EN

Case No IV/M.1229 - AMERICAN HOME PRODUCTS / MONSANTO

Only the English text is available and authentic.

REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 28/09/1998

Also available in the CELEX database
Document No 398M1229

Office for Official Publications of the European Communities
L-2985 Luxembourg

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28.09.1998

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No IV/M.1229 American Home Products - Monsanto
Notification of 14.08.1998 pursuant to Article 4 of Council Regulation No 4064/89

1. On 14.08.1998**,** the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89, as amended by Council Regulation (EEC) No 1310/97, by which the undertakings American Home Products Corporation (AHP) and Monsanto Company (Monsanto) enter into a full merger within the meaning of Article 3(1)(a) of the Council Regulation.

I. THE PARTIES' ACTIVITIES AND THE OPERATION

2. AHP is engaged in the discovery, development manufacture, distribution and sale of products in two main businesses: health care products (pharmaceuticals and consumer health care) and agricultural products (pesticides and plant growth regulators).

3. Monsanto is active in the world-wide manufacture and sale of agricultural products, pharmaceuticals, artificial sweeteners and various industrial products.

4. The operation is a merger by way of a private agreement between AHP and Monsanto.

II. COMMUNITY DIMENSION

5. AHP and Monsanto have a combined aggregate world-wide turnover in excess of ECU 5 000 million (AHP > ECU 12 000 million, and Monsanto > ECU 6 000 million). Each of them has a Community-wide turnover in excess of ECU 250 million (AHP > […]; and Monsanto > […]), but they do not achieve more than two-thirds

Rue de la Loi 200, B-1049 Bruxelles/Wetstraat 200, B-1049 Brussel - Belgium
Telephone: exchange 299.11.11
Telex: COMEU B 21877. Telegraphic address: COMEUR Brussels.

of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

III. COMPETITIVE ASSESSMENT

6. AHP and Monsanto have partly overlapping business activities in pharmaceutical products, agrochemicals and industrial weed control products.

7. There are no overlaps in consumer health care, artificial sweeteners and various industrial products such as cleaners, textile printing materials and oil and gas drilling applications.

A. Pharmaceutical Products

1. Relevant product markets

8. The Commission has on many occasions dealt with the definition of the relevant market in the case of pharmaceutical products and has established a number of principles in its previous decisions.[1] In those decisions, it noted that medicines may be subdivided into therapeutic classes by reference to the "Anatomical Therapeutic Classification" (ATC), which is recognised and used by the World Health Organisation. This classification allows medicines to be grouped together by reference to their composition and their therapeutic properties. The third level of the ATC classification allows medicines to be grouped in terms of their therapeutic indications, i.e. their intended use, and can therefore be used as an operational market definition. However, it may be appropriate to carry out analyses at other levels of the ATC classification.

9. Medicines may, moreover, be subdivided into various segments on the basis of a variety of criteria, and in particular demand-related criteria. A possible distinction is that between medicines, which can be issued only on prescription and those, which can be sold over the counter. A further distinction is that between medicines, which are refunded in whole or in part by sickness insurance schemes and those, which are not reimbursed. These segments partly overlap. Most medicines issued only on prescription are reimbursed, whereas most of those, which may be sold over the counter, are not reimbursed. Furthermore, the allocation of a medicine to a particular segment is not permanent. It is based instead on decisions by the authorities, which may lead to changes between segments.

10. The parties agree with the Commission that in most cases it is appropriate to base the market definition on the third level of the ATC classification since the third level products generally serve the same treatment purpose and are not interchangeable with products from other classes. The parties have identified the following product markets as affected by the concentration: diuretics (C3A), cerebral and peripheral vasotherapeutics (C4A), topical anti-haemorrhoidals (C5A), oral contraceptives (G3A), oestrogens (G3C), oestrogen + progestogen combinations (G3F), tranquillisers (N5C), antidepressants (N6A), gonadotropin-releasing hormons (H1C).

11. As regards gonadotropin-releasing hormones (H1C), the parties are of the opinion that the products classified under this ATC-3 classification do not constitute one product market. This group would include not only gonadotropin-releasing hormones (GnRHs), but also GnRH agonists. These products would not be prescribed for the same

[1] See last IV/M.950 Hoffmann-La Roche/Boehringer Mannheim.

treatments and therefore do not compete with each other. Indeed, AHP's product, HRF, is used to stimulate ovulation whereas Monsanto's Synarel is used to suppress levels of ovulation. The investigation undertaken by the Commission and most of the replies by the players in this market contacted by the Commission have supported the parties' view. Therefore, there is no overlap between the parties in this sector and no competition problem can arise.

12. In the pharmaceuticals industry, a full assessment of the competitive situation requires examination of the products which are not yet on the market but which are at an advanced stage of development (normally after extremely large sums of money have been invested). The potential for these products to enter into competition with other products which either are at the development stage or are already on the market can be assessed only by reference to their characteristics and intended therapeutic use. In so doing, it must be borne in mind that research and development cannot as a rule be traded between pharmaceutical companies, but are rather intended primarily for the development of a company's own active substances and products. On the other hand, co-operation takes place in the research field between pharmaceutical companies and public and private research institutes and small biotechnology undertakings which, although they have the relevant know-how, do not themselves have the resources and facilities for the clinical testing that must be carried out prior to market authorisation and for the manufacture of the pharmaceuticals. The Commission has to look at R&D potential in terms of its importance for existing markets, but also for future markets.

13. In so far as research and development must be assessed in terms of its importance for future markets, the relevant product market must, in the nature of things, be defined in a less clear-cut manner than in the case of existing markets. Market definition can be based on the existing ATC classes only if existing products are to be replaced. Otherwise, it must be guided primarily by the indications to which the future products are to be applied.

2. Relevant geographic markets

14. There are efforts at European standardisation as regards pharmaceutical products. The harmonisation of technical provisions within the Community and the entry into force of new registration procedures for medicines represent the completion of the program for the single market in terms of the scientific and technical requirements applying to medicines. Since the beginning of 1995, pharmaceutical companies have had the option (and indeed, in the case of biotechnology products, the obligation) of submitting an application for registration of a new medicine to the European Agency for the Evaluation of Medicinal Products, which then issues a recommendation to the Commission, whose decision is binding on all Member States.[2] At present, medicines can be registered in different Member States for different indications.

15. The sale of medicines is influenced by the administrative procedures or purchasing policies which the national health authorities have introduced in the Member States. Some countries exercise a direct or indirect influence on prices, and there are different levels of reimbursement by the social security system for different categories of

---

[2] See Council Regulation (EEC) No 2309/93 of 22 July 1993 laying down Community procedures for the authorization and surpervision of medicinal products for human and veterinary use and establishing a European Agency for the Evaluation of Medicinal Products, O.J. NO L214.

medicines. For this reason, the prices for medicinal products may differ from one Member State to another. In addition, there are far-reaching differences in terms of brand and pack-size strategies and in distribution systems. These differences lead to national market characteristics.

16. The markets for pharmaceutical products have therefore been defined as national markets in the decisions hitherto adopted by the Commission. The parties in their notification accept this view. The markets affected by the concentration can thus be regarded as national.

17. To the extent that future product markets can be considered on the basis of research and development in particular areas, the said national restrictions do not have the same degree of effectiveness. A characteristic of future markets is that no products have yet been registered. Because research and development is normally global, the consideration of future markets should therefore focus on the territory of the Community at least and possibly on worldwide markets.

3. Assessment

18. In most product markets affected by the concentration there will be no competition problem, since the parties' combined market share is below […][3] and since there are a number of strong international competitors.

19. In the markets for diuretics in Belgium (Monsanto [between 30% and 40%], AHP [less than 5%]), and oestrogen + progestogen combinations in the UK (AHP [between 35% and 45%], Monsanto [less than 5%]) the addition of market shares will be below 1% and does not give rise to competition problems.

