

CT- 2002 /003

THE COMPETITION TRIBUNAL

IN THE MATTER OF an application by the Commissioner of Competition for an Order pursuant to sections 92 and 105 of the *Competition Act*, R.S.C. 1985, c.C-34, as amended;

AND IN THE MATTER OF an application by the Commissioner of Competition for an Order pursuant to section 104 of the *Competition Act*;

AND IN THE MATTER OF the acquisition by Bayer AG of all of the shares of Aventis CropScience Holding S.A., constituting the agrochemical business of Aventis S.A. and, in Canada, the indirect acquisition by Bayer AG of all of the shares of Aventis CropScience Canada Co.

BETWEEN:

THE COMMISSIONER OF COMPETITION

| | | |
|--|--|---------------------------------|
| COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE | | P R O D U I T |
| JUN 5 2002 <i>GL</i> | | |
| REGISTRAR -- REGISTRAIRE | | |
| OTTAWA, ONT. # 2d | | |

Applicant

- and -

**BAYER AG
and AVENTIS CROPSCIENCE HOLDING S.A.**

Respondents

CONSENT OF THE INDEPENDENT MANAGERS AND MONITOR

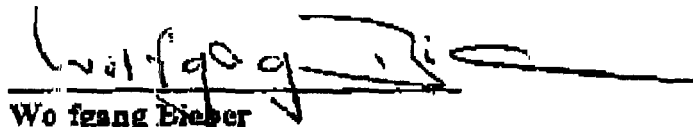
Jun-03-02 01:20pm From-FRASER MILNER CASGRAIN LLP 1

4168634592

T-700 P. 13/016 F-558

The parties hereto consent to their appointments as defined in the Draft Interim Consent Order which is attached and marked as Schedule "A".

LELBR-
SIGNED at LELBR this 31st day of May, 2002.



Wolfgang Bieber
Bayer Global Hold Separate Manager
Bayer AG
Geschäftsbereich Pflanzenschutz
Gebäude 6200
D-51368 Leverkusen

Tel: 49 21 73 38 4611

Fax: 49 21 73 38 4404

SIGNED at _____ this _____ day of May, 2002.

Vincent Turriès
ACS Global Hold Separate Manager
Aventis CropScience Holding S.A.
14-20 Rue Pierre Baizet
69663 Lyon, Cedex 09
France

Tel: (011) 33 (0) 4 72 85 4894

Fax: (011) 33 (0) 4 72 85 4473

Jun-03-02 01:21pm From-FRASER MILNER CASGRAIN LLP 1
MAT-31-04 00 411m

4168624582

T-700 P. 14/016 F-558

The parties hereto consent to their appointments as defined in the Draft Interim Consent Order which is attached and marked as Schedule "A".

SIGNED at this day of May, 2002.

Wolfgang Bieher
Bayer Global Hold Separate Manager
Bayer AG
Geschäftsbereich Pflanzenschutz
Gebäude 6200
D-51368 Leverkusen

Tel: 49 21 73 38 4611
Fax: 49 21 73 38 4404

SIGNED at Lyon this 31st day of May, 2002.

Vincent Turpin
ACS Global Hold Separate Manager
Aventis CropScience Holding S.A.
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Tel: (03) 33 (0) 4 72 85 4894
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Jun-03-02 01:21pm From:FRASER MILNER CASGRAIN LLP 1

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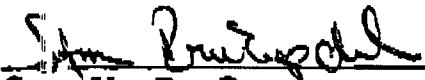
T-700 P. 15/016 F-558

SIGNED at this day of May, 2002.

Stan Prokopchuk
Bayer Product Hold Separate Business Manager
46 Aubin Drive
Winnipeg, Manitoba
R3K 1J8

Tel: (204) 254-1267
Fax: (204) 254-1372

SIGNED at *Winnipeg* this *31* day of May, 2002.


Gary Van Den Bussche
ACB Product Hold Separate Business Manager
4308 Dovercourt Drive
Winnipeg, Manitoba
R3T 1G4

Tel: (204) 989-5432
Fax: (204) 487-3648

SIGNED at this day of May, 2002.

Bryan Bowden
Bayer Product Development Manager
441 Bedson Street
Winnipeg, Manitoba
R3K 1S1


Tel: (204) 985-1564
Fax: (204) 985-1562

SIGNED at **this** **day of May, 2002.**

Stan Frokopschuk
Bayer Product Hold Separate Business Manager
46 Aulín Drive
Winnipeg, Manitoba
R3X 1J2

Tel: (204) 254-1267
Fax: (204) 254-1372

SIGNED at *Winnipeg* **this** *31st* **day of May, 2002.**



Gary Van Den Bussche
ACS Product Hold Separate Business Manager
430E Dovercourt Drive
Winnipeg, Manitoba
R3Y 1G4

Tel: (204) 989-5432
Fax: (204) 487-3648

SIGNED at **this** **day of May, 2002.**

Bryan Bowden
Bayer Product Development Manager
441 Bodden Street
Winnipeg, Manitoba
R3K 1S1

Tel: (204) 985-1564
Fax: (204) 985-1562

Jun-03-02 01:21pm From-FRASER WILNER CASGRAIN LLP 1

4168634592

T-700 P. 17/016 F-558

SIGNED at this day of May, 2002.

Stan Prokopchuk
Bayer Product Hold Separate Business Manager
46 Aubin Drive
Winnipeg, Manitoba
R3X 1J8


Tel: (204) 254-1267
Fax: (204) 254-1372

SIGNED at this day of May, 2002.

