ANALYSIS OF PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Agreement") from MacDermid, Inc. ("MacDermid") and Polyfibron Technologies, Inc. ("Polyfibron") to resolve competitive concerns arising out of MacDermid's proposed acquisition of Polyfibron. The Agreement includes a proposed Decision and Order (the "proposed Order") which would require MacDermid and Polyfibron ("respondents") to divest the Polyfibron business of producing and selling liquid photopolymers; to terminate their respective agreements to distribute sheet photopolymers in North America (MacDermid's 1998 distribution agreement with Asahi Chemical Industry Co., Ltd. ("Asahi"), and Polyfibron's 1995 distribution agreement with BASF Lacke + Farben AG ("BASF")); and to cease and desist from inviting, entering into or participating in any agreements with other photopolymer manufacturers that have as their effect any allocation, division or illegal restriction of competition. The Agreement also includes an Order to Maintain Assets which requires respondents to preserve the Polyfibron business of producing and selling liquid photopolymers as a viable, competitive, and ongoing business until the divestiture is achieved.

The proposed Order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will review the Agreement and comments received and decide whether to withdraw its acceptance of the Agreement or make final the Agreement's proposed Order.

The proposed complaint alleges that the acquisition, if consummated, would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, as amended, and Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45, as amended, in the following markets: (1) the research, development, manufacture, and sale of liquid photopolymers for use in the manufacture of flexographic printing plates for printing on packaging materials, such as corrugated containers and multi-wall bags ("Liquid Photopolymers"); and (2) the research, development and sale of solid sheet photopolymers for use in the manufacture of flexographic printing plates for printing on packaging materials such as plastic bags and other flexible packaging, as well as corrugated containers and multi-wall bags ("Sheet Photopolymers").

The proposed complaint alleges that the Liquid Photopolymer market in North America is highly concentrated, and that the proposed acquisition of Polyfibron by MacDermid represents a virtual merger to monopoly in that market.

The proposed complaint also alleges that the Sheet Photopolymer market in North America is highly concentrated, with the pre-merger market being dominated by two firms, E.I. du Pont de Nemours & Co., Inc. ("DuPont") and Polyfibron (selling its own-manufactured Sheet Photopolymer products, and those of BASF under the 1995 distribution agreement). Other firms that participate in the North American Sheet Photopolymer market are niche players with minor market shares. While MacDermid does not produce Sheet Photopolymers, it entered into a distribution agreement with Asahi in 1998 that gives it the right–which it has not yet exercised--to distribute and sell Asahi's Sheet Photopolymer products in North America. The proposed complaint alleges that the existence of the respective distribution agreements means that the present duopoly in the sale of Sheet Photopolymers in North America would be further entrenched, because the only two likely entrants, BASF and Asahi, are bound by the distribution agreements to sell only through Polyfibron and MacDermid, respectively.

The proposed complaint further alleges that the effect of the acquisition may be to substantially lessen competition and to tend to create a monopoly by, among other things, eliminating direct competition between MacDermid and Polyfibron in the manufacture, distribution and sale of Liquid Photopolymers, entrenching the existing duopoly in North America in the sale of Sheet Photopolymers, increasing the likelihood that purchasers of Liquid Photopolymers and Sheet Photopolymers will be forced to pay higher prices, increasing the likelihood that technical and sales services provided to customers will be reduced, and increasing the likelihood that innovation will be reduced. Customers have complained that the effect of the transaction would be increased prices for Liquid Photopolymers and Sheet Photopolymers and reduced technical service, support, and innovation.

The proposed complaint further alleges that entry into the relevant markets would not be timely, likely, or sufficient to deter or offset the adverse effects of the acquisition on competition. Entry is difficult in this market because of the length of time it would take and the expense that would be incurred in building appropriate chemical production facilities; the difficulty of perfecting the underlying polymer chemistry without violating existing patents; the need to offer to customers plate-making equipment on a consignment or lease basis and the concurrent difficulty and cost of obtaining a source of supply for plate-making equipment; and the difficulty of gaining recognition in a marketplace in which customers are reluctant to change from proven suppliers. In addition, the proposed complaint alleges that most customers in the relevant market for Liquid Photopolymers are engaged in long-term equipment and material supply contracts with either MacDermid or Polyfibron, further reducing the number of customers available to a new entrant at any given time.

Finally, the proposed complaint alleges that the respondents have allocated markets for the sale of photopolymers with competitors, or invited competitors to allocate markets for the sale of photopolymers. Specifically, the complaint alleges that beginning in 1995, when MacDermid first entered the market for the production and sale of Liquid Photopolymers (by virtue of its acquisition of Hercules, Inc.'s photopolymer business), MacDermid and Asahi agreed to allocate markets such that MacDermid would not compete in the sale of Liquid Photopolymers in Japan and in other areas of the world in which Asahi sold Liquid Photopolymers while Asahi would not compete in the sale of Liquid Photopolymers in North America. In the case of Polyfibron, the proposed complaint alleges that during the same period of 1995 through 1998, Polyfibron engaged in discussions with Asahi that had as their purpose the division of markets between the two companies. The proposed complaint alleges that on several occasions during this time period, Polyfibron invited Asahi to agree not to compete in the sale of Sheet Photopolymers and

Liquid Photopolymers in North America in return for Polyfibron's agreement not to compete in the sale of Sheet Photopolymers and Liquid Photopolymers in Japan.

