

***Case No COMP/M.3558 -  
CYTEC / UCB -  
SURFACE  
SPECIALTIES***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

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Article 6(2) NON-OPPOSITION  
Date: 17/12/2004

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17.12.2004

SG-Greffe(2004) D/205942

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)b & 6(2)  
DECISION

**To the notifying party**

Dear Sir/Madam,

**Subject: Case No COMP/M. 3558 - CYTEC/UCB-Surface Specialties  
Notification of 29/10/2004 pursuant to Article 4(5) of Council Regulation  
No 139/2004<sup>1</sup>**

1. On 29.10.2004, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which Cytec Industries Inc. ("Cytec", USA) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the surface and specialties chemicals business of UCB S.A. ("Surface Specialties", Belgium) by way of purchase of shares and assets.
2. In the course of the procedure, the parties have submitted Commitments designed to eliminate competition concerns identified by the Commission, in accordance with Article 6(2) of the Council Regulation. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Council Regulation and, in the light of these Commitments, does not raise serious doubts as to its compatibility with the Common Market and the EEA Agreement.

## **I. THE PARTIES AND THE OPERATION**

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<sup>1</sup> OJ L 24, 29.1.2004 p. 1.

3. Cytec produces specialty chemicals and materials, including mining and water treatment chemicals, coating chemicals, adhesives and composite materials and building block chemicals.
4. Surface Specialties produces coating chemicals, adhesives and chemicals used for graphic arts applications.
5. The acquisition of Surface Specialties will give Cytec an opportunity to diversify its product offering and geographic presence so as to be able to participate in chemicals markets in which it is not presently active. For UCB S.A., the sale of Surface Specialties will enable it to pursue its strategy of focussing solely upon its pharmaceuticals business. The transaction consists of an acquisition of shares and assets, by which Cytec will acquire from UCB S.A. 100% of the shares in Surface Specialties the legal entity that controls the twenty-eight subsidiary companies and two joint-ventures through which Surface Specialties conducts its operations, together with UCB's shares in Surface Specialties GmbH and certain assets owned by UCB S.A. that are used primarily in the Surface Specialties' business.. The operation will thus confer Cytec sole control of Surface Specialties.

## II. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 2.500 million (Cytec: € 1,450 million, Surface Specialties € 1,053 million). In each of at least three Member States, the combined aggregate turnover of all the undertakings concerned is more than EUR 100 million and in each of these Member States the aggregate turnover of each of at least two of the undertakings concerned is more than EUR 25 million ([...] Cytec EUR [...] million and Surface Specialties EUR [...] million. [...]: Cytec EUR [...] million and Surface Specialties EUR [...] million. [...]: Cytec EUR [...] million and Surface Specialties EUR [...] million). The aggregate Community-wide turnover of each of at least two of the undertakings concerned is more than EUR 100 million. (Cytec € [...] million, Surface Specialties € [...] million). The undertakings concerned do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension according to Article 1(3) of the Merger Regulation.

## III. RELEVANT MARKETS

### The relevant product market

7. The Parties argue that the chemicals industry can be segmented into seven sectors: (i) Petrochemicals; (ii) **Specialties**; (iii) Life Sciences; (iv) Inorganics; (v) Fertilizers; (vi) Man-made Fibres; and (vii) Industrial Gases.
8. While Surface Specialties is only active in the specialties segment,<sup>2</sup> Cytec, in addition to its specialties activities, is also active in inorganics (*i.e.*, sulphuric acid), petrochemicals, man-made fibres and industrial gases (*i.e.*, phosphine gas).

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<sup>2</sup> For the sake of completeness, the Parties note that Surface Specialties produces formaldehyde (typically considered a petrochemical) but [...].

9. Therefore, the Parties argue that their only common sector of activity is the specialties segment. Both this sector's segmentation and the parties' claim regarding their limited overlapping activities, other than within the specialties segment, have been confirmed by the market investigation carried out by the Commission.

**a) Amino resins**

10. This case thus concerns specialty chemicals, the segment in the chemical industry that consists of businesses that convert "basic" chemicals into "active" ingredients for use in industrial products. Surface Specialties' activities are limited to the specialty chemicals segment. Cytec's activities in the inorganics and petrochemicals segments are discussed below, when addressing potential vertical relationships.
11. The parties have submitted that the only specialty chemicals area where their activities overlap significantly is that for the production and supply of amino resins. The parties consider the relevant market to comprise all amino resins on the basis of supply-side substitutability. Manufacturers producing one type of amino resins can relatively easily switch to the production of other type of amino resins.
12. The Commission has analysed in the past the amino resins segment<sup>3</sup> and concluded that the market could be further segmented on the basis of applications, such as amino resins for (i) industrial liquid coatings, (ii) reinforced rubber, (iii) wood and laminates, (iv) inks and graphics, (v) paper and textiles and (vi) electronic circuit boards. Whilst no definitive view was taken, the Solutia/Viking decision justifies such segmentation on the basis of a different chemical base structure of the resin - and therefore a distinct manufacturing process - for each type of application.
13. The market investigation has produced mixed results. On the one hand, amino resin customers have pointed to the absence of demand-side substitutability. The different amino resin types are not interchangeable in meeting the customer's needs and alternative amino resins suppliers need to undergo a qualification process before their amino resins can be used in the customer's products. The qualification process can take between six months and three years. On the other hand, most of Cytec's competitors point to supply-side substitutability. Being produced in batch processes, it is considered relatively easy and inexpensive for companies producing one type of amino resins to switch production to amino resins for other applications.
14. The market investigation has not provided sufficient arguments for such supply-side substitutability to override the possibility of narrowly defined application-based markets as indicated by a majority of amino resin customers. Therefore, for the purpose of this decision, it can be concluded that different product markets for amino resins can be identified along the applications they serve. As a result industrial liquid coatings and reinforced rubber amino resins, the two applications for which the concentration would produce significant overlaps, constitute separate product markets.

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<sup>3</sup> Case COMP/M.1763 – Solutia Inc./Viking Resins Group Holdings B.V.

### **b) Polyurethane Dispersions**

15. Apart from the amino resins markets, Cytec and Surface Specialties both sell polyurethane dispersions (“PUDs”) in the EEA. In previous decisions<sup>4</sup>, the Commission has not further segmented PUD on the basis of end-use applications, given the high degree of supply-side substitutability, thereby considering the market to comprise all PUDs. This has been confirmed by the market investigation.

### **c) Alkyd Resins**

16. Both Cytec and Surface Specialties sell Alkyd Resins in the EEA. According to the parties, distinct markets ought to be defined for water-borne alkyds (produced by Surface Specialties) on the one hand and solvent-borne alkyds (produced by Cytec) on the other hand. No competitive overlaps would arise in such case. The final view on whether Alkyd Resins need to be further segmented can however be left open, since the competitive assessment would not change materially, regardless of the market definition.

### **d) Polyurethane Chemicals**

17. Both Cytec and Surface Specialties produce polyurethane chemicals. The parties submit that their respective polyurethane chemicals are entirely different products that serve different applications and are marketed to different customers. Cytec’s output is to encapsulate and protect electronics and adhere seal filters. Surface Specialties’ polyurethane chemicals are used in the manufacture of weather-proof clothing and fabrics. The market investigation has not indicated that the parties are in competition with each other. In any case, the final view on whether polyurethane chemicals need to be further segmented according to applications can be left open, since the competitive assessment would not change materially regardless of the market definition.

### **The relevant geographic market**

18. With regard to the geographic scope, the parties submit that the affected markets are EEA-wide, if not world-wide. Specifically as regards amino resins, the Parties submit that prices are broadly the same across the whole of the EEA. The low transport costs and the fact that producers generally supply all of the EEA from a single plant are submitted by the parties as supporting amino resins markets that are at least EEA-wide in scope. This has generally been confirmed by the market investigation.
19. Whilst the parties submit that imports exert an increasingly important competitive constraint on the sale of amino resins in the EEA, this has not been confirmed by the market investigation. The absence of significant imports of any of the amino resins in question indicates rather that the relevant geographic market is not wider than the EEA.
20. For similar reasons, the relevant geographic market for Polyurethane Dispersions, Alkyd Resins and Polyurethane Chemicals can be considered as the EEA.

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<sup>4</sup> Case IV/M.751 – Bayer/Hüls and Case IV/M.1097 Wacker / Air Products

## IV. COMPETITIVE ASSESSMENT

### Market Positions

#### *1.1.1. Horizontal overlaps*

21. Cytec and Surface Specialties are relatively small suppliers in the overall market of amino resins, with a combined share of [0% - 10%] at most, facing much larger competitors such as Dynea ([20% - 30%]), Atofina ([10% - 20%]) and BASF.
22. However, the parties hold particularly strong positions in the production of urea, melamine and benzoguanamine resins which are mainly used as crosslinkers in industrial liquid coatings and for use as adhesion promoters for reinforced rubber.
23. With regard to amino resins in industrial coatings, the parties would have a combined merchant market share of [50% - 60%] (Cytec [30% - 40%] and Surface Specialties [10% - 20%]), compared to BASF ([10% - 20%]), Akzo ([0% - 10%]), DSM ([0% - 10%]) and others ([0% - 10%]). Contrary to its competitors, the parties are not vertically integrated downstream of amino resins (inks, paints and coatings).
24. Regarding amino resins for reinforced rubber, hexamethoxymethylmelaxnine (“HMMM”) resins and hexamethylenetetramine (“HMT”) resins are used as methylene donors in formulations of adhesion promoter systems for steelcord and fabric reinforcements for rubber products. Considering both resins to be part of the amino resins for reinforced rubber market, the new entity would have a combined merchant market share of [70% - 80%] (Cytec [50% - 60%] and Surface Specialties [20% - 30%]). Melamin ([0% - 10%]), Lanxess/Bayer ([0% - 10%]) and Ceca – distributing Cytec’s HMMM resin in the EEA- ([0% - 10%]) are the parties’ competitors in this market. Whilst the parties submit that cobalt sulphur, an alternative rubber adhesion promoter, to a certain extent constrains the prices for HMMM and HMT, the market investigation did not identify cobalt sulphur as an alternative to HMMM and HMT. Cobalt sulphur is produced by Michelin, OMG, Shepard and Rhodia. Even when cobalt sulphur were to be considered part of the reinforced rubber amino resins market, the parties would hold a nearly uncontested position on the merchant market for these products as almost all the production of Michelin, the most important cobalt sulphur producer, is used internally for the production of tyres.
25. The transaction does not lead to affected markets for the remaining amino resins application markets, as the level of competitive overlap is insignificant. Indeed, in all remaining amino resin application markets (wood and laminates, inks and graphics, paper and textiles, electronic circuit boards), Surface Specialties has a market share below 25%. In all these markets, Cytec has either no presence or a market share below [1% - 10%]. The operation will therefore have no significant effect on the market for these products.
26. The transaction results in limited competitive overlaps for PUDs. Considering an EEA market comprising all PUDs, Surface Specialties has a market share of [0% - 10%] whilst that of Cytec remains below [1% - 10%]. The operation will therefore have no significant effect on the market for this product.

27. Regarding Alkyd Resins, there would be no competitive overlap should separate markets be defined for water-borne alkyds (for which Surface Specialties is the leading supplier with a [30% - 40%] market share, whilst Cytec is absent from that market) and solvent-borne alkyds (for which Cytec has a market share below 25%, whilst Surface Specialties is absent from that market). Considering a market comprising all Alkyd Resins, Surface Specialties has a market share of below [10% - 20%] whilst that of Cytec remains below [1% - 10%]. The operation will therefore have no significant effect on the market for this product.
28. Also for Polyurethane Chemicals, the transaction does not lead to affected markets. Whilst the market investigation has confirmed that the parties' Polyurethane Chemicals do not serve the same applications, the merged entity would not hold market shares in excess of 25% on a market comprising all Polyurethane Chemicals. Cytec's market share on this market is less than [1% - 10%]. The operation will therefore have no significant effect on the market for this product.
29. Surface Specialties holds market shares in excess of 25% for a number of specialty chemicals. However, as these products are entirely unrelated to the specialty chemical portfolio of Cytec, the transaction will not lead to overlaps. These products include waterborne epoxies (EEA market share of [20% - 30%]), phenolic resins (EEA market share of [20% - 30%]), radiation-curable resins (EEA market share of [30% - 40%]) and polyester resins for powder coatings (EEA market share of [30% - 40%]). The market investigation has confirmed the absence of competitive overlaps on these markets.

#### *1.1.2. Vertically affected markets*

30. Cytec manufactures aminonitrile, acrylamide (and derivatives), sulphuric acid, surfactants and isocyanates are used by Surface Specialties as raw materials. Apart from acrylamide, Cytec has no or insignificant sales of these products in the EEA.
31. Nearly all EEA demand for acrylamide is for input into polyacrylamides ("PAMs"), products that are not produced by Surface Specialties and that are not related to the adhesives and resin additives for which Surface Specialties uses acrylamide. Cytec accounts for [more than 50%] of the EEA acrylamide merchant market, where it faces competition from SNF ([10% - 20%]) and Ciba ([0% - 10%]). These two players also account for [more than 50%] of all EEA acrylamide sales (both merchant and captive sales). Surface Specialties only consumes minor quantities of acrylamide. In this situation, even if Cytec were to supply all of the small amount of acrylamide required by Surface Specialties, it would still have to sell the bulk of its production to other customers. Furthermore, both SNF and Ciba have unused capacity which could be diverted to the merchant market. The market investigation has confirmed [...] in the EEA and has not raised competition issues related to Cytec's strong position on the merchant acrylamide market.

### **Competition Effects**

#### *1.1.3. Horizontal overlaps*

32. The merged entity's market shares for Amino Resins used for industrial coatings and reinforced rubber are indicative of market power. During the market investigation, the merged entity's leading market shares have been confirmed and a majority of the third parties engaged in these two markets (either as a competitor or

as a customers) have raised significant concerns about the competitive overlaps that would result from the merger. These third parties have raised the concern that the merged entity may be in a position to exert market power in these markets, which may lead to higher prices and/or a degradation of quality. Customers have indicated that Cytec and UCB are the main suppliers in these markets and that they currently compete fiercely on price and quality. Post merger, there would be significantly less pressure upon the parties to compete on price, which could negatively affect customer's purchasing prices. In addition, third parties have expressed concerns that a decrease in competition, resulting from the merger, would negatively affect technology developments in the market.

33. Whilst the parties have highlighted buyer power and the existing level of overcapacity in the market as factors alleviating the importance of the new entity's combined share in these markets, customers consider that it would not be sufficient to restrain the merged entity's market power. Customers' ability to switch to alternative suppliers is also complicated by qualification requirements. In the absence of qualified alternative suppliers, customers would have no choice than to accept higher prices or lower quality which may be imposed by the merged entity.

#### *1.1.4. No vertical foreclosure effects*

34. The market investigation has not pointed to possible negative competitive effects resulting from the actual or potential vertical relationships between the Parties.

#### *1.1.5. Conglomerate effects*

35. As confirmed by the market investigation, the new entity will not have a product offering that is materially different from Surface Specialties' pre-transaction range of products. Negative competitive effects resulting from range effects are therefore unlikely to arise.

## **COMMITMENTS SUBMITTED BY THE PARTIES**

36. In the course of the procedure, the Parties have offered, pursuant to Article 6(2) of the Merger Regulation Commitments with a view to removing the potential concerns arising as a result of the proposed transaction, as identified by the Commission in the course of its investigation. These Commitments were formally submitted on 26 November 2004 and were subsequently refined on 14 December 2004. The full text of the final Commitments is attached to this decision and forms an integral part thereof.

### **Summary of Commitments**

37. The following is a concise summary of the Commitments, highlighting the main features and the main thrust of the package of the Commitments and it does not constitute a legal interpretation or an exhaustive list thereof.
38. In order to address the competition concerns identified by the Commission, Cytec has proposed, already at the stage of pre-notification, to divest Surface Specialties' Fechenheim (Germany) production facility, which accounts for approximately [90% - 100%] of its amino resins production in Europe. The activities of this plant



include the manufacture of amino-resins in addition to those which give rise to competition problems.

39. Cytec submits that the divestment package will eliminate any potential competition concern raised by the operation in Europe, since nearly all overlaps will be removed with respect to both amino resins for industrial liquid coatings and amino resins for reinforced rubber.
40. The merged entity will retain two small European production facilities at La Lagosta (Spain) and at Werndorf (Austria), since these assets are primarily dedicated to the manufacturing of products other than amino resins. Cytec notes that [...]. The Commission considers that [...] are neither indispensable to eliminate the competition problem on the European market, nor to ensure a viable remedies package. As such it does not constitute a condition to the decision.
41. Quite apart from the European divestments, the parties have offered to include UCB's dedicated Indian Orchard amino resins plant located in Massachusetts (USA) and UCB's tolling agreement with Solutia Inc. for the production of amino resins at Solutia's Lasalle plant (Canada). The sale of these assets are aimed at solving the competition problems in Northern America and are not considered as constituting either conditions or obligations in this case.

#### **Assessment**

42. The proposed remedy would almost completely remove the overlap in the field of all Amino Resins and therefore also those for Amino Resins used for industrial coatings and reinforced rubber. The remedy is effectively going beyond what would be strictly necessary to remove competition concerns, because it would not be possible to carve out a viable business producing only those amino resins for which the concentration would lead to competition problems.
43. The business to be divested, includes all the assets and personnel required for the operation of the business.
44. The viability of the divested business and the effectiveness of the remedy to solve the competition concerns have been confirmed by a very large majority of the respondents to the Commission's market test. In that respect, the parties have put together a saleable and viable package that solves the competition problems identified for the European markets.
45. It can therefore be concluded that the Commitments are sufficient to remove the serious doubts as regards the compatibility of the proposed transaction with the common market.

#### **Conclusion on the Commitments**

46. In the light of the above, the Commission concludes that the Commitments submitted by Cytec on 26 November 2004 are sufficient to eliminate any serious doubts as to the compatibility of the transaction with the common market in relation to Amino Resins and specifically those Amino Resins used for industrial coatings and reinforced rubber markets identified above.

47. The Commitments provided for in paragraphs 1 to 4 constitute conditions of this decision, as only through full compliance therewith can the necessary changes on the relevant markets be achieved. The remaining Commitments constitute obligations as they concern the implementing steps, which are necessary to achieve the sought changes.

## **V. CONCLUSION**

48. For the above reasons, and subject to full compliance with the Commitments by Cytec, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6.1(b) and 6(2) of Council Regulation (EC) No 139/2004.

For the Commission,

(signed)

Neelie KROES

Member of the Commission

**NON-CONFIDENTIAL VERSION**

**COMP/M.3558  
CYTEC/UCB - SURFACE SPECIALTIES**

**COMMITMENTS TO  
THE EUROPEAN COMMISSION**

**26<sup>th</sup> November 2004**

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## **COMP/M.3558 – CYTEC/UCB-SURFACE SPECIALTIES COMMITMENTS TO THE EUROPEAN COMMISSION**

On 29th October 2004, Cytec Industries Inc. (“**Cytec**”) submitted a Form CO notification pursuant to Council Regulation (EC) No. 139/2004 (the “**Merger Regulation**”) in relation to a proposed concentration that would result in Cytec acquiring sole control of the Surface Specialities business (the “**Acquired Business**”) currently owned and controlled by UCB S.A. (“**UCB**”).

Pursuant to Article 6(2) of the Merger Regulation, Cytec hereby provides the following Commitments (the “**Commitments**”) in order to enable the European Commission (the “**Commission**”) to declare the acquisition by Cytec of the Acquired Business compatible with the common market and the EEA Agreement by its decision pursuant to Article 6(1)(b) of the Merger Regulation (the “**Decision**”).

The Commitments shall take effect upon the date of adoption of the Decision.

This text shall be interpreted in the light of the Decision to the extent that the Commitments are attached as conditions and obligations, in the general framework of Community law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under the Merger Regulation and under Commission Regulation (EC) No 802/2004.

### **Section A. Definitions**

For the purpose of the Commitments, the following terms shall have the following meaning:

**Affiliated Undertakings:** means, in relation to a Party, undertakings controlled by that Party, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in the light of the Commission Notice on the concept of a concentration under Council Regulation (EEC) No 4064/89.

**Closing:** the transfer of the legal title of the Divestment Business to the Purchaser(s).

**Closing Date:** the date on which the transfer of the legal title of the Divestment Business to the Purchaser(s) occurs.

**Cytec:** Cytec Industries Inc., a company incorporated under the laws of Delaware, USA, with its registered office at Five Garret Mountain Plaza, West Paterson, New Jersey 07424, USA.

**Divestment Business:** the business as defined in Section B and Schedules 1 and 2 that Cytec commits to divest within the period provided for in Section B.

**Divestiture Trustee:** one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by Cytec and who has received from Cytec the irrevocable and exclusive mandate to sell the Divestment Business.

**Effective Date:** the date of the first business day after the satisfaction or waiver of the conditions set forth in Section 6.1(a) of the Stock and Asset Purchase Agreement dated October 1, 2004, between UCB and Cytec.

**First Divestiture Period:** the period of [CONFIDENTIAL]\* from the Effective Date.

**Hold Separate Manager:** the person appointed by Cytec for the Divestment Business to manage the day-to-day business under the supervision of the Monitoring Trustee.

**Key Personnel:** all personnel necessary to maintain the viability and competitiveness of the Divestment Business, as listed in Schedule 2.

**Monitoring Trustee:** one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by Cytec, and who has the duty to monitor the Parties' compliance with the conditions and obligations attached to the Decision.

**Parties:** Cytec and the Acquired Business.

**Personnel:** the individuals identified in Point IX (a) of Schedule 1.

**Purchaser(s):** the entity or entities approved by the Commission as acquirer(s) of the Divestment Business in accordance with the criteria set out in Section D.

**Sale and Purchase Agreement(s):** the binding agreement(s) concerning the sale of the Divestment Business to the Purchaser(s).

**Trustee(s):** the Monitoring Trustee and the Divestiture Trustee.

**Trustee Appointment Date:** the date upon which the Monitoring Trustee is appointed pursuant to paragraph 19.

**Trustee Divestiture Period:** the period of [CONFIDENTIAL]\* from the end of the First Divestiture Period.

**UCB:** UCB S.A., a company incorporated under the laws of Belgium, with its registered office at Allée de la Recherche, B-1070 Brussels, Belgium.

## **Section B. The Divestment Business**

### Commitment to divest

- (1) Cytec commits to divest, or procure the divestiture of the Divestment Business by the end of the Trustee Divestiture Period as a going concern to the Purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 15. Cytec commits to find a Purchaser and to enter into a final binding Sale and Purchase Agreement with such Purchaser for the sale of the Divestment Business within the First Divestiture Period. If Cytec has not entered into such an agreement at the end of the First Divestiture Period, Cytec shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 24 in the Trustee Divestiture Period.
- (2) Cytec shall be deemed to have complied with this undertaking if, within a period not exceeding [CONFIDENTIAL]\* from the Effective Date, it has entered into a binding agreement for the sale in accordance with paragraph 1, provided that the Closing takes place no later than [CONFIDENTIAL]\* after the execution of the Sale and Purchase Agreement.
- (3) In order to maintain the structural effect of the Commitments, Cytec and its Affiliated Undertakings shall, for a period of 10 years after the Effective Date, not acquire direct or indirect influence over the whole or part of the Divestment Business.

### Structure and definition of the Divestment Business

- (4) The Divestment Business consists of:
  - tangible and intangible assets (including intellectual property rights) which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business;
  - licences, permits and authorisations issued by any governmental organisation that operate for the benefit of the Divestment Business and are legally transferable;
  - contracts, leases, commitments and customer orders of the Divestment Business; customer, credit and other records of the Divestment Business (items referred to under (a)-(c) hereinafter collectively referred to as “**Assets**”); and
  - the Personnel and the Key Personnel;

all as more particularly described in Schedules 1 and 2.

For a transitional period after Closing, the Divestment Business shall be entitled to benefit from service or supply arrangements which were previously provided by the Acquired Business or its Affiliated Undertakings, sufficient to enable the Divestment Business to function as before Closing.

Reporting

- (5) Cytec shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than ten days after the end of every month following the date of adoption of the Decision (or otherwise at the Commission's request).
- (6) Cytec shall inform the Commission and the Monitoring Trustee of the preparation of any data room documentation, information memorandum and due diligence procedure relating to the Divestment Business.

**Section C. Related commitments**

- (7) Cytec undertakes, from the Effective Date until Closing, to fulfil the obligations in paragraphs 8 to 13 below, to the extent possible and reasonably practicable.

Preservation of Viability, Marketability and Competitiveness

- (8) To preserve the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and to minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular, until Closing:
  - not to carry out any act upon its own authority that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;
  - to make available, or procure the making available of, sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans, but not including the making available of capital resources for the expansion of amino resin manufacturing capacity; and
  - to take all reasonable steps, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business.

Hold-Separate Obligations of Cytec

- (9) To keep the Divestment Business separate from the part of the Acquired Business that Cytec is retaining and to ensure that Key Personnel of the Divestment Business – including the Hold Separate Manager – have no involvement in any business retained by Cytec and vice versa. Cytec shall also ensure that the Personnel do not report to any individual outside the Divestment Business.
- (10) Prior to Closing, to assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable undertaking separate from the businesses retained by Cytec and to appoint a Hold Separate Manager who shall be responsible for the management of the Divestment Business, under the supervision of the Monitoring Trustee. The Hold Separate Manager shall, to the extent possible and reasonably practicable, manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by Cytec.

Ring-fencing

- (11) To implement all necessary measures to ensure that Cytec does not, after the date upon which Cytec acquires control of the Acquired Business, obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business with the exception of information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or whose disclosure is required by law.

Non-solicitation Clause

- (12) Subject to customary limitations, not to solicit, and to procure that Cytec's Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of [CONFIDENTIAL]\* after Closing.

Due Diligence

- (13) In order to enable potential purchasers to carry out reasonable due diligence of the Divestment Business, to provide to potential purchasers sufficient information as regards the Divestment Business as well as information relating to the Personnel and allow them reasonable access to the Personnel subject to customary confidentiality assurances and applicable legal requirements and dependent on the stage of the divestiture process.

**Section D. The Purchaser**

- (14) The Purchaser, in order to be approved by the Commission must: (i) be independent of, and unconnected to Cytec in any way that could undermine



the Purchaser's independence in operating the Divestment Business; and (ii) have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with Cytec and other competitors in the amino resins market; and (iii) neither be likely to create, in the light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant competition and other regulatory authorities for the acquisition of the Divested Business (the aforementioned criteria for the purchaser hereafter the "**Purchaser Requirements**").

- (15) Any final binding Sale and Purchase Agreement shall be conditional on the Commission's approval. When Cytec has signed a sale and purchase agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the sale and purchase agreement(s), to the Commission and the Monitoring Trustee. The proposal shall enable the Commission to verify that the Purchaser Requirements are fulfilled and that the Divestment Business is being sold in a manner consistent with the Commitments. The verification that the Divestment Business is being sold in a manner consistent with the Commitments shall include the Commission's expeditious approval of the Purchaser and of the final binding Sale and Purchase Agreement(s). The Commission may approve the sale of the Divestment Business without one or more Assets or members of Personnel or Key Personnel if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking into account the attributes of the proposed Purchaser.

## Section E. Trustee

### I. Appointment Procedure

- (16) Cytec shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee. If Cytec has not entered into a binding Sale and Purchase Agreement one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by Cytec at that time or thereafter, Cytec shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.
- (17) The Trustee shall be independent of the Parties and of UCB, possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither be nor become exposed to a conflict of interest that would impede its ability to carry out its mandate. The

Trustee shall be remunerated by Cytec in a way that does not impede the independent and effective fulfilment of its mandate.

*Proposal by Cytec*

- (18) No later than one week after the date of adoption of the Decision, Cytec shall submit a list of one or more persons whom Cytec proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period, Cytec shall submit a list of one or more persons whom Cytec proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out in paragraph 17.

*Approval or rejection by the Commission*

- (19) The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, Cytec shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Cytec shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

*New proposal by Cytec*

- (20) If each of the proposed Trustees is rejected, by either the Commission or the United States Federal Trade Commission, Cytec shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 16 and 19.

*Trustee nominated by the Commission*

- (21) If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom Cytec shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

- (22) The Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or Cytec, give any orders or instructions to the Trustee

in order to ensure compliance with the conditions and obligations attached to the Decision.

*Duties and obligations of the Monitoring Trustee*

- (23) Following its appointment, the Monitoring Trustee shall:
- (ii) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision;
  - (ii) oversee the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by Cytec with the conditions and obligations attached to the Decision. To that end, the Monitoring Trustee shall:
    - (a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by Cytec, in accordance with paragraphs 8 and 9 of the Commitments;
    - (b) supervise the management of the Divestment Business as a distinct and saleable undertaking, in accordance with paragraph 10 of the Commitments;
    - (d) (i) in consultation with Cytec, determine all necessary measures to ensure that Cytec does not, after the Effective Date, obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business, in particular strive for the severing or blocking of the Divestment Business's participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business, and (ii) decide whether such information may be disclosed to Cytec because the disclosure is reasonably necessary to allow Cytec to carry out the divestiture or because the disclosure is required by law;
    - (d) monitor the splitting of assets and the allocation of Personnel between the Divestment Business and Cytec and its Affiliated Undertakings;
  - (iii) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;
  - (iii) propose to Cytec such measures as the Monitoring Trustee considers necessary to ensure Cytec's compliance with the conditions and obligations attached to the Decision;

- (v) review and assess potential purchasers as well as the progress of the divestiture process and verify that potential purchasers receive sufficient information;
- i(iii) provide to the Commission, sending Cytec a non-confidential copy at the same time, a written report within fifteen days after the end of every month. The report shall cover the operation and management of the Divestment Business so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending Cytec a non-confidential copy at the same time, if it concludes on reasonable grounds that Cytec is failing to comply with these Commitments; and
- ii(iii) once Cytec has proposed to the Commission a Purchaser, within two weeks after receipt of the proposal, assess the independence and suitability of the proposed purchaser and the viability of the Divestment Business after the sale to the Purchaser and give its opinion to the Commission as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision.

*Duties and obligations of the Divestiture Trustee*

- (24) Within the Trustee Divestiture Period, the Divestiture Trustee shall sell **[CONFIDENTIAL]\*** the Divestment Business to a Purchaser, provided that the Commission has approved both the Purchaser and the final binding Sale and Purchase Agreement in accordance with the procedure laid down in paragraph 15. The Divestiture Trustee shall include in the Sale and Purchase Agreement such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the Sale and Purchase Agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of Cytec, subject to the Cytec's unconditional obligation to divest **[CONFIDENTIAL]\*** in the Trustee Divestiture Period.
- (25) In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within fifteen calendar days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to Cytec.

III. Duties and Obligations of Cytec

- (26) Cytec undertakes from the Trustee Appointment Date until Closing to provide the Trustee with all such cooperation, assistance and information as the Trustee may reasonably require, and Cytec legally is able to provide, to enable the Trustee to perform its tasks under its mandate, including, but without limitation, access to the Parties' books, records, documents, management or other personnel, facilities, sites and technical information. Cytec shall make available to the Trustee one or more offices on Cytec's premises and a representative of Cytec shall be available for meetings in order to provide the Trustee with the aforementioned information.
- (27) Cytec undertakes from the Trustee Appointment Date until Closing to provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business that, on the date upon which Cytec acquires control of the Acquired Business are carried out at headquarters level. Cytec shall provide the Monitoring Trustee, on request, with access to the information submitted to potential purchasers, in particular to any data room documentation and all other information given to potential purchasers in the due diligence procedure.
- (28) Cytec shall grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale, the Closing and all actions and declarations which the Divestiture Trustee considers reasonably necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, Cytec shall cause the documents required for effecting the sale and the Closing to be duly executed.
- (29) At the expense of Cytec, the Trustee may appoint advisors (in particular for corporate finance advice or legal advice), subject to Cytec's approval (such approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should Cytec refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard Cytec. Only the Trustee shall be entitled to issue instructions to the advisors. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served Cytec during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

IV. Replacement, discharge and reappointment of the Trustee

- (30) If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a conflict of interest:
- (a) the Commission may, after hearing the Trustee, require Cytec to replace the Trustee; or
  - b) Cytec, with the prior approval of the Commission, may replace the Trustee.
- (31) If the Trustee is removed in accordance with paragraph 30, the Trustee may be required to continue in its function until a new Trustee is in place to which the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 16-21.
- (32) The Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties, following a request from the Trustee or Cytec, after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

**Section F. The Review Clause**

- (33) The Commission may, where appropriate, in response to a request from Cytec showing good cause and accompanied by a report from the Monitoring Trustee:
- Grant an extension of the time periods foreseen in the Commitments; or
  - Waive or modify, in exceptional circumstances, one or more of the undertakings in these Commitments.

Where Cytec seeks an extension of a time period, it shall submit a request to the Commission no later than one month before the expiry of that period, showing good cause. Only in exceptional circumstances shall Cytec be entitled to request an extension within the last month of any period.

.....  
duly authorised for and on behalf of  
Cytec Industries Inc.

**SCHEDULE 1**

**The Divestment Business**

**The Divestment Business** means all of Cytec and its Affiliated Undertakings' right, title and interest, as of the time at which the sale of the Divestment Business to the Purchaser is consummated, in and to the products, assets, liabilities and employees listed below.

I. All business operations directly related to the production of amino resins by the Acquired Business at Fechenheim, including the additives currently produced at Fechenheim (all such business operations hereinafter referred to as "**Amino Resins Business Operations**").

II. The following production facility:

Fechenheim plant (owned by Surface Specialties Germany GmbH and Co KG): Surface Specialties' entire Fechenheim facility, located in the greater Frankfurt area within an industrial park operated by Allessa Chemie, including all reactors, solvent recovery and filtration equipment, tank farms for raw materials and finished products, filling stations, certain utilities and warehousing capacity, both for the production of amino resins as for the production of formaldehyde.

III. The inventory of raw materials, intermediates, and finished products used in the production of amino resins or held or produced by the Amino Resins Business Operations.

IV. The following intellectual property:

a) The intellectual property primarily relating to the Amino Resins Business Operations being all know-how in product development and application technology in the fields of impregnating resins and cross-linkers as well all of the Acquired Business's patents and patent applications in relation to the following patent families:

**[CONFIDENTIAL]\***

b) The granting of non-exclusive licenses, with rights to sub-license customers to the extent necessary to enable such customers to use the relevant products as inputs in the manufacture of other products, for the following patent families related to the Acquired Business's products that include amino resins in the formulation:

**[CONFIDENTIAL]\***

- V. The trademarks used by the Divestment Business, including the following: Maprenal®, Resimene®, Modacure®, Madurit®, Viamin®, and Hypersal®. For the additives produced at Fechenheim, the Divestment Business shall have a sole license to use the [CONFIDENTIAL]\* trademark for a period of [CONFIDENTIAL]\* as of Closing.
- VI. The rights and obligations arising under the agreements primarily relating to the Divestment Business in particular:
- a) The long lease and services agreements with [CONFIDENTIAL]\* and Allessa Chemie GmbH for the Fechenheim plant; and
  - b) The melamine Supply Agreement between Surface Specialties Inc. and [CONFIDENTIAL]\* and the related Vendor Managed Inventory Agreement between Surface Specialties Germany GmbH and [CONFIDENTIAL]\* and services agreement between Surface Specialties Germany GmbH and [CONFIDENTIAL]\*.
- VII. The relationships, to the extent relating to amino resins, with customers (including distributors) currently supplied by the Amino Resins Business Operations.
- VIII. [CONFIDENTIAL]\*.
- IX. The employment agreements of:
- a) the employees listed in Exhibit 1 hereto; and
  - b) the Key Personnel.
- X. Tangible and intangible assets (including intellectual property rights) which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business.
- XI. Licences, permits and authorisations issued by any governmental organisation that operate for the benefit of the Divestment Business and are legally transferable.
- XII. Contracts, leases, commitments and customer orders of the Divestment Business; customer, credit and other records of the Divestment Business.



Exhibit 1

[CONFIDENTIAL]\*

**SCHEDULE 2**

**Key Personnel**

1. Holger Mueller, European Business Manager
2. Charles Lyon, Americas/Asia Business Manager
3. Diane Wiley, Global Controller
4. Scott Hansen, Global Manufacturing/Supply Chain Manager
5. Johann Wonner, Global R&D Product Stewardship Manager
6. Frank Scholl, Global TS&D and Quality Manager
7. Steven A. Zollmann, Hold Separate Manager