

his or her designee. The purpose of the proposed Order is to maintain the opportunity for full competition in the market for the research, development, manufacture and sale of military aircraft.

Third, Martin Marietta and Lockheed are significant competitors in the manufacture and sale of satellites and expendable launch vehicles. The proposed merger increases the degree of vertical integration in the markets for satellites and ELVs used by the United States government. Because satellites manufactured by Lockheed Martin may be launched on ELVs supplied by Lockheed Martin's competitors, Lockheed Martin's satellite divisions could gain access to competitively significant and non-public information concerning competitors' ELVs during the process of integrating a satellite and an ELV. As a result, the proposed merger increases the likelihood that competition between ELV suppliers would decrease because Lockheed Martin would have access to its competitor's proprietary information, which could affect the prices and services that Lockheed Martin provides. In addition, advancements in ELV research, innovation, and quality would be reduced because Lockheed Martin's ELV competitors would fear that Lockheed Martin could "free ride" off of its competitors' technological developments.

The proposed Consent Order prohibits Lockheed Martin's satellite divisions from disclosing to Lockheed Martin's ELV divisions any non-public information that Lockheed Martin receives from competing suppliers of ELVs. Under the proposed Order, Lockheed Martin may only use such information in its capacity as a satellite manufacturer. Non-public information in this context means any information not in the public domain and designated as proprietary information by any ELV manufacturer that provides such information to Lockheed Martin's satellite divisions. The purpose of the proposed Order is to maintain the opportunity for full competition in the research, development, manufacture and sale of ELVs.

Under the provisions of the proposed Consent Order, respondents are required to deliver a copy of the Order to any United States military aircraft manufacturer and to any United States ELV manufacturer prior to obtaining any information from them that is outside the public domain. Under the proposed Order, respondents also are required to provide to the Commission reports of their compliance with the Order sixty (60) days after the Order becomes final

and annually for the next ten (10) years on the anniversary of the date the Order becomes final.

In order to preserve or promote competition in the relevant markets during the period prior to the final acceptance of the proposed Consent Order (after the 60-day public notice period), respondents have entered into an Interim Agreement with the Commission in which respondents agreed to be bound by the proposed Consent Order as of January 10, 1995, the date the Commission accepted the proposed Consent Order subject to final approval.

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

**Donald S. Clark,**

*Secretary.*

[FR Doc. 95-2060 Filed 1-26-95; 8:45 am]

BILLING CODE 6750-01-M

[File No. 941-0043]

#### **Montedison S.p.A., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the Royal Dutch Petroleum Company and the Shell Group of Companies to divest all of Shell Oil's polypropylene assets to Union Carbide Corporation, or to another Commission approved acquirer, within six months; would require Montedison to relinquish revenues under the profit sharing agreement from future U.S. licenses by Mitsui Petrochemical Industries Ltd.; and would prohibit the company from entering into similar agreements.

**DATES:** Comments must be received on or before March 28, 1995.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

**FOR FURTHER INFORMATION CONTACT:** Howard Morse or Rhett Krulla, FTC/S-3627, Washington, D.C. 20580. (202) 326-6320 or 326-2608.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C.

46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the matter of Montedison S.p.A., a corporation, HIMONT Incorporated, a corporation, Royal Dutch Petroleum Company, a corporation, The "Shell" Transport and Trading Company, p.l.c., a corporation, and Shell Oil Company, a corporation, File No. 941-0043.

#### **Agreement Containing Consent Order**

The Federal Trade Commission ("the Commission"), having initiated an investigation of the proposed formation of a joint venture between Montedison S.p.A. and HIMONT Incorporated (collectively "Montedison") and Shell Petroleum N.V., a holding company of the Royal Dutch/Shell Group of Companies ("the Shell Group") controlled by N.V. Koninklijke Nederlandsche Petroleum Maatschappij (Royal Dutch Petroleum Company) ("Royal Dutch") and The "Shell" Transport and Trading Company, p.l.c. ("Shell T&T"), that would merge certain assets and businesses of Montedison and of companies of the Shell Group and it now appearing that Royal Dutch, Shell T&T, and Shell Oil Company ("Shell Oil"), a company of the Shell Group, (collectively "Shell") and Montedison, all collectively hereinafter sometimes referred to as "proposed respondents," are willing to enter into an agreement containing an order to exclude certain assets and businesses from the joint venture, to divest certain assets and businesses, and to cease and desist from making certain acquisitions, and providing for other relief:

It is hereby agreed by and between proposed respondents, by their duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed respondent Montedison S.p.A. is a corporation organized, existing and doing business under and by virtue of the laws of Italy with its principal executive offices located at Foro Buonaparte, 31, 20121 Milan, Italy.

2. Proposed respondent HIMONT Incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the State of

Delaware with its principal executive offices located at Three Little Falls Centre, 2801 Centerville Road, Wilmington, Delaware 19850-5439. HIMONT Incorporated is a wholly-owned, indirect subsidiary of Montedison S.p.A.

3. Proposed respondent Royal Dutch is a corporation organized, existing and doing business under and by virtue of the laws of the Netherlands with its principal executive offices located at Carel van Bylandtlaan 30, The Hague, The Netherlands. Royal Dutch is a holding company which, together with Shell T&T, controls the Shell Group.

4. Proposed respondent Shell T&T is a corporation organized, existing and doing business under and by virtue of the laws of England with its principal executive offices located at Shell Centre, London SE1 7NA, England. Shell T&T is a holding company which, together with Royal Dutch, controls the Shell Group.

5. Proposed respondent Shell Oil is a corporation organized, existing and doing business under and by virtue of the laws of Delaware with its principal executive offices located at One Shell Plaza, Houston, Texas 77002. Shell Oil is a member company of the Shell Group, and all of its shares are directly or indirectly owned by Royal Dutch and Shell T&T.

6. Proposed respondents admit, for purposes of this Agreement and Order and any related enforcement action, all the jurisdictional facts set forth in the draft of complaint.

7. Proposed respondents waive:

- (a) any further procedural steps;
- (b) the requirement that the

Commission's decision contains a statement of findings of fact and conclusions of law;

(c) all rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this Agreement; and

(d) any claim under the Equal Access to Justice Act.

8. This Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such forms as the circumstances may require) and

decision, in disposition of the proceeding.

9. This Agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint, or that the facts as alleged in the draft of complaint, other than jurisdictional facts admitted as specified above, are true.

10. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following Order to divest and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to proposed respondents' attorneys of record, William C. Pelster, Esq., Skadden, Arps, Slate, Meagher & Flom, 919 Third Avenue, New York, NY 10022, for Montedison; Robert D. Joffe, Esq., Cravath, Swaine & Moore, 825 Eighth Avenue, New York, NY 10019, for Royal Dutch and Shell T&T; and S. Allen Lackey, Esq., Shell Oil Company, One Shell Plaza, Houston, Texas 77252, for Shell Oil, shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation or interpretation not contained in the Order or this Agreement may be used to vary or contradict the terms of the Order.

11. Proposed respondents have read the proposed complaint and Order contemplated hereby. Proposed respondents understand that once the Order has been issued, they will be required to file one or more compliance reports showing they have fully complied with the Order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

## Order

I

It is ordered that, as used in this Order, the following definitions shall apply:

A. The following terms shall mean the following entities:

1. "Montedison" means Montedison S.p.A. and its wholly owned subsidiary Montedison (Nederland) N.V., a holding company that owns Montecatini Nederland B.V., which in turn owns, directly or indirectly, through its subsidiaries HIMONT Incorporated, Spherilene S.r.l., Moplefan S.p.A. and Montepolmieri Sud, S.p.A., all of the polyolefins interests of Montedison S.p.A. "Montedison" includes all subsidiaries, divisions, and groups and affiliates controlled by Montedison S.p.A., their respective successors and assigns, and their respective directors, officers, employees, agents and representatives. Unless otherwise indicated, "Montedison" does not include Montell.

2. "HIMONT" means HIMONT Incorporated. "HIMONT" includes all subsidiaries, divisions, and groups and affiliates controlled by HIMONT, their respective successors and assigns, and their respective directors, officers, employees, agents and representatives.

3. "Shell" means N.V. Koninklijke Nederlandsche Petroleum Maatschappij (Royal Dutch Petroleum Company) ("Royal Dutch"), The "Shell" Transport and Trading Company, p.l.c. ("Shell T&T"), and the Shell Group.

4. "The Shell Group" means all companies controlled by Royal Dutch and/or Shell T&T, including Shell Oil and Shell Petroleum N.V. "The Shell Group" includes all subsidiaries, divisions, and groups and affiliates controlled by companies of the Shell Group, Royal Dutch or Shell T&T, their respective successors and assigns, and their respective directors, officers, and agents and representatives. Unless otherwise indicated, "the Shell Group" does not include Montell.

5. "Shell Oil" means Shell Oil Company. "Shell Oil" includes all subsidiaries, divisions, and groups controlled by Shell Oil, their respective successors and assigns, and their respective directors, officers, agents and representatives. Unless otherwise indicated, "Shell Oil" does not include Polyco.

6. "Montell" means Montell Polyolefins, the corporation to be formed, pursuant to the Agreement to Merge Polyolefins Businesses, to hold the majority of the polyolefins businesses of Montedison and of Shell and to be owned, directly or indirectly,

by Montedison and companies of the Shell Group. "Montell" includes all subsidiaries, divisions, and groups controlled by Montell, their respective successors and assigns, and their respective directors, officers, agents and representatives.

