is accepted by the Commission for public comment. The agreement shall require Respondent to sell and provide the Acquirer with such Amino Resin Products for not longer than two (2) years at Respondent's Actual Costs. The agreement shall require Respondent to sell and provide the Acquirer with up to 110% of the greatest annual quantities of, and of comparable quality and specifications as, such Amino Resin Products sold by UCB or any predecessor to customers at any time within five (5) years of the date this Order is accepted by the Commission for public comment. The agreement shall provide that during the term of the agreement (and, for any particular item, for any longer period that may be required by law), Respondent may retain and have access to the books, records, or files included with the UCB Amino Resins Business to the extent reasonably necessary to comply with the terms of the agreement and this Order, and with any applicable legal obligations, insofar as those books, records, or files relate to the manufacture of Amino Resins at the Werndorf Amino Resins Facility, the La Llagosta Amino Resins Facility, or the Suzano Amino Resins Facility. Access to such books, records, and files shall be limited to personnel who need access for purposes of such compliance and shall in no event include marketing, sales, or other commercial personnel.
 2. Respondent shall enter into contracts, licenses, or other agreements with the Acquirer ("Supplemental Rights Agreement") sufficient to permit the Acquirer to use, for a period of up to two years after the Effective Date of Divestiture, assets, located anywhere in the world, that are not included in the definition of the UCB Amino Resins Business, but that have been used by Surface Specialties in some way in the twelve (12) months preceding the date this Order is accepted for public comment, in the research, development, manufacture, marketing, or sale of Amino Resins Products.
 3. Respondent shall enter into a transition services agreement with the Acquirer, with an initial term of six (6) months following the Effective Date of Divestiture that can, upon a showing satisfactory to the Commission, be extended for a period of up to six (6) months, to provide the services which make use of the laboratory

equipment set forth on Exhibit C to the Order, consistent with past practice at Surface Specialties.

4. Respondent shall grant the Acquirer a sole, irrevocable, perpetual, royalty-free license (with no cross-license or grant-back obligation), with respect to the patents and patent applications listed on Exhibit B, with rights to sub-license to customers for use in connection with products the customer purchases from the Acquirer.
 5. Respondent shall enter into an agreement to supply to the Acquirer administrative, human resources, and accounting services for a period not longer than six (6) months following the Effective Date.
 6. Respondent shall enter into contracts, licenses, or other agreements with the Acquirer (“Equivalent Contract Rights Agreement”): (1) sufficient to permit the Acquirer to obtain the equivalent economic and competitive benefit of any rights or obligations of UCB’s Amino Resins Business under any existing contract with Solutia that, for any reason, were not assigned, conveyed, or otherwise transferred to the Acquirer or (2) that are reasonably necessary to achieve the purposes of this Order.
 7. Respondent shall grant the Acquirer a non-exclusive, irrevocable, perpetual, royalty-free license (with no cross-license or grant-back obligations), for use in the field of Amino Resins, to all know-how, trade secrets, inventions, technological know-how, licenses, assignments, registrations, submissions, approvals, technology, specifications, designs, drawings, processes, recipes, protocols, and formulas that are included in Paragraph I.AA.35 of this Order.
- C. The Divestiture Agreements shall provide that the Acquirer can assign its rights under them, in whole but not in part, in connection with a sale of all or substantially all of the UCB Amino Resins Business and the Fechenheim Additives Business.
- D. Respondent may, at its option, require the Acquirer to grant Respondent a perpetual, royalty-free license (with no cross-license or grant-back obligations), for use only in fields other than Amino Resins, to all know-how, trade secrets, inventions, technological know-how, licenses, assignments, registrations, submissions, approvals, technology, specifications, designs, drawings, processes, recipes, protocols, and formulas that are included in the UCB Amino Resins Business pursuant to Paragraph I.AA.7 or I.AA.17 of this Order.
- E. Until the Effective Date of Divestiture of the UCB Amino Resins Business, Respondent shall take such actions as are necessary to maintain the viability and marketability of the UCB Amino Resins Business and to prevent the destruction, removal, wasting,

deterioration, or impairment of the UCB Amino Resins Business, except for ordinary wear and tear. Respondent shall not be required to make capital expenditures other than those listed on the schedule attached as Exhibit E and those that are necessary expenditures during the Hold Separate period to maintain the viability and marketability of the UCB Amino Resins Business or to prevent the destruction, removal, wasting, deterioration, or impairment of the UCB Amino Resins Business, except for ordinary wear and tear.

