IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION, *Plaintiff*, v. RAG-STIFTUNG, EVONIK INDUSTRIES AG, EVONIK CORPORATION, EVONIK INTERNATIONAL HOLDING B.V., ONE EQUITY PARTNERS SECONDARY FUND, L.P., ONE EQUITY PARTNERS V, L.P., LEXINGTON CAPITAL PARTNERS VII (AIV I), L.P., PEROXYCHEM HOLDING COMPANY LLC, PEROXYCHEM HOLDINGS, L.P., PEROXYCHEM HOLDINGS LLC, PEROXYCHEM LLC, AND PEROXYCHEM COOPERATIEF U.A., *Defendants.*	Case: 1:19-cv-02337-TJK

ANSWER OF DEFENDANTS RAG-STIFTUNG, EVONIK INDUSTRIES AG, EVONIK CORPORATION, AND EVONIK INTERNATIONAL HOLDINGS B.V.

Defendants RAG-Stiftung, Evonik Industries AG, Evonik Corporation, and Evonik International Holdings B.V. (together, ***Evonik***) answer the Complaint for Temporary Restraining Order and Preliminary Injunction (the ***Complaint***) by the Federal Trade Commission (***FTC***) in relation to Evonik's proposed acquisition of PeroxyChem LLC (the ***Acquisition***) as follows:

INTRODUCTION

Evonik will demonstrate at trial—with facts rather than theory and presumption—that the FTC's portrayal of the hydrogen peroxide industry in general and the Acquisition in particular bear little resemblance to reality. The FTC's Complaint ignores that today at least five major hydrogen peroxide producers compete vigorously to serve powerful, sophisticated customers that

demand high volume, long-term supply contracts for hydrogen peroxide products that come in various grades for a wide range of end uses, and that cannot be substituted for one another. After closing the divestiture proposed by the parties, Evonik will acquire from PeroxyChem only one North American hydrogen peroxide plant, which is located within 500 miles of three other competitors' plants. This Acquisition will not dampen the robust competition that exists today.

In order to manufacture the strongest mathematical presumption under its Horizontal Merger Guidelines, the FTC asserts artificial relevant product and geographic markets. Neither posited relevant market comports with real world industry dynamics and complexities. As a result, the FTC's asserted relevant markets both *understate* the vigorous competition in the hydrogen peroxide industry broadly and *overstate* the degree of head-to-head competition between Evonik and PeroxyChem.

First, the FTC alleges the relevant product market is all hydrogen peroxide except electronics-grade hydrogen peroxide. The FTC declines to include the latter on the basis that its "production requires additional manufacturing steps" and it "is not a substitute for other forms of hydrogen peroxide." However, the same qualities that the FTC uses to *exclude* electronics-grade hydrogen peroxide apply equally to other grades of hydrogen peroxide that the FTC *includes* in the alleged relevant product market. For example, the FTC purports to include hydrogen peroxide used for aseptic food packaging—which requires additional purification and specially formulated additives to be safe for human consumption—in the same relevant product market as the unpurified standard-grade hydrogen peroxide used for bleaching wood pulp or treating waste water. This is just one example. By including specialty grades of hydrogen peroxide like aseptic-packing-grade—which Evonik does not and cannot supply in the United States—in the

alleged relevant product market, the FTC artificially overstates the overlap in product offerings of, and therefore the extent of competition between, Evonik and PeroxyChem.

The FTC similarly gerrymanders alleged relevant geographic markets that are implausible on their face. Although the FTC historically has defined a North American market for hydrogen peroxide in its prior matters, *In re* Degussa Aktiengesellschaft, et al., 125 F.T.C. 1265, 1267 (1998) (Para. 12 of the complaint), in the Complaint the FTC inexplicably alleges a "South and Central United States" geographic market. That alleged relevant geographic market somehow includes California in the same market as Delaware and Florida (among a total of 35 states), but in a different market than neighboring Oregon and Washington state—the location of Solvay's recently expanded Longview, Washington plant.