Garry Van Den Bussche
ACS Product Hold Separate Business Manager
430 B Dovercourt Drive
Winnipeg, Manitoba
R3Y 1G4

Tel: (204) 989-5432
Fax: (204) 487-3648

SIGNED at *WPG.* this *31* day of May, 2002.
11. AM.


Bryan Bowden
Bayer Product Development Manager
448 Bedson Street
Winnipeg, Manitoba
R3K 1S1


Tel: (204) 985-1564
Fax: (204) 985-1562

Jun-03-02 01:21pm From-FRASER MILNER CASGRAIN LLP 1

4168634582

T-700 P. 18/018 F-558

SIGNED at *Orangeville* this 31 day of May, 2002.



Leo Blyden
ACS Product Development Manager
RR#7, Lot 3, Conc.5
Orangeville, Ontario
L9W 2Z3

Tel: (519) 942-0730
Fax: (204) 437-3648

SIGNED at _____ this _____ day of May, 2002.

Richard Gilmore
Hok. Separate Monitor
GIC Group
143 Duke Street
Alexandria, VA
22304, U.S.A.

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Fax: (703) 684-1369

Received Time May.31. 5:39PM

Jun-03-02 01:21pm From-FRASER MILNER CASGRAIN LLP 1

4168634502

T-700 P.1 09/016 F-558

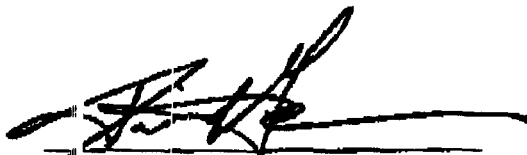
SIGNED at this day of May, 2002.

Leo Blydorp
ACS Product Development Manager
RR #7, Lot 3, Conc.5
Orangeville, Ontario
L9W 2Z3

Tel: (519) 942-0730

Fax: (204) 487-3648

SIGNED at this day of May, 2002.



Richard Gilmore
Hold Separate Monitor
GIC Group
1434 Duke Street
Alexandria, VA
22314, U.S.A.

Tel: (703) 684-1366

Fax: (703) 684-1369

CT- 2002 / 003

THE COMPETITION TRIBUNAL

IN THE MATTER OF an application by the Commissioner of Competition for an Order pursuant to sections 92 and 105 of the *Competition Act*, R.S.C. 1985, c.C-34, as amended;

AND IN THE MATTER OF an application by the Commissioner of Competition for an Order pursuant to section 104 of the *Competition Act*;

AND IN THE MATTER OF the acquisition by Bayer AG of all of the shares of Aventis CropScience Holding S.A., constituting the agrochemical business of Aventis S.A. and, in Canada, the indirect acquisition by Bayer AG of all of the shares of Aventis CropScience Canada Co.

BETWEEN:

THE COMMISSIONER OF COMPETITION

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|---|-------------------------|---------------------------------|---------|
| COMMISSION TRIBUNAL TRIBUNAL DE LA CONCURRENCE | | P R O D U I T | |
| F I L E D | MAY 31 2002 <i>GR</i> | | - and - |
| | REGISTRAR — REGISTRAIRE | | |
| | OTTAWA, ONT. #2d | | |

Applicant

- and -

**BAYER AG
and AVENTIS CROPSCIENCE HOLDING S.A.**

Respondents

CONSENT OF THE INDEPENDENT MANAGERS AND MONITOR

The parties hereto consent to their appointments as defined in the Draft Interim Consent Order which is attached and marked as Schedule "A".

SIGNED at this day of May, 2002.

Wolfgang Bieber
Bayer Global Hold Separate Manager
Bayer AG
Geschäftsbereich Pflanzenschutz
Gebäude 6200
D-51368 Leverkusen

Tel: 49 21 73 38 4611
Fax: 49 21 73 38 4404

SIGNED at this day of May, 2002.

Vincent Turriès
ACS Global Hold Separate Manager
Aventis CropScience Holding S.A.
14-20 Rue Pierre Baizet
69263 Lyon, Cedex 09
France

Tel: (011) 33 (0) 4 72 85 4894
Fax: (011) 33 (0) 4 72 85 4473

SIGNED at this day of May, 2002.

Stan Prokopchuk

Bayer Product Hold Separate Business Manager
46 Aubin Drive
Winnipeg, Manitoba
R3X 1J8

Tel: (204) 254-1267

Fax: (204) 254-1372

SIGNED at this day of May, 2002.

Garry Van Den Bussche

ACS Product Hold Separate Business Manager
430B Dovercourt Drive
Winnipeg, Manitoba
R3Y 1G4

Tel: (204) 989-5432

Fax: (204) 487-3648

SIGNED at this day of May, 2002.

Bryan Bowden

Bayer Product Development Manager
448 Bedson Street
Winnipeg, Manitoba
R3K 1S1

Tel: (204) 985-1564

Fax: (204) 985-1562

SIGNED at this day of May, 2002.

Leo Blydorp

ACS Product Development Manager

RR#7, Lot 3, Conc.5

Orangeville, Ontario

L9W 2Z3

Tel: (519) 942-0730

Fax: (204) 487-3648

SIGNED at this day of May, 2002.

Richard Gilmore

Hold Separate Monitor

GIC Group

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Alexandria, VA

22314, U.S.A.

Tel: (703) 684-1366

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CT- 2002/003

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IN THE MATTER OF an application by the Commissioner of Competition for an Order pursuant to sections 92 and 105 of the *Competition Act*, R.S.C. 1985, c.C-34, as amended;

AND IN THE MATTER OF an application by the Commissioner of Competition for an Order pursuant to section 104 of the *Competition Act*;

AND IN THE MATTER OF the acquisition by Bayer AG of all of the shares of Aventis CropScience Holdings S.A., constituting the agrochemical business of Aventis S.A. and, in Canada, the indirect acquisition by Bayer AG of all of the shares of Aventis CropScience Canada Co.

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

- and -

BAYER AG and AVENTIS CROPSCIENCE HOLDING S.A.

Respondents

DRAFT CONSENT INTERIM ORDER

FURTHER to the application (the "Consent Proceeding") of the Commissioner of Competition (the "Commissioner") pursuant to sections 92 and 105 of the *Competition Act* R.S.C. 1985, c.C-34, as amended (the "*Act*") for a consent order directing the divestiture of certain assets and certain other remedies in respect of this matter.

SCHEDULE "A"

AND FURTHER to the application of the Commissioner in the Consent Proceeding for a consent interim order pursuant to sections 92 and 104 of the *Act*;

AND ON READING the Notice of Application dated May 31st, 2002, the Motion for a Consent Interim Order, the Draft Consent Interim Order, the Affidavit of Dean Shaikh and the Consent of the Parties;

AND ON DETERMINING that this is an appropriate case for the issuance of an interim order pursuant to sections 92 and 104 of the *Act*;

THE TRIBUNAL ORDERS THAT:

I. DEFINITIONS

1. For the purposes of this Order, the following definitions shall apply:
 - (a) **"ACS"** means Aventis CropScience Holding S.A., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Aventis CropScience Holding S.A., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

SCHEDULE "A"

- (b) ***"ACS Global Hold Separate Manager"*** means Vincent Turriès, the manager to whom the various ACS Product Hold Separate Business Managers shall report during the Hold Separate Period and who, in turn, shall report to the Hold Separate Monitor, and any substitute therefor appointed hereunder.
- (c) ***"ACS Product Hold Separate Business Manager"*** means Garry Van Den Bussche, the Product Hold Separate Business Manager responsible for the Acetamiprid Business in Canada and the Seed Treatment Business in Canada, and any substitute therefor appointed hereunder.
- (d) ***"Acetamiprid Assets"*** means the Acetamiprid Assets as defined in the Consent Order.
- (e) ***"Acetamiprid Business"*** means the Acetamiprid Business as defined in the Consent Order, and for purposes of this Order includes the Acetamiprid Assets.
- (f) ***"Acquirer"*** means any Person that acquires any of the Pesticide Assets or Iprodione Licence or Additional Iprodione Assets pursuant to the Consent Order.

- (g) **"Acquisition"** means the proposed acquisition described in (i) the Stock Purchase Agreement dated as of October 2, 2001, among Aventis Agriculture, Hoechst Aktiengesellschaft, and Bayer AG, and (ii) the Stock Purchase Agreement dated as of October 2, 2001, among Schering Aktiengesellschaft, SCIC Holdings LLC, and Bayer AG.
- (h) **"Acquisition Date"** means the date of consummation of the Acquisition.
- (i) **"Aventis"** means Aventis S.A., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Aventis S.A. and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- (j) **"Aventis Hold Separate Businesses"** means the Acetamiprid Business and the Seed Treatment Business.
- (k) **"Bayer"** means Bayer AG, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Bayer AG, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

SCHEDULE "A"

- (l) ***"Bayer Global Hold Separate Manager"*** means Wolfgang Bieber, the manager to whom the Bayer Product Hold Separate Business Manager shall report during the Hold Separate Period and who, in turn, shall report to the Hold Separate Monitor, and any substitute therefor appointed hereunder.
- (m) ***"Bayer Hold Separate Business"*** means the Flucarbazone Business.
- (n) ***"Bayer Product Hold Separate Business Manager"*** means Stan Prokopchuk, the Product Hold Separate Business Manager responsible for the Flucarbazone Business in Canada, and any substitute therefor appointed hereunder.
- (o) ***"Commissioner"*** means the Commissioner of Competition appointed pursuant to section 7 of the *Competition Act*.
- (p) ***"Consent Order"*** means:
 - (i) until the issuance of a Consent Order pursuant to Section 92 and 105 of the *Competition Act* by the Competition Tribunal in this matter, the Draft Consent Order filed in these Consent Proceedings, and

SCHEDULE "A"

- (ii) following its issuance, such Consent Order as the Competition Tribunal issues in this matter.
- (q) **"EC Commitments"** means the commitments accepted by the Commission of the European Communities in respect of the Acquisition.
- (r) **"Final Divestiture"** means the latest to occur of the grant of the Iprodione Licence, the divestiture of a Pesticide Business or if necessary the divestiture of the Additional Iprodione Assets, such that after such divestiture or grant, the Respondents have, directly or indirectly, no remaining right, title or interest inconsistent with the Consent Order.
- (s) **"Flucarbazone Assets"** means the Flucarbazone Assets as defined in the Consent Order.
- (t) **"Flucarbazone Business"** the Flucarbazone Business as defined in the Consent Order, and for purposes of this Order includes the Flucarbazone Assets.
- (u) **"FTC Decision and Order"** means the Decision and Order issued by the United States Federal Trade Commission in respect of the Acquisition.
- (v) **"FTC Hold Separate"** means the Order to Hold Separate and Maintain Assets issued by the United States Federal Trade Commission in respect of the Acquisition.

- (w) ***"Hold Separate Businesses"*** means the Acetamiprid Business, the Flucarbazone Business and the Seed Treatment Business.
- (x) ***"Hold Separate Monitor"*** means the individual appointed pursuant to paragraph 31 of this Order and any employees, agents or other persons acting for or on behalf of the Hold Separate Monitor with respect to any matter referred to in this Order, and any substitute Hold Separate Monitor appointed hereunder.
- (y) ***"Hold Separate Period"*** means, with respect to the Respondents, the time period during which this Order is in effect. For greater certainty, the Hold Separate Period applicable to the Acetamiprid Business in Canada shall terminate with respect to such business upon the divestiture of the Acetamiprid Business pursuant to the Consent Order, the Hold Separate Period applicable to the Flucarbazone Business in Canada shall terminate upon the divestiture of the Flucarbazone Business pursuant to the Consent Order, and the Hold Separate Period applicable to the Seed Treatment Business shall terminate upon the later of the provision of the Iprodione Licence, the divestiture of the Triticonazole Business and the divestiture of the Acetamiprid Business and, if necessary, the divestiture of the Additional Iprodione Assets, all pursuant to the Consent Order.

SCHEDULE "A"

- (z) ***"Hold Separate Managers"*** means, collectively, the ACS Global Hold Separate Manager, the Bayer Global Hold Separate Manager, and the Product Hold Separate Business Managers.
- (aa) ***"Managers"*** means, collectively, the Hold Separate Managers and the Product Development Managers.
- (bb) ***"Material Confidential Information"*** means competitively sensitive or proprietary information not independently known to a Person from sources other than the entity to which the information pertains including, without limiting the generality of the foregoing, any customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets.
- (cc) ***"Person"*** means any individual, partnerships, firm, corporation, association, trust, unincorporated organization or other entity.
- (dd) ***"Product Development Managers"*** means the individuals appointed pursuant to paragraph 14 of this Order to manage the development of the respective products within the Hold Separate Businesses in Canada during the Hold Separate Period, and any substitutes therefor appointed hereunder.

SCHEDULE "A"

- (ee) ***"Product Hold Separate Business Managers"*** means each of the individuals responsible for managing different business lines within the Hold Separate Businesses in Canada during the Hold Separate Period. Identified separately, the individual Product Hold Separate Business Managers are as follows: Garry Van Den Bussche, the Product Hold Separate Business Manager responsible for the Acetamiprid Business in Canada and for the Seed Treatment Business in Canada; Stan Prokopchuk, the Product Hold Separate Business Manager responsible for the Flucarbazone Business in Canada; and any substitutes therefor appointed hereunder.
- (ff) ***"Respondents"*** means Bayer and ACS.
- (gg) ***"Seed Treatment Business"*** means ACS' entire seed treatment business in Canada, which includes, but is not limited to, the Iprodione Canola Seed Treatment Business and the Triticonazole Business as defined in the Consent Order.
2. All capitalized terms used in this Order but not otherwise defined shall have the meaning provided in the Consent Order.

II. APPLICATION

3. The provisions of this Order shall apply to:

- (a) the Respondents;
- (b) each officer, director, employee, agent or other Person acting for or on behalf of the Respondents with respect to any matter referred to in this Order save the Hold Separate Businesses;
- (c) all other Persons acting in concert or participating with the Respondents with respect to the matters referred to in this Order, save the Hold Separate Businesses, who shall have received actual notice of this Order;
- (d) the Hold Separate Managers and each employee, agent or other Person acting for or on behalf thereof with respect to any matter referred to in this Order; and
- (e) the Hold Separate Monitor, and each employee, agent or other Person acting for or on behalf of such Hold Separate Monitor with respect to any matter referred to in this Order.

III. INDEPENDENT MANAGEMENT OF THE HOLD SEPARATE BUSINESSES

4. Effective immediately upon the Acquisition Date, the Commissioner shall appoint the Hold Separate Managers for each of the Flucarbazone Business in Canada, the Seed Treatment Business and the Acetamiprid Business in Canada, to manage and operate the said businesses independently of the Respondents, as specified herein, pending the termination of the Hold Separate Period with respect to such Hold Separate Businesses, and/or a final determination of this Consent Proceeding.
5. For greater certainty, the Product Hold Separate Business Manager for the Seed Treatment Business and for the Acetamiprid Business in Canada shall be one and the same person.
6. The Respondents shall be responsible for all fees and expenses properly charged or incurred by the Managers.

SCHEDULE "A"

7. The Respondents shall:
- (a) take all reasonable steps to ensure that the Hold Separate Businesses in Canada are independent of the Respondents, including transferring to the Hold Separate Managers all rights, powers and authorities necessary for them to perform their duties and responsibilities under this Order;
 - (b) not exercise any direction or control, direct or indirect, over the management or operations of the Hold Separate Businesses in Canada or influence the marketing of the Hold Separate Businesses in Canada except to the extent that the Respondents must exercise such direction and control to assure compliance with this Order and except as otherwise provided in this Order; and
 - (c) cause the operational manager(s) of the Hold Separate Businesses in Canada to follow the reasonable instructions and directions of the applicable Product Hold Separate Business Manager given pursuant to the provisions of this Order.
8. The ACS Global Hold Separate Manager shall be responsible for the Aventis Hold Separate Businesses and shall report directly to the Hold Separate Monitor. The ACS Global Hold Separate Manager shall have the responsibility, consistent with the terms of this Order, to manage the Aventis Hold Separate Businesses. The ACS Global Hold Separate Manager will

SCHEDULE "A"

not have any access to Material Confidential Information of Bayer other than that relating to the Aventis Hold Separate Businesses. During the term of this Order, the ACS Global Hold Separate Manager shall not be involved, in any way, in the operations of the other businesses of the Respondents.

