UNITED STATES OF AMERICA

BEFORE THE FEDERAL TRADE COMMISSION

In the matter of	)	
	)	Docket No.: C-3919
Hoechst AG, a corporation, and	)	
	)	**PUBLIC VERSION**
Rhône-Poulenc S.A., a corporation	)	
	)	
to be renamed	)	
	)	
Aventis S.A., a corporation.	)	

PETITION OF AVENTIS TO REOPEN AND MODIFY ORDER

1. Pursuant to section 5(b) of the Federal Trade Commission Act, 15 U.S.C. § 45(b), and Section 2.51 of the Federal Trade Commission Rules of Practice, 16 C.F.R. § 2.51, Aventis, the successor company to Rhône-Poulenc S.A. ("RP") and Hoechst AG ("Hoechst") (collectively "Respondent"), by and through its undersigned counsel, hereby moves the Commission for an Order to reopen this matter for the limited purpose of modifying the Commission's Decision and Order finalized January 20, 2000, and previously modified on March 11, 2002 and November 22, 2002 (the "Order"). The Order and the orders modifying the Order are attached hereto as Exhibit 1.

2. The Order requires Respondent, *inter alia*, to reduce its "holdings in Rhodia to five (5) percent or less of Rhodia's issued and outstanding voting securities" by April 22, 2004. Order ¶ VI.D. Paragraph VI was intended to ensure that Rhodia would be able to compete independently with Celanese, a wholly-owned specialty chemicals subsidiary of Hoechst that was to be spun off as an independent company prior to the Aventis merger. Former shareholders of Hoechst were to receive shares of both Aventis and Celanese as a result of the transaction, and the Commission was concerned that these shareholders could use their holdings to coordinate the activities of Celanese and, through Aventis, of Rhodia. *See In re Hoechst AG*

(Docket No. C-3919), Analysis of Proposed Order to Aid Public Comment, at 1-2 (December 1999) ("Analysis"), attached hereto as Exhibit 2.

3. RP reduced its holdings in Rhodia from 65% to 25% of Rhodia's issued and outstanding voting securities immediately prior to the closing of the Aventis merger. At the time, Rhodia's stock traded at € 20-22 per share, but Rhodia's share price began a precipitous decline shortly after the merger, falling from € 22 per share in December 1999 to approximately € 5-6 per share today. Analysts predict further declines. *See* Affidavit of Marc Silsiguen, ¶ 21 ("Silsiguen Affidavit").

4. Respondent has two options if it is to satisfy the requirements of Paragraph VI.D: (1) the public sale of its Rhodia shares on the open market before April 22, 2004; or (2) private sales of blocs of shares to financial or strategic investors.

5. Based on average daily trading volumes, Respondent estimates that it would take nearly two and a half years to sell its considerable Rhodia holdings on the open market without further destabilizing the market. Silsiguen Affidavit ¶ 19. However, the obligations of Paragraph VI.D take effect in seven months. Compressing thirty months of normal trading activity into a seven-month period would flood the market with Rhodia stock, which could force Rhodia's share price down even further, wipe out most of the value of the investments of Rhodia's other shareholders – large and small, corporate and private, including Rhodia's employees, who collectively hold 6 percent of the company's stock – and damage the company's ability to compete by worsening its already precarious financial situation. Silsiguen Affidavit ¶¶ 19-22. This would further neither the purpose of the Order nor the Commission's goal of avoiding unnecessary harm to Rhodia and its other shareholders, and would not be in the public interest.

6. To avoid this result, Respondent must dispose of its remaining Rhodia holdings through private sales of blocs of Rhodia stock to financial or strategic investors. However, the company has determined that such investors will not purchase Rhodia's stock in a declining market without receiving protection from further declines in the Rhodia share price. Silsiguen Affidavit ¶ 13. Respondent therefore has negotiated a separate financial arrangement with one of the purchasers of its Rhodia shares, Crédit Lyonnais ("CL"), that enables CL to

protect itself from some of this risk.

REDACTED

7. Respondent believes that separate financial arrangements such as those described in Paragraph 6 *supra* are in the public interest. They enable the company to satisfy its obligation to reduce its holdings in Rhodia, thereby relinquishing any influence it might have had as a Rhodia shareholder, without causing serious injury to Rhodia and its other shareholders. Because they do not give Respondent and its shareholders any influence or control over Rhodia, these arrangements cannot threaten the independence of Rhodia, and therefore cannot undermine the purpose of the Order in any way.

8. Respondent seeks to have the Order modified to make clear that such financial arrangements will be permitted under the Order. Therefore, Respondent hereby petitions the Commission to re-open and modify the Order to exclude separate financial arrangements with the purchasers of Respondent's Rhodia shares from Respondent's "holdings in Rhodia" for purposes of Paragraph VI.D. Respondent's proposed language to effect this modification is found in Section III *infra*.

I. BACKGROUND

A. Aventis transaction

9. On May 20, 1999, RP and Hoechst agreed to merge their respective life science businesses to form Aventis. The companies did not contribute their specialty chemicals businesses to the venture. Instead, they structured the transaction so that their life science businesses would be combined into the new company, while their non-life science businesses would be spun off as independent entities.

10. Although the Commission's investigation of the merger focused on the RP and Hoechst life science businesses, the Commission was also concerned about the merger's

potential competitive effects in the market for cellulose acetate, a specialty chemical product used in the production of cigarette filters, films, and other products.

11. At the time of the merger cellulose acetate was produced in the U.S. by only three companies – Celanese, which accounted for 46 percent of U.S. production of the product and which was fully owned by Hoechst; Eastman Chemical Company, which accounted for 44 percent of U.S. production; and Primester, a 50/50 production joint venture between Rhodia and Eastman that accounted for the remaining 10 percent of U.S. production. Only Celanese and Eastman actually sold any cellulose acetate in the U.S. *See* Analysis at 1. The U.S. cellulose acetate market has not changed significantly since 1999. Silsiguen Affidavit ¶ 5.

12. In November 1999 the Commission furnished RP and Hoechst with a copy of a draft complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would have charged RP and Hoechst with a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C § 45, and a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. The complaint alleged that the proposed merger would lessen competition in two markets: (1) the direct thrombin inhibitor market; and (2) the market for cellulose acetate. The complaint did not allege that the proposed merger would lessen competition in any other relevant market.

13. The Commission was concerned that the Aventis transaction would "increase the likelihood of coordinated interaction in the market for cellulose acetate," by Aventis' shareholders. Analysis at 2. As a result of the transaction Aventis was to hold the former RP's 67 percent interest in Rhodia, which in turn would continue to have access to 5 percent of the cellulose acetate produced annually in the U.S. (one half of Primester's production). Although Aventis itself would hold no interest in Celanese, the former Hoechst shareholders were to receive shares in both the new company and Celanese, which was to be spun off as an independent company prior to the merger. One of the former Hoechst shareholders, the Kuwait Petroleum Company ("KPC"), would hold what the Commission called "a controlling interest" in Celanese and "working control" of Aventis. The Commission believed that "[t]hese shareholdings could permit KPC to coordinate the activities of Celanese and, through Aventis, Rhodia and Primester after the merger." *Id. See also* Exhibit 3.

B. The Order

14. To address concerns that KPC would be able to influence the cellulose acetate businesses of Primester/Rhodia and Celanese, Respondent agreed, *inter alia*, to sell most of its Rhodia stock: "By April 22, 2004, *i.e.*, six (6) months from the end of the note exchange period described in the Form F-3, Respondents shall have reduced their holdings in Rhodia to five (5) percent or less of Rhodia's issued and outstanding voting securities." Order ¶ VI.D (as modified by the Commission on November 22, 2002). The Commission gave Respondent until April 2004 to reduce its "holdings in Rhodia" because it recognized that a rapid sale of RP's Rhodia stock could cause significant harm to Rhodia and its other shareholders.

15. To ensure that Rhodia would be able to compete independently during this period, Respondent was required to place its Rhodia shares in escrow and to refrain from exercising its voting rights. The company also established a proxy system approved by the European Commission to govern the voting of the shares. These protections continue to be enforced and are regularly applied. Silsiguen Affidavit ¶ 9.

16. In October 1999, two months prior to the consummation of the Aventis merger, RP reduced its Rhodia stake to 25 percent through a public offering. Due to the strong market conditions that prevailed at the time, RP had no difficulty selling such a large amount of Rhodia stock, and the sale had little impact on Rhodia's share price. Silsiguen Affidavit ¶ 8.

17. On December 7, 1999, RP and Hoechst, their attorneys, and counsel for the Commission executed an agreement containing the Order, which the Commission executed and then placed on the public record.

18. On December 15, 1999, RP and Hoechst consummated the transaction contemplated by the Merger Agreement by combining their life sciences businesses into Aventis.

19. On January 20, 2000, the Commission, in conformity with procedures described in § 2.34 of its Rules, entered the Order.

20. Respondent intended to dispose of its remaining Rhodia holdings through a placement of exchangeable notes that were to be exchanged by the noteholders for Rhodia

shares. However, in early 2000 Rhodia's share price began a steady decline from € 20-22 per share in late 1999 and early 2000 to less than € 9 per share in the summer of 2002. By August 2002 it became clear to Respondent that Rhodia's share price was not likely to recover, that the exchangeable notes plan was therefore not likely to be successful, and that Respondent might be forced to sell its Rhodia shares on the open market to meet its obligations under the Order. Silsiguen Affidavit ¶¶ 11-12.

21. In September 2002 Respondent petitioned the Commission for a modification to the Order so that it could seek alternative means of achieving the required divestiture. This modification was granted in November 2002. In granting the modification, the Commission recognized that allowing Respondent to sell its Rhodia shares systematically over time, rather than forcing the company to dump the shares on the market, "would avoid a significant decline in the Rhodia share price and harm to Rhodia and shareholders of Rhodia." *In re Hoechst AG* (Docket No. C-3919), Order Reopening and Modifying Order, at 2 (November 22, 2002) ("November 22 Order"), included within Exhibit 1 attached hereto.

C. The CL Transaction

22. Respondent began to seek alternative means of disposing of its Rhodia shares shortly after the Order was modified, and determined that private sales of blocs of Rhodia stock to financial or strategic investors were the only effective way of satisfying its obligations without causing a shock to the market for Rhodia stock. However, Rhodia's share price continued to fall, dropping from € 9 in August 2002 to approximately € 6 by April 2003. Confronted with a lack of investor interest in this declining market, Respondent determined that it had to offer potential purchasers of its Rhodia holdings some protection against further decreases in Rhodia's share price. Silsiguen Affidavit ¶ 13.

23. On April 16, 2003 Respondent entered into two agreements with Crédit Lyonnais ("CL"), a financial institution headquartered in and incorporated under the laws of France. Pursuant to the first agreement, CL acquired 17,751,610 of Respondent's Rhodia shares, or 9.9 percent of Rhodia's issued and outstanding voting securities, at the market price. As a result of this transaction, which closed on May 2, 2003, CL has full and exclusive title to and control of the Rhodia shares that it acquired from Respondent, including all voting rights and the

freedom to re-sell the shares to such third parties and at such time and conditions as CL chooses. Silsiguen Affidavit ¶ 15.