The contrived nature of the FTC's complaint is also revealed by its discordant theories of anticompetitive harm. On the one hand, the FTC simultaneously alleges that "[f]or years, hydrogen peroxide producers have engaged in parallel pricing behavior and other types of parallel accommodating conduct, *including refraining from competing aggressively*," as a means to prop up its unsupported theory that the Acquisition will increase the probability that suppliers will coordinate. But on the other hand, the Complaint simultaneously acknowledges that customers nonetheless are able to "pit hydrogen peroxide producers against each other in negotiations," belying its contention of withheld competition and coordination. The FTC also inconsistently contends—without regard for the facts—that the Acquisition would reduce "significant direct, head-to-head competition" to suggest that the companies are somehow uniquely competitive with one another. Recognizing that neither of its theories of harm is strong enough to stand on its own, the FTC has instead sought to marry two internally inconsistent theories of harm to bolster its case.

What is more, the FTC ignores the divestiture of PeroxyChem's Prince George plant in Western Canada, which the parties proposed to the FTC in May 2019. As a result of the divestiture, Evonik proposes to acquire only one North American hydrogen peroxide plant in Bayport, Texas, via the Acquisition. The parties have a signed divestiture agreement, contingent on closing the Acquisition, that fully addresses any proffered anticompetitive effects in the FTC's alleged Pacific Northwest geographic market and ensures that there will be no harm to competition or consumers. The divestiture buyer is a leading global supplier of organic peroxides—a complementary product to hydrogen peroxide—that does not produce hydrogen peroxide in North America. By ignoring the proposed divestiture, the FTC unnecessarily brings claims that have been obviated. The parties' proposed divestiture will preserve the status quo of five North American hydrogen peroxide producers.

In contrast to the picture painted in the Complaint, assessment of actual market dynamics reveals supply of a wide variety of different hydrogen peroxide products that are sold in highly competitive bid events in which Evonik and PeroxyChem are not close competitors. There are at least six key points to note about how competition actually works in this industry:

First, hydrogen peroxide is not a commodity product. A variety of grades are specifically tailored to suit different end-use applications. Evonik and PeroxyChem focus on different ends of the hydrogen peroxide spectrum, with Evonik focused on supply of standard-grade hydrogen peroxide, and PeroxyChem focused on supply of high-end, specialty hydrogen peroxide products. In 2018, only around 5 percent of Evonik's hydrogen peroxide revenue in the United States was generated by the sale of specialty products that directly compete with products sold by PeroxyChem, which has a heavy and growing focus on specialty products.

Second, Evonik and PeroxyChem operate plants that are geographically differentiated, and each faces closer competition from more proximate hydrogen peroxide suppliers. PeroxyChem's Bayport, Texas hydrogen peroxide plant—located less than 10 miles from Solvay's Deer Park, Texas plant—is more than 400 miles from Evonik's Mobile, Alabama plant; similarly, Evonik's Mobile plant is significantly closer to the hydrogen peroxide plants of both Arkema and Nouryon than it is to PeroxyChem's Bayport plant. Due to the high transportation costs associated with shipping hydrogen peroxide, each hydrogen peroxide producer competes more closely with more proximate competitors.

Third, hydrogen peroxide is sold via long-term contracts that are fiercely contested in competitive bid processes. These competitive bid processes promote competition and allow customers to leverage competing bids to extract more favorable contract terms. Because Evonik and PeroxyChem are not close competitors—either geographically or in terms of product mix—they are not each other's primary competitive constraints in bid processes.

Fourth, these bid processes are initiated by powerful, sophisticated customers that have substantial bargaining leverage vis-à-vis hydrogen peroxide suppliers and are capable of undermining coordinated conduct. For example, nearly 95 percent of Evonik's 2018 hydrogen peroxide sales in the United States was attributable to its top 20 customers. Similarly, nearly 75 percent of PeroxyChem's 2018 hydrogen peroxide sales in the United States was attributable to its top 20 customers.

Fifth, hydrogen peroxide producers continually look for opportunities to increase sales, both by growing capacity to keep pace with demand and by winning business away from other suppliers. After Solvay expanded its Longview, Washington plant in 2016, it competed vigorously to sell out its new capacity—including by earning new business from customers

previously served by competing hydrogen peroxide producers. As a result, prices fell not only in the Pacific Northwest, but across North America. In addition to formal expansions, hydrogen peroxide suppliers routinely optimize and de-bottleneck their production processes, gradually increasing capacity.

Finally, actual market performance indicates that the hydrogen peroxide industry is characterized by robust competition. There is no evidence of coordination, let alone collusion, in recent history. The FTC referenced past alleged collusive conduct, quoting a court filing, but neglected to indicate the time period of the conduct described in the filing. The alleged price fixing to which the FTC referred ceased in 2001—nearly twenty years ago—and has no bearing on current market conditions or the likely effects of the Acquisition.