9. The Bayer Global Hold Separate Manager shall be responsible for the Bayer Hold Separate Business and shall report directly to the Hold Separate Monitor. The Bayer Global Hold Separate Manager shall have the responsibility, consistent with the terms of this Order, to manage the Bayer Hold Separate Business. The Bayer Global Hold Separate Manager will not have any access to Material Confidential Information of Bayer other than that relating to the Bayer Hold Separate Business. During the term of this Order, the Bayer Global Hold Separate Manager shall not be involved, in any way, in the operations of the other businesses of the Respondents.
10. The Product Hold Separate Business Manager responsible for the Acetamiprid Business in Canada and for the Seed Treatment Business shall report directly and exclusively to the ACS Global Hold Separate Manager; the Product Hold Separate Business Manager responsible for the Flucarbazone Business in Canada shall report directly and exclusively to the Bayer Global Hold Separate Manager. Each of the Product Hold Separate Business Managers shall manage his/her part of the Hold Separate Businesses in Canada independently of the management of the

SCHEDULE "A"

Respondents. During the term of this Order, the Product Hold Separate Business Managers shall not be involved, in any way, in the operations of the other businesses of the Respondents, other than their respective Hold Separate Businesses elsewhere in the world.

11. The Hold Separate Managers shall have no financial interests affected by the Respondents' revenues, profits or profit margins, except that an individual manager's compensation for managing his/her part of the Hold Separate Businesses may include economic incentives dependent on the financial performance of his/her respective businesses if there are also sufficient incentives for such manager to operate the business at no less than current rates of operation (including, but not limited to, current rates of production and sales) and to achieve the objectives of this Order.
12. In addition to those employees within the Hold Separate Businesses, the ACS Global Hold Separate Manager and the Bayer Global Hold Separate Manager may employ such employees as are reasonably necessary to assist them in managing and operating the Hold Separate Businesses, including, without limitation, those providing administrative services, such as finance personnel, information technology personnel, employee relations personnel, legal services personnel, public relations personnel, regulatory personnel, supply personnel, earnings consolidation and analysis personnel, business performance personnel, and customer relations personnel.

SCHEDULE "A"

13. Each Product Hold Separate Business Manager will have the responsibility and resources to implement existing sales, marketing, research and development, product registration, and product development plans relating to his/her products or, with the concurrence of his/her respective ACS Global Hold Separate Manager or Bayer Global Hold Separate Manager and the approval of the Hold Separate Monitor, to modify existing plans consistent with previously approved goals and objectives. Such managers will not have access to any other of the Respondents' confidential marketing materials, including without limitation, Bayer CropScience confidential marketing materials, during the Hold Separate Period.

14. The Product Hold Separate Business Managers for each of the Acetamiprid Business in Canada, the Seed Treatment Business and the Flucarbazone Business in Canada, with the concurrence of the respective ACS Global Hold Separate Manager or Bayer Global Hold Separate Manager, will appoint the relevant Product Development Managers for each of the Hold Separate Businesses in Canada. In the case of the Flucarbazone Business, the Product Development Manager shall be Bryan Bowden. In the case of the Acetamiprid Business in Canada and the Seed Treatment Business, the Product Development Manager shall be Leo Blydorp. In all instances, the manager appointed shall be an individual with the necessary experience and expertise in the particular product. This individual will have the responsibility to oversee development of products within the individual Hold Separate Businesses in Canada during the Hold Separate Period. This

person will not have access to the ongoing research and development operations of the Respondents that are not related to the relevant Hold Separate Businesses in Canada or elsewhere in the world during the Hold Separate Period.

15. During the Hold Separate Period, the Bayer and ACS sales forces in Canada will continue to operate in substantially the same manner as they were prior to closing of the Acquisition. The Respondents may also integrate the crop protection sales forces after August 1, 2002 provided, however, that: (1) the individual Product Hold Separate Business Managers will be responsible for overseeing sales of the products in the Hold Separate Businesses in Canada; (2) sales representatives responsible for sales in the Aventis Hold Separate Businesses shall have no access to Material Confidential Information relating to the Bayer Hold Separate Business; and (3) sales representatives responsible for sales in the Bayer Hold Separate Business shall have no access to Material Confidential Information relating to the Aventis Hold Separate Businesses. For crop protection and non-agricultural use products, however, the Respondents may initiate cross-training for the sales forces as of the Acquisition Date; provided, however, that no training will be provided on the products of the Hold Separate Businesses or their competing products.
16. The Hold Separate Monitor shall be permitted, in consultation with the Commissioner, to remove any of the Hold Separate Managers for cause. In the event the ACS Global Hold Separate Manager, the Bayer Global Hold Separate Manager, or any of the Product Hold Separate Business Managers cease to act in their role, the Respondents shall select a substitute

SCHEDULE "A"

manager, after consultation with the Hold Separate Monitor, and transfer to the substitute manager all rights, powers and authorities necessary to permit such substitute manager to perform his/her duties and responsibilities, pursuant to this Order.

17. Pending final determination of the Consent Proceeding, or until further order of the Competition Tribunal, each of the Hold Separate Managers shall take all necessary steps and give all necessary instructions to cause the Hold Separate Businesses under his or her management, and any servants or agents of such Hold Separate Businesses or managers, to:
- (a) operate such Hold Separate Businesses independently of the Respondents;
 - (b) operate such Hold Separate Businesses in compliance with all applicable laws;
 - (c) maintain all material registrations, permits and approvals necessary for the operation of such Hold Separate Businesses;
 - (d) proceed expeditiously with all pending registrations concerning such Hold Separate Businesses with the Pest Management Regulatory Agency;
 - (e) use commercially reasonable efforts to maintain and enhance the competitiveness and the customer base of such Hold Separate Businesses and in particular, continue to solicit business;

SCHEDULE "A"

- (f) maintain and hold such Hold Separate Businesses in good condition and repair, normal wear and tear excepted, and to standards at least equal to those maintained prior to the date of this Order;
- (g) establish all fees, deductions, discounts, credits or allowances with respect to the goods and services provided by such Hold Separate Businesses;
- (h) take all commercially reasonable steps to honour all customer contracts and to maintain quality and service standards for customers of such Hold Separate Businesses at the level that existed prior to the date of this Order, save as required by prudent management of such Hold Separate Businesses;
- (i) except with the approval of the Hold Separate Monitor, ensure that such Hold Separate Businesses do not engage in any type of business other than the type of business conducted by those businesses as of the date of this Order;
- (j) not communicate any Material Confidential Information related to his or her respective Hold Separate Business(es) to anyone other than the Hold Separate Monitor, the Commissioner, or as otherwise permitted herein;

SCHEDULE "A"

- (k) not knowingly take or allow to be taken any action that materially and adversely affects the competitiveness, assets, operations or financial status of such Hold Separate Businesses;
- (l) not materially curtail marketing, sales, promotional or other activities of such Hold Separate Businesses in connection with the solicitation of existing or prospective customers save as required by prudent management of such Hold Separate Businesses;
- (m) not, to any material extent, alter, or cause to be altered, the management of such Hold Separate Businesses as it existed prior to the date of this Order, except as may be necessary to comply with the terms of this Order or to replace employees that may resign, save as required by prudent management of such Hold Separate Businesses; and
- (n) not terminate or alter any current employment, salary or benefit agreements for any employees working in such Hold Separate Businesses, to any material extent, save as required by prudent management of such Hold Separate Businesses under his or her management, in the name of the businesses.

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18. The Respondents shall provide the Hold Separate Businesses with sufficient financial resources:
- (a) as are appropriate in the judgment of the ACS Global Hold Separate Manager and the Bayer Global Hold Separate Manager (in connection with the respective Hold Separate Businesses), with the concurrence of the Hold Separate Monitor, to operate the Hold Separate Businesses at least at current rates of operation and to carry on, at least at their scheduled pace, all capital projects, research and development plans, Pest Management Regulatory Agency required studies, business plans and promotional activities found in the Hold Separate Businesses' most recent budgets; provided that failure to achieve production or sales goals projected in the Hold Separate Businesses respective budgets shall not be deemed to be a violation of this Order;
 - (b) to continue, at least at their scheduled pace, any additional expenditures for the Hold Separate Businesses authorized prior to the Acquisition Date;
 - (c) to perform all maintenance to, and replacements of, the assets of the Hold Separate Businesses; and
 - (d) to maintain the viability, competitive vigour, and marketability of the Hold Separate Businesses.

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Such financial resources to be provided to the Hold Separate Businesses shall include, but shall not be limited to, (i) general funds, (ii) capital, (iii) working capital, and (iv) reimbursement for any operating losses, capital losses, or other losses; provided, however, that, consistent with the purposes of the Consent Order, the ACS Global Hold Separate Manager or the Bayer Global Hold Separate Manager, as appropriate, may reduce in scale or pace any capital or research and development project or Pest Management Regulatory Agency required study, or substitute any capital or research and development project or Pest Management Regulatory Agency required study for another of the same cost.

19. In connection with support services or products not included within the Hold Separate Businesses, the Respondents shall continue to provide, or offer to provide, the same support services to the Hold Separate Businesses as are being provided to such businesses by the Respondents as of the Acquisition Date. For services that the Respondents previously provided to the Hold Separate Businesses, the Respondents shall not charge more than the same fees, if any, charged by the Respondents for such services as of the Acquisition Date. For any other services or products that the Respondents may provide the Hold Separate Businesses, the Respondents shall not charge more than the same fees, if any, charged by the Respondents for the same services or products. The Respondents' personnel providing such services or products must retain and maintain all Material Confidential Information of the Hold Separate Businesses on a confidential basis, and, except as is permitted by this Hold Separate Order, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any person whose employment involves any of the Respondents'

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businesses, other than the Hold Separate Businesses. Such personnel shall also execute confidentiality agreements prohibiting the disclosure of any Material Confidential Information of Hold Separate Businesses. Notwithstanding the foregoing, but subject to the execution of such confidentiality agreements as aforesaid, nothing in this Order shall require the Respondents to hold separate the operations, assets or personnel used to provide such support services or products to the Hold Separate Businesses.

20. Pursuant to paragraph 19, the Respondents shall offer and the Hold Separate Businesses shall obtain the following services and products solely from the Respondents:

- (i) National brand advertising and promotion programs;
- (ii) Federal and provincial regulatory policy development and compliance, including but not limited to pursuing all necessary and pending registrations with the Pest Management Regulatory Agency;
- (iii) Human resources administrative services, including but not limited to labour relations support;

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- (iv) Environmental health and safety services, which develops corporate policies and ensures compliance with federal and provincial regulations and corporate policies;
 - (v) Security services;
 - (vi) Preparation of tax returns; and
 - (vii) Audit services.
21. The Respondents shall indemnify the Hold Separate Monitor and the Hold Separate Managers and hold each harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the duties of the Hold Separate Monitor or any of the Hold Separate Managers, 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 liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Hold Separate Monitor or any of the Hold Separate Managers.