20. In the market for tranquillisers in Italy Monsanto will add only [less than 5%] to AHP´s [between 30% and 40%] market share. There are a number of important multinational competitors such as Roche [between 15% and 25%], Pharmacia&Upjohn [less than 15%] and BASF [between 5% and 15%] who will continue to compete against the merged entity.

21. In the market for oral contraceptives the merger will lead to important overlaps in France (AHP [between 30% and 40%], Monsanto [between 10% and 15%]) and Norway (AHP [between 20% and 30%], Monsanto [less than 15%]).

22. In France AHP/Monsanto will be the market leader for oral contraceptives with a combined market share of [between 50% and 60%]. Its main competitors are Akzo Nobel with [between 20% and 30%], Schering with [less than 15%] and Johnson & Johnson (J&J) with [less than 10%]. In addition Hoechst, Pharmacia & Upjohn and Effik are also active in this market.

23. The parties are of the opinion that several factors will impede the creation of a dominant position. Further to the presence of multinational competitors in France, which have large oral contraceptive businesses throughout the EEA, they consider that the market is subject to high innovation. All the major competitors are engaged in the development of low-dosaged oral contraceptives. In addition they point to potential competition from the large suppliers of Hormon Replacement Therapy

---

3 Not an affected market within the meaning of FORM CO.

(HRT) products which utilise the same technology and compounds.[4] Finally, the parties point to the fact that a distinction must be made between reimbursed and non-reimbursed oral contraceptives. AHP is the only major producer, which sells reimbursable as well as non-reimbursable products. Monsanto, however, is only active in the non-reimbursable part of the market. In this segment which is the only one where competition on price takes place, the parties combined market share is only [between 35% and 45%].

24. However, such a high combined market share ([between 50% and 60%] by value or [between 65% and 75%] by volume) is in itself an indication of dominance in the French oral contraceptives market. Furthermore, it is also relevant that there is a link between Monsanto and Akzo Nobel which is the main competitor of the parties. All of Monsanto's oral contraceptives in France are produced by Akzo Nobel and then distributed by Monsanto (in competition with Akzo Nobel which sells the same products under a different brand name). The merger would create links which could give rise to information exchanges between all major competitors in France.

25. Based on the above, it can be concluded that the operation as notified threatens to create a dominant position in the oral contraceptives market in France.

26. In Norway AHP/Monsanto will achieve a combined share of [between 25% and 35%]. It needs; however, to be taken into account that only two other major competitors are active in this market (Schering [less than 60%], Akzo Nobel [less than 10%]). The Commission investigated the possibility of oligopolistic dominance. The Commission concludes that the market structure for oral contraceptives in Norway is not conducive to oligopolistic behaviour since the product is not homogenous and the market is characterised by innovation, dynamism and frequent new product entry. The Commission excludes also any other possibility of creation or strengthening of a dominant position in the oral contraceptives market in Norway as a result of this merger. Schering enjoys a much stronger market position. The customers and competitors contacted by the Commission confirmed that the Norwegian market would remain competitive. The Norwegian Medicines Control Authority shared the latter view and it added that the presence of parallel importers in the market would also be an important factor limiting the ability of any company controlling the market.

27. Finally, in the fields of active substances, as well as research and development, the investigation has not revealed any evidence that the operation creates or strengthens a dominant position.

B. Agrochemicals

28. The Commission has in the past identified a number of different product markets within the overall field of agrochemicals. These include agricultural herbicides, fungicides, insecticides, trace elements and other growth regulators.[5] Within the broad agrochemicals market the parties have overlapping sales in the EEA only in

---

4 See decision in case IV/M.781 Schering/Gehe-Jenapharm, at point 42, which noted Novartis, Solvay and Novo Nordisk as potential competitors based on their presence in HRT.

5 See decision in case M.737 Ciba-Geigy/Sandoz at points 108 *et seq.*

respect of agricultural herbicides and lawn and garden herbicides, since Monsanto has no sales of the other products.

1. Relevant product markets

a) Agricultural herbicides

29. Herbicides are products which protect crops by eradicating weeds. There are herbicides that can treat weeds affecting different types of plants, e.g. maize and cereals. In many cases, however, herbicides for the protection of different plants are not substitutable one for another. There is, for example, only limited substitutability between herbicides for the protection of cereals, fruit and sugar beet. Consequently, herbicides which protect different types of plants constitute separate relevant product markets.[6]

30. The parties consider that a further distinction should be made between selective and non-selective herbicides. Selective herbicides are effective against only a selected variety of weeds. Non-selective herbicides are effective against all types of weed and consequently would be effective against crops as well if applied at the post emergent stage of the crops. Non-selective herbicides are generally applied to fields in order to clear them of weeds after harvest of one crop and prior to sowing of the next.

31. Non-selective herbicides can be produced from several active ingredients. The most common ones are glyphosate, glufosinate, sulphosate and paraquat. For the purpose of this decision it is not necessary to decide whether all non-selective herbicides produced from these active ingredients constitute one product market. Only one of the parties, Monsanto, produces a non-selective herbicide, "Roundup", which is based on glyphosate.

32. The Commission's investigation has confirmed that so far non-selective herbicides constitute a separate product market which is distinct from selective herbicides and that, unlike selective herbicides, non-selective herbicides should generally not be broken down by crop. An exception to this would seem to be vines and orchards. For these crops glyphosate-based non-selective herbicides can be applied in the same way as selective herbicides. This is because of the mode of action of glyphosate which inhibits the photosynthesis function. Thus, it can be used without this effect between the rows of vines and at the base of trees in orchards.

33. The distinction between selective and non-selective herbicides may disappear in the future with the introduction of genetically modified crops, which are resistant to non-selective herbicides. In the USA, Monsanto, AgrEvo and other major producers have already obtained approval to commercialise genetically modified crops (GMC). Monsanto's "Roundup" resistant soybean, for instance, has achieved a market share of almost [between 25% and 35%] within the last 3 years. Farmers of Monsanto's soybean then have the choice to apply either "Roundup" or a selective herbicide.

34. The situation in Europe, however, is different. To date, only a few genetically modified crops have been approved under the Council Regulation 90/220. Monsanto has made applications under that Regulation, but has not yet received approval.

---

6 See IV/M.392 Hoechst/Schering, points 16 *et seq.*, IV/M.354 American Cyanamid/Shell, points 11 *et seq*, and IV/M.737 Ciba Geigy/Sandoz, point. 110.

According to the parties, the earliest possible date for approval would be the year [between 1999 and 2005]; the earliest possible date for a significant commercialisation would be [between 1999 and 2010]. The parties therefore consider that although the introduction of GMC will eventually affect the competitive relationship between non-selective and selective herbicides, this effect will not materialise within a time frame that is appropriate for the present merger proceedings.

b) Lawn and garden herbicides

35. In addition to its agricultural herbicides the parties sell a range of herbicides for use on lawns and gardens. These constitute a separate product market as they are sold to different customers through different distribution channels. However, it is not necessary to further delineate the relevant product markets because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

2. Relevant geographic markets

a) Agricultural herbicides

36. In the parties' view, the relevant markets for agricultural herbicides are Community-wide markets. This market definition is supported by the following: the existence of a large number of major multinational groups, central production plants, low transport costs as a proportion of total costs and uniform branding across the EEA. In addition, the marketing of plant protection products in the EU has been harmonised by Directive 414/91.

37. In its previous decisions in this market the Commission left the definition of geographic market open. It did, however, note a number of factors that point at the existence of national markets.[7] First, the existence of authorisation procedures has to be taken into account.[8] Second, price differences between Member States for one and the same product are substantial; there are no signs of any tendency for alignment of prices. Furthermore, customers (agricultural co-operatives, other wholesalers) purchase the relevant products at national level, i.e. not on a Europe-wide basis. The suppliers therefore in most cases have national sales organisations or distribute their products via the sales organisation of another manufacturer operating in the relevant Member State. The distribution of market shares in the Member States also differs quite widely, and this similarly suggests national differences in competitive relationships. In addition, there are differences as regards the composition of the individual products and also in the methods of use,

---

[7] See IV/M.392 Hoechst/Schering, points 20 *et seq.*, IV/M.354 American Cyanamid/Shell, points 17 *et seq.* and IV/M.737 Ciba Geigy/Sandoz, point 127.

