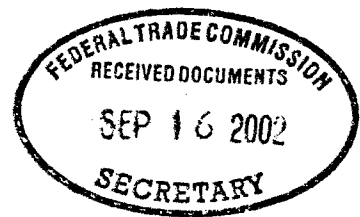


PUBLIC VERSION



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

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 In the Matter of)
)
Bayer AG,)
 a corporation,)
)
 and)
)
Aventis S.A.,)
 a corporation.)
)
)
)

Docket No. C-4049

**PETITION OF BAYER AG FOR APPROVAL
OF PROPOSED DIVESTITURE**

Pursuant to Section 2.41(f) of the Federal Trade Commission ("Commission") Rules of Practice and Procedure, 16 C.F.R. § 2.41(f) (2002), and paragraph IV.A of the Decision and Order in the above-captioned matter (the "Decision and Order"), Bayer AG ("Bayer") hereby petitions the Commission to approve the divestiture of Bayer's Flucarbazone Assets (as such term is defined in the Decision and Order) to Arvesta Corporation ("Arvesta").

I. Consent Agreement and Complaint

On May 30, 2002, Bayer, Aventis SA ("Aventis") and the Commission entered into an Agreement Containing Consent Orders, which included the Decision and Order and an Order to Hold Separate and Maintain Assets (collectively, the "Consent Agreement"). The Consent

Agreement, together with the Commission's Complaint, was placed in the public record on June 1, 2002, and was finally approved by the Commission on August 2, 2002. On June 4, 2002, Bayer completed its acquisition of Aventis CropScience, a subsidiary of Aventis. Currently, Bayer's wholly-owned subsidiary, Bayer Corporation, owns the Flucarbazone Assets and operates them in accordance with the Order to Hold Separate and Maintain Assets.

Count Three of the Commission's Complaint alleges that the acquisition by Bayer of Aventis CropScience will substantially lessen competition in the research, development, manufacture, and sale of post-emergent grass herbicides for spring wheat ("spring wheat herbicides"), a market in which Arvesta has no presence today. Accordingly, paragraph IV.A of the Decision and Order requires Bayer to divest the Flucarbazone Assets no later than 180 days from the date the Commission accepted the Consent Agreement for public comment.

This application describes the principal terms of the Asset Purchase Agreement ("Asset Purchase Agreement") by which Bayer will divest the Flucarbazone Assets and explains why the divestiture of the Flucarbazone Assets to Arvesta satisfies the purposes of the Decision and Order.

II. The Transaction Documents

On September __, 2002, Bayer Corporation, a wholly-owned subsidiary of Bayer, and Arvesta entered into the Asset Purchase Agreement for the sale and purchase of the Flucarbazone Assets. A copy of the Asset Purchase Agreement and all the attachments, exhibits and schedules attached thereto (collectively, the "Transaction Documents") is attached to this Application as Confidential Appendix A.

Bayer requests that the Transaction Documents and other information provided in Confidential Appendix A be treated by the Commission as strictly confidential and not be made

available to the public. Confidential Appendix A contains commercially and competitively sensitive information relating to the divestiture of the Flucarbazone Assets. Disclosure of the information contained in the Confidential Appendix to the public will prejudice Bayer and Arvesta and negatively affect Bayer's ability to comply with the Consent Agreement. Bayer requests that the Commission inform it immediately if the Commission will not treat the confidential version of this application and the accompanying documents and information of Bayer and Arvesta as confidential so that Bayer may seek appropriate relief.¹

As explained below, the terms of the Transaction Documents comply with and satisfy the purposes of the Decision and Order.

A. Asset Purchase Agreement

Pursuant to the Asset Purchase Agreement, Bayer Corporation has agreed to sell and Arvesta has agreed to purchase all rights, title and interest of Bayer Corporation and its affiliates in the following assets and rights associated with Flucarbazone (as those assets and rights are defined in the Asset Purchase Agreement): (i) the Patents, the Trademarks and the Recipes; (ii) the Inventory; (iii) the Contracts that (a) exist as of the closing date and (b) are assignable without consent or for which consent is obtained within one hundred eighty (180) days after closing; (iv) the Business Records; and (v) the Technical Registrations, Product Registrations, and Registration Data set forth in more detail in the Asset Purchase Agreement. Arvesta has agreed to pay \$[Redacted] for the Flucarbazone Assets, plus the value of inventory at closing.

¹ For the convenience of maintaining the public record, Bayer is submitting this application in two versions, one that includes confidential and proprietary information (the "Confidential Information") and another that is the same as the Confidential Version, but with Confidential Appendix A redacted (the "Public Version").

B. Employees

Under the Asset Purchase Agreement, Bayer is required to provide to Arvesta a list of employees with relevant experience who are available for employment by Arvesta. Arvesta will be provided an opportunity to interview and review the employment files of the listed employees. Bayer and its affiliates may not offer incentives to listed employees to decline employment with Arvesta or interfere with the employment by Arvesta of any such employee.

C. Toll Manufacturing Agreement

Bayer and Arvesta have also signed a Toll Manufacturing Agreement under which Arvesta will deliver to Bayer raw materials for the production of Flucarbazone, and Bayer will manufacture Flucarbazone at its Kansas City, Missouri, facility for delivery to Arvesta. The term of the agreement is two years, and Arvesta has the option of extending the term for another year. This agreement will ensure that Arvesta has a dependable and economical supply of Flucarbazone until it makes alternate supply arrangements.

III. The Proposed Acquirer

A. Background

Arvesta's business strategy focuses on production, development and marketing of products acquired through acquisitions, licensing, development and distribution agreements. Arvesta's parent company, Arysta LifeScience Corporation ("Arysta"), a Japanese corporation that participates in agrochemicals, pharmaceuticals, veterinary medicines and biotechnology, has over 50 years of experience in the crop protection business. Arysta was formed as a result of an agreement between its parent companies, Nichimen Corporation and Tomen Corporation (both

of which are large, publicly traded Japanese companies), to combine their life science businesses.²

Arvesta's U.S. corporate headquarters are located in San Francisco, California. Its mailing address is:

Arvesta Corporation
100 First Street, Suite 1700
San Francisco, CA 94105

Arvesta also has branch locations or affiliates in: Sacramento and San Jose, California; Perry, Ohio (manufacturing); Patterson, California; Fresno, California; Bakersfield, California; Raleigh, North Carolina; Charleston, South Carolina; Guelph, Canada; Mexico City, Mexico; San Jose, Costa Rica; Caracas, Venezuela; Buenos Aires, Argentina; Paris, France; Budapest, Hungary; and Belgrade, Yugoslavia.

Arvesta has substantial experience as a supplier of crop protection products in the United States. Arvesta's currently-registered U.S. products include: Elevate® Fungicide; Captan Fungicide ; Decree® Fungicide ; Endorse® Fungicide; and Chloropicrin Soil Fumigant. It has submitted many other products for registration in the United States, including: TM-452, a broad-spectrum herbicide for corn/sugar cane; TM-425 (Midas), a methyl bromide replacement; TM-444, a broad-spectrum systemic insecticide; and TM-413, an advanced miticide for fruits and ornamentals. Arvesta also has several products under development in the United States, including: TM-450, a premix of Elevate and Captan; and TM-435, a post-emergence broadleaf herbicide for cereals and corn.

² Tomen owns 57 percent and Nichimen owns 40 percent of Arysta. The other shares are held by Toyota Tsusho Corporation (two percent), and The UFJ Bank, Ltd. (one

B. Financial Capability

Arvesta has the financial stability and resources to ensure the continued success of the Flucarbazone Business as a viable, ongoing business as documented in the confidential Business Plan previously submitted to the FTC. Arvesta's acquisition of the Flucarbazone Business will be financed using Arysta LifeScience internally available funds and/or through third party investment in Arysta.