These real world facts, which are central to any proper antitrust analysis of the likely effects of the Acquisition, are repeatedly misunderstood, overlooked, or simply disregarded by the FTC in its Complaint and in its decision to bring this action. The result is a caricature of the hydrogen peroxide industry that understates existing competition, overstates direct competition between Evonik and PeroxyChem, and ignores market complexities that undermine any potential coordination between the five post-transaction North American hydrogen peroxide producers that will continue to compete vigorously after the close of this Acquisition.

RESPONSE TO THE SPECIFIC ALLEGATIONS OF THE COMPLAINT

Except to the extent specifically admitted herein, Evonik 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 65 numbered paragraphs.

The first paragraph of 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, Evonik admits that the FTC has petitioned this Court for a preliminary injunction enjoining Evonik's proposed acquisition of PeroxyChem and in all other respects denies the allegations in the first paragraph of the preamble to the Complaint.

The second paragraph of 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, Evonik admits that the FTC has filed an administrative complaint before the FTC and in all other respects denies the allegations in the second paragraph of the preamble the Complaint. Specifically, Evonik denies that the FTC's administrative complaint noticed a merits trial scheduled to begin on January 2, 2020; Evonik denies that competition will be harmed if the Court denies the FTC's request for a preliminary injunction enjoining the Acquisition; and Evonik denies that the FTC's administrative hearing "will determine the legality of the Acquisition" or "will provide all parties a full opportunity to conduct discovery and present testimony and other evidence regarding the likely competitive effects of the Acquisition."

To the contrary, Evonik avers that, as the FTC is aware, the last day on which the Acquisition can close is February 3, 2020 (the "***Outside Closing Date***"), meaning that either party to the Acquisition may unilaterally terminate the Acquisition as of February 4, 2020. The FTC's administrative hearing is scheduled to begin at the earliest either on January 2, 2020 (the date set forth in the FTC's Complaint) or January 22, 2020 (the date noticed in the FTC's administrative complaint). Whichever date is correct, the FTC's administrative hearing will not result in a ruling prior to the Acquisition's Outside Closing Date. Instead, given the commercial realities surrounding the Acquisition, this Court's determination with respect to this preliminary injunction action will decide the fate of the Acquisition on the merits. Indeed, based on information and belief, since the FTC adopted its current policy statement in 1995 regarding

administrative litigation following the denial of a preliminary injunction (available at https://www.ftc.gov/enforcement/merger-review), the FTC has not pursued its administrative complaint to completion after the denial of its motion for preliminary injunction; likewise, since 1995, only a very small number of transactions have been able to survive through an entire FTC administrative hearing and ruling after the FTC's motion for preliminary injunction was granted. FTC administrative proceedings typically take anywhere from 12 to 24 months before the FTC issues its final decision. Given the Outside Closing Date and the commercial realities, it is inconceivable that the Acquisition could survive such an extraordinary delay.

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

1. The first sentence of Paragraph 1 characterizes the Complaint, and therefore does not require a response; to the extent a response is deemed necessary, Evonik admits that the FTC has filed this action to temporarily restrain and preliminarily enjoin the Acquisition, and in all other respects denies the allegations of the first sentence of Paragraph 1. As to the second sentence of Paragraph 1, Evonik admits that hydrogen peroxide is used, among other things, for oxidation, sterilization, and bleaching, and in all other respects denies the allegations in the second sentence of Paragraph 1. Evonik admits the allegations in the third sentence of Paragraph 1. As to the fourth sentence of Paragraph 1, Evonik admits that the pulp and paper industry uses most of the standard-grade hydrogen peroxide produced in North America, but in all other respects denies the allegations in the fourth sentence of Paragraph 1. As to the fifth sentence of Paragraph 1, Evonik admits that the FTC has excluded electronics-grade hydrogen peroxide from its alleged product market definition, that electronics-grade hydrogen peroxide requires additional purification as compared to standard-grade hydrogen peroxide, and that electronics-grade hydrogen peroxide is not a substitute for other grades of hydrogen peroxide

and vice versa; in all other respects, Evonik denies the allegations in the fifth sentence of Paragraph 1, and specifically denies that the FTC's alleged hydrogen peroxide market, excluding electronics-grade hydrogen peroxide, constitutes a properly-defined relevant product market.

