

Proposed Acquisition's anticompetitive effects in the perylene market for several reasons. First, Ciba is the best-positioned acquirer of Sun Chemical's perylene business. Second, under the terms of the Consent Agreement, Ciba will receive everything it needs to step into the shoes of Sun Chemical in the perylene market. Finally, the Consent Agreement includes certain measures that will help ensure an effective transition of the Sun Chemical perylene assets to Ciba.

Ciba is the best-positioned acquirer of Sun Chemical's perylene business for several reasons. First, Ciba is committed to the high performance pigments market. Ciba is already a leading supplier of other high performance pigments, such as quinacridones and diketopyrrolo pyrroles. As a result, Ciba has the ability and incentive to take over and further develop Sun Chemical's perylene business, because the divestiture will enable Ciba to offer a wide range of high performance pigments. Second, because Ciba already has a reputation for quality and consistency with the customers of high performance pigments (such as automotive coatings manufacturers), it will be relatively easy for Ciba to convince these customers that it can be a viable supplier of perylenes. Finally, customers that have expressed concern about the Proposed Acquisition's likely harmful effects on the perylene market feel that a divestiture of Sun Chemical's perylene business to Ciba would resolve their concern.

Ciba will receive all of the assets it needs to replace the competition offered by Sun Chemical in the perylene market before the Proposed Acquisition. Under the Consent Agreement, Sun Chemical will divest its entire perylene business to Ciba. The divestiture includes: All of Sun Chemical's current perylene products; all perylene research and development; manufacturing technology; scientific know-how; technical assistance and expertise; customer lists; raw material, intermediate, and finished product inventory; and perylene product names, codes, and trade dress. Because Sun Chemical manufactures perylenes through toll manufacturers, no manufacturing equipment or facilities are included in the divestiture. Instead, as required by the Consent Agreement, Ciba has entered into contracts with Sun Chemical's perylene toll manufacturers—Lobeco Products and Forth Technologies—that will become effective upon closing the divestiture.

Additionally, the Consent Agreement includes several measures to ensure an effective transition of the tangible and

intangible assets related to the perylene business from Sun Chemical to Ciba. First, Ciba will have the opportunity to hire one or more Sun Chemical employees who have key responsibilities in connection with the company's perylene business. These former Sun Chemical employees will help Ciba not only to understand Sun Chemical's perylene manufacturing, research, and development process, but also to identify any missing or incomplete assets in the divestiture. Second, the Consent Agreement requires Sun Chemical to provide technical assistance to Ciba for a period of one year following the divestiture to help Ciba successfully take over Sun Chemical's perylene product line. Third, under the Consent Agreement, the Commission may appoint an interim monitor to supervise the transfer of assets and assure that Sun Chemical provides adequate technical assistance to Ciba.

Finally, in the event that the divestiture of Sun Chemical's perylene business to Ciba fails, the Consent Agreement includes certain contingent provisions to remedy the Proposed Acquisition's anticompetitive effects. If, before the Commission finalizes the Consent Order in this matter, the Commission notifies Dainippon that Ciba is not an acceptable acquirer of Sun Chemical's perylene business or that the manner in which the divestiture to Ciba was accomplished was not acceptable, the Consent Agreement requires Dainippon to rescind the transaction with Ciba and divest Sun Chemical's perylene business to an acquirer that receives the prior approval of the Commission within ninety (90) days of the rescission. Additionally, if Dainippon does not divest Sun Chemical's perylene business to either Ciba or a Commission-approved acquirer within the time required by the Consent Agreement, the Commission may appoint a trustee to divest Sun Chemical's perylene business in a manner that satisfies the requirements of the Consent Agreement.

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

#### *Quinacridones*

Sun Chemical and Bayer also manufacture quinacridones, another class of red-shade high performance organic pigments. Unlike for perylenes, however, the Proposed Acquisition would not increase the likelihood that customers would pay higher prices for

quinacridones, or that service and innovation for these products would decrease. Two companies—Ciba and Clariant—are by far the largest manufacturers of quinacridones in the world, and they are the top two choices for many customers. With respect to quinacridones, Sun Chemical and Bayer are each less than half the size of Ciba or Clariant. Unlike for perylenes, where Sun Chemical and Bayer often vigorously compete head-to-head for business, the parties are less likely to face each other in head-to-head competition for quinacridone business. Many customers believe that, after the Proposed Acquisition, the combined Sun Chemical/Bayer will become a stronger quinacridone competitor, able to compete more effectively against Ciba and Clariant. In addition, several new quinacridone suppliers recently have entered the market, and those suppliers will provide increasing competition.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

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## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Public Meeting of the President's Council on Bioethics on March 6-7, 2003**

**AGENCY:** The President's Council on Bioethics, HHS.

**ACTION:** Notice.

**SUMMARY:** The President's Council on Bioethics will hold its 10th meeting, at which it will discuss the regulation of biotechnology, with presentations on professional self-regulation of the assisted reproduction industry by: Dr. Sandra A. Carson, president of the American Society for Reproductive Medicine (ASRM) and Dr. George J. Annas, Boston University School of Public Health. The Council will also hear from Dr. Steven Pinker, Massachusetts Institute of Technology (MIT), on human nature, and Dr. Steven E. Hyman, Harvard University, on pediatric psychopharmacology. Subjects discussed at past Council meetings (and potentially touched on at this meeting) include: Human cloning; embryonic stem cell research; the patentability of human organisms; preimplantation genetic diagnosis and screening (PGD); sex selection techniques; inheritable genetic modification (IGM); international models of biotech regulation; organ procurement for