UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:	**Timothy J. Muris, Chairman**
	Mozelle W. Thompson
	Orson Swindle

several years, its debt has been given "junk" status rating, and the company has undertaken a plan to reorganize.[1]

Rhodia's troubles and market conditions have created problems with both divestiture options. First, because Rhodia shares are thinly traded in the open market, sales of the magnitude required of Aventis would cause the price to fall and thereby injure other shareholders and Rho-dia itself.[2] Second, private sales for blocks of shares require additional risk reducing arrangements, due to Rhodia's current financial situation, that would place Aventis in violation of the Order (absent a modification). In April 2003, pursuing the second of the two options, Aventis entered into an agreement with Credit Lyonnais, a French-based bank, to sell a block of Rhodia shares amounting to 9.9% of the total issued and outstanding shares (thereby reducing Aventis' holdings to approximately 15%). As part of the sale of the shares to Credit Lyonnais, Aventis also entered into an agreement that protects Credit Lyonnais from some of the financial risk associated with the purchase of the shares.

Aventis entered into this second agreement, which relates to the future performance of Rhodia's stock, with Credit Lyonnais because investors are unlikely to purchase Rhodia's stock in a declining market without receiving protection from further declines in the price of the stock.[3] The purchase agreement itself gives full title of the shares to Credit Lyonnais and includes all ownership and voting rights and the right to resell the shares at its discretion. Although such arrangements provide an incentive for a purchaser to enter into a transaction with Aventis, it leaves Aventis with a residual interest in Rhodia's financial performance. Because the Order does not allow Aventis to retain any interest in the Rhodia shares, but requires Aventis to fully divest the voting securities, any such financial interest held by Aventis as of April 22, 2004, the deadline for divestiture, would place it in violation of Paragraph VI.D. of the Order. In view of this potential violation, and in view of the likely harm to Rhodia's shareholders and Rhodia itself if Aventis is required to sell the shares in the open market, Aventis requests the Commission to modify the Order to allow it to divest the shares to Credit Lyonnais in the manner agreed upon and to allow it to use a substantially similar risk reducing arrangement in the sale of the remaining Rhodia shares.

Aventis makes its request to modify the Order under the public interest standard set forth in Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. § 45(b). Under Section 5(b), the Commission may modify an order when the Commission determines that the public interest

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[1] Petition at ¶¶ 26-28.

[2] Petition at ¶ 5.

[3] Petition at ¶¶ 6, 32.

so requires.[4] The Commission has described the showing needed to obtain a modification based on the public interest standard:

> [A] "satisfactory showing" requires, with respect to "public interest" requests, that the requester make a prima facie showing of a legitimate "public interest" reason or reasons justifying relief. . . . [T]his showing requires the requester to demonstrate, for example, that there is a more effective or efficient way of achieving the purpose of the order . . . .[5]

A request to reopen and modify does not contain a "satisfactory showing" if it is merely conclusory or otherwise fails to set forth by affidavit specific facts demonstrating in detail the reasons why the public interest would be served by the modification.[6] If, after determining that the requester has made the required showing, the Commission decides to reopen the order, the Commission will then consider and balance all of the reasons for and against modification. In no instance does a decision to reopen an order oblige the Commission to modify it,[7] and the burden remains on the requester in all cases to demonstrate why the order should be reopened and modified. The petitioner's burden is not a light one in view of the public interest in repose and the fi facie showing of5ic faci0.0002 Tw(65 Fed. Reg. 50[pall cas]ununu1s. . eviession h2(a)-lres issununu1s5

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[4] Section 5(b) also provides that the Commission shall reopen an order to consider a modification if the respondent "makes a satisfactory showing that changed conditions of law or fact" so require. Aventis has not asserted that any changed condition of law or fact requires reopening the Order, and the Commission has, therefore, not considered that issue.

[5] 65 Fed. Reg. 50637 (August 21, 2000).

[6] 16 C.F.R. § 2.51.

[7] *See United States v. Louisiana-Pacific Corp.*, 967 F.2d 1372, 1376-77 (9th Cir. 1992) (reopening and modification are independent determinations).

[8] *See Federated Department Stores, Inc. v. Moitie*, 425 U.S. 394 (1981) (strong public interest considerations support repose and finality).

performance of Rhodia's stock, would facilitate block sales and thereby achieve the Order's purpose.

The use of such risk reducing financial arrangements would not increase the competitive concerns underlying Aventis' divestiture obligation. Rhodia competes in the U.S. market for cellulose acetate through its participation in Primester, a joint venture with Eastman Chemical Company ("Eastman"). The U.S. market also includes Celanese Limited ("Celanese") and Eastman on its own, apart from its participation in the Primester joint venture. Rhone-Poulenc and Hoechst owned Rhodia and Celanese, respectively, prior to the merger that created Aventis. The merger therefore raised a competitive concern relating to Primester and Celanese. Ultimately, undertakings entered into with the Directorate General for Competition of the European Commission ("EC") and supplemented by the Order resolved this concern in two steps. First, the EC undertakings required Hoechst to spin off Celanese. Second, the EC undertakings and the Order required the parties to reduce Aventis' holdings in Rhodia because Kuwait Petroleum Company ("KPC"), a former Hoechst shareholder, would hold a controlling interest in Celanese

By April 22, 2004, i.e., six (6) months from the end of the note exchange period described in the Form F-3, Respondents shall have reduced their holdings in Rhodia to five (5) percent or less of Rhodia's issued and outstanding voting securities; provided, however, that for purposes of this Paragraph VI.D. only, voting securities sold in connection with the April 16, 2003, agreement between Respondents and Credit Lyonnais or any substantially similar financial agreements that relate to Rhodia's share performance, between Respondents and the purchaser(s) of Respondents' Rhodia voting securities, shall not be considered Respondents' "holdings in Rhodia."

By the Commission, Chairman Muris not participating.

Donald S. Clark
Secretary

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ISSUED: January 27, 2004