

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

Respondents.

DOCKET NO. 9384

ORDER GRANTING CONTINUANCE

On December 20, 2019, Complaint Counsel and Respondents RAG-Stiftung, Evonik Industries AG, Evonik Corporation, and Evonik International Holding B.V. (together, “Evonik”) and Respondents One Equity Partners Secondary Fund, L.P., One Equity Partners V, L.P., Lexington Capital Partners VIII (AIV I), L.P., PeroxyChem Holding Company LLC, PeroxyChem Holdings, L.P., PeroxyChem Holdings LLC, PeroxyChem LLC, and PeroxyChem Cooperatief U.A. (together, “PeroxyChem”) jointly moved to postpone commencement of the administrative hearing in this proceeding from January 22, 2020 to March 11, 2020, and to postpone all pre-hearing deadlines by corresponding 49-day periods. Joint Expedited Motion for Continuance of Administrative Proceeding (“Joint Motion”) at 2.

This follows the Commission’s issuance on August 2, 2019, of an administrative complaint challenging Evonik’s proposed acquisition of PeroxyChem (“the Proposed Acquisition”). The Commission at that time also filed a complaint in the U.S. District Court for the District of Columbia seeking a preliminary injunction barring the Proposed Acquisition until final resolution of this administrative proceeding. The preliminary injunction hearing and post-hearing filings have concluded in the federal district court action. The parties presented their closing arguments on December 13, 2019. The parties anticipate a decision in the federal district court action by January 24, 2020. *Id.* at 3.

The parties state that “[i]f the federal district court grants Complaint Counsel’s motion for preliminary injunction, Respondents will abandon the Proposed Acquisition.” Joint Motion at 5; *accord* Declaration of Dr. Norbert Löw, Evonik Industries AG ¶ 7; Declaration of P. Pete Zografakis, PeroxyChem Holdings ¶ 7. Moreover, the parties state that “[i]f the federal district court denies Complaint Counsel’s motion for preliminary injunction, Respondents intend to move immediately for the administrative proceeding to be withdrawn from adjudication or dismissed pursuant to Rule 3.26, 16 C.F.R. § 3.26.” Joint Motion at 5.

The parties argue that a continuance of the administrative hearing will ensure that third parties and the parties do not face unnecessary burden and expense. *Id.* They state that, pursuant to the governing Scheduling Order, “the third parties will soon need to expend significant resources to meet upcoming pre-hearing deadlines.” *Id.* For example, the Scheduling Order will require the third parties to file motions for *in camera* treatment by January 7, 2020. Twenty-three such third parties sought *in camera* protection during the course of the federal district court proceeding. *Id.* at 6. Furthermore, all parties will have to bear the expense of preparing for a full trial. *Id.* This will include the filing of motions *in limine* and associated responses, motions for *in camera* treatment and associated responses, and pretrial briefs. *Id.* at 7. Commencement of the administrative hearing will entail additional expense and will impose burdens on witnesses. *Id.* at 6-7.

Commission Rule 3.41(f) provides, in relevant part, that a pending “collateral federal court action that relates to the administrative adjudication shall not stay the proceeding [u]nless a court of competent jurisdiction, or the Commission for good cause, so directs.” 16 C.F.R. § 3.41(f). This reflects the Commission’s commitment to move forward as expeditiously as possible with its administrative hearings. *See, e.g.*, 16 C.F.R. §§ 3.1, 3.11(b)(4), 3.41(b), 3.46, 3.51-3.52.

As we have explained in the past, however, the public interest is not served if litigants and third parties bear expenditures that later prove unnecessary. *See, e.g., In re Sanford Health*, Docket No. 9376, 2017 WL 5845596, at *1 (F.T.C. Nov. 21, 2017). Commission Rule 3.41(b) authorizes the Commission to delay a hearing date, upon a showing of good cause. 16 C.F.R. § 3.41(b). Under the circumstances presented, we find that the requested continuance is justified. Deferring the start of trial to March 11, 2020, and extending the remaining pre-hearing deadlines by the same 49-day interval, will provide additional time for resolution of the federal district court action, which could obviate the need for an administrative hearing without materially delaying the Commission proceeding. We have granted continuances under comparable circumstances in the past. *See, e.g., In re Sanford Health*, Docket No. 9376, 2017 WL 6604532 (F.T.C. Dec. 21, 2017); *Sanford Health*, 2017 WL 5845596; *In re The Penn State Hershey Med. Ctr.*, Docket No. 9368, 2016 WL 3345405 (F.T.C. June 10, 2016); *In re Advocate Health Care Network*, Docket No. 9369, 2016 WL 3182774 (F.T.C. June 2, 2016). Accordingly,

IT IS HEREBY ORDERED that the Joint Expedited Motion for Continuance of Administrative Proceeding is **GRANTED**; and

IT IS FURTHER ORDERED that the evidentiary hearing in this proceeding shall commence at 10:00 a.m. on March 11, 2020, and that, unless modified by the Chief Administrative Law Judge, all related pre-hearing deadlines shall be extended by 49 days.

By the Commission, Chairman Simons recused.

April J. Tabor
Acting Secretary

SEAL:
ISSUED: January 2, 2020