F. Subject to the approval of the Commission, Respondent shall enter into an agreement with the Acquirer that Respondent shall:

1. not provide, disclose, or otherwise make available any Confidential Business Information to any Person; and
2. not use any Confidential Business Information for any reason other than as required or permitted by this Order;

provided, however, that the agreement shall permit Respondent to use Confidential Business Information only: (i) for the purpose of performing or complying with Respondent's obligations under this Order, the Hold Separate, or the Divestiture Agreements; or (ii) for the purpose of complying with Respondent's financial, tax reporting, health, safety, and environmental obligations or any other disclosure obligations imposed by law, regulation or judicial order.

G. Respondent shall:

1. not later than thirty days before the Effective Date of Divestiture, provide an opportunity for the Acquirer: (i) to meet personally, and outside the presence or hearing of any employee or agent of Cytec or Surface Specialties, with any one or more of the UCB Amino Resins Employees; and (ii) to make offers of employment to any one or more of the UCB Amino Resins Employees;
2. (i) not directly or indirectly interfere with the Acquirer's offer of employment to any one or more of the UCB Amino Resins Employees, directly or indirectly attempt to persuade any one or more of the UCB Amino Resins Employees to decline any offer of employment from the Acquirer, or offer any incentive to any UCB Amino Resins Employees to decline employment with the Acquirer; (ii) irrevocably waive any legal or equitable right to deter any UCB Amino Resins Employees from accepting employment with the Acquirer, including, but not limited to, any noncompete or confidentiality provisions of employment or other contracts with UCB that directly or indirectly relate to the UCB Amino Resins Business or the employment of any one or more of the UCB Amino Resins Employees by the Acquirer; (iii) not interfere with the employment by the

Acquirer of any UCB Amino Resins Employees; and (iv) continue employee benefits offered by UCB or Cytec until the Effective Date of Divestiture, including regularly scheduled or merit raises and bonuses, and regularly scheduled vesting of all pension benefits; and,

3. not, for a period of one year from the Effective Date of Divestiture, directly or indirectly, solicit, negotiate, hire, or enter into any arrangement for the services of all or any of the UCB Amino Resins Employees, unless such employee's employment has been terminated by the Acquirer.
- H. Prior to the Effective Date of Divestiture, Respondent shall secure all consents and waivers from all private entities that are necessary for the divestiture of the UCB Amino Resins Business, and for the continued research, development, manufacture, and sale of Amino Resin Products by the Acquirer.
- I. Respondent shall comply with all terms of the Divestiture Agreements, and any breach by Respondent of any term of the Divestiture Agreements shall constitute a violation of this Order. If any term of the Divestiture Agreements varies from the terms of this Order ("Order Term"), then to the extent that Respondent cannot fully comply with both terms, the Order Term shall determine Respondent's obligations under this Order. Notwithstanding any paragraph, section, or other provision of the Divestiture Agreements, any failure to meet any condition precedent to closing (whether waived or not) or any modification of the Divestiture Agreements, without the prior approval of the Commission, shall constitute a failure to comply with this Order.
- J. The purpose of the divestiture of the UCB Amino Resins Business and the Fechenheim Additives Business is to ensure the continuing, viable, and competitive operation of the UCB Amino Resins Business and the Fechenheim Additives Business in the same business and in the same manner in which the UCB Amino Resins Business and the Fechenheim Additives Business were engaged at the time of the announcement of the proposed Acquisition and to remedy the lessening of competition alleged in the Commission's complaint.

III.

IT IS FURTHER ORDERED that:

- A. Respondent shall:
1. not provide, disclose, or otherwise make available any Confidential Business Information to any Person; and,
 2. not use any Confidential Business Information for any reason or purpose other than as otherwise required or permitted by this Order.

- B. Notwithstanding Paragraph III.A of this Order and subject to the Hold Separate, Respondent shall use Confidential Information only: (i) for the purpose of performing or complying with Respondent's obligations under this Order, the Hold Separate, or the Divestiture Agreements; or (ii) for the purpose of complying with Respondent's financial, tax reporting, health, safety, and environmental obligations or any other disclosure obligations imposed by law, regulation or judicial order.

IV.

IT IS FURTHER ORDERED that:

- A. At any time after Respondent signs the Consent Agreement, the Commission may appoint a Person to serve as Monitor Trustee to monitor Respondent's compliance with the terms of this Order and the Divestiture Agreements made a part of this Order. The Monitor Trustee may be the same person as the Divestiture Trustee, or as the Hold Separate Trustee.
- B. If the Commission appoints a Person to serve as Monitor Trustee pursuant to this Paragraph IV. of this Order, Respondent shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor Trustee:
1. The Commission shall select the Monitor Trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. If Respondent has not opposed in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) business days after notice from the staff of the Commission to Respondent of the identity of any proposed trustee, Respondent shall be deemed to have consented to the selection of the proposed trustee.
 2. The Monitor Trustee shall have the power and authority to monitor Respondent's compliance with the terms of this Order and the Divestiture Agreements and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor Trustee in a manner consistent with the purposes of this Order and in consultation with the Commission.
 3. Within ten (10) days after appointment of the Monitor Trustee, Respondent shall execute an agreement ("Monitor Trustee Agreement") that, subject to the approval of the Commission, confers on the Monitor Trustee all the rights and powers necessary to permit the Monitor Trustee to monitor Respondent's compliance with the terms of this Order and the Divestiture Agreements in a manner consistent with the purposes of this Order. Respondent may require the Monitor Trustee to sign a confidentiality agreement prohibiting the use, or

disclosure to anyone other than the Commission, of any competitively sensitive or proprietary information gained as a result of his or her role as Monitor Trustee.

4. The Monitor Trustee shall serve until the earlier of: (i) the expiration of this Order pursuant to Paragraph IX; or (ii) the expiration of all the terms that comprise the Divestiture Agreements.
5. The Monitor Trustee shall have full and complete access to Respondent's books, records, documents, personnel, facilities, and technical information relating to compliance with this Order and the Divestiture Agreements, or to any other relevant information, as the Monitor Trustee may reasonably request. Respondent shall cooperate with any reasonable request of the Monitor Trustee. Respondent shall take no action to interfere with or impede the Monitor Trustee's ability to monitor Respondent's compliance with this Order and the Divestiture Agreements.
6. The Monitor Trustee shall serve, without bond or other security, at the expense of Respondent, on such reasonable and customary terms and conditions as the Commission may set. The Monitor Trustee shall have authority to employ, at the expense of Respondent, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor Trustee's duties and responsibilities. The Monitor Trustee shall account for all expenses incurred, including fees for his or her services, subject to the approval of the Commission.
7. Respondent shall indemnify the Monitor Trustee and hold the Monitor Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor Trustee's duties (including the duties of the Monitor Trustee's employees), 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 gross negligence, willful or wanton acts, or bad faith by the Monitor Trustee.
8. If at any time the Commission determines that the Monitor Trustee has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve, the Commission may appoint a substitute to serve as Monitor Trustee in the same manner as provided in this Paragraph IV.
9. The Commission may on its own initiative or at the request of the Monitor Trustee issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order and the Divestiture Agreements.

10. The Monitor Trustee shall report in writing to the Commission concerning Respondent's compliance with this Order and the Divestiture Agreements every ninety days for a period of two years from the date Respondent signs the Consent Agreement and annually thereafter on the anniversary of the date this Order is accepted by the Commission for public comment during the remainder of the Monitor Trustee's period of appointment, and at such other times as representatives of the Commission may request.
- C. Respondent shall comply with all terms of the Monitor Trustee Agreement, and any breach by Respondent of any term of the Trustee Agreement shall constitute a violation of this Order. Notwithstanding any paragraph, section, or other provision of the Monitor Trustee Agreement, any modification of the Monitor Trustee Agreement, without the prior approval of the Commission, shall constitute a failure to comply with this Order.

V.

IT IS FURTHER ORDERED that:

- A. If Respondent fails to complete the divestitures required by Paragraph II. of this Order within the time periods specified therein, then the Commission may appoint a Divestiture Trustee to divest the UCB Amino Resins Business and the Fechenheim Additives Business to an Acquirer and to execute Divestiture Agreements that satisfy the requirements of Paragraph II of this Order. The Divestiture Trustee may be the same person as the Monitor Trustee or the Hold Separate Trustee, and shall have the authority and responsibility to divest the UCB Amino Resins Business and the Fechenheim Additives Business absolutely and in good faith, and with the Commission's prior approval.
- B. Neither the decision of the Commission to appoint a Divestiture Trustee, nor the decision of the Commission not to appoint a Divestiture Trustee, to divest any of the assets under this Paragraph V. shall preclude the Commission or the Attorney General from seeking civil penalties or any relief available to it, including a court-appointed trustee, pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, for any failure by the Respondent to comply with this Order.
- C. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph V. of this Order to divest the UCB Amino Resins Business, Respondent shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice from the staff of the Commission to Respondent of the identity of any proposed Divestiture Trustee, Respondent shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
2. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to divest the UCB Amino Resins Business and the Fechenheim Additives Business to an Acquirer that receives the prior approval of the Commission pursuant to the terms of this Order and to enter into Divestiture Agreements with the Acquirer pursuant to the terms of this Order, which Divestiture Agreements shall be subject to the prior approval of the Commission.
3. Within ten (10) days after appointment of the Divestiture Trustee, Respondent shall execute a (or amend the existing) trust agreement (“Divestiture Trustee Agreement”) that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to divest the UCB Amino Resins Business and the Fechenheim Additives Business to an Acquirer and to enter into Divestiture Agreements with the Acquirer.
4. The Divestiture Trustee shall have twelve (12) months from the date the Commission, or the court, in the case of a court-appointed trustee, approves the Divestiture Trustee Agreement described in this Paragraph V. of this Order to divest the UCB Amino Resins Business and the Fechenheim Additives Business and to enter into Divestiture Agreements with an Acquirer that satisfies the requirements of Paragraph II. of this Order. If, however, at the end of the applicable twelve-month period, the Divestiture Trustee has submitted to the Commission or the court a plan of divestiture or believes that divestiture can be achieved within a reasonable time, such divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend such divestiture period only two (2) times.
5. The Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities of Respondent related to the research, development, manufacture, marketing, distribution, or sale of Amino Resin Products, or related to any other relevant information, as the Divestiture Trustee may request. Respondent shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee.

Respondent shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of his or her responsibilities.

6. The Divestiture Trustee shall use reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest at no minimum price and the Divestiture Trustee's obligation to expeditiously accomplish the remedial purpose of this Order; to assure that Respondent enters into Divestiture Agreements that comply with the provisions of Paragraph II. of this Order; to assure that Respondent complies with the remaining provisions of this Order; and to assure that the Acquirer obtains the assets required to research, develop, manufacture, sell and distribute Amino Resin Products. The divestiture shall be made to, and the Divestiture Agreements executed with, an Acquirer in the manner set forth in Paragraph II. of 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 acquiring entity, the Divestiture Trustee shall divest to the acquiring entity or entities selected by Respondent from among those approved by the Commission, *provided further, however*, that Respondent shall select such entity within five (5) days of receiving notification of the Commission's approval.
7. The Divestiture Trustee shall serve, without bond or other security, at the expense of Respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the expense of Respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Respondent. The Divestiture Trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the Divestiture Trustee's locating an Acquirer and assuring compliance with this Order.
8. Respondent 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.

9. If the Commission determines that the Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute trustee in the same manner as provided in this Paragraph V. of this Order.
 10. The Commission or, in the case of a court-appointed 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 comply with the terms of this Order.
 11. The Divestiture Trustee shall have no obligation or authority to operate or maintain the Divested Assets.
 12. The Divestiture Trustee shall report in writing to Respondent and to the Commission every two (2) months concerning his or her efforts to divest the UCB Amino Resins Business and the Fechenheim Additives Business and Respondent's compliance with the terms of this Order.
- D. Respondent shall comply with all terms of the Divestiture Trustee Agreement, and any breach by Respondent of any term of the Trustee Agreement shall constitute a violation of this Order. Notwithstanding any paragraph, section, or other provision of the Divestiture Trustee Agreement, any modification of the Divestiture Trustee Agreement, without the prior approval of the Commission, shall constitute a failure to comply with this Order.

VI.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of this Order.

VII.

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days after the date this Order becomes final and every thirty (30) days thereafter until the Respondent has fully complied with the provisions of Paragraphs II. and V. of this Order, Respondent shall submit to the Commission (with simultaneous copies to the Monitor Trustee, the Hold Separate Trustee and the Divestiture Trustee(s), as appropriate) verified written reports setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraphs II. and V. of this Order. Respondent shall include in the reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs

II.A., II.B. and II.C. of this Order, including a description of all substantive contacts or negotiations for the divestitures and the identity of all parties contacted. Respondent shall include in the reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning completing the obligations; and,

- B. One (1) year from the date this Order becomes final, annually for the next three (3) years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, Respondent shall file verified written reports with the Commission setting forth in detail the manner and form in which it has complied and is complying with this Order.

VIII.

IT IS FURTHER ORDERED that for the purpose of determining or securing compliance with this Order, upon written request, Respondent shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondent relating to any matters contained in this Order; and
- B. Upon five (5) days' notice to Respondent and without restraint or interference from it, to interview officers, directors, employees, agents or independent contractors of Respondent.

IX.

IT IS FURTHER ORDERED that this Order shall terminate ten (10) years from the date this Order is accepted by the Commission for public comment.

By the Commission.

Donald S. Clark

Secretary

SEAL:

ISSUED: