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

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

Analysis To Aid Public Comment on the Provisionally Accepted Consent Order

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

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

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

control Shell Oil as well as Montell.

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

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

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

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

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

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

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

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