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22. The Managers shall not communicate any Material Confidential Information acquired in the performance of the Managers' duties under this Order to any Person except to the extent required or permitted by this Order. The Managers will each execute a confidentiality agreement in this respect.
23. The Managers may provide Material Confidential Information to the following persons:
- (a) any Person employed by the external auditors of the Respondents or Aventis, as the case may be; and
 - (b) senior accountants employed by the Respondents or Aventis or their affiliates (the "Permitted Persons") only for the purposes of preparing standard financial and regulatory reports, tax returns and benefits administration and to comply with applicable law and governmental authorities in Canada, the United States and the European Communities, including the terms of the Consent Order (the "Permitted Purposes") and provided that:
 - (c) prior to disclosure of any Material Confidential Information, each Permitted Person shall execute a confidentiality agreement; and
 - (d) the Permitted Persons shall use the Material Confidential Information only for the Permitted Purposes and shall not disclose such information to any other Person, whether or not an employee of the Respondents.

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24. The Respondents shall not directly or indirectly receive or have access to, or use or continue to use any Material Confidential Information relating to the Hold Separate Businesses, except as may be necessary to comply with the terms of this Order or as permitted by this Order, and except to the extent that necessary information is exchanged in the course of consummating the Acquisition, defending investigations, defending or prosecuting litigation, obtaining legal advice, negotiating and meeting obligations under agreements to divest businesses or grant licences pursuant to the Consent Order, the FTC Decision and Order or the EC Commitments and engaging in related due diligence, and as and to the extent otherwise required by law.
25. Notwithstanding the above, this Order does not preclude disclosure to, or receipt by, the Respondents of summaries in aggregate form such as revenue summaries, cash receipt summaries and volume sales summaries, provided that no Material Confidential Information is disclosed.
26. The Hold Separate Businesses shall be staffed with sufficient employees to maintain the viability and competitiveness of the Hold Separate Businesses. Employees of the Hold Separate Businesses shall include (i) all personnel performing responsibilities primarily in connection with any of the Hold Separate Businesses as of the Acquisition Date; and (ii) any persons hired from other sources. To the extent that any employees of the Hold Separate Businesses leave or have left a Hold Separate Business prior to the termination of the Hold Separate Period with respect to that business, the ACS Global Hold Separate Manager, the Bayer Global Hold Separate Manager, or the relevant Product Hold Separate Business Manager, as applicable, with

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the approval of the Hold Separate Monitor, may replace departing or departed employees with persons who have similar experience and expertise or determine not to replace such departing or departed employees.

27. The Respondents shall not, during the Hold Separate Period, offer employees of any of the Hold Separate Businesses positions with the Respondents. An Acquirer shall have the option of offering employment to or retaining any employees of any of the Hold Separate Businesses. The Respondents shall not interfere with the employment, by the Acquirer, of such employees; shall not offer any incentive to such employees to decline employment with the Acquirer or to accept other employment with the Respondents; and shall remove any impediments that may deter such employees from accepting employment with the Acquirer including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts that would affect the ability of such employees to be employed by the Acquirer, and the payment, or the transfer for the account of the employee, of all current and accrued bonuses, pensions and other current and accrued benefits to which such employees would otherwise have been entitled had they remained in the employment of the Respondents.
28. For a period of one (1) year commencing on the divestiture of each of the Acetamiprid Business, the Flucarbazon Business and the Triconazole Business respectively, the Respondents shall not employ or make offers of employment to employees of said business who have accepted offers of employment with the Acquirer of such business unless the individual employee has been terminated by the Acquirer.

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29. Notwithstanding the requirements of paragraph 27, the Respondents shall offer a bonus or severance to employees included in the Hold Separate Businesses that continue their employment with the Hold Separate Businesses until termination of the Hold Separate Period (in addition to any other bonus or severance to which the employees would otherwise be entitled).
30. The Respondents shall assure that employees of the Hold Separate Businesses receive, during the Hold Separate Period, their salaries, all current and accrued bonuses, pensions and other current and accrued benefits to which those employees would otherwise have been entitled.

IV. HOLD SEPARATE MONITOR

31. Upon issuance of this Order, the Commissioner shall appoint Richard Gilmore to serve as the person responsible for monitoring the compliance of the Respondents and the Hold Separate Managers with this Order and the Consent Order in respect of the Hold Separate Businesses. Respondents shall be responsible for all fees or expenses properly charged or incurred by the Hold Separate Monitor, or any substitute therefore appointed pursuant to this Order.
32. If the Hold Separate Monitor ceases to act or fails to act diligently and consistent with the purposes of this Order or the Consent Order, the Commissioner may appoint a substitute Hold Separate Monitor consistent with the terms of this paragraph, subject to the consent of the Respondents, which consent shall not be unreasonably withheld. If the Respondents have not opposed, in writing, including the reasons for opposing, the selection of the substitute Hold

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Separate Monitor within ten (10) days after notice by the Commissioner to the Respondents of the identity of any substitute Hold Separate Monitor, the Respondents shall be deemed to have consented to the selection of the proposed substitute monitor. The Respondents and the substitute Hold Separate Monitor shall execute an agreement, subject to the approval of the Commissioner, consistent with this paragraph. In the event that Respondents object to the Commissioner's appointment of a proposed substitute Hold Separate Monitor, Respondents may apply to the Competition Tribunal for appropriate relief on five day's notice to the Commissioner setting out the ground for the objection. This Order and the Consent Order shall apply to any substitute Hold Separate Monitor appointed pursuant to this paragraph.

33. The Hold Separate Monitor shall have full and complete access to all personnel, books, records, documents, technical information and facilities of the Hold Separate Businesses or to any other relevant information as the Hold Separate Monitor may reasonably request. The Respondents shall cooperate with any reasonable request of the Hold Separate Monitor. The Respondents shall take no action to interfere with or impede the Hold Separate Monitor's ability to monitor the Respondents' compliance with this Order and the Consent Order.
34. The Hold Separate Monitor shall serve without bond or other security, at the expense of the Respondents, on such reasonable and customary terms and conditions as are agreed, with the approval of the Commissioner. The Hold Separate Monitor shall have the authority to employ, at the expense of the Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Hold Separate

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Monitor's duties and responsibilities under this Order and the Consent Order. The Hold Separate Monitor shall account for all expenses incurred, including fees for his or her services subject to the approval of the Commissioner.

35. The Hold Separate Monitor shall report in writing to the Commissioner (i) no later than sixty days after the Acquisition Date and every sixty days thereafter until Bayer has completed all obligations required by Parts III through VI of the Consent Order, (ii) no later than thirty days from the date Bayer has completed all obligations required by Parts III through VI of the Consent Order, and (iii) at any other time as requested by the Commissioner or his staff, concerning the Respondent's compliance with this Order and the Consent Order.
36. The Respondents shall not exert or attempt to exert any influence, direction or control over the Hold Separate Monitor which may adversely affect the discharge of the Hold Separate Monitor's duties under the terms of this Order.
37. This Order shall not be construed as providing the Hold Separate Monitor with ownership, management, possession, charge or control of the Hold Separate Businesses.
38. The Hold Separate Monitor shall execute a confidentiality agreement in which the Hold Separate Monitor will undertake not to disclose any competitively sensitive or proprietary information acquired in the performance of the Hold Separate Monitor's duties to any person except to the

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45. Notices, reports or other communications required or permitted pursuant to this order shall be in writing and shall be considered to be given if dispatched by confirmed personal delivery or facsimile transmission to the parties listed in the Service List Annex to this Order.
46. This Order does not prohibit anyone from providing Material Confidential Information to the Commissioner for purposes of the administration or enforcement of the *Competition Act*, including for the purposes of this Consent Proceeding, nor to the U.S. Federal Trade Commission or the Competition Directorate-General of the European Commission for purposes of enforcement of the FTC Decision and Order, the FTC Hold Separate or the EC Commitments, respectively.
47. If the Commissioner's approval is sought pursuant to this Order and such approval is not granted, or if a decision of the Commissioner is unreasonably delayed or withheld, the Respondents may apply to the Competition Tribunal for approval.
48. The parties are at liberty to apply to the Competition Tribunal with respect to any issue concerning this Order.

VI. TERM OF CONSENT INTERIM ORDER

49. This Order shall come into force on the Acquisition Date and shall remain in effect until Final Divestiture or further order of the Competition Tribunal.

DATED at Ottawa, this day of , 2002.

SIGNED on behalf of the Tribunal by the presiding judicial member.

VII. SERVICE LIST ANNEX

The Commissioner:

Josephine A. L. Palumbo
Department of Justice
Competition Law Division
Place du Portage, Phase I
50 Victoria Street, 22nd Floor
Gatineau, QC K1A 0C9
Telephone: (819) 953-3902
Facsimile: (819) 953-9267

Counsel to the Commissioner of Competition

Bayer:

Bayer AG
Legal Department
K-RP, Rechtsabteilung
D-51368, Leverskusen 1;
Germany
Attention: Dr. Gerhart Marchand
Telephone: 011 49 214 30 71789
Facsimile: 011 49 214 30 56524

and to:

Randal T. Hughes
Tracey N. Patel
Fraser Milner Casgrain LLP
1 First Canadian Place, 39th Floor
100 King Street, West
Toronto, ON M5X 1B2
Telephone: (416) 863-4511
Facsimile: (416) 863-4592

Counsel to Bayer AG

SCHEDULE "A"

ACS:
Aventis CropScience Holding S. A.
55, avenue René Cassin
CP 106
69266 Lyon Cedex 09
France

Attention: Emmanuel Murgue, General Counsel & Secretary

Telephone: 011 334 7285 4838
Fax: 011 334 7285 4860

and to:

Stikeman Elliott
1600-50 O'Connor Street
Ottawa, Ontario
Canada K1P 6L2

Attention: Lawson A. W. Hunter, Q.C.
Susan M. Hutton
Kim D.G. Alexander-Cook

Tel: (613) 234-4555
Fax: (613) 230-8877

Counsel to Aventis CropScience Holding S.A

CT-

IN THE MATTER OF an application by the
Commissioner of Competition for an Order pursuant
to sections 92 and 105 of the *Competition Act*,
R.S.C. 1985, c. C-34 as amended;

AND IN THE MATTER OF an application by the
Commissioner of Competition for an Order pursuant
to section 104 of the *Competition Act*;

AND IN THE MATTER OF the acquisition by
Bayer AG of all of the shares of Aventis
CropScience Holding S.A., constituting the
agrochemical business of Aventis S.A. and, in
Canada, the indirect acquisition by Bayer AG of all
of the shares of Aventis CropScience Canada Co.

BETWEEN:

**THE COMMISSIONER OF
COMPETITION**

Applicant

- and -

**BAYER AG and
AVENTIS CROPSCIENCE
HOLDING S.A.**

Respondents

**CONSENT OF THE INDEPENDENT
MANAGERS AND MONITOR**

JOSEPHINE A.L. PALUMBO

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