

**SEPARATE STATEMENT OF COMMISSIONER MARY L. AZCUENAGA**  
in Ciba Geigy Limited , File No. 961-0055

The Commission today accepts a proposed consent order for public comment to settle allegations that the planned merger of Ciba Geigy Ltd. and Sandoz Ltd. would violate Section 7 of the Clayton Act in certain agricultural chemical, pet flea control and gene therapy markets.

There appears to be reason to believe that the proposed merger would be unlawful in the corn herbicide and flea control markets identified in the complaint and that divestiture in each market is the appropriate remedy. Because BASF makes and sells a specialized corn herbicide, the proposed divestiture of Sandoz's corn herbicide business to BASF would not entirely restore pre-merger conditions, but BASF's product is sufficiently differentiated from the divested assets that the minor overlap does not appear to be significant.

It is premature, in my view, to select Central Garden and Pet Supply to acquire Sandoz's flea control business, because the Commission has virtually no information about Central beyond that contained in the proposed order and the Analysis To Aid Public Comment. While the early identification of a candidate to acquire assets to be divested under an order is to be preferred in order to restore competition quickly, the Commission does not yet have the information to evaluate the competitive implications of a proposed divestiture to Central Garden and Pet Supply.

The alleged gene therapy markets involve products now in clinical trials and others that appear to be more distant in time and perhaps more speculative. The proposed complaint also alleges a technology market, comprising the technology that firms use to develop gene therapies. The theory is that the post-merger combination of Sandoz and Ciba Geigy will control such a critical mass of proprietary information that its incentives to cross license will be diminished, either deterring entry or raising the price of it. I would be interested in public comment on these allegations.

Assuming a violation, it is not entirely clear that the proposed licensing relief is preferable or adequate. A divestiture is the preferred remedy in a Section 7 case. The proposed order, among other things, requires a license of the ex vivo patent, also called the Anderson patent, which was licensed to Sandoz by the National Institutes of Health. The merger does not add to the scope of the patent monopoly, and I see no basis in the proposed complaint for this aspect of the relief. Nor is there any apparent reason why a divestiture in these markets could not be accomplished. I look forward to reviewing the comments on this issue as well.