

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

08 20 2019
595705

COMMISSIONERS: Joseph J. Simons, Chairman
Noah Joshua Phillips
Rohit Chopra
Rebecca Kelly Slaughter
Christine S. Wilson

ORIGINAL

In the Matter of

**RAG-stiftung,
a public-private foundation;**

**Evonik Industries AG,
a public company;**

**Evonik Corporation,
a public company;**

**Evonik International Holding B.V.,
a public company;**

**One Equity Partners Secondary Fund,
L.P.,
a private company;**

**One Equity Partners V, L.P.,
a private company;**

**Lexington Capital Partners VII (AIV I),
L.P.,
a private company;**

**PeroxyChem Holding Company LLC,
a private company;**

**PeroxyChem Holdings, L.P.,
a private company;**

**PeroxyChem Holdings LLC,
a private company;**

**PeroxyChem LLC
a private company;**

and

**PeroxyChem Cooperatief U.A.
a private company.**

Docket No. 9384

**ANSWER AND DEFENSES OF RESPONDENTS ONE EQUITY PARTNERS
SECONDARY FUND, L.P., ONE EQUITY PARTNERS V, L.P., LEXINGTON CAPITAL
PARTNERS VIII (AIV I), L.P., PEROXYCHEM HOLDING COMPANY LLC,
PEROXYCHEM HOLDINGS, L.P., PEROXYCHEM HOLDINGS LLC,
PEROXYCHEM LLC, AND PEROXYCHEM COOPERATIEF U.A.**

Pursuant to Rule 3.12 of the Federal Trade Commission’s (“Commission”) Rules of Practice for Adjudicative Proceedings, Respondents One Equity Partners Secondary Fund, L.P. and One Equity Partners V, L.P., (collectively, “One Equity Partners”), Lexington Capital Partners VIII (AIV I), L.P., and PeroxyChem Holding Company LLC, PeroxyChem Holdings, L.P., PeroxyChem Holdings LLC, PeroxyChem LLC, and PeroxyChem Cooperatief U.A., (collectively, “PeroxyChem”), by and through its attorneys, hereby answer the Administrative Complaint (the “Complaint”) filed by the Commission in relation to Evonik’s proposed acquisition of PeroxyChem LLC (the “Acquisition”) as follows.

Except to the extent specifically admitted herein, PeroxyChem denies each and every allegation contained in the Complaint, including all allegations contained in headings or otherwise not contained in one of the Complaint’s 57 numbered paragraphs.

RESPONSES TO SPECIFIC ALLEGATIONS OF THE COMPLAINT

The preamble to the Complaint characterizes this action and asserts legal conclusions to which no response is required. To the extent that a response is deemed necessary, PeroxyChem denies the allegations in the preamble to the Complaint.

PeroxyChem responds to the numbered paragraphs of the Complaint as follows:

1. PeroxyChem admits that PeroxyChem and Evonik are two hydrogen peroxide producers in North America. PeroxyChem admits that hydrogen peroxide is used for oxidation, sterilization, and bleaching, among a number of other end uses. PeroxyChem admits the allegations in the third sentence of Paragraph 1. PeroxyChem also admits the fourth sentence of

control sales. PeroxyChem states further that the parties proposed a divestiture of PeroxyChem's Prince George Plant in Western Canada to the Commission in May 2019, and that the parties have a signed divestiture agreement, contingent on closing the Acquisition. The proposed divestiture of the Prince George plant fully addresses any proffered or potential anticompetitive effects in the alleged Pacific Northwest geographic market.

4. PeroxyChem states that the Horizontal Merger Guidelines speak for themselves. PeroxyChem specifically denies that the Merger Guidelines are vested with the authority to determine the legality of any acquisition, presumptively or otherwise. PeroxyChem denies the remainder of Paragraph 4, except to the extent that it contains legal conclusions to which no response is necessary.

5. PeroxyChem denies the allegations in Paragraph 5, except to the extent it states legal conclusions to which no response is necessary. PeroxyChem states that the hydrogen peroxide industry is highly competitive and will remain so post-merger. There is nothing about the Acquisition that would make coordination meaningfully more likely. PeroxyChem states that Plaintiff's allegation of a "long history of price-fixing" in the hydrogen peroxide industry mischaracterizes a single investigation into alleged conduct that ended about twenty years ago when the industry differed significantly from what it is today. PeroxyChem states further that neither it nor its predecessor was fined for alleged price-fixing, nor were any of its employees indicted let alone pled guilty.

6. PeroxyChem admits that competition between and among all of the hydrogen peroxide suppliers benefits customers. PeroxyChem denies the remainder of Paragraph 6, except to the extent it states legal conclusions to which no response is necessary.

7. PeroxyChem admits that building a new hydrogen peroxide requires a significant monetary investment in time and money, but denies that this is a barrier to entry or expansion. PeroxyChem specifically denies that expansion or repositioning by other firms is difficult or unlikely, and, indeed, is contradicted by competing hydrogen peroxide producer Solvay's recent significant expansion of its Longview, Washington plant in 2016. PeroxyChem denies the remainder of Paragraph 7, except to the extent it states legal conclusions to which no response is necessary.

8. PeroxyChem denies the allegations in Paragraph 8, except to the extent it states legal conclusions to which no response is necessary.

9. Paragraph 9 states legal conclusions to which no response is required.

10. Paragraph 10 contains legal conclusions to which no response is required. To the extent a response is deemed necessary, PeroxyChem denies the allegations in Paragraph 10.

11. PeroxyChem lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 11, and on that basis denies these allegations.

12. PeroxyChem admits the allegations in Paragraph 12.

13. PeroxyChem denies the allegations in Paragraph 13, except to admit that pursuant to an Agreement and Plan of Merger dated November 7, 2018, Evonik proposes to acquire 100% of the non-corporate interests of PeroxyChem Holding Company LLC, 99% of the non-corporate interests of PeroxyChem Coöperatief U.A., and 100% of the non-corporate interest of PeroxyChem Holdings LLC for \$625 million.

14. PeroxyChem denies the allegations in Paragraph 14, except to the extent it states

PeroxyChem admits that other standard and specialty grades of hydrogen peroxide are not a

FTC's alleged "Pacific Northwest" and "Southern and Central United States" markets constitute properly defined relevant geographic markets.

21. PeroxyChem admits the first sentence of Paragraph 21. PeroxyChem states that
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truth or falsity of the allegations relating to Evonik or other hydrogen peroxide suppliers, and therefore denies these allegations.

24. PeroxyChem lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 24, but notes that many customers of different grades of hydrogen peroxide can and have purchased from producers outside of the artificial “Pacific Northwest” and “Southern and Central United States” markets alleged by the FTC. PeroxyChem specifically denies that the FTC’s alleged “Pacific Northwest” and “Southern and Central United States” markets on which the allegations of Paragraph 24 are based constitute properly defined relevant geographic markets.

25. PeroxyChem admits that it has hydrogen peroxide production plants in Bayport, Texas and Prince George, British Columbia, Canada. PeroxyChem further admits that Evonik has hydrogen peroxide production plants in Mobile, Alabama; Gibbons, Alberta, Canada; and Maitland, Ontario, Canada. PeroxyChem denies the remainder of Paragraph 25.

26. PeroxyChem denies the allegations in Paragraph 26 and specifically denies that the FTC’s alleged “Pacific Northwest” and “Southern and Central United States” markets on which the allegations of Paragraph 26 are based constitute properly defined relevant geographic markets.

27. PeroxyChem denies the allegations in Paragraph 27 and specifically denies that the FTC’s alleged “Pacific Northwest” and “Southern and Central United States” markets on which the allegations of Paragraph 27 are based constitute properly defined relevant geographic markets.

28. PeroxyChem denies the allegations in Paragraph 28, except to the extent it states legal conclusions to which no response is necessary.

29.

40. PeroxyChem admits that the major costs to produce hydrogen peroxide include natural gas and electricity. PeroxyChem further admits that, like all businesses in a highly competitive industry, it may factor in estimates of competitors' transportation costs in order to be as competitive as possible, and that those estimates can sometimes inform PeroxyChem's bidding depending on the circumstances. PeroxyChem admits that on occasion certain customers selectively tell it a competitor's price where the customer feels that doing so is to its advantage. PeroxyChem denies the remainder of the allegations of Paragraph 40 as they pertain to it. PeroxyChem lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations as they pertain to other producers.

41. PeroxyChem denies the allegations in Paragraph 41.

42. PeroxyChem denies the allegations in Paragraph 42.

43. PeroxyChem admits that customers benefit from competition between hydrogen

information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 44

basis denies these allegations. PeroxyChem denies the remainder of the allegations in Paragraph 50, except to the extent it states legal conclusions to which no response is necessary.

51. PeroxyChem lacks knowledge or information sufficient to form a belief as to the truth of the allegations as to “other industrial chemical producers” in Paragraph 51, and on that basis denies those allegations.

52. PeroxyChem lacks knowledge or information sufficient to form a belief as to the truth of the allegations the first sentence of Paragraph 52 as they relate to other competitors or customers, and on that basis denies the allegations of Paragraph 52 except to admit that PeroxyChem has not observed significant imports of hydrogen peroxide into North America.

53. PeroxyChem denies the allegations in Paragraph 53.

54. Paragraph 54 incorporates by reference the allegations in Paragraphs 1 through 53 of the Complaint; PeroxyChem’s response to Paragraph 54 likewise incorporates PeroxyChem’s responses to the allegations contained in Paragraphs 1 through 53.

55. Paragraph 55 contains legal conclusions to which no response is required. To the extent a response is deemed necessary, PeroxyChem denies the allegations in Paragraph 55.

56. Paragraph 56 incorporates by reference the allegations in Paragraphs 1 through 53 of the Complaint; PeroxyChem’s response to Paragraph 56 likewise incorporates PeroxyChem’s responses to the allegations contained in Paragraphs 1 through 53.

57. Paragraph 57 contains legal conclusions to which no response is required. To the extent a response is deemed necessary, PeroxyChem denies the allegations in Paragraph 57.

AFFIRMATIVE DEFENSES

The inclusion of any defense within this section does not constitute an admission that PeroxyChem bears the burden of proof on each or any of the issues, nor does it excuse Plaintiff's counsel from establishing each element of its purported claims.

First Defense

The Complaint fails to state a claim on which relief can be granted.

Second Defense

The relief sought in the Complaint is not in the public interest and the equities favor consummation of the Acquisition.

Third Defense

The Complaint fails to allege a plausible relevant product market.

Fourth Defense

The Complaint fails to allege a plausible relevant geographic market.

Fifth Defense

The Complaint fails to allege any plausible harm to competition.

Sixth Defense

The benefits of the Acquisition significantly outweigh its costs.

WHEREFORE, having fully answered the Complaint, PeroxyChem respectfully requests that the Commission (i) deny the Complaint's contemplated relief; (ii) dismiss the Complaint in its entirety with prejudice; (iii) award to PeroxyChem its costs of suit, including expert fees and reasonable attorney fees, as may be allowed by law; and (iv) award to PeroxyChem such other and further relief as the Commission deems just and appropriate.

Dated: August 20, 2019

Respectfully submitted,

/s/ Mike Cowie

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L.P., PeroxyChem Holding Company LLC,
PeroxyChem Holdings, L.P., PeroxyChem
Holdings LLC, PeroxyChem LLC, and
PeroxyChem Cooperatief U.A.*

CERTIFICATE OF SERVICE

CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and

Notice of Electronic Service

I hereby certify that on August 20, 2019, I filed an electronic copy of the foregoing Respondent PeroxyChem's Answer and Defenses to Complaint, with:

D. Michael Chappell
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Donald Clark
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I hereby certify that on August 20, 2019, I served via E-Service an electronic copy of the foregoing Respondent PeroxyChem's Answer and Defenses to Complaint, upon:

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