

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

Assigned To : Kelly, Timothy J.

Assign. Date : 8/2/2019

Description: TRO/Prelim. Injunct. (D-DECK)

**RECEIVED**

AUG 02 2019

Clerk, U.S. District and  
Bankruptcy Courts

**Plaintiff Federal Trade Commission's Application for Preliminary Injunction**

Plaintiff, the Federal Trade Commission (the "Commission"), by its designated attorneys, moves this Court pursuant to Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. § 53(b), for a preliminary injunction enjoining the proposed acquisition between RAG-Stiftung, Evonik Industries AG, Evonik Corporation, and Evonik International Holding B.V., (collectively, "Evonik"), One Equity Partners Secondary Fund, L.P. and One Equity Partners V, L.P., (collectively, "One Equity Partners"), Lexington Capital Partners VII (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") until the completion of the administrative proceedings now pending before the Commission evaluating the transaction. Plaintiff will file a memorandum in support of its motion for a preliminary injunction in accordance with any case management and scheduling order entered by the Court in this matter.

For the Court's information, the Defendants have agreed not to consummate their proposed acquisition while the Court considers Plaintiff's motion for a preliminary injunction. In particular, the parties have stipulated to the entry of a temporary restraining order under which Defendant Evonik will not consummate any acquisition of any stock, assets, or other interest, of Defendant PeroxyChem until after 11:59 PM Eastern Time on the fifth (5th) business day after the Court rules on Plaintiff's motion for a preliminary injunction or the date set by the district court, whichever is later. The parties have submitted the stipulation for a temporary restraining order to the Court by separate motion for its approval.

The proposed acquisition of PeroxyChem by Evonik would combine two hydrogen peroxide producers in North America. Post-acquisition, Evonik would control significantly more than half of the nameplate hydrogen peroxide capacity in the Pacific Northwest, and nearly half

of the nameplate capacity in the South and Central United States. The remaining competitive alternatives would not provide a meaningful constraint on the combined company and, as a result, the proposed acquisition is likely to cause anticompetitive effects in the market for hydrogen peroxide in both the Pacific Northwest and the Southern and Central United States.

The Commission has determined that it has reason to believe that Defendants' proposed acquisition would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act, 15 U.S.C. § 45. In such circumstances, Section 13(b) of the FTC Act authorizes the Commission to seek a preliminary injunction halting the proposed acquisition until the Commission "has had an opportunity to adjudicate the merger's legality in an administrative proceeding." *FTC v. CCC Holdings Inc.*, 605 F. Supp. 2d 26, 35 (D.D.C. 2009) (citing 15 U.S.C. § 53(b)). The Commission voted to issue the administrative complaint in this matter on August 2, 2019, and the trial of this case on the merits before an administrative law judge is scheduled to begin on January 2, 2020.

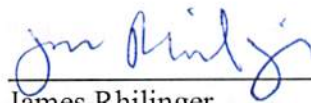
Because Defendants have not agreed not to consummate their proposed acquisition while the Commission's adjudication of the acquisition is pending, the Commission needs a preliminary injunction from the Court to preserve its ability to obtain adequate relief and to prevent harm to consumers if, after a full trial on the merits, the Commission determines that the Defendants' proposed acquisition violates Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act, 15 U.S.C. § 45. A preliminary injunction would be in the public interest based on a weighing of the equities and the Commission's likelihood of success on the merits. *FTC v. H.J. Heinz Co.*, 246 F.3d 708, 714 (D.D.C. 2001).

In accordance with Local Rule 7(m), counsel for the Commission discussed this motion with counsel for the Defendants, and counsel has indicated Defendants will oppose the motion for preliminary injunction.

A proposed preliminary injunction order is attached.

Dated: August 2, 2019

Respectfully submitted,



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*Counsel for Plaintiff Federal Trade Commission*

**CERTIFICATE OF SERVICE**

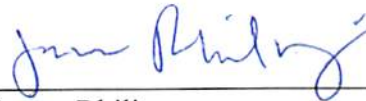
I HEREBY CERTIFY that on the 2nd day of August, 2019, I served the foregoing on the following counsel via electronic mail:

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James Rhilinger  
Attorney for Plaintiff Federal Trade Commission