7. "Montell Affiliates" means companies that Montell controls as that term is defined in 16 C.F.R. § 801.1(b), except that this term shall also include (i) any entity other than Montell in which Shell or Montedison has an ownership interest of 25% or more as of December 1, 1994 and which interest is contributed to Montell, and (ii) companies in which Montell has an ownership interest of 35% or more and would have control as defined in 16 CFR 801.1(b) if ownership interests held directly or indirectly by a government were excluded.

8. "Technipol" means a company to be formed and held separate by Montedison under the terms and conditions of the attached Agreement to Hold Separate. "Technipol" includes all subsidiaries, divisions, and groups controlled by Technipol, their respective successors and assigns, and their respective directors, officers, agents and representatives.

9. "Polyco" means a company to be formed by Shell Oil to succeed to and conduct, under the terms and conditions of this Order, the Properties to Be Divested. "Polyco" includes all subsidiaries, divisions, and groups controlled by Polyco, their respective successors and assigns, and their respective directors, officers, agents and representatives.

10. "Akzo Nobel" means Akzo Nobel N.V., Akzo Nobel Inc., Akzo Chemicals BV and Akzo Chemicals Inc.

11. "Mitsui" means Mitsui Petrochemical Industries Ltd.

12. "Union Carbide" or "UCC" means Union Carbide Corporation.

B. "Commission" means the Federal Trade Commission.

C. "Agreement to Merge Polyolefins Businesses" means the agreement between Montedison and Shell Petroleum N.V. (a company of the Shell Group) dated December 30, 1993, and amendments thereto, to merger the majority of the worldwide polyolefins businesses of Montedison and of Shell into a new entity to be owned by Montedison and companies of the Shell Group.

D. "Propylene Polymers" or "PP" means homopolymers of propylene and copolymers or polyolefinic alloys of propylene with less than 50% by mol of other monoolefins and having a flexural moduls (measured according to ASTM D 790-71) higher than 4,000 Kg/cm<sup>2</sup>.

E. "PP Catalyst" means supported catalyst components including compounds of transition metals of Groups IV-VIII of the Periodic Table, at least in part supported on a carrier, the essential component of which is a halogen-containing compound of magnesium, for use in production of Propylene Polymers.

F. "Catalyst Support" means preformed catalyst supports or support carriers which may be titanated, i.e., combined with titanium or with a titanium containing compound, to produce PP Catalyst.

G. "Catalyst Systems" means specified combinations of PP Catalyst and other components designed, developed, used, or suitable for use for the production of Propylene Polymers.

H. "PP Technology" means technology relating to Propylene Polymers and the production thereof, and to the preparation and use of Catalyst Systems.

I. "Catalyst Technology" means technology relating to PP Catalyst and to the production, preparation and use of PP Catalyst, Catalyst Support and Catalyst Systems.

J. "Shell Catalyst Technology" means Catalyst Technology, including Know-How and patent rights, developed, under development, used, offered for license or licensed to any person by companies of the Shell Group at any time prior to the date of transfer to Polyco of the Properties to Be Divested.

K. "Shell Oil Catalyst Technology" means Catalyst Technology, including Know-How and patent rights, developed, under development, used, offered for license or licensed to any person by Union Carbide or Shell Oil at any time prior to that date of transfer to Polyco of the Properties to Be Divested.

L. "Unipol PP Technology" means PP Technology and Catalyst Technology, including Know-How and patent rights, developed, under development, offered for license, or licensed to any person by UCC and/or Shell Oil in accordance with their Cooperative Undertaking Agreement dated December 22, 1983, or used by UCC and Shell Oil in their partnership PP facility at Seadrift, Texas at any time prior to the date this Order becomes final.

M. "Unipol/SHAC Technology Business" means the research and development, promotion, and licensing of Unipol PP Technology and Shell Oil Catalyst Technology; the research and development of PP Catalyst, Catalyst Support and Catalyst Systems utilizing Unipol PP Technology and Shell Oil Catalyst Technology; rights and obligations under, and activities conducted pursuant to, the Cooperative

Undertaking Agreement between UCC and Shell Oil dated December 22, 1983, and the Polypropylene Catalyst Research and Development Agreement among Shell Oil, UCC and Shell Internationale Research Maatschappij B.V. ("The Tripartite Catalyst Research Agreement"); and the research and development, production and sale of Propylene Polymers, and the demonstration of Unipol PP Technology and Shell Oil Catalyst Technology, pursuant to the Seadrift Polypropylene Company partnership agreement between UCC and Shell Oil.

N. "LIPP Process" means PP Technology developed and used by Shell for the production of Propylene Polymers through a bulk liquid polymerization process.

O. "Know-How" means all relevant information, including knowledge, experience and specifications.

P. "Material Confidential Information" means competitively sensitive or proprietary information, not in the public domain, concerning the PP Technology, Catalyst Technology, PP Catalyst, Catalyst Support, or Propylene Polymers businesses.

Q. "Properties to Be Divested" means 1. All assets, tangible and intangible, of Shell Oil relating to PP Technology, Catalyst Technology, Propylene Polymers and PP Catalyst, including without limitation:

a. Shell Oil's Propylene Polymers plant and assets at Norco, Louisiana, and Shell Oil's associated facilities at Norco, Louisiana for splitting and separating polymer-grade propylene and propane from chemical-grade propylene;

b. Shell Oil's PP Catalyst plant and assets at Norco, Louisiana;

c. Shell Oil's interest in the Seadrift Polypropylene Company and the Propylene Polymers plant at Seadrift, Texas;

d. Shell Oil's PP Catalyst pilot plant;

e. Shell Oil's facilities and equipment (other than real property and general, chemical analytical equipment) at the Westhollow Technology Center at Houston, Texas, primarily utilized during the year prior to the transfer to Polyco of the Properties to Be Divested in research, development and technical support with respect to Shell Oil's Propylene Polymers, PP Catalyst and Catalyst Technology businesses;

f. A rent-free lease, until five years from the date of divestiture of the Properties to Be Divested or until such earlier date as the acquirer may elect, to offices and research and development space at the Westhollow Technology Center at Houston, Texas, associated with the Properties to Be Divested;

g. All owned or leased distribution facilities, rail cars and other assets used in sales or technical service of Propylene Polymers or PP Catalyst, other than real property at the headquarters offices, general sales offices, and research center of Shell Oil;

h. All intellectual property, including patent rights, trade secrets, technology and Know-How, relating to Catalyst Technology, PP Catalyst, Catalyst Systems, and Propylene Polymers;

i. All customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, technical information, management information systems, software, inventions, specifications, designs, drawings, processes and quality control data;

j. All interest 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, including without limitation agreements with Shell Canada and Pecten, and rights under warranties and guarantees, express or implied;

k. All books, records, and files;

l. Shell Oil's interest in owned or leased real property associated with the Norco, Louisiana, and Seadrift, Texas, Propylene Polymers plants, together with appurtenances, licenses and permits;

m. Shell Oil's interest in owned or leased improvements to real property associated with the Norco, Louisiana, PP Catalyst plant, together with appurtenances, licenses and permits, and a rent-free lease to the land associated with the PP Catalyst plant for the life of the plant;

n. Shell Oil's interest in the Unipol/SHAC Technology Business and in the Cooperative Undertaking Agreement dated December 22, 1983, including but not limited to all future revenue of Shell Oil from Unipol PP Technology and Shell Catalyst Technology developed, under development, offered for license, or licensed to any person by UCC or Shell Oil at any time prior to the date of transfer to Polycy;

o. Exclusive world-wide rights to all Shell Oil trademarks and trade names relating to Propylene Polymers other than Shell Oil trademarks used by Shell Oil for its products generally, such as the "SHELL" mark and the Pecten emblem;

p. All licenses relating to the manufacture and sale of Propylene Polymers and PP Catalyst or the

licensing of PP Technology or Catalyst Technology, including but not limited to Shell Oil's rights under the following patents:

(1) All applicable patents of Shell;

(2) All patents of Montedison and Mitsui covered by the July 30, 1985 Agreement of Himont Incorporated, Mitsui, Union Carbide Corporation, and Shell Chemical Company; any patent license agreements between Montedison and Shell; and any patent license agreements between Mitsui and Shell;

(3) Phillips U.S. Patent 4,376,851 "crystalline polypropylene";

(4) Studiengesellschaft Kohle U.S. Patent 4,125,698 covering production of PP with a titanium chloride/DEAC catalyst; and

(5) Amoco Chemical Company patents covering "PP Catalyst" identified in the patent license agreement between Amoco and Shell Oil, including Amoco U.S. Patent 4,540,679; Japan Patent Application 59350/85 and European Patent Application 159,150; and

q. Shell Oil's rights under the Tripartite Catalyst Research Agreement; the Polypropylene Agreement between Shell Research Limited and Shell Oil Company; the PP Catalyst Patent Settlement Agreement between Shell Internationale Research Maatschappij B.V. and Shell Oil Company; and the July 30, 1985 Agreement of Himont Incorporated, Mitsui, Union Carbide Corporation, and Shell Chemical Company, subject to any necessary approval of parties not subject to this Order; and

2. All Shell's worldwide rights to the "SHAC" trademark; all customer lists, records and files, all catalogs, and all sales promotion literature relating to sales by Shell outside the United States of PP Catalyst and Propylene Polymers manufactured by Shell Oil; and all interest in and to contracts entered into by Shell in the ordinary course of business with customers, sales representatives, distributors and agents relating to the sale, outside the United States, of PP Catalyst or Propylene Polymers manufactured by Shell Oil (together with associated bid and performance bonds).

R. "Viability and competitiveness" means having the capability and incentive to operate independently at annual levels of research and development, licensing, production, and sales of PP Technology, Catalyst Technology, PP Catalyst, Catalyst Support and Propylene Polymers at least equal to levels experienced during each of the two (2) calendar years immediately preceding the date of transfer to Polycy of the Properties to Be Divested, and capable through its own

resources of functioning independently and competitively in the PP Technology, Catalyst Technology, PP Catalyst, and Propylene Polymers businesses.

## II

It is further ordered that:

A. Shell and Shell oil, as applicable, shall divest the Properties to Be Divested, absolutely and in good faith, within six (6) months of the date this Order becomes final, and shall also divest such additional, ancillary assets and businesses and effect such arrangements as are necessary to assure the marketability and the Viability and Competitiveness of the Properties to Be Divested.

B. The period of six (6) months as specified in Paragraph II.A shall be extended to March 31, 1997, if either of the following conditions is satisfied:

1. Union Carbide declines, within thirty (30) days following receipt by Union Carbide of the report of the independent appraiser, to acquire the Properties to Be Divested for the fair market value of the Properties to Be Divested as an operating business as determined by an independent appraisal prepared in accordance with the following procedure, or as otherwise agreed, or at such price as agreed, by Shell Oil and Union Carbide:

a. Prior to the expiration of fifteen (15) days from the date this Order becomes final Shell Oil will notify Union Carbide of Shell Oil's selection of an independent appraiser;

b. The independent appraiser selected by Shell Oil will perform the appraisal unless within fifteen (15) days from notification of Shell Oil's selected independent appraiser, Union Carbide objects to Shell Oil's selected independent appraiser and notifies Shell Oil of its selection of an independent appraiser;

c. Within fifteen (15) days from the date the name of Union Carbide's selected independent appraiser is received by Shell Oil, Shell Oil will either agree to Union Carbide's selected independent appraiser or request that the two selected independent appraisers jointly select, within ten (10) days of such request, another independent appraiser;

d. The compensation paid to the independent appraiser shall be paid by Shell Oil or as otherwise agreed by Shell Oil and Union Carbide, and the amount of compensation shall be independent of the amount of the fair market value of the properties to Be Divested as determined by the appraisal;

e. The independent appraiser shall be authorized by Shell to question

personnel and examine all relevant books and records, including personnel and books and records of the Unipol/SHAC Technology Business, in connection with the appraisal under appropriate confidentiality provisions;

f. The independent appraisal shall be completed and presented by the appraiser to Union Carbide and Shell Oil within forty-five (45) days of the selection of the appraiser as set forth in this Paragraph II.B.1 of this Order; or

2. Union Carbide, within (30) days of receiving notice from Shell Oil that Shell proposes to divest Polyco to a named acquirer approved by the Commission, does not consent to the transfer of Polyco's interest in the Cooperative Undertaking Agreement dated December 22, 1983, to such Commission approved acquirer.

C. In the event that, prior to the expiration of the six (6) months specified in Paragraph II.A of this Order, the Commission has neither approved nor disapproved, within sixty (60) days of receipt of the application, an application for approval of a divestiture to a proposed acquirer submitted in accordance with Paragraphs II.A and II.F of this Order, the time period specified in Paragraph II.A of this Order may be extended by the Commission by the number of days in excess of sixty (60) required by the Commission to rule on the divestiture application and, if the Commission approves divestiture to a person other than Union Carbide, the Commission may further extend such period, if necessary, by thirty (30) days in order to provide Shell Oil time to comply with the requirements of Paragraph II.B.2 of this Order.

D. Provided further, if at the instance of Union Carbide over the opposition of Shell, Shell is enjoined or otherwise prohibited by court order from divesting the Properties to Be Divested, Shell shall promptly give written notice of such order to the Commission, whereupon the period within which Shell shall divest the Properties to Be Divested under Paragraphs II.A, II.B or II.C of this Order shall be extended to the earlier of (1) one year from the expiration of the time specified in Paragraph II.A of this Order and such additional time as may be allowed in Paragraphs II.B or II.C of this Order; or (2) ninety (90) days after the injunction or other order expires.

E. Respondents shall comply with all terms of the Agreement to Hold Separate, attached to this order and made a part hereof as Appendix I. Said Agreement shall continue in effect until such time as Shell and Shell Oil, as applicable, have divested all the Properties to Be Divested or until such

other time as the Agreement to Hold Separate provides. Profits accumulated by Technipol during the period the Agreement to Hold Separate is in effect shall be retained by Montedison upon expiration of the Agreement to Hold Separate and shall in no event be transferred to Montell or Shell.

F. Shell and Shell Oil, as applicable, shall divest the Properties to Be Divested as an incorporated, ongoing business, identified herein as "Polyco" and established in accordance with the attached Agreement to Hold Separate, and shall divest the Properties to Be Divested only to Union Carbide or to another acquirer or acquirers that receive 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 continuation of Polyco as an ongoing and viable business engaged in the research, development, manufacture and sale of PP Catalyst and Propylene Polymers and in the research, development, and licensing of PP Technology and Catalyst Technology, and to remedy the lessening of competition resulting from the proposed acquisition as alleged in the Commission's complaint.

G. The Properties to Be Divested shall be divested free and clear of (1) all royalties, mortgages, encumbrances and liens to Shell or Montell; and (2) any contractual commitments or obligations to Shell or Montell existing as of the date of divestiture.

H. Should any transfer of an agreement, contract or license required by Paragraph II.A of this Order not be possible after reasonable effort by Shell and Shell Oil due to a person other than a party to this Order withholding its consent to the transfer, Shell Oil shall enter into an agreement with Polyco or the acquirer thereof the purpose of which agreement is to realize the same effect as such transfer. Shell Oil shall submit a copy of each such agreement with its compliance reports to the Commission pursuant to Paragraphs VIII.A and VIII.B of this Order. Further, Shell Oil shall secure, at its expense, patent licenses, or assignments of patent licenses, extending to Polyco and the acquirer thereof rights and royalty rates with respect to the manufacture and sale of Propylene Polymers and PP Catalyst from the Properties to Be Divested, and rights to expand production and sale, no less favorable than those held by Shell Oil as of the date of transfer to Polyco of the Properties to Be Divested.

### III

It is further ordered that:

A. Prior to transfer of any assets or businesses from Shell into Montell or merger of any part of Shell and Montell or Montedison, Shell shall

1. Extend to Polyco, without royalty to Shell or Montell, Shell's rights under agreements relating to the research and development, manufacture and sale of PP Catalyst, Catalyst Support, and Catalyst Systems by any person, including but not limited to nonexclusive rights to sell, and to contract with Akzo Nobel for the production of, PP Catalyst and Catalyst Support;

2. Disclose to Polyco all Shell Catalyst Technology in its possession or to which it has rights;

3. Grant Polyco, without royalty to Shell or Montell, the perpetual, non-exclusive right (1) to license, subject to the rights of Union Carbide, Shell Catalyst Technology to any person worldwide; (2) to sell worldwide to any person PP Catalyst and Catalyst Systems based on Shell Catalyst Technology; and (3) to enforce intellectual property rights with respect to Shell Catalyst Technology worldwide, including without exclusion the right to sue any person who by the manufacture, use or sale of any PP Catalyst or Catalyst System infringes any Shell patent which has been applied for in any country in the world before the date this Order becomes final. All costs of any such suit by Polyco shall be borne by Polyco and all damages recovered shall be retained by Polyco; and

4. Grant Polyco, without royalty to Shell or Montell, the exclusive right, until seven years from the date of divestiture of the Properties to Be Divested, (1) to license, subject to the rights of Union Carbide, Shell Catalyst Technology to persons other than Montell and Montell Affiliates; and (2) to sell to persons other than Montell and Montell Affiliates (or LIPP Process licensees for use in their LIPP Process plants) such PP Catalyst formulations or their equivalent as were manufactured or sold by Shell, or manufactured for Shell by Akzo Nobel, prior to the date this Order becomes final; and

B. Shell and Montell shall grant to Polyco and licensees of Unipol PP Technology immunity under patents relating to PP Technology, Catalyst Technology, PP Catalyst, Catalyst Support, Catalyst Systems or Propylene Polymers, based on work conducted prior to December 31, 1997, or prior to one year after divestiture of the Properties to Be Divested, whichever is later, by persons who, as Shell personnel within one (1) year prior to the date of the formation of Montell, had access to Unipol PP Technology other

than in the public domain and other than Catalyst Technology received by Shell Oil from other companies of the Shell Group.

C. Until one (1) year after divestiture of the Properties to Be Divested no Shell research personnel who, within one (1) year prior to the date of the formation of Montell, had access to Unipol PP Technology (other than Catalyst Technology received by Shell Oil from other companies of the Shell Group) shall engage in research at facilities of Montell on PP Technology, Shell Catalyst Technology or Montedison Catalyst Technology. Provided, however, nothing in this Order shall require Shell to conduct any research and development for any person or to refrain from conducting research and development for, and at the expense of, any person, including Montell and communicating with, or receiving communications from, such person regarding such research and development work. The results of any research and development conducted by Shell prior to December 31, 1997, or one year after divestiture of the Properties to Be Divested, whichever is later, on Shell Catalyst Technology, including but not limited to research or development conducted for, or at the expense of, Montell, shall be provided to Polyco without payment for use in the Unipol/SHAC Technology Business.

D. Shell (including former employees of Shell transferred to Montell) shall not provide, disclose or otherwise make available to Montedison, Technipol, Montell or Montell Affiliates any Material Confidential Information relating to Unipol PP Technology or the Unipol/SHAC Technology Business (other than Catalyst Technology received by Shell Oil from other companies of the Shell Group), provided however nothing in this Paragraph III.D of this Order shall prohibit (1) Montell Affiliates who are licensees of Unipol PP Technology from receiving information, in accordance with such license, for use in their Unipol PP Technology licensed production facilities, including information obtained by Shell, prior to the formation of Montell, under The Tripartite Catalyst Research Agreement; and (2) any communication between Shell and Montell necessary to ensure that Montell and its employees make no unauthorized use or disclosure of any Material Confidential Information.

E. Until two (2) years after divestiture of the Properties to Be Divested, Shell, Montell and Technipol shall not employ, or make offers of employment to, any person employed by Shell Oil whose principal duties, during the year

prior to the date of transfer to Polyco of the Properties to Be Divested, related to the management, development or operation of the Properties to Be Divested. This provision, however, does not apply to employment by Shell Oil of any employee who is terminated by Polyco or by the acquirer of the Properties to Be Divested or who is not offered employment by Polyco or by the acquirer of the Properties to Be Divested at a base salary that is at least equivalent, and incentives and benefits that are comparable, to those held by the employee prior to the divestiture of the Properties to Be Divested. Provided, however, Shell Oil shall not be required to, but may, terminate employment of any employee who refuses to accept employment with Polyco; Shell Oil shall substitute alternative personnel or equivalent qualifications, education and experience for any persons declining to accept employment with Polyco who are not terminated by Shell. Shell Oil shall encourage and facilitate employment by Polyco or by the acquirer of the Properties to Be Divested of employees whose principal duties, during the year prior to the date of transfer to Polyco of the Properties to Be Divested, related to the management, development or operation of the Properties to Be Divested; shall not offer any incentive to such employees to decline employment with Polyco or with the acquired or the Properties to Be Divested or to accept other employment in Shell; and shall remove any impediments that exist which may deter such employees from accepting employment with Polyco or with the acquirer of the Properties to Be Divested, including but not limited to the payment for the benefit of the employees of all accrued bonuses, pensions and other accrued benefits to which such employees are entitled as of the date of the divestiture. Shell Oil shall not impose any loss of pension benefits on employees to which such employees are entitled under the Shell Oil pension plan as administered under ERISA.

#### IV

It is further ordered that from the date this Order becomes final and continuing until three (3) years following the date of the divestiture required by this Order, Shell shall, at Polyco's request or at the request of the acquirer of the Properties to Be Divested, contract with Polyco or the acquirer of the Properties to Be Divested to supply to Polyco or the acquirer propylene monomer, in such quantities and product grade as Polyco or the acquirer may request for use in the Properties to Be Divested subject

only to the capacity and grade constraints of Shell's propylene monomer production facilities in the United States and preexisting contractual obligations to persons other than Shell, Montedison, and Montell. The price, terms, and conditions at which Shell shall supply any grade of propylene monomer to Polyco and to the acquirer of the Properties to Be Divested shall be no less favorable to Polyco and the acquirer of the Properties to Be Divested than the price, terms, and conditions at which Shell supplies such grade of propylene monomer, directly or indirectly, to Montell in North America, through exchange or otherwise.

#### V

It is further ordered that:

A. If Shell or Shell Oil, as applicable, has not divested, absolutely and in good faith and with the Commission's prior approval, the Properties to Be Divested within the time required by Paragraph II.A of this Order or within such additional time as may be allowed in Paragraphs II.B, II.C or II.D of this Order, the Commission may appoint a trustee to divest the Properties to Be Divested. 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, Shell shall consent to the appointment of a trustee in such action. 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 Shell to comply with this Order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph V.A of this Order, Shell 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 Shell, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Shell has 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 Shell of the identity of any proposed trustee,

Shell 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 the Properties to Be Divested.

3. Within ten (10) days after appointment of the trustee, Shell 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 this Order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph V.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 the Properties to Be Divested or to any other relevant information, as the trustee may request. Shell and Polyco shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Shell and Polyco shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by Shell or Polyco shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, in the case of 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 Shell's absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to the acquirer or acquirers as set out in Paragraph II.A 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 or entities selected by Shell from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of Shell, 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 Shell, 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 or, 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 Shell 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 the Properties to Be Divested.

8. Shell shall indemnify the trustee and hold the trustee harmless against any liabilities, losses, claims, damages, 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 liabilities, losses, claims, damages, 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 V.A. 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 Properties to Be Divested pending completion of the divestiture.

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

#### VI

It is further ordered that:

A. Royal Dutch, Shell T&T and Montedison shall obligate Montell, Montedison shall obligate Technipol,

and Shell Oil shall obligate Polyco, to be bound by this Order and insure compliance with this Order by Montell, Technipol and Polyco, respectively.

B. Shell, Montedison and Montell shall not restrict any Montell Affiliate from licensing PP Technology or Catalyst Technology from the Unipol/SHAC Technology Business or Technipol or from purchasing PP Catalyst or Catalyst Systems from Polyco or Technipol.

C. Polyco shall not withhold its consent, except for good cause, to Union Carbide to grant or negotiate license fees and royalty rates below those minimums specified in the Cooperative Undertaking Agreement dated December 22, 1983, and attachments thereto.

D. Shell, Montedison, Montell and Technipol shall not enter into or renew any agreement or understanding with any developer or licensor of PP Technology or Catalyst Technology or any manufacturer, or seller of PP Catalyst, Catalyst Support, or Catalyst Systems limiting the geographic area within which, or limiting the persons to whom, such person may license PP Technology or Catalyst Technology or may manufacture and sell PP Catalyst, Catalyst Support, or Catalyst Systems, unless such agreement or understanding relates exclusively to markets other than the United States and has no effect on United States commerce, including but not limited to export commerce. Nothing in this Paragraph VI.D shall prohibit Shell, Montedison, Montell or Technipol from legitimately designating a sales agent for the sale of, or contract manufacturer for the production of, PP Catalyst or Propylene Polymers in any geographic area, or from limiting the persons, geographic area or uses for which they respectively grant legitimate licenses of their PP Technology or Catalyst Technology.

E. Montedison, Montell and Technipol shall not (1) enforce any provision in any agreement with Mitsui providing for sharing of royalties with respect to licenses granted by Mitsui after the date this Order becomes final for use of PP Technology and Catalyst Technology in the United States in Propylene Polymers plants and in the production of Propylene Polymers; or (2) enter into or renew any agreement with Mitsui providing for sharing of royalties with respect to licensing of PP Technology or Catalyst Technology in the United States for use in Propylene Polymers plants and in the production of Propylene Polymers.

#### VII

It is further ordered that, for a period of ten (10) years from the date this Order



becomes final, Shell, Montedison and Montell shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity, or other interest in any concern, corporate or non-corporate, other than the acquisition by Shell or Montedison of additional shares of Montell, engaged in at the time of such acquisition, or within two (2) years preceding such acquisition engaged in,

1. the research and development (other than only implementation of technology licensed from others), or sale or licensing to any person, of PP Technology or Catalyst Technology anywhere in the world;

2. the research and development, sale, or manufacture for sale of PP Catalyst, Catalyst Support, or Catalyst Systems anywhere in the world; or

3. the manufacture or sale of Propylene Polymers in the United States or Canada; or

B. Acquire any assets used for or previously used for (and still suitable for use for)

1. the research and development (other than only implementation of technology licensed from others), or sale or licensing to any person, of PP Technology or Catalyst Technology anywhere in the world;

2. the research and development, sale, or manufacture for sale of PP Catalyst, Catalyst Support, or Catalyst Systems anywhere in the world; or

3. the manufacture or sale of Propylene polymers in the United States or Canada.

Provided, however, these prohibitions shall not relate to the construction of new facilities or the acquisition of new or used equipment in the ordinary course of business from a person other than the persons referred to in Paragraph VII.A of this Order. Provided, further that this Paragraph VII of this Order shall not apply to the acquisition of Technipol by Montell following completion of the divestiture of the Properties to Be Divested and expiration of the attached Hold Separate Agreement.

#### VIII

It is further ordered that:

A. Within sixty (60) days from the date this Order becomes final and every sixty (60) days thereafter until Shell has fully complied with the provisions of Paragraphs II and V of this Order, Shell Oil shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraphs II and V

of this Order. Shell Oil shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II and V of the Order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Shell Oil shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

B. One (1) year from the date this Order becomes final, annually for the next nine (9) years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, Royal Dutch, Shell Oil, Montedison and Montell shall each file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with this Order.

#### IX

It is further ordered that Royal Dutch, Shell T&T, Shell Oil, Montedison and Montell shall each notify the Commission at least thirty (30) days prior to any proposed change in such company, 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 such company that may affect compliance obligations arising out of this Order.

#### X

It is further ordered that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request, and on reasonable notice, Shell, Montedison and Montell shall each permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Shell, Montedison or Montell, as applicable, relating to any matters contained in this Order; and

B. Upon five (5) days notice to Shell, Montedison or Montell and without restraint or interference from it, to interview its officers, directors or employees, who may have counsel present, regarding such matters.

#### XI

It is further ordered that this Order shall terminate twenty (20) years from the date this Order becomes final.

#### Attachment I

In the Matter of: Montedison S.p.A., a corporation, HIMONT Incorporated, a corporation, Royal Dutch Petroleum Company, a corporation, The "Shell" Transport and Trading Company, p.l.c., a corporation, and Shell Oil Company, a corporation, File No. 941-0043.

#### Agreement to Hold Separate

This Agreement to Hold Separate ("Agreement") is by and among Montedison S.p.A., a corporation organized, existing and doing business under the laws of Italy with its principal executive offices located at Foro Buonaparte, 31, 20121 Milan, Italy, and its wholly-owned subsidiary, HIMONT Incorporated, a corporation organized, existing and doing business under the laws of the State of Delaware with its principal executive offices located at Three Little Falls Centre, 2801 Centerville Road, Wilmington, Delaware 19850-5439 (collectively "Montedison"); Royal Dutch Petroleum Company, a corporation organized, existing and doing business under the laws of the Netherlands with its principal executive offices located at Carel van Bylandtlaan 30, The Hague, The Netherlands, and The "Shell" Transport and Trading Company, p.l.c., a corporation organized, existing and doing business under the laws of England with its principal executive offices located at Shell Centre, London SE1 7NA, England, and their wholly-owned subsidiary, Shell Oil Company, a corporation organized, existing and doing business under the laws of the State of Delaware with its principal executive offices located at One Shell Plaza, Houston, Texas 77002 (collectively "Shell"); and the Federal Trade Commission (the "Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. § 41, et seq. (collectively, the "Parties").

#### Premises

Whereas, on or about December 30, 1993, Montedison and Shell Petroleum N.V., a holding company of the Shell Group, entered into an agreement providing for the merger (hereinafter the "Acquisition") of the majority of the polyolefin assets and businesses of Montedison (hereinafter the "Montedison Merged Assets") and the majority of the polyolefin assets and



businesses of Shell (hereinafter the "Shell Merged Assets"); and

Whereas, Montedison and Shell each develop a license PP Technology and Catalyst Technology and each develop, manufacture and sell PP Catalyst and Propylene Polymers; and

Whereas, Montedison will establish Technipol and hold Technipol separate from Montell in accordance with the Decision of the Commission of the European Communities in Case No. IV/M. 269-SHELL/MONTECATINI; and

Whereas, the Commission is now investigating the Acquisition to determine if it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order ("Consent Order"), which would require the divestiture of certain assets, the Commission must place the Consent Order on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* of the Montedison Merged Assets and the Shell Merged Assets, respectively, during the period specified in Paragraph 4 of this Agreement, divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of the Properties to Be Divested as described in Paragraph I.Q of the Consent Order and the Commission's right to have the Properties to Be Divested continue as a separate, viable and independent entity; and

Whereas, the purpose of this Agreement and the Consent Order is to:

(i) Preserve the Properties to Be Divested, also referred to herein as "Polyco," as a viable business independent from Montedison, pending the divestiture of the Properties to Be Divested as a viable and ongoing enterprise;

(ii) Preserve Technipol as a viable business independent from Shell, pending the divestiture of the Properties to Be Divested as a viable and ongoing enterprise; and

(iii) Remedy any anticompetitive effects of the Acquisition; and

Whereas, Montedison's and Shell's entering into this Agreement shall in no way be construed as an admission by Montedison and Shell that the Acquisition is illegal, and this Agreement shall in no way be construed as limiting in any way the obligations of Montedison and Shell pursuant to the Decision of the Commission of the European Communities in Case No. IV/M. 269-SHELL/MONTECATINI; and

Whereas, Montedison and Shell understand that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, the Commission will not seek a temporary restraining order, preliminary injunction, or permanent injunction with respect to the Acquisition, and in recognition that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order to which it is annexed and made a part thereof, and, in the event the required divestiture is not accomplished, to seek divestiture of the Properties to Be Divested and such other relief as the Commission may consider appropriate, the Parties agree as follows:

1. Montedison and Shell agree that from the date this Agreement is signed by Shell and Montedison until the earliest of the dates listed in Paragraphs 1.a or 1.b, they each will comply with the provisions of this Agreement:

a. Ten days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Section 2.34 of the Commission's Rules; or

b. The day after the divestiture required by the Consent Order has been completed.

2. Montedison, Royal Dutch, Shell T&T and Shell Oil agree to execute and be bound by the attached Agreement Containing Consent Order and to comply, from the date this Agreement is accepted, with the provisions of the Consent Order as if it were final.

3. The terms capitalized herein shall have the same definitions as in the Consent Order. In addition, the following terms used herein shall have the following definitions:

a. "Montedison PP Technology" means PP Technology and Catalyst Technology, including Know-How and

patent rights, developed, under research and development, used, offered for license, or licensed to any person by Montedison at any time prior to the date of transfer to Technipol of the Montedison Properties to Be Transferred. For purposes of this Agreement Catalloy process and related catalyst technology and technology concerning the production of PP Catalyst or the production of any other component of Catalyst Systems shall be excluded from "Montedison PP Technology."

b. "Montedison Properties to Be Transferred" means the businesses, rights and interests, and other assets, tangible and intangible, required to be transferred from Montedison to Technipol pursuant to Paragraph 8 of this Agreement.

c. "Existing Montedison Licenses" means licenses of Montedison PP Technology to persons other than Montell Affiliates in effect as of the date of transfer to Technipol of the Montedison Properties to Be Transferred and includes so-called "catalyst use know-how licenses," "process know-how licenses" and "patent licenses."

d. "Improvements" means all refinements, optimizations, or new technical developments, patentable or unpatentable, of Know-How, PP Technology and Catalyst Technology, with commercial application, other than Major Advances.

e. "Major Advances" means all new technical developments of and changes, patentable or unpatentable, to existing Know-How, PP Technology and Catalyst Technology with commercial application, of the type generally recognized in the industry as revolutionary or of major consequence and would, upon commercial implementation, (a) reduce production costs of Propylene Polymers by at least one (1) cent per pound; (b) significantly increase the quality, productivity or selling potential of the PP Catalyst, Catalyst Support or Catalyst System, or the quality or selling potential of the Propylene Polymers; or (c) enable production of new Propylene Polymers commercially competitive primarily in end-uses for which Propylene Polymers produced and sold commercially have not been previously suitable for technological reasons. Major Advances include, for example:

i. In the case of PP Technology, elimination of a unit operation, addition of a unit operation, or introduction of a new comonomer or additive;

ii. In the case of PP Catalyst, a change in the major type of Catalyst Support;

iii. In the case of Catalyst Systems, a change in the major type of components

or elimination of one component together with a type change in another component; and

iv. In the case of Propylene Polymers, new compositions or types that display chemical and physical properties not previously achievable by the relevant technology.

4. Montedison and Shell agree that from the date this Agreement is signed by Montedison and Shell until March 1, 1995, Montedison will hold the Montedison Merged Assets separate and apart from Shell and from Montell, and Shell will hold the Shell Merged Assets separate and apart from Montedison and from Montell.

5. Commencing prior to, or concurrently with, transfer to Montell of the Shell Merged Assets, Shell will hold the Properties to Be Divested as they are presently constituted (hereafter "Polyco") separate and apart on the following terms and conditions:

a. Shell and Shell Oil, as applicable, shall transfer to Polyco all ownership and control of the Properties to Be Divested. Polyco shall be held separate and apart and shall be operated independently of Shell (meaning here and hereinafter, Shell excluding Polyco and excluding all personnel connected with Polyco as of the date this Agreement is signed) except to the extent that Shell Oil must exercise direction and control over Polyco to assure compliance with this Agreement or with the Consent Order.

b. Shell Oil shall separately incorporate Polyco and cause Polyco to adopt new Articles of Incorporation and By-laws and any other required documents for Polyco that are not inconsistent with other provisions of this Agreement. Shell Oil shall also elect a new six-person board of directors of Polyco ("New Board") prior to, or concurrently with, transfer of any assets or businesses from Shell into Montell or merger of any part of Shell and Montell or Montedison. Questions before the New Board shall be approved by a simple majority of the directors voting on the matter, provided that Polyco shall engage in no transaction that is precluded by this Agreement or by the Consent Order. Shell Oil may elect the directors to the New Board; provided, however, that such New Board shall consist of at least three outside directors neither previously nor currently employed by Shell or Montedison; two officers of Polyco; and a maximum of one Shell Oil (but not Royal Dutch, Shell T&T or Montell) director, officer, employee, or agent; provided, further, that such Shell Oil director, officer, employee or agent shall enter into a confidentiality agreement in accordance

with the provisions of Paragraph 5.h hereof and shall not be a person involved in Shell or Montell's Propylene Polymers or PP Catalyst businesses, as defined in Paragraph I. of the Consent Order. Such director who is also a Shell Oil director, officer, employee or agent shall participate in matters that come before the New Board only for the limited purpose of carrying out Shell Oil's and Polyco's responsibilities under this Agreement or under the Consent Order. Shell Oil will take no action to delay or limit expansion of production capacity by Polyco. Except as permitted by this Agreement, the Shell Oil director shall not participate in any matter, or attempt to influence the votes of the other directors with respect to matters, including but not limited to expansion of capacity, that would involve a conflict of interest if Shell Oil and Polyco were separate and independent entities. In the case of deadlock by the New Board on any question in which the Shell Oil director participates, a second vote shall be taken on the question and the Shell Oil director shall not vote. The New Board shall include a chairman who is independent of Shell and is competent to assure the continual Viability and Competitiveness of Polyco. Shell Oil shall notify the Commission in its next compliance report submitted pursuant to Paragraph VIII.A of the Consent Order of the identity and relevant qualifications and experience of any person whom Shell Oil has appointed as an original or subsequent director of Polyco.

c. Except for the single Shell Oil director, officer, employee, or agent serving on the "New Board" (as defined in Paragraph 5.b), Shell shall not permit any director, officer, employee or agent of Shell to also be a director, officer, employee or agent of Polyco. In the event any members of management of the Properties to Be Divested should choose not to accept employment with Polyco, or should retire or otherwise leave their management positions, the non-Shell (as Shell is defined in Paragraph 5.a hereof) directors serving on the New Board (as defined in Paragraph 5.b hereof) shall have the exclusive power to replace such members of management.

d. Polyco shall be staffed with sufficient employees to maintain the Viability and Competitiveness of the Properties to Be Divested. Shell, Montell and Technipol shall not employ, or make offers of employment to, any person employed by Shell Oil whose principal duties, during the year prior to the date of transfer to Polyco of the Properties to Be Divested, related to the

management, development or operation of the Properties to Be Divested. This provision, however, does not apply to employment by Shell Oil of any employee who is terminated by Polyco or who is not offered employment by Polyco at a level of compensation and benefits at least equivalent to those held by the employee prior to the date of transfer to Polyco of the Properties to Be Divested. Shell Oil shall encourage and facilitate employment by Polyco of Shell Oil employees who had line responsibility with respect to the Properties to Be Divested in the year prior to the transfer to Polyco of the Properties to Be Divested; shall not offer any incentive to such employees to decline employment with Polyco or accept other employment in Shell; and shall remove any impediments that exist which may deter such employees from accepting employment with Polyco, including but not limited to the payment, or transfer for the account of the employee, of all accrued bonuses, pensions and other accrued benefits to which such employees would otherwise have been entitled had they remained in the employment of Shell Oil.

e. Shell shall not exercise direction or control over, or influence directly or indirectly, Polyco; provided, however, that Shell Oil may exercise only such direction and control over Polyco as is necessary to assure compliance with this Agreement or with the Consent Order, including dissolution, merger, consolidation, bankruptcy, sale of substantially all assets, major acquisitions, issuance of equity securities or any change in the legal status of Polyco.

f. Shell shall not cause or permit any destruction, removal, wasting, deterioration or impairment of Polyco, except for ordinary wear and tear. Shell Oil shall maintain the marketability and the Viability and Competitiveness of Polyco and shall not sell, transfer, encumber (other than in the normal course of business) or otherwise impair its marketability or Viability and Competitiveness. Shell Oil shall provide Polyco with sufficient working capital to operate at current rates of operation, to perform all necessary routine maintenance to, and replacement of, plant and equipment of the Properties to Be Divested, and to maintain the Viability and Competitiveness of the Properties to Be Divested.

g. Shell shall not change the composition of the management of Polyco except that the non-Shell (as Shell is defined in Paragraph 5.a hereof) directors or members serving on the New Board (as defined in Paragraph 5.b hereof) shall have the power to remove

any employee. With the exception of the single Shell Oil director, Shell Oil shall not remove directors of the New Board except for cause.

h. Except as permitted by this Agreement, the Shell Oil New Board member shall not in his or her capacity as a New Board member receive Material Confidential Information and shall not disclose any such information received under this Agreement to Shell, Montedison or Montell or use it to obtain any advantage for Shell, Montedison or Montell. Any Shell Oil director, officer, employee or agent who obtains or may obtain confidential information under this Agreement shall enter a confidentiality agreement prohibiting disclosure of confidential information until the day after the divestitures required by the Consent Order have been completed.

i. Except as required by law and except to the extent that necessary information is exchange in the course of defending investigations or litigation, obtaining legal advice, acting to assure compliance with this Agreement or the Consent Order (including accomplishing the divestitures), or negotiating agreements to dispose of assets, Shell, Montedison and Montell shall not receive or have access to, or the use of, any Material Confidential Information of Polyco, except as such information would be available to Montedison in the normal course of business if the Acquisition had not taken place. Any such information that is obtained by Shell Oil pursuant to this Paragraph shall only be used for the purposes set out in this Paragraph. Provided, however, until divestiture of Polyco, hourly personnel assigned to Polyco plant operations may continue to be covered by existing contracts between Shell Oil and any unions representing such employees; and Shell Oil may assign Shell Oil personnel to perform the accounting, analytical chemistry, human resources, information systems, transportation services and tax functions for Polyco provided that such Shell Oil personnel shall enter into confidentiality agreements in accordance with the provisions in Paragraph 5.h hereof and provided further that those Shell Oil personnel working with Material Confidential Information of Polyco shall not be involved in Montell's PP Technology, Catalyst Technology, PP Catalyst or Propylene Polymers business, as defined in Paragraph I. of the Consent Order for the period that Shell must comply with Paragraph 5 hereof. Provided further that the New Board (as defined in subparagraph 5.b hereof) may designate and contract with

Shell Oil as a nonexclusive sales agent for sales of PP Catalyst or Propylene Polymers by Polyco outside the United States, provided that all Shell Oil personnel with access to Material Confidential Information of Polyco in connection with such contract or agency shall, prior to gaining such access, enter into confidentiality agreements in accordance with the provisions of Paragraph 5.h hereof.

j. All earnings and profits of Polyco shall be retained separately in Polyco.

k. Should any transfer to Polyco of an agreement, contract or license required to be included in the Properties to Be Divested not be possible after reasonable effort by Shell Oil due to another party withholding its consent to the transfer, Shell Oil shall enter into an agreement with Polyco the purpose of which agreement is to realize the same effect as such transfer. Further, Shell Oil shall secure, at its expense, patent licenses, or assignments of patent licenses, extending to Polyco rights and royalty rates with respect to the manufacture and sale of Propylene Polymers and PP Catalyst, and rights to expand production and sale, no less favorable than those held by Shell Oil as of the date of transfer to Polyco of the Properties to Be Divested.

6. Prior to, or concurrently with, transfer to Montell of the Shell Merged Assets, Royal Dutch and Shell T&T shall ensure that companies of the Shell Group shall:

a. Take such actions as are necessary to establish and maintain separate and apart from Montell the Koninklijke/Shell Laboratorium Amsterdam ("KSLA") research and development laboratory of Shell Research B.V., a company of the Shell Group; and

b. Take such actions as are necessary to ensure that no Shell research personnel who have had access to Unipol PP Technology (other than Catalyst Technology received by Shell Oil from other companies of the Shell Group) within one (1) year prior to the date of the formation of Montell engage in research at facilities of Montell.

7. Shell Oil's Pecten international marketing organization shall not market or distribute products of Montell but may, as requested by Polyco, market and distribute products produced by Polyco.

8. Prior to, or concurrently with, transfer to Montell of the Montedison Merged Assets, Montedison shall

a. transfer to Technipol as an ongoing business:

i. PP research and development facilities in the Giulio Natta Research Center in Ferrara, Italy, by outright transfer or lease, including transfer of its PO3 pilot plant, equipment, rights-of-

way, easements, and other rights and assets appropriate and sufficient to preserve the Viability and Competitiveness of the Montedison PP Technology business.

ii. The irrevocable worldwide right, for a period not to expire prior to the divestiture of the Properties to Be Divested, to grant to any person perpetual Montedison PP Technology licenses subject to any lawful rights previously granted to persons not parties to this Agreement. This right shall be exclusive subject to the right of Montell to license Montell Affiliates.

iii. Existing Montedison Licenses and Montedison's PP Catalyst supply contracts with persons other than Montell Affiliates. Should any such transfer not be possible after reasonable effort by Montedison due to the other party withholding its consent to the transfer, Montedison or Montell shall enter into an agreement with Technipol to service the licenses not transferred to Technipol and account for revenues from such licenses strictly for the benefit and account of Technipol, the purpose of which agreement is to realize to the extent possible the same effect of a transfer of such licenses.

iv. Montedison's PP Catalyst sales business.

v. Personnel who possess the specific skills and experience required by Technipol sufficient to support, conduct and preserve the Viability and Competitiveness of the Montedison Properties to Be Transferred. Montedison shall appoint Technipol's managers on the basis of demonstrated ability and specific experience in the Montedison PP Technology field.

vi. Such other assets (including cash and working capital) and personnel as may be required to effectuate the remedial purpose of this Order and to assure that Technipol will be capable of operating independently at the same level of research, development and licensing of PP Technology, and sale of PP Catalyst as existed in the Montedison Properties to Be Transferred on average during the two (2) years prior to the Transfer Date.

b. Physically separate, to the extent feasible, the assets, personnel, offices and facilities transferred or leased to Technipol from those retained in Montedison and from those transferred to Montell so as to assure the independence of Technipol from Montell and to assure that Material Confidential Information that is not to be made available to another person pursuant to the Consent Order and this Agreement is not accessible to such person.

c. Assign to Technipol all other agreements in which Montedison grants to a person other than Montell or a Montell Affiliate the right to practice Montedison PP Technology. Should any such assignment not be possible after reasonable effort by Montedison due to the other party withholding its consent to the assignment, Montedison or Montell shall enter into an agreement with Technipol the purpose of which is to realize the effect of such assignment.

d. Take such actions as necessary to ensure an ongoing agreement between Montell and Technipol pursuant to which Montell will provide to Technipol, at Montell's cost, services (such as building security, fire protection, trash removal, shipping and receiving, accounting and cleaning services), utilities and common maintenance for the Montedison Properties to Be Transferred, as may be requested by Technipol.

Provided, however, that Montedison shall retain for Montell ownership of, and free right to practice and use, and sell product resulting from the practice or use of, all Montedison PP Technology and PP Catalyst production assets.

9. Commencing prior to, or concurrently with, transfer to Montell of the Montedison Merged Assets, Montedison will hold Technipol as constituted in accordance with Paragraph 8 of this Agreement separate and apart on the following terms and conditions:

a. Montedison shall separately incorporate Technipol and adopt Articles of Incorporation and By-laws for Technipol that are not inconsistent with other provisions of this Agreement. Montedison shall also elect a board of directors of Technipol prior to, or concurrently with, transfer to Montell of the Montedison Merged Assets.

b. Technipol shall be operated independently of Montell and Shell, and neither Shell nor Montell shall have any ownership or other financial interest in Technipol or exercise direction or control over, or influence directly or indirectly, Technipol, except as specifically authorized by this Agreement.

c. Montedison shall not permit any director, officer, employee or agent of Montell, or any director, officer, employee or agent of Montedison involved in management or oversight of Montell, to also be a director, officer, employee or agent of Technipol.

d. Any Montedison director, officer, employee or agent who obtains or may obtain Material Confidential Information of Technipol under this Agreement shall not disclose to Shell or Montell such Material Confidential

Information until the day after divestiture of the Properties to Be Divested has been completed.

e. Montedison shall not cause or permit any destruction, removal, wasting, deterioration or impairment of Technipol, except for ordinary wear and tear. Montedison shall also maintain the Viability and Competitiveness of Technipol and shall not sell, transfer, encumber (other than in the normal course of business) or otherwise impair its Viability and Competitiveness.

f. The purpose of the formation of Technipol and the transfer to it of the Montedison Properties to Be Transferred is to ensure the continuation of a separate, full-functioning entity to conduct the business of the Montedison Properties to Be Transferred and to preserve the Viability and Competitiveness of that business until the Properties to Be Divested are divested.

g. Montell shall provide Technipol and its licensees and prospective licensees access to any and all of Montell's commercial scale PP plants using Montedison PP Technology for demonstrating the PP Technology and Catalyst Technology used in the plant to prospective licensees and shall provide technical assistance and training for personnel of Technipol's licensees. In consideration for providing such services and assistance to Technipol, Montell may charge no more than its actual hourly cost of pay and benefits for the services of Montell personnel providing technical assistance and training and, in the case of technical assistance or training by Montell personnel at a licensee's or prospective licensee's facilities, reasonable and customary travel and per diem subsistence costs of such personnel.

h. With respect to future Improvements or Major Advances in Montedison PP Technology by Technipol or Montell:

i. Technipol and Montell shall each own any Improvements or Major Advances it develops at its own cost or finances.

ii. Technipol shall have the right to license to any person any results obtained from research and development in the field of PP Technology performed by Technipol under contract for Montell.

iii. Technipol may grant Montell a paid-up, royalty-free, perpetual and non-exclusive right to use any Improvements owned by Technipol or received by Technipol from its licensees.

iv. Technipol may grant Montell a non-exclusive license to use any Major Advances owned by Technipol or

received by Technipol from its licensees on a non-discriminatory basis on terms available to other persons.

v. Montell shall grant Technipol a paid-up, royalty-free, perpetual and non-exclusive right to license persons other than Montell Affiliates to use any Improvements owned by Montell.

vi. Montell shall grant Technipol the right to license third parties to use any Major Advances owned by Montell, unless Montell is contractually prohibited, by contract with any person other than a Montell Affiliate or a respondent, from sharing such Major Advances with Technipol. Such grant to Technipol shall be on reasonable terms and conditions which shall, in any event, be no less favorable to Technipol than those offered by Montell to any person other than a Montell Affiliate.

i. Technipol shall have the exclusive right, subject to any lawful rights previously granted to persons not parties to this Agreement, to enforce intellectual property rights with respect to Montedison PP Technology, and to sell PP Catalyst to persons other than Montell and Montell Affiliates.

j. Except as expressly provided in this Agreement, all sales, licensing and other business relationships between Technipol and either Montedison, Shell or Montell shall be conducted on a non-discriminatory basis on terms available to other persons.

k. Pursuant to a PP Catalyst supply agreement between Montell and Technipol, Montell shall produce PP Catalyst, including Improvements thereto, for Technipol for use by Technipol's licensees and PP Catalyst customers, subject to the rights of Akzo Nobel. To this end, Montell shall dedicate such portion of its PP Catalyst production capacity as is required to supply Technipol's licensees and PP Catalyst customers. The price for PP Catalyst supplied by Montell to Technipol shall be negotiated between Montell and Technipol, but in no event shall be more than the lowest contract price, in terms of the price per pound of Propylene Polymers produced per pound of PP Catalyst, for PP Catalyst available to a licensee other than a Montell Affiliate or government controlled licensee, as of December 31, 1993, recalculated in accordance with the pricing formula in the PP Catalyst supply contract for that licensee, less eight percent (8%).

l. Pursuant to a Catalyst Support supply agreement between Montell and Technipol, Montell shall produce Catalyst Support, including Improvements thereto, for Technipol for sale to Akzo Nobel. The price for Catalyst Support supplied by Montell to

Technipol shall be negotiated between Montell and Technipol, but in no event shall be more than the price charged to Akzo Nobel as of December 31, 1993, recalculated in accordance with the pricing formula in the Catalyst Support supply contract between Akzo Nobel and Himont, less eight percent (8%).

m. Notwithstanding any agreement entered into by Montell and Technipol pursuant to Paragraphs 9.k and 9.l of this Agreement, Technipol may acquire PP Catalyst and Catalyst Support from any other person.

n. Technipol shall provide to Montell, on the date of transfer to Technipol of the Montedison Properties to Be Transferred and on the first day of every calendar quarter thereafter, an estimate of its requirements for PP Catalyst and Catalyst Support for the following twelve (12) months. Montell shall supply PP Catalyst and Catalyst Support in quantities sufficient to maintain an inventory of PP Catalyst and Catalyst Support equivalent to Technipol's requirements for PP Catalyst and Catalyst Support for a period of six (6) months. In the event that Montell is unable to maintain an inventory of PP Catalyst and Catalyst Support sufficient to supply Technipol's requirements for PP Catalyst and Catalyst Support for a period of six (6) months, Montell will grant to Technipol the right and Know-How necessary to produce, or have produced on its behalf, PP Catalyst and Catalyst Support.

o. In the case of any shortage of PP Catalyst or Catalyst Support production Montell shall continue to supply Technipol with its requirements except that in the case of shortages that are not the result of Montell's actions Montell may allocate PP Catalyst and Catalyst Support to Technipol and Montell and Montell Affiliates on a pro rata basis based on the previous twelve (12) months. In the case of any shortage of PP Catalyst or Catalyst Support to Technipol, Technipol may request that Montell expand the production facilities, at Montell's expense, in order to meet the requirements of Technipol.

p. Technipol shall have the sole right to determine, subject to PP Catalyst supply contracts with persons other than Montell or Montell Affiliates existing as of the date the Montedison Properties to Be Transferred are transferred to Technipol and the existing Akzo agreement, the sales price, quantity and type of PP Catalyst and Catalyst Support sold by Technipol to any person.

q. Montell and Shell shall not interfere in, or attempt to influence, any decisions or activities of Technipol.

r. Shell, Montedison, Montell, Technipol and Polyco shall not exchange or discuss between each other, directly or indirectly, current or future intentions, plans or forecasts for pricing, production or capacity for PP Catalyst, Catalyst Support, Catalyst Systems or Propylene Polymers, or royalty rates for licensing PP Technology or Catalyst Technology to others, except as required between Montell and Technipol in accordance with Paragraphs 9.k and 9.l of this Agreement.

10. Except as otherwise provided in the Consent Order or this Agreement, as required for the purpose of tax return preparation, compliance with any law or request from a revenue authority, or to the extent that necessary information is exchanged in the course of evaluating and consummating the formation of Montell, Technipol or Polyco, defending government investigations or litigation, or negotiating to dispose of assets:

a. Neither Montedison, Montell, Technipol nor Polyco shall provide, disclose or otherwise make available to Shell any Material Confidential Information.

b. Neither Montedison nor Technipol shall provide, disclose or otherwise make available to Montell any Material Confidential Information of Technipol.

c. Shell shall not provide, disclose or otherwise make available to Montedison, Montell or Technipol any Material Confidential Information of Polyco or the Unipol/SHAC Technology Business (other than Catalyst Technology received by Shell Oil from other companies of the Shell Group), provided however, nothing in this Paragraph 10.c of this Agreement shall prohibit (a) Montell Affiliates who are licensees of Unipol PP Technology from receiving information, in accordance with such license, for use in their Unipol PP Technology licensed production facilities, including information obtained by Shell, prior to the formation of Montell, under The Tripartite Catalyst Research Agreement; and (b) any communication between Shell and Montell necessary to ensure that Montell and its employees make no unauthorized use or disclosure of any Material Confidential Information.

d. Neither Montell nor Shell shall provide, disclose or otherwise make available to Montedison or Technipol any Material Confidential Information.