24. REDACTED

25. REDACTED

D. Rhodia's Current Financial Condition

26. Rhodia is in financial distress. In 2000 a slowdown in the global specialty chemicals industry began to drag Rhodia's share price down, and although the stock began to recover in late 2000 and early 2001 the general retraction of the global equity markets that began in 2001 erased those gains. Today, Rhodia's share price trades at approximately € 5-6 per share, down from € 22 per share in the months that followed the Aventis transaction. The company's debt has been given "junk" status by the rating agencies, ~~which has closed off the~~ capital markets to the company. Although Rhodia is currently in the midst of a massive reorganization, most analysts are skeptical that the company will be able to overcome its financial and managerial problems, and have issued "sell" recommendations for Rhodia's stock. Silsiguen Affidavit ¶ 21.

27. Respondent and CL currently hold a combined 25 percent of Rhodia's issued and outstanding voting securities, or over 45 million shares. The public sale of so many shares during the seven months that remain until the deadline established by the Order would have a catastrophic effect on Rhodia's already-depressed share price.

REDACTED

28. REDACTED

II. MODIFICATION OF THE ORDER IS IN THE PUBLIC INTEREST

A. Standard of Review

29. Section 5(b) of the Federal Trade Commission Act, 15 U.S. C. § 45(b), and Section 2.51(b) of the Commission's Rules of Practice, 16 C.F.R. § 2.51(b) provide that the Commission may reopen and modify an order if the public interest requires such action.

30. Section 2.51(b) of the Commission's Rules states that parties seeking to have orders reopened and modified must include in their request "a satisfactory showing that changed conditions of law or fact require the rule or order to be altered, modified, or set aside, . . *or that the public interest so requires*." 16 C.F.R. § 2.51(b) (emphasis added). According to the Supplementary Information published by the FTC when it amended 16 C.F.R. § 2.51(b) in August 2000:

> a 'satisfactory showing' requires, with respect to 'public interest' requests, that the requester make a *prima facie* showing of a legitimate 'public

> interest' reason or reasons justifying relief. [T]his showing requires the requester to demonstrate, for example, that there is a more effective or efficient way of achieving the purposes of the order . . . .

Requests to Reopen, 65 Fed. Reg. 50,636, 50,637 (Aug. 21, 2000) (to be codified at 16 C.F.R. part 2).

31. Public interest warrants that the Commission grant the relief requested herein, because the modification requested by Respondent will enable it to satisfy its obligations and achieve the intended purposes of the Order in a more effective and efficient manner. Indeed, without the use of arrangements like the TRS, Rhodia will be substantially damaged. Rhodia's ability to compete will be injured and the purposes of the Order will be frustrated.

B. The requested modification is in the public interest

32. Respondent seeks to have the Order modified to make clear that under the Order it may negotiate separate financial arrangements with the purchasers of its holdings in Rhodia that relate to the future performance of Rhodia's stock.

33. REDACTED

34. REDACTED

35. Modifying the Order to permit Respondent to offer protection from further declines in Rhodia's share price to purchasers of its Rhodia stock will enable Respondent to satisfy its obligations without resorting to large public sales. Because these arrangements facilitate the sale of Respondent's holdings while avoiding unnecessary harm to Rhodia, its other shareholders, and the market in general, modifying the Order to permit them is in the public interest.

C. The financial arrangements planned by Respondent are consistent with the Commission's stated goal of ensuring an orderly divestiture of Respondent's Rhodia holdings

36. The Commission's stated goal in requiring Respondent to sell its Rhodia holdings was to maintain competition in the market for cellulose acetate through "an independent and competitive Rhodia." November 22 Order at 2. The Commission has therefore sought to avoid causing harm to Rhodia and its shareholders by enabling Respondent to divest its Rhodia holdings over time.

37. When it modified the Order in November 2002 to permit Respondent to re-purchase the exchangeable notes and seek alternative means of satisfying its obligations, the Commission acknowledged that the purpose of the Order, "an orderly disposition of Rhodia voting securities," would be more effectively and efficiently achieved if Respondent could sell its holdings in Rhodia systematically over time. November 22 Order at 2. Such a strategy, the Commission noted, would enable Respondent to sell its Rhodia shares "in a manner that would avoid a significant decline in the Rhodia share price and harm to Rhodia shareholders and Rhodia." *Id.*

38. The separate financial arrangements that Respondent intends to offer to the purchasers of its remaining Rhodia holdings are consistent with the goals articulated by the Commission in this matter. By enabling Respondent to negotiate the private sale of its Rhodia holdings and avoid rapid and large public sales, these arrangements facilitate the "orderly disposition of Rhodia voting securities." Respondent will therefore be able to satisfy its obligations "in a manner that . . . avoid[s] a significant decline in the Rhodia share price and harm to Rhodia shareholders and Rhodia."

D. The financial arrangements planned by Respondent do not undermine the purpose of the Order

39. Although arrangements such as the TRS give Respondent some indirect interest in Rhodia's financial performance, such arrangements in no way frustrate the narrow purpose of the Order.

40. When it drafted the Order the Commission was concerned that the Aventis transaction could increase the likelihood of coordinated interaction in the cellulose acetate market between Rhodia and *Celanese*, not between Rhodia and Respondent. The Order requires Respondent to reduce its holdings in Rhodia so that the Kuwait Petroleum Company ("KPC"), along with other Aventis shareholders who received shares of Celanese when it was spun off by Hoechst, cannot use their holdings to coordinate the cellulose acetate businesses of Celanese and, through Aventis, of Rhodia.

41. Arrangements such as the TRS will not frustrate this purpose, because they do not increase the likelihood of coordinated interaction in the U.S. cellulose acetate market. The financial provisions of the TRS provide only for payments between Aventis and the purchasers of its Rhodia shares, payments that cannot increase coordination between Primester and Celanese. Furthermore, arrangements such as the TRS do not give Respondent any voting rights in or control over Rhodia, either directly or through the shares that CL has purchased from Respondent, and therefore do not give KPC the ability to influence Rhodia/Primester's cellulose acetate business in any way. Silsiguen Affidavit ¶ 16.

42. Finally, the effects of financial arrangements such as the TRS on the cellulose acetate business are *de minimis* at best. KPC has no meaningful interest in Rhodia/Primester's cellulose acetate performance. First, Rhodia's cellulose acetate business accounts for less than 1 percent of the company's annual turnover, so even a significant improvement of its performance in that market would be unlikely to have any measurable effect on the company's share price. Silsiguen Affidavit ¶ 5. Second, Respondent will have an indirect interest in only 25 percent of Rhodia's stock through arrangements such as the TRS, so KPC's 13.6 percent share of Respondent will give it an indirect interest in the future performance of only 3.4 percent of Rhodia's stock. Therefore, to the extent that Rhodia's share price improves

as a result of its cellulose acetate business KPC will not see any measurable increase in return. Third, Rhodia does not sell cellulose acetate in the U.S., so any business lost by Celanese in the U.S. will not be captured by Rhodia.

43. Through modifying the Order as requested herein, the Commission will enable Respondent to satisfy its obligations under the Order, in the time required, without causing undue injury to Rhodia, its shareholders, or the market, and without undermining the purpose of the Order. Modification is therefore in the public interest.

III. MODIFICATIONS REQUESTED

44. Specifically, then, in the interests of achieving an efficient divestiture of Respondent's Rhodia holdings in the time required by the Order without causing undue injury to Rhodia, its shareholders, or the market, Respondent now approaches the Commission seeking to have the terms of the Order modified as follows:

> VI. IT IS FURTHER ORDERED that:
>
> * * * * *
>
> D. By April 22, 2004, i.e., six (6) months from the end of the note exchange period described in the Form F-3, Respondents shall have reduced their holdings in Rhodia to five (5) percent or less of Rhodia's issued and outstanding voting securities; *provided, however*, that for purposes of this Paragraph VI.D only, the April 16, 2003 agreement between Respondents and Crédit Lyonnais or any substantially similar financial agreements that relate to Rhodia's share performance, between Respondents and the purchaser(s) of Respondents' Rhodia voting securities, shall not be considered Respondents' "holdings in Rhodia."

45. Respondent has discussed this modification with the staff of the Bureau of Competition, which has indicated that it is prepared to recommend that the Commission grant Respondent's petition to modify the Order as requested herein.

46. As required by Section 2.51(b) of the Commission's Rules of Practice, 16 I.E. ¶2.51(b), an affidavit by Marc Silsiguen, Head of Corporate Finance at Aventis, is attached

hereto. This affidavit sets forth the specific facts demonstrating the reasons why the public interest requires the requested modifications of the Order.

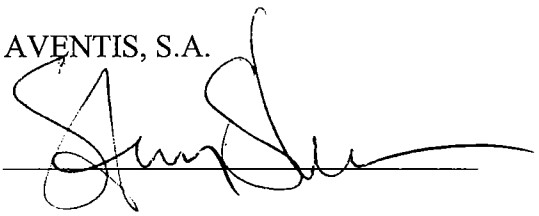
* * * * *

For the reasons given above, the Commission should grant Respondent's Petition to Reopen and Modify Order as described herein, and should grant such other further relief as would reduce the burden of this Order on Respondent, as the Commission may determine to be in the Public Interest.

Dated: September 29, 2003

Respectfully submitted,

AVENTIS, S.A.



Steven C. Sunshine
James J. O'Connell, Jr.
SHEARMAN & STERLING
801 Pennsylvania Avenue, N.W.
Washington, DC 20004-2604

Exhibit 1

FTC Decision & Order

Exhibit 2

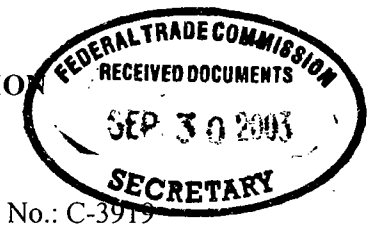
In re Hoechst AG (Docket No. C-3919),
Analysis of Proposed Order to Aid Public Comment, (December 1999)

Exhibit 3

Rhodia Capital Structure

UNITED STATES OF AMERICA

BEFORE THE FEDERAL TRADE COMMISSION



In the matter of	
Hoechst AG, a corporation, and	
Rhône-Poulenc S.A., a corporation	
to be renamed	
Aventis S.A., a corporation.	

Docket No.: C-3919

PUBLIC VERSION

AFFIDAVIT IN SUPPORT OF PETITION OF AVENTIS TO REOPEN AND MODIFY ORDER

Marc Silsiguen hereby states as follows:

1. I am Head of Corporate Finance for Aventis. I am familiar with the extent of Aventis' financial holdings in Rhodia, the commitment Aventis has made to the European Commission (the "EC") and to the Federal Trade Commission (the "Commission") to reduce its Rhodia holdings, the efforts Aventis has undertaken to satisfy these commitments, and the current financial condition of Rhodia. I am also aware of the impact that a large public sale of Aventis' Rhodia holdings could have on Rhodia's share price and overall financial performance.

