

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

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;

Docket No. 9384

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 (“Commission”), having reason to believe that Respondents 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”) have executed an acquisition agreement (the “Acquisition”) in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, which if consummated would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint pursuant to Section 5(b) of the FTC Act, 15 U.S.C. § 45(b), and Section 11(b) of the Clayton Act, 15 U.S.C. § 21(b), stating its charges as follows:

I. NATURE OF THE CASE

1. Respondents Evonik and PeroxyChem are two of only five hydrogen peroxide producers in North America. Hydrogen peroxide is a commodity chemical used for oxidation, sterilization, and bleaching, and for most end uses there are no effective substitutes. Hydrogen peroxide producers sell to customers in various industries, including pulp and paper, food packaging, agriculture, chemical synthesis, mining and gas, and personal care. The pulp and paper industry uses most of the hydrogen peroxide produced in North America, primarily for bleaching pulp and deinking recycled paper. This case does not concern electronics-grade hydrogen peroxide, which requires additional manufacturing steps and is not a substitute for other forms hydrogen peroxide.

2. Respondents compete vigorously for customers, especially in regional markets in the Pacific Northwest and the Southern and Central United States. In the Pacific Northwest, the Acquisition would combine two of only three significant hydrogen peroxide producers in the region. In the Southern and Central United States, the Acquisition would combine the two largest hydrogen peroxide producers by nameplate production capacity, and two of the three largest hydrogen peroxide suppliers by sales. The Acquisition would create a firm with a dominant share and significantly increase market concentration in each regional market.

3. Post-Acquisition, Evonik would control more than half of the market, based on capacity and sales, for the production and sale of hydrogen peroxide in the Pacific Northwest, where Solvay would be the only other hydrogen peroxide producer with a meaningful presence.

In the Southern and Central United States, post-Acquisition, Evonik would control nearly half of the market, based on capacity and sales, for the production and sale of hydrogen peroxide, with only Solvay, Arkema, and Nouryon remaining.

4. Under the 2010 U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines (“Merger Guidelines”), a post-acquisition market-concentration level above 2,500 points, as measured by the Herfindahl-Hirschman Index (“HHI”), and an increase in market concentration of more than 200 points renders an acquisition presumptively unlawful. Based on both capacity and sales, in both the Pacific Northwest and the Southern and Central United States, the Acquisition would significantly increase concentration in already concentrated markets, well beyond the thresholds set forth in the Merger Guidelines. Thus, under the Merger Guidelines, the Acquisition is presumptively unlawful in both the Pacific Northwest and the Southern and Central United States.

5. The Acquisition would substantially lessen competition for the production and sale of hydrogen peroxide in at least two ways. First, the Acquisition will increase the likelihood of coordination in a market already vulnerable to coordination, functioning as an oligopoly, and with a long history of price-fixing, including guilty pleas, litigation, and substantial fines and settlements. The hydrogen peroxide industry is already characterized by significant market transparency, strong interdependence among a few major competitors, low demand elasticity, and high entry barriers. Several hydrogen peroxide suppliers previously admitted to illegally fixing prices at a time when there were six major suppliers in North America. After the Acquisition, there will be only two suppliers remaining in the Pacific Northwest and four suppliers remaining in the Southern and Central United States. In each of the two relevant geographic markets, the Acquisition removes one of only a few competitors, thereby strengthening and reinforcing the existing oligopolistic market dynamics and making coordination amongst the few remaining suppliers easier. The Acquisition will thus increase the likelihood of coordinated effects in both the Pacific Northwest and the Southern and Central United States.

6. Second, the Acquisition would eliminate significant head-to-head competition between Evonik and PeroxyChem in the Pacific Northwest and the Southern and Central United States. In both regional markets, customers benefit from head-to-head competition amongst a small handful of hydrogen peroxide suppliers, including the merging parties. The Acquisition would substantially reduce that competition. Direct competition between Evonik and PeroxyChem has repeatedly resulted in lower prices for customers. If consummated, the Acquisition threatens significant harm to hydrogen peroxide customers in both the Pacific Northwest and the Southern and Central United States by eliminating this direct competition.

7. New entry or expansion by existing hydrogen peroxide producers would not be timely, likely, or sufficient to counteract the anticompetitive effects of the Acquisition. There are significant barriers to entry for potential producers of hydrogen peroxide. These include the need for substantial capital investment and the likelihood that it would take multiple years to build a new hydrogen peroxide production plant. These barriers make entry or expansion difficult, and incapable of constraining the merged entity. Expansion or repositioning by the remaining firms sufficient to offset the Acquisition’s anticompetitive effects is also unlikely. Nor are increases in

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 €4.4 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, in 2014, renaming the business PeroxyChem. PeroxyChem has two hydrogen peroxide production plants in North America, in Bayport, Texas and Prince George, British Columbia. PeroxyChem also recently opened a plant in Saratoga Springs, New York. That plant purifies hydrogen peroxide produced at PeroxyChem’s Bayport facility to create electronics-grade hydrogen peroxide.

IV. THE ACQUISITION

13. Pursuant to an Agreement and Plan of Merger dated November 7, 2018, Evonik proposes to acquire 100% of the voting securities of PeroxyChem for approximately \$625 million in cash.

V. RELEVANT MARKETS

14. The production and sale of hydrogen peroxide to customers in (1) the Pacific Northwest and (2) the Southern and Central United States constitute relevant antitrust markets.

A. Relevant Product Market

15. The relevant product market in which to assess the effects of the Acquisition is hydrogen peroxide. Hydrogen peroxide is an oxidizing agent with diverse uses such as bleaching pulp, chemical synthesis, and sterilizing food packaging. The primary use of hydrogen peroxide produced in North America is for bleaching in the pulp and paper industry.

16. The relevant product market at issue in this case does not include electronics-grade hydrogen peroxide. Electronics-grade hydrogen peroxide is used by semiconductor manufacturers as a cleaning and etching agent to remove contaminants from semiconductor wafers that go into cell phones, computers, and other advanced electronic devices. Electronics-grade hydrogen peroxide requires additional purification capabilities that vary by hydrogen peroxide producer, and not all hydrogen peroxide producers are capable of producing electronics-grade hydrogen peroxide. Hydrogen peroxide is not a substitute for electronics-grade hydrogen peroxide.

17. Hydrogen peroxide is a commodity chemical. The primary raw materials in manufacturing hydrogen peroxide are natural gas and hydrogen. The hydrogen peroxide production process in North America is comprised of three steps: 1) hydrogenation, 2) oxidation, and 3) extraction. This process results in crude hydrogen peroxide, which is then diluted, filtered, and stabilized depending on customer end-use.

18. There are no reasonably interchangeable substitutes for hydrogen peroxide, and customers could not realistically switch to other chemicals in the face of a small but significant non-transitory increase in price. For pulp and paper customers, who purchase the majority of hydrogen peroxide in North America, mills are set up to use specific chemicals in the bleaching process. These customers could not switch to a different bleaching chemical without purchasing new equipment and re-formulating the bleaching process, which would be costly and could take several years to implement. Similarly, there are no effective substitutes for hydrogen peroxide for other end-use applications.

B. Relevant Geographic Markets

19. Respondents compete in regional markets for the production and sale of hydrogen peroxide to customers. Accordingly, it is appropriate to analyze the competitive effects of the

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, Arkansas, Arizona, California, Colorado, the District of Columbia, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, Mississippi, North Carolina, North Dakota, Nebraska, New Mexico, Nevada, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Wisconsin, and West Virginia.

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—by monitoring public statements and gathering competitive information from customers, distributors and others throughout the industry.