2. Evonik denies the allegations in the first sentence of Paragraph 2 except to admit that Evonik and the other North American producers of hydrogen peroxide "compete vigorously for customers." The remainder of Paragraph 2 contains legal conclusions to which no response is required. To the extent a response is deemed necessary, Evonik denies the remaining allegations in Paragraph 2, and specifically denies that the FTC's artificial "Pacific Northwest" and "Southern and Central United States" markets on which the allegations in Paragraph 2 are based constitute properly defined relevant geographic markets and that the FTC's alleged hydrogen peroxide market, excluding electronics-grade hydrogen peroxide, constitutes a properly defined relevant product market.

3. Paragraph 3 contains legal conclusions to which no response is required; to the extent a response is deemed necessary, Evonik denies the allegations in Paragraph 3, except to admit that Solvay, Arkema, and Nouryon all are active North American hydrogen peroxide producers. Further, Evonik states that the proposed divestiture of the Prince George plant fully addresses any proffered or potential anticompetitive effects in the alleged Pacific Northwest geographic market.

4. The first sentence of Paragraph 4 seeks to characterize the FTC's Merger Guidelines, which speak for themselves. The remainder of Paragraph 4 contains legal conclusions to which no response is required; to the extent a response is deemed necessary, Evonik denies the allegations in Paragraph 4 and specifically denies that the Merger Guidelines

are vested with the authority to determine the legality of any acquisition, presumptively or otherwise.

5. The first, second, sixth, and seventh sentences of Paragraph 5 contain legal conclusions to which no response is required; to the extent a response is deemed necessary, Evonik denies the allegations in the first, second, sixth, and seventh sentences of Paragraph 5. Evonik denies the allegations in the third, fourth, and fifth sentences of Paragraph 5 except to admit that certain hydrogen peroxide suppliers admitted to illegally fixing prices nearly twenty years ago.

6. Evonik denies the allegations in Paragraph 6, except to admit that Evonik and other North American hydrogen peroxide producers compete to serve customers throughout the United States.

7. The first sentence of Paragraph 7 contains a legal conclusion to which no response is required; to the extent a response is deemed necessary, Evonik denies the allegations in the first sentence of Paragraph 7. In all other respects, Evonik denies the allegations in Paragraph 7.

8. Paragraph 8 contains legal conclusions to which no response is required; to the extent a response is deemed necessary, Evonik denies the allegations in Paragraph 8.

9. Paragraph 9 contains legal conclusions to which no response is required; to the extent a response is deemed necessary, Evonik admits the allegations in Paragraph 9 except to deny that the administrative complaint noticed a merits trial scheduled to begin on January 2, 2020.

10. Evonik admits the allegations in the first sentence of Paragraph 10. The second sentence of Paragraph 10 contains a legal conclusion to which no response is required; to the

extent a response is deemed necessary, Evonik denies the allegations in the second sentence of Paragraph 10.

11. Paragraph 11 contains legal conclusions to which no response is required; to the extent a response is deemed necessary, Evonik denies the allegations in Paragraph 11.

12. Evonik admits that the FTC has filed this Complaint pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and under 28 U.S.C. §§ 1331, 1337, and 1345 and admits that the FTC is an agency of the United States. The remaining allegations in Paragraph 12 characterize this action and assert legal conclusions to which no response is required; to the extent a response is deemed necessary, Evonik denies the remaining allegations in Paragraph 12.

13. Paragraph 13 purports to quote portions of a federal statute that speaks for itself and to which no response is required; Evonik further refers the Court to the cited statute for a complete and accurate statement of its contents.

14. Paragraph 14 contains legal conclusions to which no response is required; to the extent a response is deemed necessary, Evonik admits that it is engaged in activities in or affecting interstate commerce. Evonik denies the remaining allegations in Paragraph 14.

15. Evonik lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 15 and on that basis denies those allegations. The second, third, and fourth sentences of Paragraph 15 contain legal conclusions to which no response is required; to the extent a response is deemed necessary, Evonik denies the allegations in the second, third, and fourth sentences of Paragraph 15.

16. Evonik admits the allegations in Paragraph 16.

17. Evonik admits the allegations in Paragraph 17, except to deny that RAG-Stiftung acquired Degussa in 2006. Evonik states that RAG-Stiftung's predecessor, RAG AG, acquired a

majority share of Degussa in 2004 and the remainder of Degussa shares in 2006, and that RAG-Stiftung currently owns approximately 64.3 percent of the outstanding shares of Evonik Industries AG.

18. Evonik lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18 and on that basis denies those allegations.

19. Evonik denies the allegations in Paragraph 19, 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 interests of PeroxyChem Holdings LLC for approximately $625 million.

20. Evonik admits the allegations in Paragraph 20.

21. Evonik admits that the FTC authorized the filing of this Complaint; in all other respects, Evonik denies the allegations in Paragraph 21 and specifically denies that the Acquisition would violate any provision of the Clayton Act or the FTC Act, or that Evonik's acquisition of PeroxyChem would substantially lessen competition or harm consumers in any line of commerce, or that enjoining Evonik's acquisition of PeroxyChem would in any way be in the public interest.

22. Paragraph 22 contains legal conclusions to which no response is required; to the extent a response is deemed necessary, Evonik denies the allegations in Paragraph 22. Evonik specifically denies that the FTC's artificial "Pacific Northwest" and "Southern and Central United States" markets constitute properly defined relevant geographic markets, and specifically denies that the FTC's alleged hydrogen peroxide market, excluding electronics-grade hydrogen peroxide, constitutes a properly defined relevant product market.

23. The first sentence of Paragraph 23 contains legal conclusions to which no response is required; to the extent a response is deemed necessary, Evonik denies the allegations in the first sentence of Paragraph 23. As to the second sentence of Paragraph 23, Evonik admits that hydrogen peroxide can be used as an oxidizing agent with diverse end uses, including various grades appropriate for end uses such as bleaching pulp, chemical synthesis, and sterilizing food packaging, among many others including electronics. As to the third sentence of Paragraph 23, Evonik admits that the primary use of standard-grade hydrogen peroxide in North America is for bleaching in the pulp and paper industry. In all other respects, Evonik denies the allegations in Paragraph 23. Evonik specifically denies that the FTC's alleged hydrogen peroxide market, excluding electronics-grade hydrogen peroxide, constitutes a properly defined relevant product market.

24. As to the first sentence of Paragraph 24, Evonik admits that the FTC has excluded electronics-grade hydrogen peroxide from its alleged product market definition, but specifically denies that the FTC's alleged hydrogen peroxide market, excluding electronics-grade hydrogen peroxide, constitutes a properly defined relevant product market. Evonik admits the allegations in the second and third sentences of Paragraph 24. Evonik also states that certain other grades of hydrogen peroxide similarly require additional purification capabilities that vary by hydrogen peroxide producer, are not capable of being produced by all hydrogen peroxide producers, and are not substitutable with other grades of hydrogen peroxide. In all other respects, Evonik denies the allegations in Paragraph 24.

25. Evonik denies the allegations in the first sentence of Paragraph 25. As to the second sentence of Paragraph 25, Evonik admits that the primary raw materials used to manufacture the various grades of hydrogen peroxide are natural gas and hydrogen. As to the

third sentence of Paragraph 25, Evonik admits that crude hydrogen peroxide is produced via a three-step process of hydrogenation, oxidation, and extraction. As to the fourth sentence of Paragraph 25, Evonik admits that various grades of hydrogen peroxide are made from crude hydrogen peroxide via dilution, filtration, and stabilization processes designed to meet end-use specific criteria. In all other respects, Evonik denies the allegations in the second, third, and fourth sentences of Paragraph 25.

26. Evonik denies the allegations in the first, third, and fourth sentences of Paragraph 26. As to the second sentence of Paragraph 26, Evonik admits that pulp and paper customers purchase the majority of standard-grade hydrogen peroxide in North America. Evonik lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the remainder of the second sentence of Paragraph 26 and on that basis denies those allegations.

27. Paragraph 27 contains legal conclusions to which no response is required; to the extent a response is deemed necessary, Evonik denies the allegations in Paragraph 27 except to admit that Evonik and other producers of hydrogen peroxide compete to serve customers throughout the United States.

28. Paragraph 28 contains legal conclusions to which no response is required; to the extent a response is deemed necessary, Evonik denies the allegations in Paragraph 28 and specifically denies that the FTC's artificial "Pacific Northwest" and "Southern and Central United States" markets constitute properly defined relevant geographic markets.

29. Evonik lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 29 as they relate to any customer or competitor other than Evonik, and on that basis denies those allegations. With that qualification: Evonik admits the allegations

in the first sentence of Paragraph 29. As to the second sentence of Paragraph 29, Evonik admits that transportation costs associated with delivering standard-grade hydrogen peroxide may be high relative to the value of the product itself, and in all other respects denies the allegations of the second sentence of Paragraph 29. Evonik admits the allegations in the third sentence of Paragraph 29. Evonik denies the allegations in the fourth sentence of Paragraph 29, except to admit that Evonik uses terminals to deliver hydrogen peroxide further distances.

30. Evonik lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding other hydrogen peroxide suppliers in Paragraph 30 and on that basis denies those allegations. In all other respects, Evonik denies the allegations in Paragraph 30, except to admit that Evonik analyzes the North American hydrogen peroxide industry in a number of different ways in its efforts to compete most effectively.

31. Evonik lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding other hydrogen peroxide suppliers in Paragraph 31 and on that basis denies those allegations. In all other respects, Evonik denies the allegations in Paragraph 31 except to admit that Evonik contracts individually with customers, primarily through customers' formalized bid processes, and that prices vary by customer and customer-location, among a range of other factors.

32. Evonik lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 32 and on that basis denies those allegations, but notes that customers of different grades of hydrogen peroxide can purchase and have purchased from producers outside of the artificial "Pacific Northwest" and "Southern and Central United States" markets alleged by the FTC. Evonik specifically denies that the FTC's artificial "Pacific

Northwest" and "Southern and Central United States" markets on which the allegations in Paragraph 32 are based constitute properly defined relevant geographic markets.

33. Evonik denies the allegations in the first and second sentences of Paragraph 33, except to admit that Evonik and other hydrogen peroxide producers compete to serve customers across the United States. Evonik admits the allegations in the third sentence of Paragraph 33.

34. Evonik denies the allegations in Paragraph 34 and specifically denies that the FTC's artificial "Pacific Northwest" market on which the allegations in Paragraph 34 are based constitutes a properly defined relevant geographic market.

35. Evonik denies the allegations in Paragraph 35 and specifically denies that the FTC's artificial "Southern and Central United States" market on which the allegations in Paragraph 35 are based constitutes a properly defined relevant geographic market.

36. Paragraph 36 contains legal conclusions to which no response is required; to the extent a response is deemed necessary, Evonik denies the allegations in Paragraph 36.

37. Evonik denies the allegations in Paragraph 37 and specifically denies that the FTC's artificial "Pacific Northwest" market on which the allegations in Paragraph 37 are based constitutes a properly defined relevant geographic market. Evonik also specifically denies the allegations in the second sentence of Paragraph 37 on the grounds that, following the proposed divestiture of the Prince George plant, Evonik's market share will remain unchanged.

38. Evonik lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 38 and on that basis denies those allegations, except to admit that Evonik and other hydrogen peroxide producers compete vigorously to serve customers throughout the United States. Evonik specifically denies that the FTC's artificial "Southern and

Central United States" market on which the allegations in Paragraph 38 are based constitutes a properly defined relevant geographic market.

39. Paragraph 39 contains characterizations of the Merger Guidelines and court opinions, which speak for themselves and to which no response is required; to the extent a response is deemed necessary, Evonik denies the allegations in Paragraph 39 and specifically denies that the Merger Guidelines are vested with the authority to determine the legality of any acquisition, presumptively or otherwise.

40. Evonik denies the allegations in Paragraph 40.

41. Evonik denies the allegations in Paragraph 41. Evonik further denies the allegations in Paragraph 41 on the grounds that concentration in the alleged Pacific Northwest market will remain unchanged following the divestiture of the Prince George plant.

42. Evonik denies the allegations in Paragraph 42.

43. Evonik denies the allegations in Paragraph 43.

44. Evonik denies the allegations in Paragraph 44.

45. Evonik denies the allegations in Paragraph 45.

46. Evonik denies the allegations in the first sentence of Paragraph 46. As to the second sentence of Paragraph 46, Evonik admits that Degussa, Evonik's predecessor, entered into an antitrust leniency agreement with the U.S. Department of Justice for its cooperation with a criminal antitrust investigation involving hydrogen peroxide in relation to conduct that ceased in 2001—nearly twenty years ago; in all other respects, Evonik denies the allegations in the second sentence of Paragraph 46. The third sentence of Paragraph 46 purports to quote a plea agreement associated with conduct that ceased in 2001, to which Evonik refers the Court for a complete and accurate statement of its contents; to the extent a further response is deemed

necessary, Evonik admits, on information and belief, that certain hydrogen peroxide producers entered plea agreements in relation to that same decades-old conduct.

47. Evonik lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 47 concerning other "North American hydrogen peroxide producers," and on that basis denies those allegations. Evonik denies the remaining allegations in Paragraph 47 except to admit that Evonik seeks to gather public information or information from customers regarding the competitive conditions in the market(s) in which it competes.

48. Evonik lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 48 as they relate to competitors and customers other than Evonik, and on that basis denies those allegations. With that qualification, Evonik admits that the major costs to produce hydrogen peroxide include natural gas and electricity and that it seeks to gather public information or information from customers regarding the competitive conditions in the market(s) in which it competes; in all other respects, Evonik denies the allegations in Paragraph 48.

49. Evonik denies the allegations in Paragraph 49.

50. Evonik denies the allegations in Paragraph 50.

51. Evonik denies the allegations in Paragraph 51 except to admit that customers benefit substantially from competition among multiple North American producers.

52. Evonik denies the allegations in the first sentence of Paragraph 52 except to admit that Evonik and other producers of hydrogen peroxide compete to serve customers throughout the United States. Evonik lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding PeroxyChem in the second sentence of Paragraph 52 and on that basis denies those allegations; Evonik in all other respects denies the allegations in the second sentence of Paragraph 52 except to admit that Evonik seeks to gather public information

regarding the competitive conditions in the market(s) in which it competes, which allows Evonik to respond to competition by offering better prices. As to the third sentence of Paragraph 52, Evonik admits that competition among multiple North American producers enables customers to pit producers against each other in negotiations to obtain lower prices and increased discounts. Evonik denies the remaining allegations in Paragraph 52.

53. Evonik denies the allegations in Paragraph 53.

54. Evonik denies the allegations in the first sentence of Paragraph 54. Evonik specifically denies the allegations in the first sentence of Paragraph 54 on the grounds that the divestiture of the Prince George plant will fully replace any alleged lost competition. Evonik lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second and third sentences of Paragraph 54 and on that basis denies those allegations.

55. Evonik denies the allegations in Paragraph 55 and specifically denies that the FTC's artificial "Pacific Northwest" and "Southern and Central United States" markets on which the allegations in Paragraph 55 are based constitute properly defined relevant geographic markets and that the FTC's alleged hydrogen peroxide market, excluding electronics-grade hydrogen peroxide, constitutes a properly-defined relevant product market.

56. Evonik denies the allegations in Paragraph 56.

57. Evonik denies the allegations in Paragraph 57.

58. Evonik denies the allegations in the first sentence of Paragraph 58. Evonik denies the allegations in the second and third sentences of Paragraph 58 except to admit that, on information and belief, Solvay expanded capacity at its Longview, Washington plant in 2016.

59. Evonik lacks knowledge or information sufficient to form a belief as to the truth of the allegations as to "other industrial chemical producers" in Paragraph 59, and on that basis denies those allegations.

60. Evonik lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 60 as they relate to other competitors or customers, and on that basis denies those allegations. In all other respects, Evonik denies the remaining allegations in Paragraph 60 except to admit that Evonik has not observed significant imports of hydrogen peroxide into North America.

61. Evonik denies the allegations in Paragraph 61.

62. Paragraph 62 contains legal conclusions to which no response is required; to the extent a response is deemed necessary, Evonik denies the allegations in Paragraph 62.

63. Paragraph 63 contains legal conclusions to which no response is required; to the extent a response is deemed necessary, Evonik denies the allegations in Paragraph 63.

64. Evonik denies the allegations in Paragraph 64.

65. Evonik denies the allegations in Paragraph 65 and specifically denies that the relief sought by the FTC is in any way in the public interest.

DEFENSES

The inclusion of any defense within this section does not constitute an admission that Evonik 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 any alleged anticompetitive effects.

Seventh Defense

The proposed divestiture of the Prince George plant fully addresses any proffered anticompetitive effects in the alleged Pacific Northwest geographic market and ensures that there will be no harm to competition or consumers.

Additional Defenses

Evonik reserves the right to assert any other available defenses.

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

Dated: August 16, 2019

Respectfully submitted,

/s/ Eric J. Mahr

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