

APPENDIX I

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

In the Matter of)
)
Ciba-Geigy Limited,)
a corporation,)
)
Ciba-Geigy Corporation,)
a corporation,)
)
Chiron Corporation,)
a corporation,)
)
Sandoz Ltd.,)
a corporation,)
)
Sandoz Corporation,)
a corporation, and)
)
Novartis AG,)
a corporation.)

File No. 961-0055

AGREEMENT TO HOLD SEPARATE

This Agreement to Hold Separate ("Hold Separate") is by and between Sandoz Ltd. ("Sandoz"), a corporation organized, existing and doing business under and by virtue of the laws of Switzerland, with its office and principal place of business at Lichtstrasse 35, Basel, Switzerland, 4002; Ciba-Geigy Limited ("Ciba"), a corporation, organized, existing and doing business under and by virtue of the laws of Switzerland with its principal place of business located at Klybeckstrasse 141, Basel, Switzerland 4002; and the Federal Trade Commission (the "Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. § 41, et seq. (collectively, the "Parties").

PREMISES

WHEREAS, on March 6, 1996, Ciba and Sandoz entered into an Agreement providing for the merger (hereinafter the "Merger") of Ciba and Sandoz into Novartis AG ("Novartis"); and

WHEREAS, Sandoz, through its subsidiary Sandoz Agro, Inc., operates *inter alia*, (a) an Agricultural Chemical Business as defined in an Agreement Containing Consent Order attached hereto (the "Consent Order"); and (b) an Animal Health Business as defined in the Consent Order; and

WHEREAS, Ciba, through its subsidiary Ciba-Geigy Corporation, operates *inter alia*, (a) an agricultural chemical business, and (b) an animal health business, and

WHEREAS, the Commission is now investigating the Merger to determine whether it would violate any of the statutes enforced by the Commission; and

WHEREAS, if the Commission accepts the Consent Order, which would require the divestiture of certain assets, the Commission must place the Consent Order on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

WHEREAS, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* of the Sandoz Agricultural Chemical Business and the Sandoz Animal Health Business as defined in Paragraph I of the Consent Order during the period prior to the final acceptance and issuance of the Consent Order by the Commission (after the 60-day public comment period), divestiture resulting from any proceeding challenging the legality of the Merger might not be possible, or might be less than an effective remedy; and

WHEREAS, the Commission is concerned that if the Merger is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of the Sandoz Agricultural Chemical Business, as described in Paragraph I.BB. of the Consent Order, and the Sandoz Animal Health Business, as described in Paragraph **CC. of the Consent Order, and the Commission's right to have the Sandoz Agricultural Chemical Business and the Sandoz Animal Health Business** continue as viable competitors independent of Ciba, Sandoz and Novartis; and

WHEREAS, even if the Commission determines to finally accept the consent Order, it is necessary to hold separate the Sandoz Agricultural Chemical Business and the Sandoz Animal Health Business to protect interim competition pending divestiture or other relief; and

WHEREAS, the purpose of the Hold Separate and the Consent Order is:

1. to preserve the Sandoz Agricultural Chemical Business and the Sandoz Animal Health Business as viable and competitive, independent businesses pending the divestitures required by the Consent Order;
2. to remedy any anticompetitive effects of the Merger; and
3. to preserve the Sandoz Agricultural Chemical Business and the Sandoz Animal Health Business as ongoing and competitive entities engaged in the same businesses in which they are presently employed until divestiture is achieved; and

WHEREAS, Sandoz and Ciba's entering into this Hold Separate shall in no way be construed as an admission by Sandoz or Ciba that the Merger is illegal; and

WHEREAS, Sandoz and Ciba understand that no act or transaction contemplated by this Hold Separate shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Hold Separate.

NOW, THEREFORE, the Respondents, upon understanding that the Commission has not yet determined whether the Merger will be challenged, and in consideration of the Commission's agreement at the time it accepts the Consent Order for public comment that, unless the Commission determines to reject the Consent Order, the Commission will not seek a temporary restraining order, preliminary injunction, or permanent injunction to prevent consummation of the Merger, and will grant early termination of the Hart-Scott-Rodino waiting period, the Parties agree as follows:

1. Ciba and Sandoz agree that from the date this Hold Separate is signed by Sandoz and Ciba until the earliest of the dates listed in Paragraphs 1.a or 1.b, they each will comply with the provisions of this Hold Separate:

- . twenty (20) days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Section 2.34 of the Commission's Rules; or
- . the day after each of the divestitures required by the Consent Order has been completed.

2. Ciba and Sandoz agree to execute and be bound by the attached Consent Order and to comply, from the date this Hold Separate is accepted, with the provisions of the Consent Order as if it were final.

3. The terms capitalized herein shall have the same definitions as in the Consent Order.

4. To ensure the complete independence and viability of The Properties To Be Divested and to ensure that no competitive information is exchanged between The Properties To Be Divested and Sandoz, Ciba or Novartis, Sandoz and Novartis shall hold The Properties To Be Divested as they are presently constituted separate and apart on the following conditions:

- . the held separate businesses shall be held separate and apart and shall be operated independently of Ciba, Sandoz and Novartis (meaning here and hereinafter, Ciba, Sandoz and Novartis excluding The Properties To Be Divested and excluding all personnel connected with The Properties To Be Divested as of the date this Hold Separate was signed) except to the extent that Ciba, Sandoz or Novartis must exercise direction and control over the held separate businesses to assure compliance with this Hold Separate or the Consent Order.
- . The Properties To Be Divested shall be staffed with sufficient employees to maintain the viability and competitiveness of The Properties To Be Divested. Neither Sandoz, Ciba nor Novartis shall employ, or make offers of employment to, any person employed by Sandoz in connection with The Properties To Be Divested or whose principal duties, during the year prior to the date of the signing of this Hold Separate, related to the management, operation, research, development, regulatory registration, sales or marketing activities of The Properties To Be Divested. Sandoz, Ciba and Novartis shall encourage and facilitate employment by The Properties To Be Divested of Sandoz employees who had line responsibility with respect to The Properties To Be Divested in the year prior to the signing of this Hold Separate; shall not

offer any incentive to such employees to decline employment with The Properties To Be Divested or accept other employment in Sandoz, Ciba or Novartis; and shall remove any impediments that may deter such employees from accepting employment with The Properties To Be Divested, including but not limited to, the payment, or transfer for the account of the employee, of all accrued bonuses, pensions and other accrued benefits to which such employees would otherwise have been entitled had they remained in the employment of Sandoz.

Ciba, Sandoz or Novartis personnel connected with The Properties To Be Divested or providing support services to The Properties To Be Divested as of the date of this Hold Separate was signed may continue, as employees of Sandoz or Novartis, to provide such services as they are currently providing to the held separate businesses. Such Sandoz or Novartis personnel must retain and maintain all material confidential information relating to the held separate businesses on a confidential basis and, except as is permitted by this Hold Separate, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any Sandoz or Novartis business.

Sandoz, Ciba and Novartis shall not exercise direction or control over, or influence directly or indirectly, The Properties To Be Divested, the Management Committee (as defined in subparagraph 4.f.), or any of its operations or businesses; provided, however, that Ciba, Sandoz and Novartis may exercise only such direction and control over The Properties To Be Divested as is necessary to assure compliance with this Hold Separate or with the Consent Order.

Ciba, Sandoz and Novartis shall maintain the marketability, viability and competitiveness of The Properties To Be Divested and shall not take any action that may cause or permit the destruction, removal, wasting, deterioration or impairment of The Properties To Be Divested, except for ordinary wear and tear, and shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair the marketability, viability or competitiveness of The Properties To Be Divested. Sandoz shall provide The Properties To Be Divested with sufficient working capital to operate at current rates of operation, including but not limited to, current levels of research and development activities, to perform all necessary routine maintenance to, and replacement of, plant and equipment of The Properties To Be Divested, and to maintain the viability and competitiveness of The Properties To Be Divested.

Sandoz shall appoint a three-person Management Committee for The Properties To Be Divested (the "Management Committee"), one of whom shall be named Chairman of the Management Committee. The Management Committee shall consist of persons who are, and shall remain, independent of Sandoz, Ciba and Novartis and competent to assure the continued viability and competitiveness of The Properties To Be Divested. Sandoz shall not permit any director, officer, employee or agent of Ciba, Sandoz or Novartis also to be a director, officer, employee or agent of The Properties To Be Divested. Each Management Committee member shall enter into a

confidentiality agreement agreeing to be bound by the terms and conditions of this Hold Separate.

. Except as required by law and except to the extent that necessary information is exchanged in the course of evaluating and consummating the Merger, defending investigations or litigation, obtaining legal advice, or complying with this Hold Separate or the Consent Order (including accomplishing the divestitures), neither Sandoz, Ciba nor Novartis shall receive or have access to, or the use of, any material confidential information of The Properties To Be Divested or the activities of the Management Committee, not in the public domain. Sandoz may receive on a regular basis from The Properties To Be Divested aggregate financial information necessary and essential to allow Sandoz to file financial reports, tax returns and personnel reports. Any such information that is obtained pursuant to this subparagraph shall only be used for the purposes set out in this subparagraph. ("Material confidential information," as used in this Hold Separate, means competitively sensitive or proprietary information not independently known to Ciba, Sandoz or Novartis from sources other than The Properties To Be Divested or the Management Committee, as applicable, and includes but is not limited to customer lists, customers, price lists, prices, individual transactions, marketing methods, patents, technologies, processes, or other trade secrets).

. All material transactions, out of the ordinary course of business and not precluded by Paragraph 4 hereof, shall be subject to a majority vote of the Management Committee (as defined in Paragraph 4.f. hereof).

. Sandoz shall not change the composition of the Management Committee unless it is necessary to do so in order to assure compliance with this Hold Separate or with the Consent Order. The Chairman of the Management Committee shall have the power to remove members of the Management Committee for cause and to appoint replacement members of the Management Committee. Sandoz shall not change the composition of the management of The Properties To Be Divested except that the Management Committee shall have the power to remove management employees for cause. If the Chairman ceases to act or fails to act diligently, a substitute Chairman shall be appointed in the same manner as provided in Paragraph 4.f. The Management Committee shall circulate to the management employees of The Properties To Be Divested and appropriately display a notice of this Hold Separate and the Consent Order at a conspicuous place at all offices and facilities of The Properties To Be Divested.

. All earnings and profits of The Properties To Be Divested shall be retained separately in The Properties To Be Divested.

. Subject to the direction of the Management Committee, Sandoz and Novartis shall cause The Properties To Be Divested to continue to expend funds for the advertising and trade promotion of such businesses at levels not lower than those budgeted for 1995 and 1996, and shall increase such spending as deemed reasonably necessary in light of competitive conditions. If necessary, Sandoz and Novartis shall provide the held separate businesses with funds necessary to accomplish the foregoing. Sandoz and Novartis shall continue to provide to The Properties To Be Divested such support services as is reasonably necessary and was provided prior to the merger by Sandoz.

5. Should the Federal Trade Commission seek in any proceeding to compel dissolution of Novartis, to compel Sandoz or Novartis to divest any assets or businesses of Ciba that they may hold, to compel Ciba or Novartis to divest any assets or businesses of Sandoz that they may hold, or to seek any other injunctive or equitable relief, neither Sandoz nor Ciba shall raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Merger. Sandoz and Ciba also waive all rights to contest the validity of this Hold Separate.

6. Within twenty (21) days after the date this Hold Separate is signed by Respondents and every thirty (30) days thereafter, Respondents shall each submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Hold Separate and the Consent Order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with the terms of the Consent Order, including a description of all contacts and negotiations for the divestiture and the identity of all parties contacted. Respondents shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the divestitures.

7. For the purpose of determining or securing compliance with this Hold Separate, subject to any legally recognized privilege, and upon written request and five day's notice, Sandoz and Ciba shall permit any duly authorized representative(s) of the Commission:

- . Access during the office hours of Sandoz or Ciba and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Sandoz, Ciba or Sandoz Agro relating to compliance with this Hold Separate;
- . Without restraint or interference from Respondents, to interview Sandoz or Ciba officers, directors or employees, or employees of The Properties To Be Divested, who may have counsel present, regarding any such matters.

8. This Hold Separate shall not be binding until approved by the Commission.

Dated: December 16, 1996

CIBA-GEIGY LIMITED

By: _____

CIBA-GEIGY CORPORATION

By: _____

SANDOZ LTD.

By: _____

SANDOZ CORPORATION

By: _____

FEDERAL TRADE COMMISSION

By: _____
Stephen Calkins
General Counsel