40. North American hydrogen peroxide producers also have significant awareness of their competitors' pricing. The major costs to produce hydrogen peroxide are natural gas and electricity, which allows hydrogen peroxide producers to estimate production costs at competitor plants. Further, when responding to competitive bids, hydrogen peroxide producers factor in transportation costs from their competitors' hydrogen peroxide production plants. Hydrogen peroxide producers also learn about competitor pricing during the competitive bid process for customers, whether formal or informal.

41. Having competed against each other in an oligopolistic market environment for many years, the major North American hydrogen peroxide producers recognize their mutual interdependence and aligned incentives. For years, hydrogen peroxide producers have engaged in parallel pricing behavior and other types of parallel accommodating conduct, including

refraining from competing aggressively to win new business for fear of provoking a competitive response from a rival. By eliminating a key competitor, the Acquisition may exacerbate the anticompetitive effects of this interdependence.

42. Allowing Evonik to acquire PeroxyChem will increase the likelihood of anticompetitive coordination by eliminating a large, independent competitor. In the Pacific Northwest, the Acquisition creates a duopoly, leaving Evonik and Solvay as the only hydrogen peroxide producers remaining in the region. In the Southern and Central United States, the Acquisition establishes a firm controlling nearly half of the production capacity and sales in the region. Previous industry conduct demonstrates that hydrogen peroxide producers were successfully able to fix prices with six firms competing in North America. The Acquisition would reduce the number of remaining firms to two in the Pacific Northwest and four in the Southern and Central United States, making coordination among the remaining firms both easier and more likely to increase.

B. The Acquisition Would Eliminate Vital Head-to-Head Competition Between Evonik and PeroxyChem

43. The Acquisition would eliminate significant direct, head-to-head competition between Respondents. Customers benefit substantially from the competition between Evonik and PeroxyChem in the form of lower prices. The Acquisition would substantially reduce that competition.

44. Evonik and PeroxyChem compete for customers in both the Pacific Northwest and the Southern and Central United States, to the direct benefit of customers. Evonik and PeroxyChem track rival firms' price movements and respond to competition by offering better prices. This competition enables customers to pit hydrogen peroxide producers against each other in negotiations to obtain lower prices and increased discounts. Customers benefit from having more hydrogen peroxide producers in the region from which to obtain competitive pricing.

45. Post-Acquisition, Evonik would face less meaningful competition in both regional markets than it does today. Evonik would not need to compete as aggressively on price to win or retain the business of many customers. Other hydrogen peroxide producers will be unable to make up for the competition lost as a result of the Acquisition.

46. The only remaining hydrogen peroxide producer with a significant presence in the Pacific Northwest is Solvay. Customers in the Pacific Northwest are often unwilling to use hydrogen peroxide producers with plants outside the Pacific Northwest—Arkema and Nouryon—due to their distance from customer locations, which results in higher delivered prices and an increased risk of supply issues. Further, Arkema and Nouryon generally do not bid on customers' business in the Pacific Northwest.

47. The only remaining hydrogen peroxide producers in the Southern and Central United States are Solvay, Arkema, and Nouryon. However, post-Acquisition, Evonik would control nearly half of the production capacity and sales in the region. Solvay, Arkema, and

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 waiver of your right to appear and to contest the allegations of the complaint and shall authorize the Commission, without further notice to you, to find the facts to be as alleged in the complaint and to enter a final decision containing appropriate findings and conclusions, and a final order disposing of the proceeding.

The Administrative Law Judge shall hold a prehearing scheduling conference not later than ten (10) days after the Respondents file their answers. Unless otherwise directed by the Administrative Law Judge, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the pre-hearing scheduling conference (but in any event no later than five (5) days after the Respondents file their answers). Rule 3.31(b) obligates counsel for each party, within five (5) days of receiving the Respondents' answers, to make certain initial disclosures without awaiting a discovery request.

NOTICE OF CONTEMPLATED RELIEF

Should the Commission conclude from the record developed in any adjudicative proceedings in this matter that the Acquisition challenged in this proceeding violates Section 5 of the Federal Trade Commission Act, as amended, and/or Section 7 of the Clayton Act, as

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: