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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

In the Matter of **BASF SE,** **a corporation.**	**Docket No. C-4253**

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and of the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission (the "Commission"), having reason to believe that respondent BASF SE ("BASF"), a corporation, and Ciba Holding Inc. ("Ciba"), a corporation, both subject to the jurisdiction of the Commission, have agreed to an acquisition by BASF of Ciba in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act ("FTC Act"), as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENT

1. Respondent BASF is a corporation organized and existing under the laws of the Federal Republic of Germany, with its principal place of business at D-67056, Ludwigshafen, Germany. BASF's principal subsidiary in the United States, BASF Corporation, is located at 100 Campus Drive, Florham Park, New Jersey 07932.

2. BASF is a global company engaged in a wide variety of chemical businesses, including the research, development, manufacture, and sale of pigments.

II. JURISDICTION

3. BASF is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affects commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

4. Ciba is a corporation organized and existing under the laws of the Swiss Confederation, with its principal place of business at Klybeckstrasse 141, 4057 Basel, Switzerland. Ciba's principal subsidiary in the United States, Ciba Corporation, is located at 540 White Plains Road, Tarrytown, New York 10591-9005.

5. Ciba is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affects commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

III. THE PROPOSED TRANSACTION

6. Pursuant to an Agreement and Plan of Merger (the "Merger Agreement") dated September 15, 2008, BASF proposes to purchase all of the outstanding shares of Ciba in a transaction valued at approximately $5.1 billion. BASF and Ciba are two of the most significant firms involved in the research, development, manufacture, and sale of high performance pigments.

IV. THE RELEVANT PRODUCT MARKETS

7. For the purposes of this Complaint, the relevant lines of commerce in which to analyze the effects of the acquisition are the research, development, manufacture and sale of the following two pigments: (a) bismuth vanadate, and (b) indanthrone blue. There are no practical substitutes for the relevant products. Due to their unique characteristics, properties and cost-effectiveness, customers would not switch away from the relevant products in response to a small but significant and non-transitory increase in their price. In addition, there may be additional narrower product markets based on specific end-use applications.

8. Bismuth vanadate pigment is a high performance pigment that imparts a brilliant yellow color with a green tint. It is particularly favored for high heat applications because of its excellent performance in high temperature environments. Worldwide sales of bismuth vanadate in 2008 were approximately $111 million.

9. Indanthrone blue is a high performance pigment that imparts a unique blue color with a tinge of red. Like bismuth vanadate, indanthrone blue is used primarily in automotive coating applications. Because of its unique properties, customers would not shift to alternative

products in response to a small but significant and non-transitory increase in the price of indanthrone blue. Worldwide sales of indanthrone blue in 2008 were approximately $29 million.

V. THE RELEVANT GEOGRAPHIC MARKET

10. The relevant geographic market is worldwide. Because shipping costs are low relative to the overall value of the product, producers of high performance pigments are able to ship product worldwide from one plant. For example, BASF produces the relevant products in Germany, while Ciba produces them in France and the Netherlands. There are also no differences in technical standards in Europe, North America, South America, Africa, the Middle East, and Asia for these products.

VI. CONCENTRATION IN THE RELEVANT MARKETS

11. Each of the relevant markets is highly concentrated. In the market for bismuth vanadate, the proposed merger would reduce the number of significant competitors from four to three, with BASF having a 60 percent post-merger market share based on sales. The market for indanthrone blue is similarly highly concentrated with the proposed merger resulting in a reduction in the number of significant competitors from three to two, with BASF having 55 percent post-merger market share based on sales. These market shares confirm that many customers strongly prefer BASF and Ciba to the other producers of these products.

VII. CONDITIONS OF ENTRY

12. Entry into either relevant market would not be timely, likely, and sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the acquisition. A potential entrant would first need to develop the technological capability to produce the relevant pigment which would be difficult and time-consuming. Once an entrant has developed the product and has the capability to manufacture it, an entrant must then undergo a qualification process at each customer which can take anywhere from two to five years. Additional time is added to the start up process for producers of indanthrone blue because producers must qualify raw materials to make certain it is adequate to make a product that will meet customer specifications. Entry is also unlikely because the costs to enter are high, the available market opportunities are limited, and there are significant sunk costs that would be incurred in any attempt to enter. Expansion by fringe competitors would also be costly and is unlikely to occur in a timely fashion or at all.

VIII. EFFECTS OF THE ACQUISITION

14. The effects of the acquisition, if consummated, may be to substantially lessen competition and tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45. Specifically, the acquisition would:

a. eliminate actual, direct, and substantial competition between BASF and Ciba in the relevant markets;

b. increase the likelihood that the combined firm will exercise market power unilaterally in the relevant markets;

c. further consolidate an already concentrated market, thereby substantially increasing the likelihood of coordinated interaction in the relevant markets;

d. reduce existing incentives to improve service or product quality or to pursue further innovation in the relevant market; and

e. increase the likelihood that customers of the relevant products would be forced to pay higher prices.

IX. VIOLATIONS CHARGED

15. The Merger Agreement described in Paragraph 6 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

16. The transaction described in Paragraph 6, if consummated, would constitute a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this first day of April, 2009, issues its Complaint against said Respondent.

By the Commission.

SEAL:

Donald S. Clark
Secretary