2. I have read and am familiar with both the Commission's Decision and Order finalized January 20, 2000 in the above-captioned matter (the "Order") and Aventis' Petition to Reopen and Modify filed with the Commission today (the "Petition").

3. The information in this affidavit is based on my personal knowledge and on information conveyed to me by senior executives at Aventis and at Rhodia.

4. I affirm that to the best of my knowledge and belief, all of the facts and statements contained in the Petition that pertain to Aventis' Rhodia holdings are true. I also affirm that to the best of my knowledge and belief all of the facts and statements contained in the Petition that pertain to Rhodia, its historical financial performance, and its current financial condition are true.

Order in late November 2002. However, Rhodia's share price continued to fall, declining from € 9 a share in September 2002 to € 6 a share in April 2003. Aventis had great difficulty attracting the interest of the investor community in this declining market, and it became clear to me that investors were not willing to acquire significant amounts of Rhodia shares without receiving some protection against further declines in the share price. I believed and continue to believe that Aventis will be forced to sell its substantial Rhodia holdings on the open market if it is not able to offer such protections to potential purchasers.

14. On April 16, 2003 Aventis entered into two agreements with Crédit Lyonnais ("CL"), a French financial institution. These were the Share Purchase Agreement ("SPA") and the Total Return Swap Agreement ("TRS").

15. Pursuant to the SPA, on May 2, 2003 CL acquired 17,751,610 Rhodia shares from Aventis, or 9.9 percent of Rhodia's issued and outstanding voting securities, at the market price. As a result of this agreement and sale CL has full and exclusive title to and control of the Rhodia shares that it acquired from Aventis, which includes full and exclusive voting rights. CL may also hold or re-sell the shares to such third parties and at such time and conditions as CL chooses.

16. REDACTED

17. REDACTED

18. REDACTED

19. If Aventis is unable to offer arrangements like the TRS to the purchasers of its remaining 27 million Rhodia shares, to meet the requirements of the Order Aventis will have to sell those shares on the open market. Based on average daily trading volumes Aventis estimates that it would take nearly two and a half years to sell its Rhodia shares at a rate that would not cause major disruptions to Rhodia's share price. However, Aventis' divestiture obligations take effect in a mere seven months.

20. The public sale of such a large amount of Rhodia's shares during this compressed period of time could have a catastrophic effect on Rhodia and on its other shareholders.

REDACTED

21. I believe that such a collapse in Rhodia's share price could also destroy the company's ability to function as an independent competitor. Rhodia needs capital in order to compete, but I understand that its distressed financial condition has made it extremely difficult for the company to raise that capital. Rhodia's share price trades at approximately € 5-6 per share, down from € 22 per share in the months that followed the Aventis transaction, and it is projected by analysts to decline further. Rhodia's debt has been given "junk" status by the rating agencies, a development that has essentially made it nearly impossible for the company to raise the funds it needs on the capital markets. Although Rhodia is currently in the midst of a massive reorganization, the analyst community is skeptical that the company will be able to overcome its financial and managerial problems. I understand that most of these analysts have issued "sell" recommendations for Rhodia's stock.

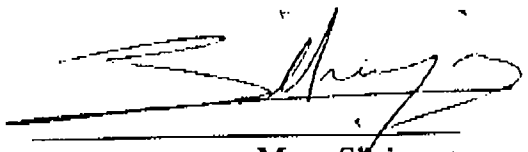
22. REDACTED

23. Aventis remains committed to achieving the required disposition of its Rhodia holdings by April 22, 2004, without causing undue injury to Rhodia, its shareholders, and to the market in general. I believe that Aventis will not be able to achieve this goal if it is not able to negotiate separate financial arrangements such as the TRS with the purchaser(s) of its remaining Rhodia shares.

* * * * *

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on September 29, 2003



Marc Silsiguen

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UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Robert Pitofsky, Chairman**
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary

In the Matter of **Hoechst AG,** a corporation; and **Rhône-Poulenc S.A.,** a corporation; to be renamed **Aventis S.A.,** a corporation.	Docket No. C-3919 DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the proposed merger between Respondent Hoechst AG and Respondent Rhône-Poulenc S.A. into Respondent Aventis S.A., a new entity, and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge Respondents 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

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing an admission by

Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents 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 Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon accepted the executed Agreement Containing Consent Order and placed such Consent Agreement 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 issues its Complaint, makes the following jurisdictional findings and enters the following Order:

A. Respondent Hoechst is a corporation organized, existing and doing business under and by virtue of the laws of Germany, with its office and principal place of business located at D-65926 Frankfurt am Main, Germany.

B. Respondent RP is a corporation organized, existing and doing business under and by virtue of the laws of France, with its office and principal place of business located at 25 Quai Paul Doumer, F-92408 Courbevoie, France, that is to be renamed Aventis S.A. with its registered office relocated at Strasbourg (Bas-Rhin)-Espace Europeen de L'Entreprise, 67300 Schiltigheim, France pursuant to the Business Combination Agreement between Hoechst and RP dated May 20, 1999, after consummation of that Agreement.

C. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this order, the following definitions shall apply:

A. "Hoechst" means Hoechst AG, its directors, officers, employees, agents, and representatives, predecessors, successors, and assigns; the subsidiaries, divisions,

groups and affiliates controlled by Hoechst, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

B. "RP" means Rhône-Poulenc S.A., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; the subsidiaries, divisions, groups and affiliates controlled by RP, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "Aventis" means Aventis S.A., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; the subsidiaries, divisions, groups and affiliates controlled by Aventis, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

D. "Respondents" means Hoechst, RP and Aventis.

E. "Commission" means the Federal Trade Commission.

F. "Revasc" means any pharmaceutical preparation containing the drug substance desirudin (chemical name: desulfatohirudin) that is the subject of the Agreement dated June 25, 1998 by and between Novartis Pharma AG and Rhône-Poulenc Rorer Inc., any of its constituent elements, active ingredients or intermediaries, including, but not limited to, vials containing the lyophilized desirudin and solvent ampules needed for reconstitution, and all rights relating to the research, development, manufacture and sale of Revasc, including without limitation Revasc Patent Rights and Know-how granted in the Agreement dated June 25, 1998 by and between Novartis Pharma AG and Rhône-Poulenc Rorer Inc.

G. "Revasc License" means the rights that RP licensed from Novartis pursuant to the Agreement dated June 25, 1998 by and between Novartis Pharma AG and Rhône-Poulenc Rorer Inc., attached hereto as non-public Appendix I.

H. "Revasc Divestiture Assets" means all rights granted to RP pursuant to the Revasc License and all assets and contracts that are related to the research, development, marketing, sale or use of Revasc.

I. "Novartis" means Novartis Pharma AG, a Swiss corporation, with its office and principal place of business located at Lichstrasse 35, CH-4002 Basel, Switzerland, and includes its directors, officers, employees, agents and representatives, licensees, predecessors, successors, and assigns; the subsidiaries, divisions, groups and affiliates controlled by Novartis, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

J. "Dr. Madaus GmbH" means Dr. Madaus GmbH, a German corporation, with its offices and principal place of business located at Herderstraße 2, D-83512, Wasserburg am Inn, Germany, and includes its directors, officers, employees, agents, representatives, licensees, predecessors, successors, and assigns; the subsidiaries, divisions, groups and affiliates controlled by Dr. Madaus GmbH, and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

K. "FDA" means the United States Food and Drug Administration.

L. "DVT" means deep vein thrombosis.

M. "Know-how" means all technological, technical, scientific, chemical, biological, pharmacological, toxicological, regulatory, marketing and other information, including without limitation all formulae, trade secrets, inventions, techniques, patents, patent applications, discoveries, compounds, compositions of matter, assays, reagents, and biological materials, trademarks, research data, technical data and information, testing data, preclinical and clinical data, toxicological and pharmacological data, statistical analysis, analytical data, clinical protocols, specifications, designs, drawings, processes, testing and quality assurance/quality control data, manufacturing data and information, regulatory submissions, and any other information and experience.

N. "Revasc Know-how" means all confidential business information and Know-how presently owned by RP that relates in whole or in part to Revasc, including without limitation information stored on management information systems (and specifications sufficient for Novartis or the sublicensee specified in Paragraph II to use such information); proprietary software used in connection with Respondent RP's Revasc; all data, contractual rights, materials and information relating to obtaining FDA approvals and other government or regulatory approvals for RP's Revasc; and any other information and experience relating to Revasc.

O. "Confidential Business Information" means all information concerning the research, development, marketing, distribution, cost, pricing, sale and commercialization of a product or product in development.

P. "NDA" means a New Drug Application, any preparatory work, drafts and data necessary for the preparation thereof, and Know-how, and includes without limitation both supplemental and abbreviated NDAs.

Q. "New Indications" means any indication other than DVT, and includes, but is not limited to, Heparin-Induced Thrombocytopenia and arterial indications.

R. "Revasc Patent Rights" means any and all patents and patent applications owned, licensed or controlled by Respondents related to Revasc, including, but not limited to, the patents listed in or issuing on applications listed in the Annex attached to the Revasc License attached hereto as non-public Appendix I, and any and all reissues, extensions (including supplementary protection certificates), substitutions, confirmations, registrations, revalidations, additions, continuations or divisions of or to any of the aforesaid patents.

S. "Revasc Business Plan" means the development work for Revasc as provided in the Revasc Business Plan of 1999, attached hereto as non-public Appendix II and incorporated by reference herein.

T. "Merger" means the proposed merger of Hoechst and RP by means of an exchange offer by RP for all of Hoechst's outstanding shares, with Hoechst shareholders receiving one RP share for each 1.33 outstanding Hoechst shares pursuant to the Business Combination Agreement between Hoechst and RP dated May 20, 1999.

U. "Direct cost" means the cost of labor and materials associated with preparing, reviewing, modifying and submitting New Drug Applications to the FDA and other worldwide health authorities, and includes the cost of training personnel in accomplishing those duties and in responding to inquiries from the FDA and other worldwide health authorities regarding those applications.

V. "Refludan" means the drug substance lepirudin (chemical name : desulfatohirudin).

W. "Refludan Assets" means all of Respondents' assets and rights relating to the research, development and manufacture of Refludan for sale in North America, including the regulatory approvals, physical assets necessary to manufacture Refludan (excluding the production assets in Marburg, Germany), and all of its brand names and trade names. Refludan Assets include the New Drug Application Number 20-807 on file with the Food and Drug Administration ("FDA"), and include, but are not limited to:

1. manufacturing operations, machinery, fixtures, equipment, furniture, tools and other tangible personal property necessary to manufacture Refludan;

2. all intellectual property, inventions, technology, know-how, patents, trademarks, brand names, trade names, trade secrets and copyrights;

3. all research materials, formulations, patent rights, trade secrets, specifications, protocols, technical information, management information systems, software, specifications, designs, drawings, processes and quality control data;

4. all customer lists, vendor lists, catalogs, sales promotion literature and advertising materials;

5. inventory and storage capacity;

6. all rights, titles and interests in and to owned or leased real property, together with appurtenances, licenses and permits relating to the assets described in Definition W;

7. all rights, titles and interests in and to contracts relating to the research and development of Refludan;

8. all rights, titles and interests in and to the contracts entered into in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;

9. all rights under warranties and guarantees, express or implied;

10. all books, records and files; and

11. all items of prepaid expense relating to the assets described in Definition W;

Provided, however, that the Refludan Assets shall also include all research, development and manufacturing assets necessary to produce Refludan in an FDA Good Manufacturing Practice-approved facility if the person acquiring the Refludan Assets requests such assets.

