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and
PeroxyChem Cooperatief U.A.,
a private company.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (“FTC Act”), and by the virtue of the authority vested in it by the FTC Act, the Federal Trade Commission

hydrogen peroxide imports or repositioning by other chemical producers likely to offset the anticompetitive effects of the Acquisition.

8. Respondents cannot show cognizable, merger-specific efficiencies that would offset the likely and substantial competitive harm resulting from the Acquisition.

II. JURISDICTION

9. Respondents are, and at all relevant times have been, engaged in commerce or in activities affecting “commerce” as defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12.

10. The Acquisition constitutes an acquisition subject to Section 7 of the Clayton Act, 15 U.S.C. § 18.

III. RESPONDENTS

11. Respondent RAG-Stiftung owns Respondent Evonik Industries AG, a large chemicals manufacturer, headquartered in Essen, North Rhine-Westphalia, Germany. Respondent Evonik Corporation is a wholly owned subsidiary of Evonik Industries AG, and is based in New Jersey. Respondent Evonik International Holding B.V. is a wholly owned subsidiary of Evonik Industries AG, and is based in the Netherlands. In 2006, RAG-Stiftung acquired Degussa, a long-time hydrogen peroxide producer, and ultimately renamed the company Evonik. Evonik had worldwide revenue of €14.4 billion in 2017. Evonik has three North American hydrogen peroxide production plants located in Mobile, Alabama; Gibbons, Alberta; and Maitland, Ontario.

12. Respondent One Equity Partners Secondary Fund, L.P. holds all of the limited partnership interests of Respondent One Equity Partners V, L.P. Respondent Lexington Capital Partners VIII (AIV I), L.P. indirectly holds a majority of the limited partnership interests in One Equity Partners Secondary Fund, L.P. One Equity Partners is the private investment arm of J.P. Morgan Chase & Co., which owns Respondent PeroxyChem Holding Company LLC, a leading global manufacturer of several chemicals, including hydrogen peroxide, based in Philadelphia, Pennsylvania. PeroxyChem Holding Company LLC owns Respondent PeroxyChem Holdings LLC, Respondent PeroxyChem Holdings, L.P., Respondent PeroxyChem LLC, and Respondent PeroxyChem Cooperatief. One Equity Partners acquired FMC Global Peroxygens, a long-time hydrogen peroxide producer (ox)-10 (,)-10 (a)4 (l)-2 (o7 l)-2 (o12 (u (e)4 na (l)-2 (s)-1 (, co-10 (I)15 (C)-3 (h)-

Acquisition in certain regional markets in which Respondents compete. There is also likely to be harm to customers that are outside of these geographic markets.

20. The relevant regional geographic markets in which to assess the Acquisition's effects are: (1) the Pacific Northwest and (2) the Southern and Central United States.

21. Hydrogen peroxide is delivered to customers predominantly by rail or truck. There are high transportation costs associated with delivering hydrogen peroxide, particularly relative to the value of the product itself. As a result, hydrogen peroxide producers deliver from plants that are relatively nearer to customers because – when all else is equal – it is more cost-effective to deliver at shorter distances. While hydrogen peroxide producers use terminals to deliver further distances, this usage increases the cost of delivery.

22. Respondents, like the other major North American hydrogen peroxide producers, analyze the industry by geographic regions, routinely treating the Pacific Northwest and the Southern and Central United States as separate regions.

23. Evonik and PeroxyChem individually negotiate prices with customers and price differently based on customers' locations. When hydrogen peroxide producers negotiate with a multiregional customer, the customer's prices typically vary by region.

24. Customers within one of the relevant regional geographic markets are unlikely to purchase hydrogen peroxide outside of that market and transport it themselves, given the cost of delivery and the importance of proximity. Further, customers could not defeat a price increase by purchasing indirectly from or through other customers (*i.e.*, arbitrage).

25. Competitive conditions for the production and sale of hydrogen peroxide differ by region. Evonik and PeroxyChem each compete to serve customers in the Pacific Northwest and the Southern and Central United States, where clusters of hydrogen peroxide customers are located. Additionally, Evonik and PeroxyChem each have plants in the Pacific Northwest and the Southern and Central United States.

