

**ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDERS
TO AID PUBLIC COMMENT
*In the Matter of Dow Chemical Company, File No. 081-0214***

I. Introduction

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) from Dow Chemical Company (“Dow” or “Respondent”) to remedy the anticompetitive effects stemming from Dow’s proposed acquisition of Rohm & Haas Company (“Rohm & Haas”). Under the terms of the Consent Agreement, Dow is required to divest to a Commission-approved buyer significant portions of its acrylic monomer, acrylic latex polymer, and hollow sphere particle businesses and to license certain intellectual property related to the production of the products in these businesses. Dow is also required to institute procedures to ensure that the other businesses it acquired from Rohm & Haas do not have access directly or indirectly to competitively sensitive non-public information regarding the divested assets.

The proposed Consent Agreement has been placed on the public record for thirty (30) days to receive comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will review the Consent Agreement and comments received and decide whether to withdraw from the proposed Consent Agreement, modify it, or make final the Consent Agreement’s proposed Order.

On July 10, 2008, Dow announced a definitive agreement to purchase all of the outstanding shares of Rohm and Haas in a transaction valued at \$18.8 billion, including \$3.5 billion in debt assumption. The Commission’s complaint alleges that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by lessening competition in the North American markets for the research, development, manufacture and sale of glacial acrylic acid, butyl acrylate, ethyl acrylate, acrylic latex polymers for traffic paint, and hollow sphere particles. The Consent Agreement will remedy the alleged violation by divesting significant acrylic monomer and acrylic polymer research, development, production and manufacturing assets and related intellectual property to a third party thereby replacing the lost competition that would result from the acquisition in these markets.

II. The Proposed Complaint

According to the Commission’s proposed Complaint, the relevant lines of commerce in which to analyze the effects of the proposed acquisition are the markets for the research, development, manufacture, and sale of certain acrylic monomers, including glacial acrylic acid, butyl acrylate and ethyl acrylate, as well as acrylic latex polymer for traffic paint and hollow sphere particles.

All of the acrylic monomer relevant products are made from crude acrylic acid. Glacial acrylic acid is purified crude acrylic acid and is used to make super absorbent polymers for personal care and hygiene products. Butyl acrylate and ethyl acrylate are acrylate esters formed from reacting crude acrylic acid with butanol and ethanol, respectively. These acrylate esters are then used to produce acrylic latex polymers used in paints, architectural coatings, and pressure sensitive adhesives.

Acrylic latex polymer for traffic paint and hollow sphere particles are unique types of polymers. Acrylic latex polymer for traffic paint is a quick drying polymer used to mark traffic lines on highways. Hollow sphere particles are a type of specialty polymer that is used in the manufacture of coated paper to provide gloss, brightness, and opacity.

The Complaint alleges that the relevant geographic market in which to analyze the anticompetitive effects of the proposed acquisition for all of the relevant markets is no larger than North America. Most monomers are difficult to ship because of their volatility. While there are some minor imports of acrylic monomers, they are not a meaningful constraint on the prices of these products in North America. Acrylic polymers, such as those used for traffic paint and hollow sphere particles, are also difficult and expensive to ship long distances. Shipping these polymers, which must be immersed in water for transport, is cost-prohibitive because of the substantial added water weight relative to the value of the polymer itself.

The Complaint further alleges that all of the relevant markets are highly concentrated. For the acrylic monomer relevant markets, the proposed transaction would reduce the number of significant players in those markets from four to three with the combined company having significant market shares in each of the markets. The combined entity would have a market share exceeding 40% in glacial acrylic acid, a market share approaching 90% in the market for butyl acrylate, and a market share approaching 80% in ethyl acrylate. The markets for acrylic polymer for traffic paint and hollow sphere particles are even more highly concentrated with Dow and Rohm & Haas as the only two suppliers. As a result, the proposed acquisition would result in a merger to monopoly in those markets.

Finally, the Complaint alleges that the proposed acquisition would reduce competition in the relevant markets by eliminating direct and substantial competition between Dow and Rohm & Haas, by increasing Dow's ability to exercise market power unilaterally in the relevant markets, and/or by increasing the likelihood of coordinated interaction in the markets for glacial acrylic acid, butyl acrylate, and ethyl acrylate. The Complaint further alleges that potential new entry or fringe expansion would not prevent the anticompetitive effects described in the Complaint.

III. Terms of the Proposed Order

Under the proposed Consent Agreement, Dow will divest to a single Commission-approved Acquirer a significant part of its acrylic monomer and polymer research and development and production assets including: its acrylic monomer production facility in Clear Lake, Texas; its acrylic polymer production assets located in St. Charles, Louisiana; its acrylic polymer production facility located in Alsip, Illinois; its acrylic polymer production facility located in Torrance, California; its acrylic monomer research and development group located in South Charleston, West Virginia; its acrylic latex polymer research and development group located in Cary, North Carolina, and other assets related to such businesses. The divestiture would also include the technology that is primarily related to these businesses, and further provides that Dow license to the Acquirer any intellectual property not primarily related to the divested business that Dow nonetheless uses in those businesses, and requires Dow to divest the business contracts of the divested businesses, and obtain the consents that are necessary to assign those contracts to the Acquirer. The divestiture to a single acquirer of both acrylic monomer and acrylic polymer research, development, manufacture and production assets best replicates the pre-acquisition market structure in which each of the significant acrylic monomer firms was forward-integrated into the supply of acrylic polymers.

In order to ensure the transition of the divested assets and the viability of the Acquirer, the Consent Agreement requires Dow to provide certain services. First, Dow is required to continue to provide certain input products to the Acquirer that Dow provided previously to the divested assets. Second, the Consent Agreement requires Dow to provide transition services for a short period of time to accomplish the transition of the divested assets to the Acquirer. Finally, the Consent Agreement requires that Dow continue to provide site services to the Acquirer in connection with the acrylic polymer production assets located in St. Charles, Louisiana, where the Acquirer will operate a business unit that, although largely separate, is located on the grounds of a larger Dow facility.

The Consent Agreement remedies the competitive concerns in the markets for hollow sphere particles and acrylic latex polymer for traffic paint by requiring Dow to divest the intellectual property that is primarily related to these products and to license certain other intellectual property used for these products. In addition, Dow is required to supply hollow sphere particles and acrylic latex polymer for traffic paint to the Acquirer at its manufacturing cost, until such time as the Acquirer is able to develop its own manufacturing.

The Consent Agreement also requires Dow to institute procedures to ensure that it does not have access directly, or indirectly, to competitively sensitive non-public information obtained from the Divested Businesses and Facilities or to use any such competitively sensitive non-public information it already has in an anticompetitive manner.

The proposed Order gives the Commission the power to appoint an interim monitor to assure that Dow expeditiously complies with all of its obligations and performs all of its responsibilities as required by the Order. If Dow fails to sell the divested assets within the later of (1) 240 days after the Consent Agreement is accepted by the Commission for Public Comment and (2) 240 days after

the Acquisition closes, the Order allows for the appointment of a Divestiture Trustee to divest the assets that are the subject of the proposed Order. In order to ensure that the Commission remains informed about the status of the proposed divestitures and the transfers of assets, the proposed Consent Agreement requires Dow to file reports with the Commission periodically until the divestitures and transfers are accomplished.

The purpose of this analysis is to facilitate public comment on the proposed Decision and Order. This analysis is not intended to constitute an official interpretation of the Consent Agreement and the proposed Decision and Order.