X. "Celanese" means Celanese AG, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; the subsidiaries, divisions, groups and affiliates controlled by Celanese, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

Y. "Rhodia" means Rhodia, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; the subsidiaries, divisions, groups and affiliates controlled by Rhodia, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

Z. "KPC" means the Kuwait Petroleum Corporation, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; the

subsidiaries, divisions, groups and affiliates controlled by KPC, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

AA. "Cellulose Acetate Business" means the production, marketing, distribution, and/or sale of cellulose acetate flake, filament, and tow products.

BB. "Primester" means the cellulose acetate flake manufacturing joint venture between Rhodia and Eastman Chemical Company, located in Tennessee.

II.

IT IS FURTHER ORDERED that:

A. Respondents shall not develop, manufacture, distribute, or sell Revasc or participate in the development, manufacture, distribution or sale of Revasc and shall not assert any rights granted by the Revasc License or any other contract against any person for any activities related to the use of Revasc; provided, however, that Respondents shall retain such rights under the Revasc License and other contract(s) as are necessary to fulfill the requirements of Paragraph II of this Order.

B. Respondent RP shall offer to transfer and surrender at no minimum price to Novartis, absolutely and in good faith, within ten (10) days from the date the Agreement Containing Consent Order in this matter is accepted by the Commission for public comment, the Revasc Divestiture Assets.

C. If Novartis, within twenty (20) days from receipt of RP's offer as required by Paragraph II.B. of this Order, fails to accept the return of the Revasc Divestiture Assets, then Respondents shall absolutely and in good faith, within six (6) months from the date the Agreement Containing Consent Order in this matter is accepted by the Commission for public comment, sublicense, at no minimum price, the Revasc Divestiture Assets only to a licensee that receives the approval of Novartis, pursuant to Section 14 of the Revasc License, and that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission; provided, however, that Respondents' sublicense shall restrict Respondents' access to Revasc Know-how, except to the extent that such information is specifically required to perform the short-term service contract and Support required by Paragraph II.E. of this Order, and shall restrict Respondents' use of such information solely for those purposes. An Interim Trustee shall be used where appropriate to avoid the necessity of Respondents' gaining access to Revasc Know-how.

D. Respondents shall assign or transfer their rights relating to the manufacturing of Revasc, including, but not limited to, the toll manufacturing agreement and any other agreements between or among RP, Aventis, Novartis and Dr. Madaus

GmbH relating to the manufacture or preparation of Revasc, to Novartis within ten (10) days from the date that Novartis accepts the offer described in Paragraph II.B., or to the sublicensee within ten (10) days from the date that the sublicensee is approved pursuant to Paragraph II.C. of this Order.

E. At the option of Novartis or Respondent RP's sublicensee, Respondents shall enter into a short-term service contract with Novartis or the sublicensee to continue to perform the development work for Revasc at a price not to exceed direct cost. The short-term service contract shall terminate no later than one year after the date on which the FDA approves Revasc for the prevention of DVT. Additionally, at the option of Novartis or the sublicensee, Respondents shall provide expertise and grant reasonable support to Novartis or the sublicensee in the transfer of Revasc Know-how, in the handover of data necessary for preparation of any dossier for Revasc, including the NDA for Revasc for the United States, and in assisting Novartis or the sublicensee to address questions from the FDA or other regulatory agencies (all of the foregoing, collectively "Support") at a price not to exceed Respondents' direct cost.

F. Within ten (10) days from the date that Novartis accepts return of the Revasc Divestiture Assets, or within ten (10) days from the date that the Commission approves the sublicensee, Respondent RP shall transfer and surrender to Novartis or the sublicensee, all Revasc Know-how and shall not keep copies of such Revasc Know-how unless otherwise agreed to by Novartis or the sublicensee for the purpose of performing the Support obligations or development work for Revasc as provided in the Revasc Business Plan; provided, however, that Respondents shall keep such information as is required solely for the purpose of performing the short-term service contract and Support required by Paragraph II.E. of this Order, and shall use such information solely for those purposes. In no event shall Respondents keep any copies of Revasc Know-how after the earlier of either: (1) termination of the short-term service contract; or (2) written request by Novartis (if it accepts the Revasc Divestiture Assets), or by the sublicensee for the transfer of the Revasc Know-how.

G. Respondents shall take such actions as are necessary to maintain the development of Revasc and to prevent the destruction, removal, wasting, delay, deterioration, or impairment of the assets used in the research, development, manufacturing or sale of Revasc, including but not limited to the submission of the NDA for Revasc pursuant to RP's Revasc Business Plan, until Respondents have fully complied with the obligations specified in Paragraphs II.B. through II.F. of this Order.

H. The purpose of this Paragraph II is to ensure the continued research, development, manufacture and sale of Revasc in the United States and to remedy the lessening of competition resulting from the Merger as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

A. At any time after the Agreement Containing Consent Order in this matter is accepted by the Commission for public comment, the Commission may appoint an individual to serve as a trustee ("the Interim Trustee") to assure that Respondents expeditiously perform their responsibilities as required by Paragraphs II and V of this Order.

B. If an Interim Trustee is appointed pursuant to Paragraph III. A. of this Order, Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Interim Trustee:

1. The Commission shall select the Interim Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed trustee, Respondents shall be deemed to have consented to the selection of the proposed trustee.

2. The Interim Trustee shall have the power and authority to monitor Respondents' compliance with the terms of this Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Interim 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 Interim Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, confers on the Interim Trustee all the rights and powers necessary to permit the Interim Trustee to monitor Respondents' compliance with the terms of this Order and in a manner consistent with the purposes of this Order.

4. The Interim Trustee shall serve until the later of the divestiture of the Revasc Divestiture Assets or, if any options under Paragraph II.E. are exercised, the date that all agreements entered into pursuant to Paragraph II.E. have terminated; provided, however, the Commission may extend this period as may be necessary or appropriate to accomplish the purposes of this Order; provided further, however, that if the Refludan Assets are divested pursuant to Paragraphs IV. and V. of this Order, then the Interim Trustee shall serve until all agreements entered into pursuant to Paragraphs IV. and V. have terminated.

5. The Interim Trustee shall have full and complete access to Respondents' personnel, books, records, documents, facilities and technical information relating to the research, development, manufacture, importation, distribution and sale of Revasc, or to any other relevant information, as the Interim Trustee may reasonably request, including, but not limited to, all documents and records kept in the normal course of business that relate to the manufacture of Revasc and all materials and information relating to the FDA and other government or regulatory approvals. Respondents shall cooperate with any reasonable request of the Interim Trustee. Respondents shall take no action to interfere with or impede the Interim Trustee's ability to monitor Respondents' compliance with this Order.

6. The Interim Trustee shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set. The Commission may, among other things, require the Interim Trustee to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Interim Trustee's duties. The Interim Trustee shall have authority to employ, at the expense of Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Trustee's duties and responsibilities. The Interim Trustee shall account for all expenses incurred, including fees for his or her services, subject to the approval of the Commission.

7. Respondents shall indemnify the Interim Trustee and hold the Interim Trustee harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Interim 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 Interim Trustee.

8. If the Commission determines that the Interim Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Trustee in the same manner as provided in Paragraph III.B.1. of this Order.

9. The Commission may on its own initiative or at the request of the Interim Trustee issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.

10. Respondents shall submit reports as required by the Interim Trustee. The Interim Trustee shall obtain and evaluate reports submitted to him or

her by Respondents with respect to the performance of Respondents' obligations under the Order. The Interim Trustee shall report in writing to the staff of the Commission every two (2) months for the period that he or she serves as Interim Trustee.

IV.

IT IS FURTHER ORDERED that:

A. If Respondents have not fully complied with the obligations specified in Paragraph II.B. through II.G. of this Order, the Commission may appoint an individual to serve as a trustee to divest either: (1) the Revasc Divestiture Assets, Revasc Know-how and all other rights granted to Respondent RP by the Revasc License; or (2) the Refludan Assets. In the event that the Commission or the Attorney General brings an action pursuant to § 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*l*), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a trustee in such action to divest all of Respondent RP's Revasc Divestiture Assets or the Refludan Assets. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph IV. A. of this Order, Respondents shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed trustee, Respondents shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest all of Respondent RP's Revasc Divestiture Assets.

3. Within ten (10) days after appointment of the trustee, Respondents shall execute a trust 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 trustee all rights and powers necessary to permit the trustee to effect the divestiture required by Paragraph II. of this Order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph IV. B. 3. to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the 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 this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to Revasc or to any other relevant information, as the trustee may request. Respondents shall develop such financial or other information as the trustee may request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to an acquirer as set out in Paragraph II of this Order; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity selected by Respondents from among those approved by the Commission; provided further, however, that Respondents shall select such entity within five (5) business days of receiving notification of the Commission's approval.

7. The trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The 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 the Respondents, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting all of Respondent RP's Revasc Divestiture Assets.

8. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the 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 trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph IV.B. 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 trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

11. The trustee shall have no obligation or authority to operate or maintain the Revasc Divestiture Assets.

12. The trustee shall report in writing to Respondents and the Commission every sixty (60) days concerning the trustee's efforts to accomplish the divestiture.

V.

IT IS FURTHER ORDERED that in the event that the Commission appoints a trustee to divest the Refludan Assets, the trustee shall divest the Refludan Assets on behalf of Respondents in the following manner:

A. The assets shall be divested, absolutely and in good faith, as a competitively viable, ongoing product line in North America, at no minimum price, to an Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture is to

ensure the continued research, development, manufacture and sale of Refludan in North America and to remedy the lessening of competition resulting from the Merger as alleged in the Commission's complaint.

B. Respondents' agreement with the Acquirer or the New Acquirer (as specified in Paragraph V.B.9-10) (hereinafter the "Divestiture Agreement") shall include the following provisions, and Respondents shall commit to satisfy the following:

1. Respondents shall contract manufacture on behalf of and deliver to the Acquirer or the New Acquirer, in a timely manner and under reasonable terms and conditions ("the Contract Manufacturing Arrangement"), a supply of Refludan, specified in the Divestiture Agreement at cost for a period not to exceed four (4) years from the date the Divestiture Agreement is approved, or three (3) months after the date the Acquirer or the New Acquirer obtains all necessary FDA approvals to manufacture and sell Refludan in the United States, whichever is earlier; provided, however, that the four (4) year period may be extended by the Commission in twelve (12) month increments for a period not to exceed two (2) years.

2. After Respondents commence delivery of Refludan to the Acquirer or the New Acquirer pursuant to the Divestiture Agreement and for the term of the Contract Manufacturing Arrangement for Refludan, referred to in Paragraph V.B.1. of this Order, Respondents will make inventory of Refludan available for sale or resale in the United States and Canada only to the Acquirer or New Acquirer.

3. Respondents shall make representations and warranties that the Refludan supplied pursuant to the Divestiture Agreement meets the FDA approved specifications. Respondents shall agree to indemnify, defend and hold the Acquirer or the New Acquirer harmless from any and all suits, claims, actions, demands, liabilities, expenses or losses alleged to result from the failure of the Refludan supplied to the Acquirer or New Acquirer pursuant to the Divestiture Agreement by Respondents to meet FDA specifications. This obligation shall be contingent upon the Acquirer or the New Acquirer giving Respondents prompt, adequate notice of such claim, cooperating fully in the defense of such claim, and permitting Respondents to assume the sole control of all phases of the defense and/or settlement of such claim, including the selection of counsel; provided, however, any such defense and/or settlement shall be consistent with the obligations assumed by Respondents under this Order. This obligation shall not require Respondents to be liable for any negligent act or omission of the Acquirer or the New Acquirer or for any representations and warranties, express or implied, made by the Acquirer or the New Acquirer that exceed the representations and warranties made by Respondents to the Acquirer or the New Acquirer.

4. Respondents shall make representations and warranties that Respondents will hold harmless and indemnify the Acquirer or New Acquirer for any liabilities or loss of profits resulting from the failure by Respondents to deliver Refludan in a timely manner as required by the Divestiture Agreement unless Respondents can demonstrate that their failure was entirely beyond the control of Respondents and in no part the result of negligence or willful misconduct on Respondents' part.

5. During the term of the Contract Manufacturing Arrangement between Respondents and the Acquirer or the New Acquirer, upon request by the Acquirer, New Acquirer or the Interim Trustee, Respondents shall make available to the Interim Trustee all records that relate to the manufacture of Refludan.

6. Upon reasonable notice and request from the Acquirer or the New Acquirer to Respondents, Respondents shall provide in a timely manner: (a) assistance and advice to enable the Acquirer or the New Acquirer (or the designees of the Acquirer or New Acquirer) to obtain all necessary FDA approvals to manufacture and sell Refludan; (b) assistance to the Acquirer or New Acquirer (or the designee thereof) as is necessary to enable the Acquirer or New Acquirer (or the designee thereof) to manufacture Refludan in substantially the same manner and quality employed or achieved by Respondents; and (c) consultation with knowledgeable employees of Respondents and training, at the request of and at the facility of the Acquirer's or the New Acquirer's choosing, until the Acquirer or New Acquirer (or the designee thereof) receives certification from the FDA or abandons its efforts for certification from the FDA, sufficient to satisfy the management of the Acquirer or New Acquirer that its personnel (or the designee's personnel) are adequately trained in the manufacture of Refludan. Such assistance shall include on-site inspections of the manufacturing plants, at the Acquirer's or New Acquirer's request, which is the specified source of supply of the Contract Manufacturing. Respondents may require reimbursement from the Acquirer or New Acquirer for all their direct out-of-pocket expenses incurred in providing the services required by this Paragraph.

7. The Divestiture Agreement shall require the Acquirer or the New Acquirer to submit to the Commission within ten (10) days of signing the Divestiture Agreement a certification attesting to the good faith intention of the Acquirer or the New Acquirer, including a plan by the Acquirer or the New Acquirer, to obtain in an expeditious manner all necessary FDA approvals to manufacture and sell Refludan.

8. The Divestiture Agreement shall require the Acquirer or the New Acquirer to submit to the Commission and Interim Trustee periodic, verified written reports, setting forth in detail the efforts of the Acquirer or the New Acquirer to sell Refludan obtained pursuant to the Divestiture Agreement and to obtain all FDA approvals necessary to manufacture and sell Refludan. The Divestiture Agreement shall require the first such report to be submitted sixty (60) days from the date the Divestiture Agreement is approved by the Commission and every ninety (90) days thereafter until all necessary FDA approvals are obtained by the Acquirer or the New Acquirer to manufacture and sell Refludan in the United States. The Divestiture Agreement shall also require the Acquirer or the New Acquirer to report to the Commission and the Interim Trustee within ten (10) days of its ceasing the sale in the United States of Refludan obtained pursuant to the Divestiture Agreement for any time period exceeding sixty (60) days or abandoning its efforts to obtain all necessary FDA approvals to manufacture and sell Refludan in the United States. The Acquirer or New Acquirer shall provide the Interim Trustee access to all records and all facilities that relate to its efforts, pursuant to the Divestiture Agreement, to sell or manufacture Refludan or obtain FDA approvals.

9. The Divestiture Agreement shall provide that the Commission may terminate the Divestiture Agreement if the Acquirer or the New Acquirer: (a) voluntarily ceases for sixty (60) days or more the sale of, or otherwise fails to pursue good faith efforts to sell, Refludan in the United States prior to obtaining all necessary FDA approvals to manufacture and sell Refludan in the United States; (b) fails to pursue good faith efforts to obtain all necessary FDA approvals to manufacture and sell Refludan in the United States; or (c) fails to obtain all necessary FDA approvals of its own to manufacture and sell Refludan in the United States within four (4) years from the date the Commission approves the Divestiture Agreement between Respondents and the Acquirer or the New Acquirer; provided, however, that the four (4) year period may be extended by the Commission in twelve (12) month increments for a period not to exceed an additional two (2) years if it appears that such FDA approvals are likely to be obtained within such extended time period.

10. The Divestiture Agreement shall provide that if it is terminated, the Refludan Assets shall revert back to Respondents and shall be divested by the trustee to a New Acquirer pursuant to the provisions of Paragraph IV. of this order.

VI.

IT IS FURTHER ORDERED that:

A. Respondents shall not complete the Merger until Hoechst has divested its interest in Celanese as set out in the Form F-1 initially filed by Hoechst with the U.S. Securities and Exchange Commission on September 27, 1999.

B. Respondents shall not participate in any decisions relating to, or receive confidential business information concerning, and shall not directly or indirectly influence or seek to influence the conduct of Rhodia's Cellulose Acetate Business in any way through board membership, shareholdings or otherwise whenever all of the following are true:

1. KPC holds more than five (5) percent of the voting securities in Celanese;

2. KPC holds more than five (5) percent of the voting securities in Aventis;

3. Respondents hold more than five (5) percent of the voting securities in Rhodia or have a seat on Rhodia's board of directors; and

4. Rhodia holds any interest in Primester.

C. Within three (3) months of the date the Agreement Containing Consent Order in this matter is accepted by the Commission for public comment, Respondents shall have reduced their holdings in Rhodia to 5 percent or less of Rhodia's issued and outstanding voting securities. For purposes of this Paragraph VI. C. only, any Rhodia shares held in escrow by RP at that time, to be exchanged with the exchangeable notes issued by RP in a private placement as described in the Prospectus dated October 14, 1999, filed by Rhodia with the Securities and Exchange Commission on October 18, 1999, in connection with Rhodia's Registration Statement on Form F-3 (Reg. No. 333-10832) (the "Form F-3"), shall not be included as shares held by RP for purposes of calculating RP's Rhodia holdings.

D. Within six (6) months of the end of the note exchange period described in the Form F-3, Respondents shall have reduced their holdings in Rhodia to five (5) percent or less of Rhodia's issued and outstanding voting securities.

VII.

IT IS FURTHER ORDERED that:

A. If Respondents have not fully complied with the obligations specified in Paragraph VI.C of this Order, the Commission may appoint a trustee to divest any shares of Rhodia held in Respondents' names, excluding those Rhodia shares Respondents are required to hold pursuant to the private placement described in the Form F-3. In the event that the Commission or the Attorney General brings an action pursuant to § 45(*l*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*l*), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a trustee in such action to divest any Rhodia shares held in Respondents' names above five (5) percent of Rhodia's issued and outstanding voting securities, excluding those Rhodia shares Respondents are required to hold pursuant to the private placement described in the Form F-3. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(*l*) of the Federal Trade Commission Act or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph VII.A. of this Order, Respondents shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed trustee, Respondents shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest any shares of Rhodia held in Respondents' names, excluding those Rhodia shares held in Respondents' names pursuant to the note exchange program described in the Form F-3.

3. Within ten (10) days after appointment of the trustee, Respondents shall execute a trust 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 trustee all rights and powers

necessary to permit the trustee to effect the divestiture required by Paragraph VI.C of this Order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph VII.B.3. to accomplish the divestiture, which shall be subject to the prior approval of the Commission, unless accomplished through sales of the shares on the open market. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the 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 this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to Respondents' holdings in Rhodia or to any other relevant information, as the trustee may request. Respondents shall develop such financial or other information as the trustee may request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission subject to Respondents' absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to an acquirer as directed by the Commission; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity selected by Respondents from among those approved by the Commission; provided further, however, that Respondents shall select such entity within five (5) business days of receiving notification of the Commission's approval.

7. The trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The 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 the Respondents, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission

arrangement contingent on the trustee's divesting all of the shares specified in Paragraph VII.A.

8. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the 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 trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner provided in Paragraph VII.B. 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 trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

11. The trustee shall report in writing to Respondents and the Commission every sixty (60) days concerning the trustee's efforts to accomplish the divestiture.

VIII.

IT IS FURTHER ORDERED that:

A. If Respondents have not fully complied with the obligations specified in Paragraph VI.D of this Order, the Commission may appoint a trustee to divest any shares of Rhodia held in Respondents' names. In the event that the Commission or the Attorney General brings an action pursuant to § 45(*l*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*l*), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a trustee in such action to divest any Rhodia shares held in Respondents' names above five (5) percent of Rhodia's issued and outstanding voting securities. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(*l*) of the Federal Trade Commission Act or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph VIII.A. of this Order, Respondents shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days afer notice by the staff of the Commission to Respondents of the identity of any proposed trustee. Respondents shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest any shares of Rhodia held in Respondents' names.

3. Within ten (10) days after appointment of the trustee, Respondents shall execute a trust 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 trustee all rights and powers necessary to permit the trustee to effect the divestiture required by Paragraph VI.D of this Order.

4. The trustee shall have twelve (12) months, from the date the Commission approves the trust agreement described in Paragraph VIII.B.3. to accomplish the divestiture, which shall be subject to the prior approval of the Commission, unless accomplished through sales of the shares on the open market. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the 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 this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to Respondents' holdings in Rhodia or to any other relevant information, as the trustee may request. Respondents shall develop such financial or other information as the trustee may request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission. The divestiture shall be made in the manner and to an acquirer as directed by the Commission; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity selected by Respondents from among those approved by the Commission; provided further, however, that Respondents shall select

such entity within five (5) business days of receiving notification of the Commission's approval.

7. The trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The 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 the Respondents, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting all of the shares specified in Paragraph VIII.A.

8. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the 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 trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner provided in Paragraph VIII.B. 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 trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

11. The trustee shall report in writing to Respondents and the Commission every sixty (60) days concerning the trustee's efforts to accomplish the divestiture.

IX.

IT IS FURTHER ORDERED that within thirty (30) days after the date this Order becomes final and every sixty (60) days thereafter until Respondents have fully complied with the provisions of Paragraphs II.B. through II.G., or until a trustee has been appointed pursuant to Paragraph IV.A., and Respondents have complied with Paragraphs VI.A. and VI.C. of this Order, Respondents shall 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 Order. Respondents shall submit at the same time a copy of their report concerning compliance with this Order to any Interim Trustee(s) who has been appointed. Respondents shall include in their reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II.B. through II.G. and Paragraphs VI.A. through VI.D. of the Order, including a description of all substantive contacts or negotiations for the divestiture and the identities of all parties contacted. Respondents shall include in their reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning completing the obligations. After completing the obligations required under Paragraphs II.B. through II.G. and Paragraphs VI.A. and VI.C. of this Order, Respondents shall submit reports, setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with the Order, every year beginning on the anniversary of the date this Order became final until and including the tenth anniversary date of this Order.

X.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondents 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 the Order.

XI.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents made to their principal United States office, Respondents shall permit any duly authorized representative of the Commission:

A. Access, during office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents relating to compliance with this Order; and

B. Upon five (5) days' notice to Respondents and without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

XII.

IT IS FURTHER ORDERED that this order shall terminate at the earlier of: (1) January 18, 2010; or (2) after the divestitures required by Paragraphs II.B. through II.F., IV., V., VI., and VII. of this Order have been accomplished.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: January 18, 2000

APPENDIX I (Non-Public)
Copy of Revasc License

APPENDIX II. [nonpublic]
Revasc Business Plan

APPENDIX III (nonpublic)
Interim Trustee Agreement

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Timothy J. Muris, Chairman
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary

In the Matter of **HOECHST AG, a corporation and RHONE-POULENC S.A., a corporation; renamed AVENTIS, S.A., a corporation.**	Docket No. C-3919

ORDER REOPENING AND MODIFYING ORDER

On November 15, 2001, Aventis S.A. ("Aventis") filed with the Commission its "Petition of Aventis S.A. To Reopen and Modify Order" ("Petition"). Aventis is the successor to Hoechst AG and Rhone-Poulenc S.A., the respondents named in the consent order issued by the Commission on January 18, 2000, in Docket No. C-3919 ("Order"). Aventis became the successor under the Order as a result of the merger of the two other parties. In the Petition, Aventis asks that the Commission modify the obligations under Paragraph II of the Order that require respondent to divest manufacturing facilities in Romainville, France and require respondent to divest all intellectual property related to "Refludan," the product required to be divested by the Order. In place of those existing obligations, respondent requests that its supply obligations from the Romainville plant be extended and that it be permitted to retain rights to the intellectual property for the purpose of manufacturing a product that is unrelated to Refludan. For the reasons stated below, the Commission has determined to grant the Petition. The effect of this modification is to conform the requirements of the Order to the divestiture contract approved by the Commission on September 26, 2001.

I. THE ORDER

On January 18, 2000, the Commission issued its Order ("Order") in Docket No. C-3919 regarding the merger between Rhone-Poulenc S.A. and Hoechst AG, which has been

renamed Aventis SA. The Order became final on January 28, 2000. The Order required Aventis to divest all rights related to a drug known as Revasc within six months and to maintain the value of the drug pending divestiture by, inter alia, seeking approval from the FDA to market the drug in the United States. The Order required the divestiture of Revasc because Hoechst's product, Refludan, and Rhone-Poulenc's product, Revasc, were the closest competitors in the direct thrombin inhibitor market. Direct thrombin inhibitors are used in the treatment of many blood clotting diseases, because of their unique mechanism of action in the blood clotting cascade of targeting thrombin. There are no acceptable substitutes for direct thrombin inhibitors because of their unique mechanism of action. The purpose of the Order is to ensure the continued research, development, manufacture and sale of direct thrombin inhibitors.

In the event that Aventis failed to divest Revasc within the time period required by the Order, Paragraph IV.A. provides that the Commission may appoint a trustee to divest either (1) all rights related to Revasc or (2) all rights related to a drug known as Refludan. Despite what appears to have been diligent efforts by Aventis, it did not find a buyer for the Revasc assets. As a result, on August 23, 2000, the Commission appointed Ferghana Partners as Divestiture Trustee to Divest the Refludan Assets.[1] On September 26, 2001, the Commission approved a divestiture by the Trustee to Schering AG of some, but not all, of the assets that are defined in the Order as "Refludan Assets."

Paragraph V.A. of the Order requires the divestiture of the Refludan Assets "as a competitively viable, ongoing product line in North America." The product is manufactured in Marburg, Germany and Romainville, France for distribution in Europe and North America. Paragraph I.V. defines the assets to include "all of Respondent' assets and rights relating to the research, development and manufacture of Refludan, including regulatory approvals, physical assets necessary to manufacture Refludan (excluding the production assets in Marburg, Germany) . . . ." The definition goes on to list categories of assets that are specifically included, including all research materials, formulations, patent rights, inventory, and title to owned or leased property related to the research, development and manufacture of Refludan.

Paragraph V.B. requires that Aventis "contract manufacture on behalf of and deliver to the Acquirer . . . under reasonable conditions . . . a supply of Refludan, specified in the Divestiture Agreement at cost for a period not to exceed four (4) years . . ." but provides that the "four (4) year period may be extended by the Commission in twelve month increments for a period not to exceed two (2) years."

II. THE PETITION

Aventis has petitioned the Commission to modify Paragraph I and Paragraph V of the Order on public interest grounds. In its petition, Aventis asserts that the more limited divestiture

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[1] Aventis did not object to the Commission's decision to require the divestiture of Refludan instead of Revasc.

contract negotiated by the Divestiture Trustee and approved by the Commission is more efficient and accomplishes the purposes of the Order better than a divestiture that included all of the assets specified in the Order. Aventis requests that it be permitted to retain its Romainville manufacturing facilities. As a partial replacement for not divesting those facilities, Aventis recommends that the Commission extend Aventis' obligation to supply Refludan for an additional two years to further ensure that Schering will be able to build its own facilities to produce Refludan. In addition, Aventis requests that it be permitted to retain limited rights to the intellectual property that it is divesting in order to continue its development of a product that is unrelated to Refludan. Aventis asserts that Schering would be disadvantaged by purchasing the Romainville plants and does not want them, and that consequently the public is better served by the deletion of this requirement. It also argues that the public would be better served by permitting Aventis to retain limited rights to intellectual property that is being divested to enable Aventis to continue its research and development of a product that is unrelated to Refludan.

III. STANDARD FOR REOPENING AND MODIFYING FINAL ORDERS

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. § 45(b), provides that the Commission shall reopen an order to consider whether it should be modified if the respondent "makes a satisfactory showing that changed conditions of law or fact" so require. A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of it inequitable or harmful to competition. S. Rep. No. 96-500, 96th Cong., 1st Sess. 9 (1979) (significant changes or changes causing unfair disadvantage); *Louisiana-Pacific Corporation*, Docket No. C-2956, Letter to John C. Hart (June 5, 1986), at 4 (unpublished) ("Hart Letter").[2] Aventis has not asserted that any changed condition of law or fact requires reopening the Order, and the Commission has, therefore, not considered that issue.

Section 5(b) also provides that the Commission may modify an order when, although changed circumstances would not require reopening, the Commission determines that the public interest so requires. Respondents are therefore invited in petitions to reopen to show how the public interest warrants the requested modification. Hart Letter at 5; 16 C.F.R. § 2.51. The Commission has described the showing needed to obtain a modification based on the public interest standard:

> [A] "satisfactory showing" requires, with respect to "public interest" requests, that the requester make a prima facie showing of a legitimate "public interest" reason or reasons justifying relief. . . . [T]his showing requires the requester to demonstrate, for example,

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[2] *See also United States v. Louisiana-Pacific Corp.*, 967 F.2d 1372, 1376-77 (9th Cir. 1992) ("A decision to reopen does not necessarily entail a decision to modify the order. Reopening may occur even where the petition itself does not plead facts requiring modification.").

that there is a more effective or efficient way of achieving the purpose of the order . . . .[3]

The language of Section 5(b) plainly anticipates that the burden is on the petitioner to make a "satisfactory showing" of changed conditions to obtain reopening of the order. The legislative history also makes clear that the petitioner has the burden of showing, other than by conclusory statements, why an order should be modified. The Commission "may properly decline to reopen an order if a request is merely conclusory or otherwise fails to set forth specific facts demonstrating in detail the nature of the changed conditions and the reasons why these changed conditions require the requested modification of the order." S. Rep. No. 96-500, 96th Cong., 1st Sess. 9-10 (1979); *see also* Rule 2.51(b) (requiring affidavits in support of petitions to reopen and modify). If the Commission determines that the petitioner has made the necessary showing, the Commission must reopen the order to consider whether modification is required and, if so, the nature and extent of the modification. The Commission is not required to reopen the order, however, if the petitioner fails to meet its burden of making the satisfactory showing required by the statute. The petitioner's burden is not a light one in view of the public interest in repose and the finality of Commission orders. *See Federated Department Stores, Inc. v. Moitie*, 425 U.S. 394 (1981) (strong public interest considerations support repose and finality).

IV. IT IS IN THE PUBLIC INTEREST TO GRANT THE PETITION

Public interest considerations warrant modifying the Order for the reasons cited by Aventis. Having considered both the assertions of Aventis in its Petition and the confidential business plan submitted by Schering in connection with the Divestiture Trustee's Application to Divest, the Commission is persuaded that requiring Schering to purchase the Romainville plants would be disadvantageous to Schering and that it would be more consistent with Schering's business plan and more efficient to eliminate this requirement from the Order. Also, requiring divestiture of the Romainville facilities to a party other than Schering would interfere with Aventis' ability to supply Refludan to Schering as required by the Order. Accordingly, the Commission has determined to eliminate the requirement that Aventis sell the Romainville facilities.

Schering expects that it will have its own manufacturing facilities within four years, but has asked for additional protection against what it considers to be the remote contingency that its plans for new production facilities fail. Should that contingency occur, Schering might require a supply contract that exceeds the six years provided for in the Order. Aventis has agreed to this extension and included the change in its Petition. The Commission is persuaded that this contingency is remote by the fact that Schering is willing to pay a substantially higher amount for any Refludan that it might acquire after year six. That higher price provides assurance that the availability of extended supplies will not discourage Schering from developing its own supplies as quickly as it can. Accordingly, the Commission has determined to modify the Order to extend the supply contract for two years on a basis that is less advantageous to Schering.

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[3] 65 Fed. Reg. 50637 (August 21, 2000).

The Commission is also persuaded that Aventis should be permitted to retain certain rights derived from the intellectual property that is being divested to Schering. The research and development project concerns insulin products that are completely unrelated to thrombin inhibitor drugs. Accordingly, Aventis' retention of such rights should have no effect on Schering's development of the Refludan product. In contrast, requiring Aventis to divest such rights would likely severely hamper the insulin development project on which Aventis and a joint venture research partner have been working. The Order does not require the divestiture of the know-how associated with insulin, because insulin was not a product affected by the merger of Hoechst and Rhone-Poulenc. Accordingly, it would be in the public interest to permit Aventis to retain intellectual property rights to pursue the development of insulin products.

Because some of the intellectual property rights used in the insulin development project have been dedicated to the joint venture, it would be time consuming and expensive to extricate those rights from the joint venture and transfer the patent applications to Schering. These rights, however, have potential application to the production of Refludan and must therefore be divested to the buyer. They are, nevertheless, not currently used in that production and are not part of any existing plan of Schering to produce Refludan. In these circumstances, the Commission believes that the purposes of the Order can be effected more efficiently by granting Schering the exclusive right to use these rights in connection with Refludan and allowing Aventis to retain the title to the patent applications.

V. THE ORDER IS REOPENED AND MODIFIED

Accordingly, IT IS ORDERED that this matter be, and it hereby is, reopened and that the Order be, and it hereby is, modified in the manner set forth below. The provisions added to the Order are underlined and italicized. Other portions of the Order are repeated here solely to facilitate understanding the context of the additions.

I. IT IS ORDERED that, as used in this order, the following definitions shall apply:

* * * * *

W. "Refludan Assets" means all of Respondents' assets and rights relating to the research, development, and manufacture of Refludan for sale in North America, including the regulatory approvals, physical assets necessary to manufacture Refludan (excluding the production assets in Marburg, Germany *and <u>Romainville, France</u>),* and all of its brand names and trade names. Refludan Assets include the New Drug Application Number 20-807 on file with the Food and Drug Administration (FDA), and include but are not limited to:

1. manufacturing operations, machinery, fixtures, equipment, furniture, tools, and other tangible personal

property necessary to manufacture Refludan;

2. all intellectual property, inventions, technology, know-how, patents, trademarks, brand names, trade names, trade secrets, and copyrights, *excluding the following Aventis patent applications: DE 19944870. 1-43; DE 10033195. 5-41; DE 10108100.6: DE 10108211.8; and DE 10108212.6 (provided, however, Aventis must grant an exclusive license to the Acquirer or New Acquirer for use of any patents granted under these applications for use in connection with the manufacture or sale of Refludan and a non-exclusive license for any other use except the manufacture and sale of Insulin Products);*

3. all research materials, formulations, patent rights, trade secrets, specifications, protocols, technical information, management information systems, software, specifications, designs, drawings, processes and quality control data; . . .

* * * * *

11. all items of prepaid expense relating to the assets described in Definition W;

Provided however, that Respondents may receive a grant back from the Acquirer or New Acquirer of the following rights:

a) *an exclusive license (even as to the Acquirer or New Acquirer) to use the Product Patents, Process Patents, and Manufacturing Technology transferred to the Acquirer or New Acquirer for the production and sale of Insulin Products; and*

(b) *a non-exclusive license to use the Product Patents, Process Patents, and Manufacturing Technology transferred to the Acquirer or New Acquirer for the production and sale of Non-Refludan Products.*

Provided, however, that the Refludan Assets shall also include all research, development, and manufacturing assets necessary to produce Refludan in an FDA Good Manufacturing Practice-approved facility if the person acquiring the Refludan Assets requests such assets.

* * * * *

CC. "Insulin Product" means any Product comprised of insulin and/or its derivatives and analogs or any precursor of any of the following (in particular human insulin or animal insulin) including, without limitation, any (or any combination) of the following: (1) natural insulins; (2) chemically synthesized insulins; (3) insulin analogs, including, by way of example, analogs of human or animal insulin which are distinguished from natural insulin by a combination of a substitution or addition of at least one natural or non-natural amino acid residue and/or deletion of at least one amino acid residue in comparison to the natural insulin: and (4) insulin derivatives, including, by way of example, derivatives of a natural insulin or insulin analogs obtained by chemical modification of the respective natural insulin or insulin analog.

DD. "Refludan Product" means any Product comprised of hirudin and/or its derivatives and analogs or any precursor of any of the following including, without limitation, any (or any combination) of the following: (1) natural hirudins; (2) chemically synthesized hirudins; (3) hirudin analogs, including, by way of example, analogs of hirudin which are distinguished from natural hirudin by a combination of a substitution or addition of at least one natural or non-natural amino acid residue and/or deletion of at least one amino acid residue in comparison to the natural hirudin; and (4) hirudin derivatives, including, by way of example, derivatives of a natural hirudin or hirudin analogs obtained by chemical modification of the respective natural hirudin or hirudin analog.

EE. "Non-Refludan Product" means any Product which is not a Refludan Product or an Insulin Product.

* * * * *

V. IT IS FURTHER ORDERED that in the event that the Commission appoints a trustee to divest the Refludan Assets, the trustee shall divest the Refludan Assets on behalf of Respondents in the following manner:

* * * * *

B. Respondents' agreement with the Acquirer or the New Acquirer (as specified in Paragraph V.B.9-10) (hereinafter the "Divestiture Agreement") shall include the following provisions, and Respondents shall commit to satisfy the following:

1. Respondents shall contract manufacture on behalf of and deliver to the Acquirer or the New Acquirer, in a timely manner and under reasonable terms and conditions ("the Contract Manufacturing Arrangement"), a supply of Refludan, specified in the Divestiture Agreement at cost for a period not to exceed four (4) years from the date the Divestiture Agreement is approved, or three (3) months after the date the Acquirer or the New Acquirer obtains all necessary FDA approvals to manufacture and sell Refludan in the United States, whichever is earlier; provided, however, that the four (4) year period may be extended by the Commission in twelve (12) month increments for a period not to exceed *four (4) years. In the event that the Commission chooses to extend the initial four year period for more than two additional years - i.e., beyond a date six (6) years from the date the Divestiture Agreement is approved - the Purchase Price paid by the Acquirer or New Acquirer for Refludan shall be increased to an amount equal to Respondents' Fully Burdened Cost plus thirty percent (30%). The method of calculating Respondents' Fully Burdened Cost shall be determined by Respondents and the Acquirer.*

By the Commission, Chairman Muris not participating.

Donald S. Clark
Secretary

SEAL:

ISSUED: March 11, 2002

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Timothy J. Muris, *Chairman*
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary

In the matter of

Hoechst AG, a corporation, and
Rhone-Poulenc S.A., a corporation, to be renamed
Aventis S.A., a corporation.

Docket No. C-3919

ORDER REOPENING AND MODIFYING ORDER

On September 16, 2002, Aventis S.A. ("Aventis"), the successor to respondents Hoechst AG and Rhone-Poulenc S.A. named in the consent order issued by the Commission on January 18, 2000, in Docket No. C-3919 ("Order"), filed its Petition of Aventis to Reopen and Modify Order ("Petition"), seeking to modify the Order to divest its interest in Rhodia, a French chemical company. For the reasons stated below, the Commission has determined to grant the Petition.

Paragraph VI.C. of the Order requires Aventis to reduce its holdings in Rhodia voting securities to five percent or less within three months after the Commission accepts the Agreement Containing Consent Order ("Consent Agreement") for public comment. The Consent Agreement was accepted for public comment on December 7, 1999; thus, the deadline for divesting the Rhodia voting securities was March 7, 2000. For purposes of calculating Aventis' holdings of Rhodia voting securities, Paragraph VI.C. of the Order excludes any Rhodia voting securities that Aventis holds in escrow in connection with a certain private placement plan referenced in the Order. By March 7, 2000, Aventis had complied with the Order, subject to the escrow condition permitted by the Order. The private placement plan referenced in the Order involves a sale undertaken by Aventis of notes that may be exchanged for Rhodia shares (instead of redeemed for cash) during an exchange period that terminates on the maturity date of the notes, which is October 22, 2003. The escrow arrangement serves to set aside shares of Rhodia that may be exchanged for notes and, in conjunction with a proxy system relating to the shares in escrow, serves to prevent Aventis from exercising any of its voting rights in the shares. Pursuant to Paragraph VI.D. of the Order, Aventis is required to divest any Rhodia shares remaining at the end of the note exchange period no later than six months from the date the exchange period ends. Accordingly, the ultimate deadline for divestiture of the shares pursuant to the Order is April 22, 2004.

Aventis believes it unlikely that any note holder will exchange its notes for Rhodia shares when the exchange period ends. The terms and conditions of the note exchange plan are such that an exchange of notes would be attractive starting at a price per share of approximately EUR 23. The recent price of Rhodia shares has been EUR 9, and Aventis has no reason to expect any significant improvement in the price in the near to medium term. Because it is unlikely that any note holders will exchange notes for shares on or before October 22, 2003, Aventis will likely be required to divest at least 20 percent of Rhodia's shares in a six-month period and risk driving share values down, which would not only harm Rhodia's non-party shareholders, but also threaten Rhodia's ability to raise financial capital, should Rhodia need to do so. Such an adverse effect on Rhodia would frustrate the successful operation of the Commission's Order. To avoid divesting the shares in such a short period of time, Aventis seeks to use an alternative method for divesting the

connection with Rhodia's Registration Statement on Form F-3 (Reg. No. 333-10832) (the "Form F-3"), or (2) to be otherwise divested, provided that Respondents (i) maintain substantially the same escrow arrangement as in the private placement and (ii) will not exercise any voting rights in said shares other than as described in the Form F-3.

IT IS FURTHER ORDERED that Paragraph VI.D. of the Order be, and it hereby is, modified, as of the effective date of this order, to read as follows:

By April 22, 2004, i.e., six (6) months from the end of the note exchange period described in the Form F-3, Respondents shall have reduced their holdings in Rhodia to five (5) percent or less of Rhodia's issued and outstanding voting securities.

IT IS FURTHER ORDERED that Paragraph VII.A. of the Order be, and it hereby is, modified, as of the effective date of this order, to read as follows:

If Respondents have not fully complied with the obligations specified in Paragraph VI.C. of this Order, the Commission may appoint a trustee to divest any shares of Rhodia held in Respondents' names, excluding those Rhodia shares held in escrow as described in Paragraph VI.C. In the event that the Commission or the Attorney General brings an action pursuant to § 45(*l*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*l*), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a trustee in such action to divest any Rhodia shares held in Respondents' names above five (5) percent of Rhodia's issued and outstanding voting securities, excluding those Rhodia shares held in escrow by Respondents as described in Paragraph VI.C. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(*l*) of the Federal Trade Commission Act or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.

IT IS FURTHER ORDERED that Paragraph VII.B.2. of the Order be, and it hereby is, modified, as of the effective date of this order, to read as follows:

Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest any shares of Rhodia held in Respondents' names, excluding those Rhodia shares held in escrow by Respondents as described in Paragraph VI.C.

By direction of the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED: November 22, 2002

Endnotes:

1. The buy-back would violate Paragraph VI.C. of the Order because only those shares held in escrow pursuant to the private placement plan referenced in the Order are to be excluded when determining whether Aventis holds more than five percent of Rhodia's shares.

2. Section 5(b) also provides that the Commission shall reopen an order to consider whether it should be modified if the respondent "makes a satisfactory showing that changed conditions of law or fact" so require. Aventis has not asserted that any changed condition of law or fact requires reopening the Order, and the Commission has, therefore, not considered that issue.

3. 65 Fed. Reg. 50637 (August 21, 2000).

4. 16 C.F.R. § 2.51.

5. *See United States v. Louisiana-Pacific Corp.*, 967 F.2d 1372, 1376-77 (9th Cir. 1992) (reopening and modification are independent determinations).

6. *See Federated Department Stores, Inc. v. Moitie*, 425 U.S. 394 (1981) (strong public interest considerations support repose and finality).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission ("Commission") has accepted provisionally an agreement containing a proposed consent order from Hoechst AG ("Hoechst") and Rhône-Poulenc S.A. ("RP") under which RP would be required: (1) to divest the assets relating to RP's direct thrombin inhibitor drug Revasc; and (2) to divest its interest in Rhodia, its specialty chemicals subsidiary which produces cellulose acetate, to a level of 5% or less and to sequester that interest pending its divestiture, thereby preserving competition in the manufacture, marketing, and sale of cellulose acetate thermoplastics.

The proposed Consent 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 again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed Consent Order.

In a proposed merger agreement, Hoechst and RP will combine most of their respective businesses through an exchange offer by RP for all of Hoechst's outstanding shares, with Hoechst shareholders receiving one RP share for each 1.33 outstanding Hoechst shares. Thereafter, the merged entity will be renamed Aventis S.A. ("Aventis"). The proposed complaint alleges that the proposed merger, if consummated, would constitute a 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, in the markets for: (1) cellulose acetate; and (2) direct thrombin inhibitors. The proposed Consent Order would remedy the alleged violations by replacing the lost competition that would result from the merger.

Cellulose Acetate

Cellulose acetate is a thermoplastic that is used to produce, among other products, cigarette filters, tool handles, tapes and films. In applications where it is used, there are no cost effective substitutes. U.S. consumers purchase approximately $1 billion worth of cellulose acetate yearly.

The market for cellulose acetate is highly concentrated. Three companies currently produce cellulose acetate in the United States: (1) Eastman Chemical Company ("Eastman"); (2) Primester, a joint venture whose shares are owned 50% by Eastman and 50% by Rhodia (a specialty chemicals company that is itself 67% owned by RP); and (3) Celanese Limited ("Celanese"), until recently a wholly-owned subsidiary of Hoechst. Celanese controls approximately 46% of U.S. production capacity, Eastman owns approximately 44% of U.S. production capacity, and Primester holds the remaining 10%. Eastman and Rhodia are each entitled to one-half of the production of Primester. Rhodia currently sells cellulose acetate only outside the United States; thus, Celanese and Eastman are the only companies currently selling cellulose acetate in the United States.

There are significant barriers to entry into the cellulose acetate market. In order to enter the

market, a firm must incur substantial sunk costs to build a dedicated production facility. Moreover, reductions in the demand for this material and its limited growth potential create disincentives to new entry.

The merger of RP and Hoechst will increase the likelihood of coordinated interaction in the market for cellulose acetate. The Kuwait Petroleum Company ("KPC") will hold significant interests in Celanese and Aventis after the merger. Because the remaining shareholders of Celanese and Aventis are (and will remain) widely diversified, KPC currently owns a controlling interest in Celanese, and will acquire working control (defined as 10% or more interest in a corporation whose stock is widely held) of Aventis. These shareholdings could permit KPC to coordinate the activities of Celanese and, through Aventis, Rhodia and Primester after the merger. In addition, Aventis' indirect holding, through Rhodia, of 50% of the Primester joint venture with Eastman may facilitate coordination between the KPC-controlled entities and Eastman following the merger. For these reasons, the proposed transaction could create conditions that increase the likelihood of collusion in the cellulose acetate market.

On September 15, 1999, the parties entered into undertakings with the Antitrust Directorate of the European Commission ("EC") to resolve competitive concerns raised by the proposed merger of Hoechst and RP to form Aventis. Among other conditions, the EC undertakings required Hoechst to spin off Celanese and required RP to divest its holding in Rhodia. Pursuant to those undertakings, Hoechst spun off the Celanese division to Hoechst shareholders on October 26, 1999. To date, RP has not divested Rhodia, and the EC undertakings did not require RP to divest Rhodia prior to the formation of Aventis.

The proposed Consent Order is designed to supplement the EC undertakings by preserving interim competition among Celanese, Rhodia and Eastman in the cellulose acetate market in the United States pending Aventis' divestiture of Rhodia. The proposed Consent Order requires the parties to divest their holding of Rhodia to a level of 5% or less of total outstanding shares within three months of the date the consent agreement is accepted by the Commission for public comment. In the case of shares held in escrow as collateral for RP debt obligations, the shares must be divested within six months of the end of the exchange period for those shares. The proposed Consent Order also requires the parties to refrain from participating in the decisions of, seeking to influence the conduct of, or receiving confidential business information concerning Rhodia's cellulose acetate business.

Direct Thrombin Inhibitors

Direct thrombin inhibitors are used in the treatment of various blood clotting diseases. While certain other products may also be used for the treatment of blood clotting diseases, direct thrombin inhibitors are both more effective and safer than any available alternatives. U.S. sales of direct thrombin inhibitors currently total only approximately $15 million, but have the potential to increase significantly in the future.

Hoechst sells the only direct thrombin inhibitor currently on the U.S. market, Refludan. RP is in the final stages of developing its direct thrombin inhibitor, Revasc, which it licensed from Novartis AG ("Novartis") in 1998. RP plans to submit its New Drug Application for Revasc to the Food and Drug Administration for approval shortly. Available evidence indicates that RP and Hoechst are each other's closest competitors in the direct thrombin inhibitor market. Each party priced its products in relation to those of the other and based its

product development strategy on the other's development and position in the market. Other companies currently developing direct thrombin inhibitors are years behind Hoechst and RP.

The planned merger is likely to create anticompetitive effects in the direct thrombin inhibitor market by eliminating the actual, direct, and substantial competition between Hoechst and RP that would otherwise continue to exist. In addition, the proposed transaction reduces potential competition and innovation competition among researchers and developers of direct thrombin inhibitor products by eliminating a significant competitor and increasing the barriers to entry to others by, among other results, combining RP and Hoechst's portfolios of patents and patent applications.

To resolve these anticompetitive concerns, the proposed Consent Order is designed to transfer all of RP's rights in the direct thrombin inhibitor Revasc to Novartis or an independent third party. Novartis (the original licensor) holds a contractual right of prior approval for any transfer of RP's rights in Revasc to any third party. Thus, while other companies have expressed interest in acquiring the rights to Revasc, none may do so without the prior approval of Novartis. The proposed Consent Order requires the parties to return RP's rights in Revasc to Novartis or to sublicense all such rights to another company, subject to Novartis's contractual right of approval. The proposed Consent Order would also require the parties to enter into a short-term service contract with the acquirer of the Revasc rights in order to ensure the continued performance of development work on Revasc. Should RP be unable to divest Revasc during the allotted time period, the proposed Consent Order permits the appointment of a trustee to divest either RP's Revasc assets or the North American rights to Hoechst's own drug, Refludan. Further, in order to prevent any interim harm to assets related to Revasc, the parties have signed a trustee agreement and an Interim Trustee has been approved by the Commission. The proposed Consent Order would provide for the immediate involvement of the Interim Trustee to ensure the continued development and viability of Revasc as an independent competitor to Hoechst's Refludan.

The purpose of this analysis is to facilitate public comment on the propose Consent Order, and it is not intended to constitute an official interpretation of the agreement and proposed Consent Order or to modify their terms in any way.

Fig. 1: KPC holdings in Aventis and Celanese at the time of the Aventis merger (1999)

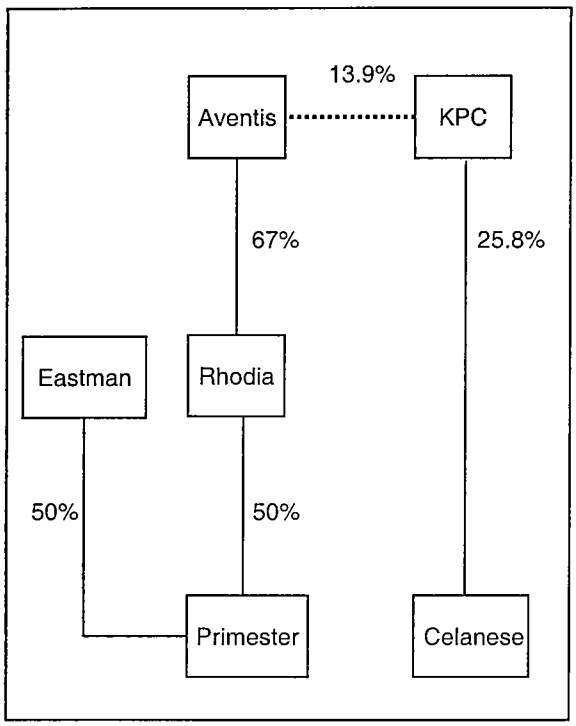
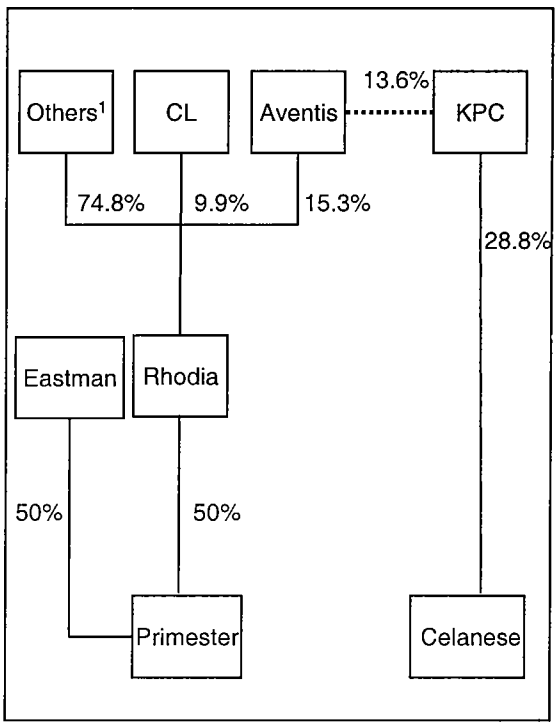


Fig. 2: Ownership of Rhodia as of June 30, 2003



[1] See Fig. 3

Fig. 3: Rhodia Capital Structure