The proposed Order is designed to remedy the anticompetitive effects of the acquisition in the North American markets for Liquid Photopolymers and Sheet Photopolymers, as alleged in the complaint, by requiring the divestiture of Polyfibron's Liquid Photopolymer business, by requiring the respondents to terminate their respective distribution agreements with Asahi and BASF, and by requiring the respondents to cease and desist from entering into, inviting or participating in any agreements to allocate, divide or illegally restrict competition in the relevant markets.

Under the terms of the proposed Order, respondents are required to divest Polyfibron's North American Liquid Photopolymer business to Chemence, Inc. ("Chemence"), no later than twenty (20) days after the date the Order becomes final. Chemence currently produces adhesives, sealants and photopolymers for making printing stamps, using technology similar to that involved in Liquid Photopolymers. Chemence also produces a small amount of Liquid Photopolymers in its facilities in Alpharetta, Georgia, as well as in the United Kingdom.

Divestiture of Polyfibron's Liquid Photopolymer business to Chemence is designed to promote the viability and competitiveness of the divested business by placing the business in the hands of a company with extensive expertise in photopolymer technology, expertise in related chemistries, and economies of scale resulting from shared research and development, overhead and production. The divestiture package, in turn, will permit Chemence to penetrate the North American market. It provides Chemence with a photopolymer technology that is well-known, well-respected and proven in the marketplace, access to plate-making equipment that it may offer to its resin customers, a sales and technical support force that is well-known in the industry, customer lists, and long-term equipment/resin supply contracts with those customers.

The proposed Order requires that respondents divest all trade secrets, know-how, trade marks and trade names, intellectual property, intangible assets, tangible assets including equipment, and supply contracts and business information (including purchasing, sales, marketing, licensing, and similar information) relating to Polyfibron's Liquid Photopolymer business. The proposed Order also requires that respondents provide incentives to certain employees identified by the acquirer as important to the continued competitiveness and viability of the Liquid Photopolymers business, to facilitate their transfer and the transfer of know-how to the acquirer.

The proposed Order to Maintain Assets requires that respondents preserve the Polyfibron Liquid Photopolymer business as a viable and competitive business until it is transferred to the Commission-approved acquirer. It includes an obligation on respondents to build and maintain a sufficient inventory of Liquid Photopolymers to ensure there is no shortage of supply during the period that the business is being transitioned to the Commission-approved acquirer, and obligations to maintain an adequate workforce.

Both the proposed Order and the Order to Maintain Assets include provisions designed to protect the Commission-approved acquirer during the transition period from the possibility that respondents might target customers on the customer lists being transferred to the Commission-approved acquirer. The provisions prohibit respondents from soliciting Liquid Photopolymer customers of Polyfibron for the transition period, which in any event is not to exceed ninety (90) days from the date the assets to be divested are transferred to the Commission-approved acquirer.

If, following receipt and review of public comments regarding the proposed Order, the Commission determines to disapprove the divestiture to Chemence, respondents are required to rescind the transaction with Chemence and divest Polyfibron's Liquid Photopolymers business, within three (3) months, to an acquirer that receives the prior approval of the Commission. The proposed Order also provides that if respondents fail to divest the Liquid Photopolymers business as required by the proposed Order, the Commission may appoint a Divestiture Trustee to divest the business along with any assets related to the business that are necessary to effect the purposes of the proposed Order.

Under the terms of the proposed Order, respondents are required to terminate their distribution agreements with BASF and Asahi. These provisions of the proposed Order are designed to remedy the foreseeable anticompetitive effects of maintaining the existing duopoly in the sale of Sheet Photopolymers in North America. Presently, DuPont and Polyfibron represent over ninety (90) percent of the sales of Sheet Photopolymers in North America. The investigation revealed that prices for Sheet Photopolymers in North America are considerably higher than prices for Sheet Photopolymers in other areas of the world where all of the major world players--DuPont, Polyfibron, BASF and Asahi--compete for business. Furthermore, the investigation revealed evidence of coordinated price activity in the sale of Sheet Photopolymers in North America among the two major firms. By requiring the respondents to terminate the distribution agreements with BASF and Asahi, the order frees BASF and Asahi to enter the North American market independently, and thereby to act as a competitive counterweight to DuPont and respondents.

Finally, the proposed Order requires that respondents cease and desist from inviting, creating, maintaining, adhering to, participating in, or enforcing any agreement with any producer of photopolymer products to allocate, divide or illegally restrict competition in the relevant markets. This provision of the proposed Order is designed to further enhance competition in the North American markets for Liquid Photopolymers and Sheet Photopolymers by ensuring that no potential entrant into these markets refrains from entering because of any illegal invitations from or arrangements with the respondents.

The proposed Order requires respondents to provide the Commission, within thirty (30) days of the date the Agreement is signed, with an initial report setting forth in detail the manner in which respondents will comply with the provisions relating to the divestiture of assets. The proposed Order further requires respondents to provide the Commission with a report of compliance with the Order within thirty (30) days following the date the Order becomes final and every thirty (30) days thereafter until they have complied with the divestiture provisions of the Order. Furthermore, the Order requires respondents to report annually to the Commission, for ten (10) years, regarding their compliance with the provisions of the Order relating to the Sheet Photopolymer distribution agreements and market allocation agreements.

The purpose of this analysis is to facilitate public comment on the proposed Order. This analysis is not intended to constitute an official interpretation of the Agreement or the proposed Order or in any way to modify the terms of the Agreement or the proposed Order.