

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Deborah Platt Majoras, Chairman**
 Orson Swindle
 Thomas B. Leary
 Pamela Jones Harbour
 Jonathan Leibowitz

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| _____ |) | |
| In the Matter of |) | |
| |) | |
| Hoechst AG, |) | |
| a corporation, and |) | |
| |) | Docket No. C-3919 |
| Rhone-Poulenc S.A., |) | |
| a corporation, |) | |
| |) | |
| to be renamed |) | |
| |) | |
| Aventis S.A., |) | |
| a corporation. |) | |
| _____ |) | |

ORDER REOPENING AND MODIFYING ORDER

On December 16, 2004, Aventis S.A. (“Aventis”), the successor to respondents Hoechst AG and Rhone-Poulenc S.A. named in the consent order issued by the Commission on January 18, 2000, in Docket No. C-3919 (“Order”), filed its Petition of Aventis to Reopen and Modify Order (“Petition”), seeking to set aside those provisions relating to the divestiture of Aventis’ interest in Rhodia, a French chemical company. For the reasons stated below, the Commission has determined to grant the Petition.

When the Order was initially issued, the Commission determined that the merger of Rhone-Poulenc and Hoechst would, among other things, increase the likelihood of coordinated interaction in the market for cellulose acetate.¹ Specifically, the Commission found that Rhodia competes in the U.S. cellulose acetate market through its participation in Primester, a joint venture with Eastman Chemical Company (“Eastman”). The U.S. market also includes Celanese

¹Cellulose acetate is a thermoplastic that is used to produce, among other products, cigarette filters, tool handles, tapes and films. In applications where it is used, there are no cost effective substitutes.

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 the competitive concern relating to Primester and Celanese 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 the Kuwait Petroleum Company (“KPC”), a former Hoechst shareholder, would hold a controlling interest in Celanese and a working interest in Aventis after the merger. It was because of concerns that KPC would be in a position post-merger to coordinate the actions of Celanese, Primester (through Aventis/Rhodia), and perhaps Eastman through Primester, that the Commission required Aventis to reduce its holdings in Rhodia. The Order thus is designed and intended to sever the potential KPC influence on Rhodia/Primester.

Paragraph VI. of the Order, as modified, requires Aventis to reduce its interest in Rhodia to five (5) percent or less by April 22, 2005.² The Order also requires Aventis to maintain unsold Rhodia voting securities in escrow with a proxy system that prevents Aventis from exercising its voting rights, and restricts Aventis from influencing or receiving confidential information concerning Rhodia’s cellulose acetate business. The Order therefore limits KPC’s ability to coordinate the interaction between Rhodia, through Aventis, and Celanese.

KPC has recently divested all of its shares in Celanese to BCP Crystal Acquisition Group GmbH & Co. KG, an entity affiliated with the Blackstone Group (“Blackstone”), a U.S. based private equity fund. On February 2, 2004, Blackstone launched a friendly public takeover of Celanese and announced that, if successful, it intended to take Celanese private. On April 2, 2004, Blackstone and Celanese announced that the tender offer was successful, with 83.6% of issued and outstanding shares being tendered, and that all the conditions precedent to the completion of the offer had been met. Pursuant to the tender offer, KPC tendered all of its shares in Celanese to Blackstone.

Aventis offers two reasons why the Order provisions relating to the divestiture of the Rhodia shares should be set aside. First, Aventis asserts that the modifications are necessary because changed conditions of fact (*i.e.*, KPC’s tender of its interest in Celanese to Blackstone)

²Aventis previously filed two petitions to reopen and modify the Order as it relates to the required divestiture of its Rhodia shares. The first petition was filed on September 16, 2002, and the second petition was filed on September 30, 2003. In both instances, the Commission granted Aventis’ petition to reopen and modify on public interest grounds. Specifically, the Commission determined that Rhodia’s precarious financial condition warranted an order modification that, in essence, gave Aventis a longer period of time to divest the Rhodia shares.

render the Order provisions relating to the divestiture of the Rhodia shares obsolete. Second, Aventis argues that the modifications are warranted because it is in the public interest to set aside the divestiture requirements in an attempt to preserve Rhodia's financial viability.

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. § 45(b), provides that the Commission shall reopen an order to consider whether it should be modified if the respondent "makes a satisfactory showing that changed conditi

³ S. Rep. No. 96-500, 96th Cong., 2d Sess. 9 (1979) (significant changes or changes causing unfair disadvantage); *Louisiana-Pacific Corp.*, Docket No. C-2956, Letter to John C. Hart (June 5, 1986), at 4 (unpublished) ("Hart Letter"). *See also United States v. Louisiana-Pacific Corp.*, 967 F.2d 1372, 1376-77 (9th Cir. 1992) ("A decision to reopen does not necessarily entail a decision to modify the Order. Reopening may occur even where the petition itself does not plead facts requiring modification.").

⁴ Hart Letter at 5; 16 C.F.R. § 2.51.

⁵ 16 C.F.R. § 2.51(b). *See also Supplementary Information, Amendment to 16 C.F.R. § 2.51(b)*, August 15, 2001, ("Amendment").

⁶ 16 C.F.R. § 2.51.

IT IS ORDERED that this matter be, and it hereby is, reopened;

IT IS FURTHER ORDERED that Paragraphs VI.B through VI.D, VII and VIII of the Order be, and they hereby are, set aside, as of the effective date of this Order;

IT IS FURTHER ORDERED that Paragraph IX of the Order be, and it hereby is, modified, as of the effective date of this Order, to read as follows:

That within thirty (30) days after the date this Order becomes final and every sixty (60) days thereafter until Respondents have fully complied with the provisions of Paragraphs II.B. through II.G., or until a trustee has been appointed pursuant to Paragraph IV.A., and Respondents have complied with Paragraph VI.A. of this Order, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order. Respondents shall submit at the same time a copy of their report concerning compliance