Provided, however, that nothing in this Agreement shall limit or prohibit (a) Montell, Technipol or Polyco from licensing or otherwise doing business on a nondiscriminatory basis with each other or with any entity in which Montedison or a Shell Group company has an interest; or (b) persons elected by

Shell or Montedison to the Montell board of directors from participating in decisions relating to Montell if they do not also participate in decisions relating to similar businesses of Technipol or Polyco.

11. To the extent that this Agreement or the Consent Order requires Shell or Montedison to take, or prohibits Shell or Montedison from taking, certain actions that otherwise may be required or prohibited by contract, Shell and Montedison shall abide by the terms of this Agreement and the Consent Order and shall not assert as a defense such contract rights in a civil penalty action brought by the Commission to enforce the terms of this Agreement or the Consent Order.

12. Should the Federal Trade Commission seek in any proceeding to compel Shell (meaning here and hereinafter Shell including Polyco) to divest itself of the Montedison Merged Assets, to compel Shell to divest any assets of businesses of the Shell Merged Assets or the Montedison Merged Assets that it may hold, to compel Montedison to divest itself of the Shell Merged Assets, to compel Montedison to divest any assets or businesses of the Montedison Merged Assets or the Shell Merged Assets that it may hold, or to seek any other injunctive or equitable relief for any failure to comply with the Consent Order of this Agreement, or in any way relating to the Acquisition, Shell and Montedison shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. Shell and Montedison also waive all rights to contest the validity of this Agreement.

13. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to Montedison, Shell, Polyco or Montell made to its principal office, Montedison, Shell, Polyco and Montell shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of Montedison or Shell and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Montedison, Shell, Polyco or Montell relating to compliance with this Agreement; and

b. Upon ten (10) days notice to Montedison, Shell, Polyco or Montell and without restraint or interference from it, to interview officers or

employees of Montedison, Shell, Polycor or Montell who may have counsel present, regarding any such matters.

14. This Agreement shall not be binding on the Commission until it is approved by the Commission.

#### **Analysis To Aid Public Comment on the Provisionally Accepted Consent Order**

The Federal Trade Commission ("the Commission") has accepted, for public comment, an agreement containing a proposed Consent Order from Montedison S.p.A. and Himont Incorporated (collectively "Montedison") and Royal Dutch Petroleum Company, The "Shell" Transport and Trading Company, p.l.c., and Shell Oil Company (collectively "Shell"). The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments from interested persons. Comments received during this period will become part of the public record. After sixty (60) 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 Order.

The Commission's proposed complaint alleges that on or about December 30, 1993, Montedison and Shell entered into an agreement to form and acquire equal interests in a joint venture, designated by Montedison and Shell as "Montell" and valued at over six billion dollars, that would merge the majority of Shell's and Montedison's worldwide polyolefins businesses. Shell would retain outside the proposed joint venture polypropylene assets of Shell Oil Company ("Shell Oil"), including Shell Oil's polypropylene catalyst and polypropylene resin production facilities, Shell Oil's rights and obligations under a 1983 Cooperative Undertaking Agreement with Union Carbide Corporation ("Union Carbide"), pursuant to which Shell Oil and Union Carbide research, develop and license polypropylene technology and polypropylene catalyst worldwide, and Shell Oil's interest in the Seadrift Polypropylene Company, a partnership with Union Carbide which produces polypropylene resin. According to the complaint, Shell would nonetheless control Shell Oil as well as Montell.

The proposed complaint further states that Montedison coordinates with Mitsui Petrochemical Industries Ltd. ("Mitsui") in licensing of polypropylene technology and in the sale of polypropylene catalysts and shares with Mitsui royalties from licensing of polypropylene technology and catalyst technology and profits from the sale of

polypropylene catalysts manufactured in the United States for sale to licensees in the Western Hemisphere.

The proposed complaint alleges that the joint venture agreement between Montedison and Shell violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; the proposed joint venture between Montedison and Shell, would, if consummated, violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act in the world markets for polypropylene technology, licensing of polypropylene technology and the licensing, production and sale of polypropylene catalysts, and in the United States and Canada markets for the production and sale of polypropylene impact copolymer resin; the proposed joint venture would have an adverse effect on U.S. export trade in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and the agreement between Montedison and Mitsui violates Section 5 of the Federal Trade Commission Act.

According to the proposed complaint, polypropylene technology and catalyst technology are essential for entry into the production of polypropylene resin, and polypropylene catalysts are essential inputs in the production of polypropylene resin. Polypropylene resin is a thermoplastic with distinct price/performance characteristics and physical properties and relatively low cost and low density. Polypropylene impact copolymer resin is a type of polypropylene resin with high impact strength suitable for low temperature applications and produced through copolymerization, in a second reactor, of polypropylene and ethylene or other olefin monomers.

As alleged in the proposed complaint, Montedison, through Himont, is the leading competitor in each of the relevant markets. Shell is the second largest producer of polypropylene catalyst, polypropylene resin and impact copolymer polypropylene resin in the world, is a leader in catalyst technology, and is a significant competitor in the manufacture and sale of polypropylene resin and polypropylene impact copolymer resin in the United States and Canada. Shell Oil and Union Carbide under the Cooperative Undertaking Agreement are the principal competitor to Montedison in research, development and licensing of polypropylene technology and catalyst technology. Other technologies are not a significant competitive constraint according to the complaint.

The purpose of the divestiture is to ensure continuation of the divested

assets as an ongoing, viable business engaged, in competition with Montedison and Montell and with other companies, in the research, development and licensing of polypropylene technology and catalyst technology and in the manufacture and sale of polypropylene catalysts and polypropylene resin including polypropylene impact copolymer resin, and to remedy any lessening of competition in the relevant markets resulting from the joint venture. The proposed Consent Order provides for accelerated divestiture. However, if Union Carbide declines to acquire the assets to be divested by Shell Oil, at fair market value as determined by an independent appraisal or as otherwise agreed by Shell Oil and Union Carbide, or Union Carbide objects to another acquirer approved by the Commission, the divestiture period may be extended to March 31, 1997. If Shell Oil fails to complete the required divestitures within the required period, the Commission may appoint a trustee to divest the assets required to be divested together with ancillary assets and businesses and arrangements necessary to assure the marketability of the divested assets and to assure that they are viable and competitive in the relevant markets. Any proposed divestiture pursuant to the Order must be approved by the Commission after the divestiture proposal has been placed on the public record for reception of comments from interested persons.

In addition, the proposed Consent Order would prohibit Montedison and Montell from sharing in royalties from licenses granted by Mitsui after the Order becomes final for use of polypropylene technology and catalyst technology in the United States or from entering into agreements with Mitsui for sharing of licensing royalties in the United States and would prohibit Montedison, Shell and Montell from entering into agreements to allocate markets for licensing of polypropylene technology and catalyst technology or for manufacture and sale of polypropylene catalysts.

A hold separate agreement executed as part of the Consent prohibits Shell and Montedison from transferring assets to Montell until March 1, 1995, and until Shell has completed the required divestiture, requires Shell to preserve and hold separate from Shell and Montell the assets required to be divested and requires Montedison to preserve, and hold separate from Shell and Montell, assets related to Montedison's polypropylene technology and polypropylene catalyst businesses.

For a period of ten years from its effective date, the Order would also prohibit Shell, Montedison and Montell from acquiring, without prior Commission approval, stock or other interest in any company engaged in, or assets used for, the research and development, manufacture for sale, or sale or licensing of polypropylene technology, catalyst technology or polypropylene catalyst anywhere in the world or the manufacture or sale of polypropylene polymers in the United States or Canada.

The purpose of this analysis is to invite public comment concerning the Consent Order and any other aspect of the joint venture or Montedison license agreements. This analysis is not intended to constitute an official interpretation of the Consent Agreement and Order or to modify its terms in any way.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 95-2061 Filed 1-26-95; 8:45 am]

BILLING CODE 6750-01-M

[File No. 941 0126]

### **Sensormatic Electronics Corporation; Proposed Consent Agreement With Analysis To Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, Sensormatic Electronics Corporation, a Florida-based manufacturer of electronic-article surveillance systems from acquiring patents and other exclusive rights for manufacturer installed disposable anti-shoplifting labels from Knogo Corporation. In addition, the consent agreement would require Sensormatic, for ten years, to obtain Commission approval before acquiring certain rights in connection with Knogo's SuperStrip, or any significant acquisition of entities engaged in, or assets used for, the research, development or manufacture of disposable labels, or acquisitions of patents or other intellectual property for such purposes.

**DATES:** Comments must be received on or before March 28, 1995.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:**

Ann Malester, Arthur Strong or Melissa Heydenreich, FTC/S-2224, Washington, DC 20580. (202) 326-2682, 326-3478 or 326-2543.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

### **Agreement Containing Consent Order**

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by Sensormatic Electronics Corporation ("Sensormatic") of certain assets of the Knogo Corporation ("Knogo"), and it now appearing that Sensormatic, hereinafter sometimes referred to as "proposed respondent," is willing to enter into an agreement containing consent order to cease and desist from making certain acquisitions, and providing for other relief:

It is hereby agreed by and between Sensormatic, by its duly authorized officer and its attorney, and counsel for the Commission that:

1. Proposed respondent Sensormatic is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its offices and principal place of business located at 500 NW. 12th Avenue, Deerfield Beach, Florida 33442.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the

Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceedings unless and until it is accepted by the Commission. If this agreement is accepted by the

Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) Issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.