26. The Pacific Northwest consists of approximately Washington, Oregon, Montana, Idaho, and Wyoming in the United States, along with British Columbia, Alberta, Manitoba, and Saskatchewan in Canada.

27. The Southern and Central United States consists of approximately Alabama,

VI. MARKET CONCENTRATION AND THE ACQUISITION'S PRESUMPTIVE ILLEGALITY

28. Post-Acquisition, the combined entity would have a dominant share of sales to customers in both the Pacific Northwest and the Southern and Central United States, and the Acquisition would greatly increase concentration in these already concentrated markets.

29. Other than Evonik and PeroxyChem, only one other hydrogen peroxide producer has significant sales in the Pacific Northwest: Solvay. Following the Acquisition, the merged entity will be the largest hydrogen peroxide producer in the Pacific Northwest, with more than half of the production capacity and sales in the region.

30. In the Southern and Central United States, Evonik and PeroxyChem compete with Solvay, Arkema, and Nouryon. By nameplate production capacity, Evonik and PeroxyChem are the two largest hydrogen peroxide producers, and are two of the top three suppliers of hydrogen peroxide by sales. Following the Acquisition, the merged entity will be the largest hydrogen peroxide producer in the area, with nearly half of the production capacity and sales in the region.

31. The Merger Guidelines and courts often measure concentration using HHIs. HHIs are calculated by totaling the squares of the market shares of every firm in the relevant market pre- and post-Acquisition. Under the Merger Guidelines, an acquisition is presumed likely to create or enhance market power – and is presumptively illegal – when the post-acquisition HHI exceeds 2,500 and the acquisition increases the HHI by more than 200 points.

32. The market for hydrogen peroxide in each relevant regional market is already concentrated. Post-Acquisition, each regional market would be substantially more concentrated than it is today.

33. In the Pacific Northwest, post-Acquisition Evonik would control more than half of the production capacity and sales in the relevant market. Post-Acquisition, the HHI in the relevant market far exceeds the 2,500 points that demonstrate that a market is highly concentrated. Moreover, the Acquisition would increase HHIs in an already highly concentrated market by significantly more points than required for a presumption that the Acquisition is likely to enhance market power.

34. In the Southern and Central United States, post-Acquisition Evonik would control nearly half of the production capacity and sales in the market. Post-Acquisition, the HHI in the relevant market would exceed the 2,500 points that demonstrate that a market is highly concentrated. Moreover, the Acquisition would increase HHIs in an already concentrated market by significantly more points than required for a presumption that the Acquisition is likely to enhance market power.

35. Thus, in both relevant markets, the Acquisition would result in concentration well above the amount necessary to establish a presumption of competitive harm.

36. Therefore, the Acquisition is presumptively unlawful.

VII. ANTICOMPETITIVE EFFECTS

A. The Acquisition Would Increase the Likelihood of Anticompetitive Coordination

37. The markets for the production and sale of hydrogen peroxide to customers already demonstrate numerous characteristics that make them vulnerable to coordinated conduct. These characteristics include a commodity product; a highly concentrated market structure with a limited number of competitors; significant transparency regarding the competitive and strategic decisions of rival firms; customers with long-term, stable supplier relationships allowing for easy detection of deviations from past practices; low elasticity of demand; and a history of strong interdependent behavior.

38. Given these characteristics, it is not surprising that the industry has a history of price fixing, including guilty pleas, private litigation, and substantial fines and settlements. Evonik's predecessor, Degussa, entered into an antitrust leniency agreement with the U.S. Department of Justice for its cooperation with a criminal antitrust investigation into illegal price fixing involving hydrogen peroxide. As part of the same criminal price-fixing case, Solvay and AkzoNobel (now Nouryon) entered plea agreements which summarized the facts underlying the anticompetitive behavior among the hydrogen peroxide producers:

[Solvay] . . . participated in a conspiracy among major hydrogen peroxide producers, the primary purpose of which was to suppress and eliminate competition by fixing the price of hydrogen peroxide sold in the United States and elsewhere. In furtherance of the conspiracy, the defendant, through certain of its former officers, directors, and employees, engaged in discussions and attended meetings with representatives of other major hydrogen peroxide producers. During these discussions and meetings, agreements were reached to fix the price of hydrogen peroxide sold in the United States and elsewhere.

39. The major North American hydrogen peroxide producers have considerable visibility into their competitors' business. Competitors track a wealth of information about each other—including plant-by-plant production capacities, production and inventory levels, costs, and customer locations served—

Nouryon do not have sufficient capacity to mitigate the anticompetitive effects of the Acquisition in the Southern and Central United States. Further, for certain customers, some of these suppliers are not viable options due to smaller production capacities.

VIII. LACK OF COUNTERVAILING FACTORS

A. Barriers to Entry and Expansion

48. Respondents cannot demonstrate that new entry or expansion by existing firms would be timely, likely, or sufficient to offset the anticompetitive effects of the Acquisition.

49. The hydrogen peroxide market is characterized by substantial barriers to entry. Building a new hydrogen peroxide plant would take multiple years and a large capital investment. Thus, sufficiently timely entry is unlikely to occur in response to the Acquisition's anticompetitive effects in the Pacific Northwest or the Southern and Central United States to prevent significant anticompetitive harm.

50. Expansion or repositioning by the remaining firms that would defeat anticompetitive effects in the hydrogen peroxide markets in the Pacific Northwest or the Southern and Central United States is also unlikely. While Solvay expanded production of hydrogen peroxide at its Longview, Washington plant in 2016, there has been no other substantial increase in hydrogen peroxide capacity in the last decade. Further, any expansion would require a large capital investment. Thus, expansion would not be timely, likely, or sufficient in the Pacific Northwest or the Southern and Central United States to counteract the anticompetitive effects of the Acquisition.

51. Other industrial chemical producers are unlikely to reposition. The same barriers to entry and expansion by existing hydrogen peroxide producers hold true for industrial chemical manufacturers.

52. There are no significant imports of hydrogen peroxide into North America, and North American hydrogen peroxide producers do not view imports as a competitive threat. Further, customers do not view imports as a viable option for hydrogen peroxide due to supply chain challenges and transportation costs.

B. Efficiencies

53. Respondents cannot demonstrate cognizable merger-specific efficiencies that would be sufficient to rebut the strong presumption and evidence of the Acquisition's likely significant anticompetitive effects in the relevant markets.

IX. VIOLATION

Count I – Illegal Agreement

54. The allegations of Paragraphs 1 through 53 above are incorporated by reference as though fully set forth herein.

55. The Acquisition Agreement constitutes an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

Count II—Illegal Acquisition

56. The allegations of Paragraphs 1 through 53 above are incorporated by reference as though fully set forth herein.

57. The Acquisition, if consummated, may substantially lessen competition in the relevant market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and is an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

NOTICE

Notice is hereby given to the Respondents that the 22nd day of January, 2020, at 10:00 a.m., is hereby fixed as the time, and the Federal Trade Commission offices at 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580, as the place, when and where an evidentiary hearing will be had before an Administrative Law Judge of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under the Federal Trade Commission Act and the Clayton Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in the complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the fourteenth (14th) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted. If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material facts to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint and, together with the complaint, will provide a record basis on which the Commission shall issue a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding. In such answer, you may, however, reserve the right to submit proposed findings and conclusions under Rule 3.46 of the Commission's Rules of Practice for Adjudicative Proceedings.

Failure to file an answer within the time above provided shall be deemed to constitute a

amended, the Commission may order such relief against Respondents as is supported by the record and is necessary and appropriate, including, but not limited to:

1. If the Acquisition is consummated, divestiture or reconstitution of all associated and necessary assets, in a manner that restores two or more distinct and separate, viable and independent businesses in the relevant markets, with the ability to offer such products and services as Evonik and PeroxyChem were offering and planning to offer prior to the Acquisition.
2. A prohibition against any transaction between Evonik and PeroxyChem that combines their businesses in the relevant markets, except as may be approved by the Commission.
3. A requirement that, for a period of time, Evonik and PeroxyChem provide prior notice to the Commission of acquisitions, mergers, consolidations, or any other combinations of their businesses in the relevant markets with any other company operating in the relevant markets.
4. A requirement to file periodic compliance reports with the Commission.
5. Any other relief appropriate to correct or remedy the anticompetitive effects of the transaction or to restore PeroxyChem as a viable, independent competitor in the relevant market.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D.C., this second day of August, 2019.

By the Commission, Chairman Simons recused.

April J. Tabor
Acting Secretary

SEAL: