

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.

**ANSWER AND DEFENSES OF RESPONDENTS RAG-STIFTUNG, EVONIK  
INDUSTRIES AG, EVONIK CORPORATION, AND EVONIK INTERNATIONAL  
HOLDING B.V.**

Pursuant to Rule 3.12 of the Federal Trade Commission's (*Commission*) Rules of Practice for Adjudicative Proceedings, Respondents RAG-Stiftung, Evonik Industries AG, Evonik Corporation, and Evonik International Holding B.V. (together, *Evonik*), by and through its attorneys, hereby answers the Administrative Complaint (the *Complaint*) filed by the Commission in relation to Evonik's proposed acquisition of PeroxyChem LLC (the *Acquisition*) as follows:

Except to the extent specifically admitted herein, Evonik denies each and every allegation contained in the Complaint, including all allegations contained in headings or otherwise not contained in one of the Complaint's 57 numbered paragraphs.

**RESPONSE TO THE SPECIFIC ALLEGATIONS OF THE COMPLAINT**

The preamble to the Complaint characterizes this action and asserts legal conclusions to which no response is required; to the extent that a response is deemed necessary, Evonik denies the allegations in the preamble to the Complaint.

Evonik responds to the numbered paragraphs of the Complaint as follows:

1. Evonik denies the allegations in the first sentence of Paragraph 1. As to the second sentence of Paragraph 1, Evonik admits that hydrogen peroxide is used, among other things, for oxidation, sterilization, and bleaching, and in all other respects denies the allegations in the second sentence of Paragraph 1. Evonik admits the allegations in the third sentence of

Paragraph 1. As to the fourth sentence of Paragraph 1, Evonik admits that the pulp and paper industry uses most of the standard-grade hydrogen peroxide produced in North America, but in all other respects denies the allegations in the fourth sentence of Paragraph 1. As to the fifth sentence of Paragraph 1, Evonik admits that the Commission has excluded electronics-grade hydrogen peroxide from its alleged product market definition, that electronics-grade hydrogen peroxide requires additional purification as compared to standard-grade hydrogen peroxide, and that electronics-grade hydrogen peroxide is not a substitute for other grades of hydrogen peroxide and vice versa; in all other respects, Evonik denies the allegations in the fifth sentence of Paragraph 1, and specifically denies that the Commission's alleged hydrogen peroxide market, excluding electronics-grade hydrogen peroxide, constitutes a properly-defined relevant product market.

2. Evonik denies the allegations in the first sentence of Paragraph 2 except to admit that Evonik and the other North American producers of hydrogen peroxide "compete vigorously for customers." The remainder of Paragraph 2 contains legal conclusions to which no response is required. To the extent a response is deemed necessary, Evonik denies the remaining allegations in Paragraph 2, and specifically denies that the Commission's artificial "Pacific Northwest" and "Southern and Central United States" markets on which the allegations in Paragraph 2 are based constitute properly defined relevant geographic markets and that the Commission's alleged hydrogen peroxide market, excluding electronics-grade hydrogen peroxide, constitutes a properly defined relevant product market.

3. Paragraph 3 contains legal conclusions to which no response is required; to the extent a response is deemed necessary, Evonik denies the allegations in Paragraph 3, except to admit that Solvay, Arkema, and Nouryon all are active North American hydrogen peroxide

producers. Further, Evonik states that the parties proposed divestiture of PeroxyChem's Prince George Plant in Western Canada to the Commission in May 2019, and that the parties have a signed divestiture agreement, contingent on closing the Acquisition; the proposed divestiture of the Prince George plant fully addresses any proffered or potential anticompetitive effects in the alleged Pacific Northwest geographic market.

4. The first sentence of Paragraph 4 seeks to characterize the Commission's Merger Guidelines, which speak for themselves. The remainder of Paragraph 4 contains legal conclusions to which no response is required; to the extent a response is deemed necessary, Evonik denies the allegations in Paragraph 4 and specifically denies that the Merger Guidelines are vested with the authority to determine the legality of any acquisition, presumptively or otherwise.

5. The first, second, sixth, and seventh sentences of Paragraph 5 contain legal conclusions to which no response is required; to the extent a response is deemed necessary, Evonik denies the allegations in the first, second, sixth, and seventh sentences of Paragraph 5. Evonik denies the allegations in the third, fourth, and fifth sentences of Paragraph 5 except to admit that certain hydrogen peroxide suppliers admitted to illegally fixing prices nearly twenty years ago.

6. Evonik denies the allegations in Paragraph 6, except to admit that Evonik and other North American hydrogen peroxide producers compete to serve customers throughout the United States.

7. The first sentence of Paragraph 7 contains a legal conclusion to which no response is required; to the extent a response is deemed necessary, Evonik denies the allegations

in the first sentence of Paragraph 7. In all other respects, Evonik denies the allegations in Paragraph 7.

8. Paragraph 8 contains legal conclusions to which no response is required; to the extent a response is deemed necessary, Evonik denies the allegations in Paragraph 8.

9. Paragraph 9 contains legal conclusions to which no response is required; to the extent a response is deemed necessary, Evonik admits that it is engaged in activities in or affecting interstate commerce. Evonik denies the remaining allegations in Paragraph 9.

10. Paragraph 10 contains legal conclusions to which no response is required; to the extent a response is deemed necessary, Evonik denies the allegations in Paragraph 10.

11. Evonik admits the allegations in Paragraph 11, except to deny that RAG-Stiftung acquired Degussa in 2006. Evonik states that RAG-Stiftung's predecessor, RAG AG, acquired a majority share of Degussa in 2004 and the remainder of Degussa shares in 2006, and that RAG-Stiftung currently owns approximately 64.3 percent of the outstanding shares of Evonik Industries AG.

12. Evonik lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12 and on that basis denies those allegations.

13. Evonik denies the allegations in Paragraph 13, except to admit that pursuant to an Agreement and Plan of Merger dated November 7, 2018, Evonik proposes to acquire 100% of the non-corporate interests of PeroxyChem Holding Company LLC, 99% of the non-corporate interests of PeroxyChem Coöperatief U.A., and 100% of the non-corporate interests of PeroxyChem Holdings LLC for approximately \$625 million.

14. Paragraph 14 contains legal conclusions to which no response is required; to the extent a response is deemed necessary, Evonik denies the allegations in Paragraph 14. Evonik

specifically denies that the Commission's artificial "Pacific Northwest" and "Southern and Central United States" markets constitute properly defined relevant geographic markets, and specifically denies that the Commission's alleged hydrogen peroxide market, excluding electronics-grade hydrogen peroxide, constitutes a properly defined relevant product market.

15. The first sentence of Paragraph 15 contains legal conclusions to which no response is required; to the extent a response is deemed necessary, Evonik denies the allegations in the first sentence of Paragraph 15. As to the second sentence of Paragraph 15, Evonik admits that hydrogen peroxide can be used as an oxidizing agent with diverse end uses, including various grades appropriate for end uses such as bleaching pulp, chemical synthesis, and sterilizing food packaging, among many others including electronics. As to the third sentence of Paragraph 15, Evonik admits that the primary use of standard-grade hydrogen peroxide in North America is for bleaching in the pulp and paper industry. In all other respects, Evonik denies the allegations in Paragraph 15. Evonik specifically denies that the Commission's alleged hydrogen peroxide market, excluding electronics-grade hydrogen peroxide, constitutes a properly defined relevant product market.

16. As to the first sentence of Paragraph 16, Evonik admits that the Commission has excluded electronics-grade hydrogen peroxide from its alleged product market definition, but specifically denies that the Commission's alleged hydrogen peroxide market, excluding electronics-grade hydrogen peroxide, constitutes a properly defined relevant product market. Evonik admits the allegations in the second and third sentences of Paragraph 16. Evonik also states that certain other grades of hydrogen peroxide similarly require additional purification capabilities that vary by hydrogen peroxide producer, are not capable of being produced by all

hydrogen peroxide producers, and are not substitutable with other grades of hydrogen peroxide. In all other respects, Evonik denies the allegations in Paragraph 16.

17. Evonik denies the allegations in the first sentence of Paragraph 17. As to the second sentence of Paragraph 17, Evonik admits that the primary raw materials used to manufacture the various grades of hydrogen peroxide are natural gas and hydrogen. As to the third sentence of Paragraph 17, Evonik admits that crude hydrogen peroxide is produced via a three-step process of hydrogenation, oxidation, and extraction. As to the fourth sentence of Paragraph 17, Evonik admits that various grades of hydrogen peroxide are made from crude hydrogen peroxide via dilution, filtration, and stabilization processes designed to meet end-use specific criteria. In all other respects, Evonik denies the allegations in the second, third, and fourth sentences of Paragraph 17.

18. Evonik denies the allegations in the first, third, and fourth sentences of Paragraph 18. As to the second sentence of Paragraph 18, Evonik admits that pulp and paper customers purchase the majority of standard-grade hydrogen peroxide in North America. Evonik lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the remainder of the second sentence of Paragraph 18 and on that basis denies those allegations.

19. Paragraph 19 contains legal conclusions to which no response is required; to the extent a response is deemed necessary, Evonik denies the allegations in Paragraph 19 except to admit that Evonik and other producers of hydrogen peroxide compete to serve customers throughout the United States.

20. Paragraph 20 contains legal conclusions to which no response is required; to the extent a response is deemed necessary, Evonik denies the allegations in Paragraph 20 and

specifically denies that the Commission's artificial "Pacific Northwest" and "Southern and Central United States" markets constitute properly defined relevant geographic markets.

21. Evonik lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21 as they relate to any customer or competitor other than Evonik, and on that basis denies those allegations. With that qualification: Evonik admits the allegations in the first sentence of Paragraph 21. As to the second sentence of Paragraph 21, Evonik admits that transportation costs associated with delivering standard-grade hydrogen peroxide may be high relative to the value of the product itself, and in all other respects denies the allegations of the second sentence of Paragraph 21. Evonik admits the allegations in the third sentence of Paragraph 21. Evonik denies the allegations in the fourth sentence of Paragraph 21, except to admit that Evonik uses terminals to deliver hydrogen peroxide further distances.

22. Evonik lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding other hydrogen peroxide suppliers in Paragraph 22 and on that basis denies those allegations. In all other respects, Evonik denies the allegations in Paragraph 22, except to admit that Evonik analyzes the North American hydrogen peroxide industry in a number of different ways in its efforts to compete most effectively.

23. Evonik lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding other hydrogen peroxide suppliers in Paragraph 23 and on that basis denies those allegations. In all other respects, Evonik denies the allegations in Paragraph 23 except to admit that Evonik contracts individually with customers, primarily through customers' formalized bid processes, and that prices vary by customer and customer-location, among a range of other factors.

24. Evonik lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 24 and on that basis denies those allegations, but notes that customers of different grades of hydrogen peroxide can purchase and have purchased from producers outside of the artificial “Pacific Northwest” and “Southern and Central United States” markets alleged by the Commission. Evonik specifically denies that the Commission’s artificial “Pacific Northwest” and “Southern and Central United States” markets on which the allegations in Paragraph 24 are based constitute properly defined relevant geographic markets.

25. Evonik denies the allegations in the first and second sentences of Paragraph 25, except to admit that Evonik and other hydrogen peroxide producers compete to serve customers across the United States. Evonik admits the allegations in the third sentence of Paragraph 25.

26. Evonik denies the allegations in Paragraph 26 and specifically denies that the Commission’s artificial “Pacific Northwest” market on which the allegations in Paragraph 26 are based constitutes a properly defined relevant geographic market.

27. Evonik denies the allegations in Paragraph 27 and specifically denies that the Commission’s artificial “Southern and Central United States” market on which the allegations in Paragraph 27 are based constitutes a properly defined relevant geographic market.

28. Paragraph 28 contains legal conclusions to which no response is required; to the extent a response is deemed necessary, Evonik denies the allegations in Paragraph 28.

29. Evonik denies the allegations in Paragraph 29 and specifically denies that the Commission’s artificial “Pacific Northwest” market on which the allegations in Paragraph 29 are based constitutes a properly defined relevant geographic market. Evonik also specifically denies the allegations in the second sentence of Paragraph 29 on the grounds that, following the proposed divestiture of the Prince George plant, Evonik’s market share will remain unchanged.

30. Evonik lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 30 and on that basis denies those allegations, except to admit that Evonik and other hydrogen peroxide producers compete vigorously to serve customers throughout the United States. Evonik specifically denies that the Commission's artificial "Southern and Central United States" market on which the allegations in Paragraph 30 are based constitutes a properly defined relevant geographic market.

31. Paragraph 31 contains characterizations of the Merger Guidelines and court opinions, which speak for themselves and to which no response is required; to the extent a response is deemed necessary, Evonik denies the allegations in Paragraph 31 and specifically denies that the Merger Guidelines are vested with the authority to determine the legality of any acquisition, presumptively or otherwise.

32. Evonik denies the allegations in Paragraph 32.

33. Evonik denies the allegations in Paragraph 33. Evonik further denies the allegations in Paragraph 33 on the grounds that concentration in the alleged Pacific Northwest market will remain unchanged following the divestiture of the Prince George plant.

34. Evonik denies the allegations in Paragraph 34.

35. Evonik denies the allegations in Paragraph 35.

36. Evonik denies the allegations in Paragraph 36.

37. Evonik denies the allegations in Paragraph 37.

38. Evonik denies the allegations in the first sentence of Paragraph 38. As to the second sentence of Paragraph 38, Evonik admits that Degussa, Evonik's predecessor, entered into an antitrust leniency agreement with the U.S. Department of Justice for its cooperation with a criminal antitrust investigation involving hydrogen peroxide in relation to conduct that ceased

in 2001—nearly twenty years ago; in all other respects, Evonik denies the allegations in the second sentence of Paragraph 38. The third sentence of Paragraph 38 purports to quote a plea agreement associated with conduct that ceased in 2001, to which Evonik refers the Court for a complete and accurate statement of its contents; to the extent a further response is deemed necessary, Evonik admits, on information and belief, that certain hydrogen peroxide producers entered plea agreements in relation to that same decades-old conduct.

39. Evonik lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 39 concerning other “North American hydrogen peroxide producers,” and on that basis denies those allegations. Evonik denies the remaining allegations in Paragraph 39 except to admit that Evonik seeks to gather public information or information from customers regarding the competitive conditions in the market(s) in which it competes.

40. Evonik lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 40 as they relate to competitors and customers other than Evonik, and on that basis denies those allegations. With that qualification, Evonik admits that the major costs to produce hydrogen peroxide include natural gas and electricity and that it seeks to gather public information or information from customers regarding the competitive conditions in the market(s) in which it competes; in all other respects, Evonik denies the allegations in Paragraph 40.

41. Evonik denies the allegations in Paragraph 41.

42. Evonik denies the allegations in Paragraph 42.

43. Evonik denies the allegations in Paragraph 43 except to admit that customers benefit substantially from competition among multiple North American producers.

44. Evonik denies the allegations in the first sentence of Paragraph 44 except to admit that Evonik and other producers of hydrogen peroxide compete to serve customers throughout

the United States. Evonik lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding PeroxyChem in the second sentence of Paragraph 44 and on that basis denies those allegations; Evonik in all other respects denies the allegations in the second sentence of Paragraph 44 except to admit that Evonik seeks to gather public information regarding the competitive conditions in the market(s) in which it competes, which allows Evonik to respond to competition by offering better prices. As to the third sentence of Paragraph 44, Evonik admits that competition among multiple North American producers enables customers to pit producers against each other in negotiations to obtain lower prices and increased discounts. Evonik denies the remaining allegations in Paragraph 44.

45. Evonik denies the allegations in Paragraph 45.

46. Evonik denies the allegations in the first sentence of Paragraph 46. Evonik specifically denies the allegations in the first sentence of Paragraph 46 on the grounds that the divestiture of the Prince George plant will fully replace any alleged lost competition. Evonik lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second and third sentences of Paragraph 46 and on that basis denies those allegations.

47. Evonik denies the allegations in Paragraph 47 and specifically denies that the Commission's artificial "Pacific Northwest" and "Southern and Central United States" markets on which the allegations in Paragraph 47 are based constitute properly defined relevant geographic markets and that the Commission's alleged hydrogen peroxide market, excluding electronics-grade hydrogen peroxide, constitutes a properly-defined relevant product market.

48. Evonik denies the allegations in Paragraph 48.

49. Evonik denies the allegations in Paragraph 49.

50. Evonik denies the allegations in the first sentence of Paragraph 50. Evonik denies the allegations in the second and third sentences of Paragraph 50 except to admit that, on information and belief, Solvay expanded capacity at its Longview, Washington plant in 2016. In all other respects, Evonik denies the allegations in Paragraph 50.

51. Evonik lacks knowledge or information sufficient to form a belief as to the truth of the allegations as to “other industrial chemical producers” in Paragraph 51, and on that basis denies those allegations.

52. Evonik lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 52 as they relate to other competitors or customers, and on that basis denies those allegations. In all other respects, Evonik denies the remaining allegations in Paragraph 52 except to admit that Evonik has not observed significant imports of hydrogen peroxide into North America.

53. Evonik denies the allegations in Paragraph 53.

54. Paragraph 54 incorporates by reference the allegations in Paragraphs 1 through 53 of the Complaint; Evonik’s response to Paragraph 54 likewise incorporates Evonik’s responses to the allegations contained in Paragraphs 1 through 53.

55. Paragraph 55 contains legal conclusions to which no response is required; to the extent a response is deemed necessary, Evonik denies the allegations in Paragraph 55.

56. Paragraph 56 incorporates by reference the allegations in Paragraphs 1 through 53 of the Complaint; Evonik’s response to Paragraph 56 likewise incorporates Evonik’s responses to the allegations contained in Paragraphs 1 through 53.

57. Paragraph 57 contains legal conclusions to which no response is required; to the extent a response is deemed necessary, Evonik denies the allegations in Paragraph 57.

**AFFIRMATIVE DEFENSES**

The inclusion of any defense within this section does not constitute an admission that Evonik bears the burden of proof on each or any of the issues, nor does it excuse Plaintiff's counsel from establishing each element of its purported claims.

**First Defense**

The Complaint fails to state a claim on which relief can be granted.

**Second Defense**

The relief sought in the Complaint is not in the public interest and the equities favor consummation of the Acquisition

**Third Defense**

The Complaint fails to allege a plausible relevant product market.

**Fourth Defense**

The Complaint fails to allege a plausible relevant geographic market.

**Fifth Defense**

The Complaint fails to allege any plausible harm to competition.

**Sixth Defense**

The benefits of the Acquisition significantly outweigh any alleged anticompetitive effects.

**Seventh Defense**

The proposed divestiture of the Prince George plant fully addresses any proffered anticompetitive effects in the alleged Pacific Northwest geographic market and ensures that there will be no harm to competition or consumers.

**Additional Defenses**

Evonik reserves the right to assert any other available defenses.

WHEREFORE, having fully answered the Complaint, Evonik respectfully requests that the Commission (i) deny the Complaint's contemplated relief; (ii) dismiss the Complaint in its entirety with prejudice; (iii) award to Evonik its costs of suit, including expert fees and reasonable attorney fees, as may be allowed by law; and (iv) award to Evonik such other and further relief as the Commission deems just and appropriate.

Date: August 20, 2019

*s/ Eric J. Mahr*

Eric J. Mahr

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 20, 2019, I filed the foregoing documents using the FTC's E-Filing System, which will send notification of such filing to:

Office of the Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-113  
Washington, DC 20580

The Honorable D. Michael Chappell  
Chief Administrative Law Judge  
Federal Trade Commission,  
600 Pennsylvania Ave., NW, Rm. H-110  
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I also hereby certify that I caused a true and correct copy of the foregoing documents to be served upon the following via email:

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PeroxyChem Cooperatief U.A.*

Dated: August 20, 2019

By: s/ Laura C. Onken  
Laura C. Onken

**CERTIFICATE FOR ELECTRONIC FILING**

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

Dated: August 20, 2019

By: s/ Laura C. Onken  
Laura C. Onken

Notice of Electronic Service

**I hereby certify that on August 20, 2019, I filed an electronic copy of the foregoing Respondent Evonik's Answer and Defenses to Complaint, with:**

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**I hereby certify that on August 20, 2019, I served via E-Service an electronic copy of the foregoing Respondent Evonik's Answer and Defenses to Complaint, upon:**

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