[8] See Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market, O.J. 1991, L 230/1. While plant protection products must, before they may be marketed, be authorised in the Member States until their active ingredients are included in Annex I to Directive 91/414 (Community list of authorised active substances), under the review programme of Directive 91/414 all existing active ingredients are to be reviewed and corresponding decisions concerning their entry into Annex I must be taken. One active substance has already been included to the Community list (imazalil).

depending on the different conditions existing in the individual Member States as regards agriculture, plant health, the environment, climate, soil properties and topography.

38. The definition of the relevant geographic market can, however, be left open since, even applying the narrowest (national) market definition and any other market definitions, the merger will not create or strengthen a dominant position.

b) Lawn and garden herbicides

39. According to the parties the relevant geographic market is the EEA. However, it is not necessary to further delineate the relevant geographic markets because, in all alternative geographic market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

3. Assessment

a) Agricultural herbicides

40. The main overlap between AHP and Monsanto in selective herbicides appears in the market for maize herbicides. In this market the parties have a combined market share of [less than 20%] in the EEA (AHP [less than 10%], Monsanto [between 5% and 15%]). On a national basis the combined market shares will exceed [between 20% and 30%] in Greece (AHP [less than 5%], Monsanto [between 20% and 30%]), Italy (AHP [between 10% and 20%], Monsanto [between 10% and 20%]) and Spain (AHP [between less than 5%], Monsanto [between 20% and 30%]). However, in all of these markets Novartis will remain the market leader with a share of around [between 25% and 35%]. Moreover, there are other important multinational competitors with varying market shares active in these markets. Therefore the concentration does not threaten to create a competition problem in the market for maize herbicides.

41. A further overlap leading to a combined market share of more than [between 20% and 30%] is created by the use of Monsanto's "Roundup" as a selective herbicide in the Spanish market for top fruits. The combination will lead to a market share of [between 20% and 30%], whereby AHP adds only [less than 5%] to Monsanto's share of [between 20% and 30%]. Several multinational companies also supply the Spanish market, with shares between [less than 10%] and [between 15% and 25%] (Zeneca [between 15% and 25%], Novartis [between 10% and 20%], AgrEvo [less than 10%], DuPont [less than 10%]). Therefore, the merger does not give rise to competition concerns in this market.

42. As regards the possible future development of non-selective and selective herbicides becoming one single market a problem may arise due to Monsanto's market share for non-selective herbicides of [less than 60%] in the EEA. The first major crop resistant to glyphosate-based non-selective herbicides such as Monsanto´s "Roundup", for which Monsanto plans to seek approval under the Council Directive 90/220, will be "Roundup ready corn". Due to the regulatory procedures both on national and EU-level, approval before the year [between 1999 and 2005] seems unlikely. However, even when the two markets will eventually become one it would be wrong to simply add the market shares of AHP´s selective maize herbicide to Monsanto´s Roundup

since Roundup is off patent in Europe and more and more competitors supply the market with glyphosate herbicides.

43. Even when approval will be given in the year [between 1999 and 2005] it seems quite uncertain whether European farmers and consumers will accept the new products. Recent experimental sowings of genetically modified plants were accompanied by public protests. Some of the fields were even destroyed by militant opponents of this technology. There are powerful consumer networks publishing lists of food companies who declare not to process genetically modified inputs.

44. Therefore, a development like in the US, where genetically modified soybeans were an immediate, huge success capturing a large part of the market is by no means certain in Europe. Moreover, even in the USA, glyphosate tolerant corn does not enjoy for agronomic reasons the same rapid growth as glyphosate tolerant soybeans. Finally, in the USA AgrEvo's Liberty Link corn (tolerant to AgrEvo's glufosinate herbicide) seems to be more successful in the market than Monsanto's Roundup Ready corn. With respect to Europe it is also relevant for the assessment that AgrEvo's Liberty Link corn has already received regulatory approval from the Commission and it could then be marketed in Europe one or two years in advance of Monsanto's Roundup Ready corn.

45. Future developments involving the new merging entity in this market will eventually need to be seen, *inter alia*; in the context of the very strong position of Monsanto's non-selective herbicides; Monsanto/AHP's technological leadership for the introduction on the market of herbicide tolerant crops; Monsanto's future European sales strategy in relation to GMC and Monsanto's current process of vertical integration as a result of its active policy of acquiring seed producers in the world and in Europe. However, the Commission cannot, at this stage, conclude, with the sufficient degree of certainty, that the process of convergence between selective and non-selective herbicides in Europe due to the introduction of GMC, will give rise to competition concerns resulting from the present operation which could be relevant under the Merger Regulation.

b) Lawn and garden herbicides

46. In the market for lawn and garden herbicides AHP is only active in Belgium. Monsanto, which is active in the whole of the EEA, has prior to the merger signed a letter of intent to sell its lawn and garden business to The Scotts Company, a US corporation. In Belgium the combined market share of the parties would amount to [between 40% and 50%] (AHP [less than 40%], Monsanto [less than 10%]). In this market, which has a volume of [less than 10 MECU], the main competitors are Bayer [less than 30%], KB (Rhone Poulenc) [between 5% and 15%], and Formulex [less than 10%]. The main customers are large, specialised retail chains (e.g. GB-Brico), which possess considerable bargaining power. Consequently, the proposed concentration does not threaten to create or strengthen a dominant position in this market.

C. Industrial weed control products

1. Relevant product market

47. Industrial weed control products are used for clearing weeds in a variety of non-agricultural applications. These include weed clearance at industrial sites, railway tracks, electricity wires, car parks, high ways and aquatic applications. Industrial weed control products are a separate product market from agricultural herbicides. AHP´s product cannot be registered for agricultural use because of its residual effect. Monsanto's product is based on glyphosate but sold under different brands and with different pricing and labelling. Both products are sold to different customers than agricultural herbicides.

2. Relevant geographic market

48. According to the parties the relevant geographic market is the EEA. However, it is not necessary to further delineate the relevant geographic markets because, in all alternative geographic market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

3. Assessment

49. As a result of the concentration there are overlaps leading to affected markets in the EEA and 8 Member States. However, in the EEA (Monsanto [between 15% and 25%], AHP [less than 10%]) as well as in most Member States the combined market share share is below [between 20% and 30%] and there are a number of strong international competitors (Novartis, DuPont and Zeneca).

50. In Norway and Finland the parties will become the market leader with a combined share of [between 35% and 45%] and [between 25% and 35%] respectively. Both markets have a total volume of less than 1 MECU. Despite of their small size, both markets have attracted large multinational competitors such as Novartis, DuPont and Zeneca who will continue to provide effective competition.

51. In Belgium (market volume 4 MECU) AHP is the current market leader with a share of [between 35% and 45%]. The notified operation will give rise to an increment of [less than 5%]. This increment is relatively small as compared to the variation of AHP´s market share, which in the last three years has risen and fallen by [between 5% and 15%] percentage points. Moreover, there are several multinational competitors including Bayer and Rhone-Poulenc.

52. Consequently, the proposed concentration does not create or strengthen a dominant position in any market for industrial weed control products as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

IV. MODIFICATIONS TO THE ORIGINAL CONCENTRATION

53. The parties submitted undertakings to the Commission on 07.09.1998 in order to remove the competitive concerns raised by the operation with regard to the market of oral contraceptives in France. The text of these undertakings is the following:

"Pursuant to Article 6(2) of Council Regulation (EEC) No 4064/89 (as amended) (the *Regulation*), American Home Products Corporation (*AHP*) and Monsanto Company (*Monsanto*) hereby give the commitments set out below to the Commission of the European Communities in respect of the proposed merger between AHP and Monsanto (the *Merger*). These commitments shall take effect on receipt of the decision of the Commission declaring the Merger to be compatible with the common market pursuant to Article 6(1)(b) of the Regulation (the *Decision*).

1. Monsanto undertakes, in accordance with the provisions set out below, to procure the ending of the two distribution agreements dated 7 June 1990 between Monsanto Nederland B.V. (formerly G.D. Searle Nederland B.V.) and Organon International B.V. and Organon (Ireland) Limited respectively in relation to the distribution of oral contraceptive products in France (the *Agreements*).

2. Following completion of the Merger (*Completion*) and prior to fulfilment by Monsanto of the commitment given in paragraph 1 above, AHP and Monsanto (together, the *Parties*) undertake:

(a) to ensure that the oral contraceptive business currently operated by Monsanto in France pursuant to the Agreements (the *French Business*) is held separate and managed as a distinct business, in particular separate from AHP's existing oral contraceptive business in France;

(b) to maintain sufficient administrative and management functions relating to the French Business; and

AHP undertakes:

(c) not to obtain from the French Business's management any business secrets, know-how or commercial information of a confidential or proprietary nature relating to the French Business (other than information already in AHP's possession upon the date of the Decision which has been exchanged for the purposes of the Merger). Notwithstanding any other provision of these commitments, AHP may receive on a regular basis from the French Business aggregate financial information necessary to allow AHP to prepare consolidated financial reports, tax returns and personnel reports.

3. Monsanto undertakes to comply with the commitment given in paragraph 1 above so that the Agreements end within […] of receipt of the Decision or, if later, within […] following Completion. For the avoidance of doubt, the Parties will not be obliged to comply with the commitments given in paragraphs 1 and 2 above if Completion does not occur.

4. The Commission may, upon the request of the Parties showing good cause, extend the […] period granted for procuring the ending of the Agreements by a period to be agreed between the Parties and the Commission.

5. Monsanto shall:

(a) prior to fulfilment of the commitment in paragraph 1 above, report in writing to the Commission every three months (or otherwise at the request of the Commission) on the status of its negotiations to bring an end to the Agreements, subject to the Commission agreeing to keep confidential all such information received; and

(b) promptly inform the Commission in writing of the conclusion of an agreement to bring the Agreements to an end."

54. The remedy stipulates that Monsanto will terminate its distribution agreements in France with Organon (Akzo Nobel). The Commission has been informed that Akzo Nobel agrees to terminate the above-referred distribution agreements. All of Monsanto's oral contraceptives sold in France are produced by Akzo Nobel. With the termination of the distribution agreements between Monsanto and Akzo Nobel any possible overlap in this market between AHP and Monsanto as a result of the merger is eliminated. Thus, any concern related to the addition of these activities will be removed. The undertakings given by the parties are sufficient to remove the competition concerns raised by this operation.

V. ANCILLARY RESTRICTIONS

55. The parties have submitted a number of possible ancillary restrictions contained in the Merger Agreement:

Clauses 4.1 and 4.2

56. These provisions relate to obligations which take effect between signing of the Merger Agreement and closing of the transaction, and relate to obligations to carry on business in the ordinary course and not to enter into any material new line of business or commit any capital expenditure without the consent of the other party.

Clause 5.5

57. This provision relates to an obligation not to initiate, solicit or encourage other proposals for mergers or business combinations.

58. The parties argue that these provisions are directly related to the merger and have been entered into for the sole purpose of facilitating the proposed concentration. The parties consider that these provisions are necessary for giving effect to the concentration because, in the absence of these restrictions, the parties could not be guaranteed that the full value of the respective business would be transferred to the merged company.

59. However, these contractual arrangements relate to stages before the establishment of control within the meaning of Article 3, paragraphs 1 and 3 of the Regulation. As explained by the Commission in its Notice regarding restrictions ancillary to concentration, these provisions cannot be covered by the present decision.

VI. CONCLUSION

60. For the above reasons, and subject to the full compliance with the commitments made by the parties, the Commission decides 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) of Council Regulation (EEC) N°4064/89.

For the Commission,