

**ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDERS
TO AID PUBLIC COMMENT
*In the Matter of BASF SE, File No. 081-0265***

I. Introduction

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) from BASF SE (“BASF” or “Respondent”) to remedy the anticompetitive effects stemming from BASF’s proposed acquisition of Ciba Holding Inc. (“Ciba”). Under the terms of the Consent Agreement, BASF is required to divest to a Commission-approved buyer certain Ciba assets and intellectual property relating to two of its high performance pigment businesses.

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

Pursuant to an Agreement and Plan of Merger dated September 15, 2008, BASF proposes to purchase all of Ciba’s outstanding stock in a transaction valued at approximately \$5.1 billion. The Commission’s complaint alleges that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act (“FTC Act”), as amended, 15 U.S.C. § 45, by lessening competition in the world markets for the research, development, manufacture and sale of bismuth vanadate and indanthrone blue pigments. The Consent Agreement will remedy the alleged violation by divesting certain Ciba assets and intellectual property to a third party thereby replacing the lost competition that would result from the acquisition in these markets.

II. The Parties

BASF, headquartered in Ludwigshafen, Germany, is the world’s leading chemical company. It manufactures, among other things, chemicals, plastics, agricultural products, fine chemicals and high performance pigments. BASF is a leading supplier of several high performance pigments including bismuth vanadate and indanthrone blue. In 2008, BASF’s worldwide sales were approximately \$79.5 billion.

Ciba, headquartered in Basel, Switzerland, is a leading supplier of chemicals used to, among other things, provide color performance and care for plastics, coatings, textile, paper, home and personal care products. Ciba is a leading supplier of high performance pigments including bismuth vanadate and indanthrone blue. In 2008, Ciba’s worldwide sales were approximately \$5.4 billion.

III. The Complaint

According to the Commission's Complaint, the relevant lines of commerce in which to analyze the effects of the proposed acquisition are the markets for the research, development, manufacture, and sale of bismuth vanadate and indanthrone blue pigments. Pigments are small particles that are used to impart color to a wide variety of products including inks, coatings, plastics and fibers. Bismuth vanadate and indanthrone blue are high performance pigments. High performance pigments are pigments that offer superior durability and light fastness compared to other pigments such as commodity pigments. As a result, high performance pigments are particularly suited for use in products that are exposed to sunlight and weather, such as automotive coatings.

Bismuth vanadate is a high performance pigment that imparts a brilliant yellow coloration with a green tint. Bismuth vanadate is primarily used in applications requiring exposure to high temperatures because of its durability under such conditions. Because no other pigment offers the same combination of unique color and high performance characteristics that bismuth vanadate provides, customers of bismuth vanadate could not achieve the same colors and performance levels in their products without it. Thus, there are no substitute products that customers of bismuth vanadate could turn to even in the face of a significant price increase.

Indanthrone blue is a high performance pigment that imparts a blue coloration with a tinge of red. Because of its durability and light fastness, indanthrone blue is used primarily in automotive coatings. Similar to bismuth vanadate, no other pigment offers the same combination of unique color and high performance characteristics that indanthrone blue provides and customers of indanthrone blue could not achieve the same colors and performance levels in their products without it. Thus, there are no substitute products that customers of indanthrone blue could turn to even if faced with a significant price increase.

The Complaint alleges that the relevant geographic market in which to analyze the anticompetitive effects of the proposed acquisition is the world. Transportation costs and technical barriers to worldwide shipment of the relevant products are insignificant. As a result, several pigment suppliers manufacture these products in a single location and ship them worldwide. For example, BASF and Ciba supply the relevant products for their customers worldwide from their production facilities in Europe.

The Complaint further alleges that the relevant markets are highly concentrated. In the bismuth vanadate market, the proposed transaction would reduce the number of significant players in that market from four to three and the combined entity would have a market share of approximately 60 percent based on sales. The market for indanthrone blue is also highly concentrated with BASF and Ciba constituting two of only three significant suppliers. In that market, the combined entity's market share would be approximately 56 percent based on sales.

By eliminating competition between BASF and Ciba in the relevant markets, the proposed transaction would allow the combined firm to unilaterally exercise market power, as well as increase the likelihood of coordinated interaction among the remaining suppliers. As a result, the proposed transaction would increase the likelihood that purchasers of bismuth vanadate and indanthrone blue would be forced to pay higher prices for these products and that innovation and service in these markets would decline.

Entry into either relevant market is not likely and would not be timely or sufficient to deter or counteract the anticompetitive effects that would result from the proposed merger. It would take a new entrant well over two years to complete all of the requisite steps for entry, including: researching and developing the pigment technology; building a manufacturing facility; and passing the rigorous qualification testing required to get customer approval. Additionally, new entry into either the bismuth vanadate or indanthrone blue markets is unlikely to occur because the capital investment to become a viable supplier is high relative to the limited sales opportunities available to new entrants.

IV. Terms of the Proposed Order

The proposed Consent Agreement effectively remedies the proposed merger's anticompetitive effects in the markets for bismuth vanadate and indanthrone blue pigments. BASF is required to divest assets used to research, develop, manufacture, and sell those products. The divested assets will permit the acquirer to become a viable competitor in the relevant markets.

The assets to be divested include Ciba's bismuth vanadate production assets which are located in Europe, or provides a mechanism for, at the acquirer's option, production to be relocated to the acquirer's production facilities. More specifically, BASF can either: (1) divest the Ciba bismuth vanadate production facility, (2) lease the production facility to the acquirer, or (3) enter into a tolling agreement that provides sufficient time for the acquirer to begin production at its own facilities and to qualify that production with customers. The indanthrone blue production assets will be used to produce that product pursuant to a tolling arrangement at the Ciba facilities until the acquirer of those assets is prepared to shift production to its own facilities. All tangible assets and intellectual property used to produce the relevant products will also be divested. Several credible acquirers have expressed interest in purchasing the assets to be divested.

The provisions ordering the two divestitures further include ancillary relief such as supply agreements, protections for confidential information, assistance in hiring of key employees, and the appointment of a monitor to oversee the divestiture process to ensure that the acquirer, or acquirers, of the relevant assets will be able to effectively compete in the research,

development, manufacture, and sale of bismuth vanadate and indanthrone blue pigments. A final Order to Maintain Assets has also been issued.

The proposed Consent Agreement includes a provision that allows the Commission to appoint an interim monitor to ensure that BASF expeditiously complies with all of its obligations and performs all of its responsibilities as required by the Commission's Decision and Order. If appointed, the interim monitor would be required to file periodic reports with the Commission to ensure that the Commission remains informed about the status of the divestitures and the efforts being made to accomplish the divestitures.

Finally, the Consent Agreement contains provisions that allow the Commission to appoint a divestiture trustee to divest the assets that are the subject of the Commission's Decision and Order if BASF fails to divest the designated assets within six (6) months after the Consent Agreement is accepted by the Commission for Public Comment. To ensure that the Commission remains informed about the status of the proposed divestitures and the transfer of the assets, the proposed Consent Agreement requires BASF to file reports with the Commission periodically until the divestitures and transfers are accomplished.

The purpose of this analysis is to facilitate public comment on the proposed Decision and Order. This analysis is not intended to constitute an official interpretation of the Consent Agreement and the proposed Decision and Order.