C. Operations and Marketing Experience

Arvesta has the operations and marketing expertise necessary to manage the Flucarbazone Business successfully. It has marketed products in North America and the rest of the world for the past 10 years and currently sells its products in over 60 countries around the world. Arvesta has extensive manufacturing experience, including its own manufacturing plant in Perry, Ohio, as well as various toll-manufacturing operations in the United States, Mexico and Europe. Over the past 5 years, Arvesta has demonstrated an average growth rate of more than 5% per year, and has been outperforming the industry as a whole.

Arvesta has a history of successfully acquiring the marketing rights to pesticides developed and manufactured by other companies. Arvesta, for example, obtained the North American marketing rights for clothianidin, the active ingredient in Clutch™, from Takeda Chemical Industries, Ltd. Clothianidin is currently under expedited registration review by the U.S. Environmental Protection Agency as an "organophosphate replacement" compound. Arvesta has also licensed the worldwide rights to a new broad-spectrum corn and sugarcane herbicide, known as Amicarbazone, which Bayer discovered and patented. Amicarbazone has already been submitted for registration in the United States. Arvesta has also developed the soil

percent).

fumigant Midas™ (iodomethane) for use on strawberries, tomatoes, grapes, nursery and ornamental crops, as a replacement product for methyl bromide, which is being phased out in 2005. Arvesta expects to receive US EPA approval for Midas by the end of September 2002. Arvesta has several other products under development for sales in NAFTA -- including a miticide for use in apples, pears and citrus, a herbicide for use in cereals (wheat) and corn, and a bactericide for use on tomatoes and peppers.

V. Absence of Market Presence

Arvesta does not currently market any products for use as post-emergent herbicides in spring wheat. Other herbicides that Arvesta currently manufactures and supplies cannot be used in the spring wheat sector. Accordingly, the divestiture of the Flucarbazone Business to Arvesta will not create any competitive concerns.

VI. Request for Shortening of Public Comment Period

Pursuant to Section 2.41(f)(2) of the Commission's Rules of Practice and Procedure, in appropriate cases, the Commission may shorten or eliminate a comment period. 16 C.F.R. § 2.41(f)(2) (2002). This is plainly an appropriate case, and Bayer requests that the comment period be shortened to no more than 14 days.

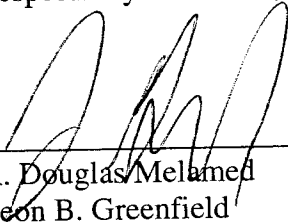
The Flucarbazone Business is seasonal by its very nature. Suppliers of spring wheat herbicides initiate their marketing programs for the Spring growing season in late September and early October. Those marketing programs include incentives offered to distributors and end users, and are an important element of competition for spring wheat herbicides. To preserve and promote the business and remain competitive, the Hold Separate Trustee would need to initiate these programs in late September or early October for the next growing season (by which time Arvesta will own the Flucarbazone business). Accordingly, to give Arvesta the maximum

flexibility to guide marketing programs and dictate the Flucarbazone Business's competitive posture for the next growing season, it is necessary and in the best interests of consumers to shorten the comment period to no more than 14 days. Arvesta has submitted under separate cover and without disclosure to Bayer a confidential memorandum outlining the business activities that must be undertaken as soon as possible to ensure that Arvesta achieves a strong first year in the spring wheat sector.

VII. Conclusion

The proposed divestiture of the Flucarbazone Business to Arvesta will accomplish the purposes of the Consent Agreement and remedy any alleged lessening of competition in the research, development, manufacture, and sale of post-emergent grass herbicides for spring wheat. Arvesta has no presence in the spring wheat herbicides market and, therefore, its acquisition of the Flucarbazone Business creates no competitive concerns. Arvesta has the financial stability and support from its parent companies to ensure the continued operation of the Flucarbazone Business as a viable, on-going business. Furthermore, Arvesta has the experience and resources necessary to operate the Flucarbazone Business successfully. Accordingly, Bayer requests that the Commission approve the proposed divestiture and acquirer.

Respectfully submitted,



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Wilmer, Cutler & Pickering
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