



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

May 13, 2010

George S. Cary, Esq.
Cleary Gottlieb Steen & Hamilton LLP
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-1801

Re: *The Dow Chemical Company/Rohm & Haas, Docket No. C-4243*

Dear Mr. Cary:

This letter responds to the Petition of The Dow Chemical Company (“Dow”) for approval of its proposed divestiture of the Hollow Sphere Particle Business to OMNOVA Solutions, Inc. (“Petition”), which Dow filed on September 24, 2009. The Commission’s approval of both OMNOVA, the proposed acquirer, and the divestiture agreements (the “manner” of divestiture) is required by the Commission’s order issued on March 31, 2009, in this matter. The Commission has determined to approve Dow’s Petition.

The Commission notes that the divestiture agreements originally filed by Dow with the Petition would not have divested the Hollow Sphere Particle Business in the manner required by the Order.¹ Dow and OMNOVA have modified the divestiture agreements during the pendency of the Petition and pursuant to discussions with the Commission’s staff, and the Commission has determined that those agreements, as modified, comply with the Order, with the one exception discussed below.

Dow negotiated a right to continue to use the assigned intellectual property in fields outside the product market alleged in the Commission’s Complaint, which conflicted with Dow’s obligation to divest absolutely all of its rights in this intellectual property. The Commission has determined, however, for reasons stated in its Order To Show Cause and Order Modifying Order, to reopen and modify the Order to permit this license. Accordingly, the divestiture agreements, including the license, would comply with the Order as modified.

¹ Dow’s divestiture agreements filed with its petition seeking approval to divest the Acrylic Acid Business and Latex Polymers Business to Arkema Inc., under separate requirements of the Order, similarly would not have divested those businesses as required by the Order. Dow modified those agreements during the divestiture review process so as to comply with the Order, with the exception of the divestiture of some real property that was not used directly in the relevant markets, which Arkema did not want. Dow requested more time to divest that asset, and the Commission granted that request. See Letter (January 20, 2010) from Donald S. Clark, Secretary, to George S. Cary, Esq.

In according its approval to Dow's Petition, the Commission has relied upon the information submitted by Dow and OMNOVA and the representations made by Dow and OMNOVA in the course of the Commission staff's review of Dow's Petition, and the Commission has assumed them to be accurate and complete. The manner of divestiture considered by the Commission is that set forth in the agreements submitted to the Commission through the course of the staff's review.

The Commission also notes that Dow's failure to file at the outset divestiture agreements that comply fully with the Order caused delay in the Hollow Sphere Particle Business divestiture beyond the Order's deadline and thereby delayed the restoration of competition as contemplated by the Order. The Commission recognizes that Dow consented to the issuance of an Order to Hold Separate and Maintain Assets and the appointment of a Hold Separate Trustee during the pendency of the divestiture, but the delay in that divestiture has necessarily delayed achieving the Orders' stated purpose and may have harmed competition.

By direction of the Commission, Commissioner Ramirez not participating.

Donald S. Clark
Secretary