

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,**  
**Evonik Industries AG,**  
**Evonik Corporation,**  
**Evonik International Holding B.V.,**  
**One Equity Partners Secondary Fund,**  
**L.P.,**  
**One Equity Partners V, L.P.,**  
**Lexington Capital Partners VII (AIV I),**  
**L.P.,**  
**PeroxyChem Holding Company LLC,**  
**PeroxyChem Holdings, L.P.,**  
**PeroxyChem Holdings LLC,**  
**PeroxyChem LLC**  
**and**  
**PeroxyChem Cooperatief U.A.**

Docket No. 9384

**JOINT EXPEDITED MOTION FOR  
CONTINUANCE OF ADMINISTRATIVE PROCEEDING**

Pursuant to Rule 3.41 of the Federal Trade Commission's (*FTC* or *Commission*) Rules of Practice for Adjudicative Proceedings, Complaint Counsel, 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 move for a continuance of the commencement of the administrative hearing in the above-captioned matter. Complaint Counsel and Respondents jointly request that the administrative hearing currently scheduled to begin on January 22, 2020 be postponed 49 days to March 11, 2020. Complaint Counsel and Respondents also request that the related pre-hearing deadlines be postponed by 49 days.

**BACKGROUND**

On August 2, 2019, the FTC issued a complaint initiating this administrative proceeding and also filed a complaint in the U.S. District Court for the District of Columbia seeking a temporary restraining order and preliminary injunction to enjoin Evonik's proposed acquisition of PeroxyChem (the *Proposed Acquisition*) pursuant to Section 13(b) of the FTC Act. *In re RAG-Stiftung*, D09384 (F.T.C. Aug. 2, 2019); *FTC v. RAG-Stiftung*, No. 1:19-cv-02337-TJK (D.D.C. Aug. 2, 2019). On August 5, 2019, the U.S. District Court for the District of Columbia entered a temporary restraining order preventing Respondents from consummating the Proposed Acquisition until, at the earliest, after 11:59 PM Eastern Time five business days following the federal district court's decision on the motion for preliminary injunction. Order Granting

Plaintiff's Motion for Entry of Stipulated Temporary Restraining Order, *FTC v. RAG-Stiftung*, No. 1:19-cv-02337-TJK (D.D.C. Aug. 5, 2019). Following fact discovery between August 12, 2019 and September 27, 2019, a preliminary injunction hearing was held before Judge Timothy J. Kelly from November 12, 2019 to November 21, 2019. Joint Stipulated Case Management and Scheduling Order at 2, *FTC v. RAG-Stiftung*, No. 1:19-cv-02337-TJK (D.D.C. Aug. 12, 2019). The parties filed Proposed Findings of Fact and Conclusions of Law in the U.S. District Court for the District of Columbia on December 4, 2019, and presented closing arguments before Judge Kelly on December 13, 2019. Docket, *FTC v. RAG-Stiftung*, No. 1:19-cv-02337-TJK (D.D.C. Dec. 4 and Dec. 13, 2019).

Pursuant to Respondents' executed Agreement and Plan of Merger, the outside closing date of the Proposed Acquisition is February 3, 2020, after which either party may terminate the transaction. Transcript of Pretrial Conference at 7, *In re RAG-Stiftung*, D09384 (F.T.C. Aug. 29, 2019) [Exhibit 1]. Based on the outside closing date, the parties requested—and Judge Kelly stated that he anticipates issuing—a decision on the motion for preliminary injunction by January 24, 2020. *See* Transcript of Status Conference at 7-8, *FTC v. RAG-Stiftung*, No. 1:19-cv-02337-TJK (D.D.C. Aug. 5, 2019) [Exhibit 2]; Transcript of Evidentiary Hearing at 2438:2-2439:16, *FTC v. RAG-Stiftung*, No. 1:19-cv-02337-TJK (D.D.C. Dec. 13, 2019) [Exhibit 3]. As a result of the outside closing date of February 3, 2020, Evonik and PeroxyChem intend to abandon the Proposed Acquisition if it is preliminarily enjoined.<sup>1</sup> Declaration of Dr. Norbert Löw, Evonik Industries AG [Exhibit 4]; Declaration of Pete Zografakis, PeroxyChem Holdings [Exhibit 5]. The parties also made the same representation directly to Judge Kelly on several occasions, including most recently in their Proposed Findings of Fact and Conclusions of Law. Defendants

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<sup>1</sup> Evonik and PeroxyChem reserve all rights to appeal.

Proposed Findings of Fact and Conclusions of Law (Dec. 4, 2019) ¶ 45 (“If the Court enjoins the merger, the final closing date will pass on February 3, 2020, and commercial imperatives will force the merging parties to terminate their merger agreement.”).

## **ARGUMENT**

The proposed brief continuance of the administrative hearing and related pre-hearing deadlines will avoid unnecessary material burden on the third parties, the FTC, and the Respondents, and will not interfere with the Commission’s expeditious review and resolution of the matter pursuant to its Part III policies. Under Rule 3.41(b), “[t]he Commission, upon a showing of good cause, may order a later date for the evidentiary hearing to commence.” 16 C.F.R. § 3.41(b). Similarly, Rule 3.41(f) provides the Commission with authority to stay an administrative hearing due to a collateral federal court action when there is good cause: “[t]he pendency of a collateral federal court action that relates to the administrative adjudication shall not stay the proceeding: (i) [u]nless a court of competent jurisdiction, or the Commission for good cause, so directs.” 16 C.F.R. § 3.41(f). Complaint Counsel and Respondents jointly submit that good cause exists for the requested continuance.

### **1. Good Cause Merits a Continuance of the Hearing and Pre-Hearing Deadlines.**

The overlapping administrative hearing and anticipated ruling in the federal district court preliminary injunction proceeding provide good cause to grant a continuance. Under the current Scheduling Order, the administrative hearing is scheduled to begin on January 22, 2020, two days before the federal district court is anticipated to issue a decision on the motion for preliminary injunction. Scheduling Order at 5, *In re RAG-Stiftung*, D09384 (F.T.C. Aug. 29, 2019). Following issuance of the federal district court’s decision on or around January 24, 2020, Respondents anticipate that the administrative hearing is unlikely to immediately proceed—if it

proceeds at all—irrespective of the court’s ruling. If the federal district court grants Complaint Counsel’s motion for preliminary injunction, Respondents will abandon the Proposed Acquisition. *See* Transcript of Pretrial Conference at 7, *In re RAG-Stiftung*, D09384 (F.T.C. Aug. 29, 2019) [Exhibit 1]; Transcript of Status Conference at 7-8, *FTC v. RAG-Stiftung*, No. 1:19-cv-02337-TJK (D.D.C. Aug. 5, 2019) [Exhibit 2]; Declaration of Dr. Norbert Löw, Evonik Industries AG [Exhibit 4]; Declaration of Pete Zografakis, PeroxyChem Holdings [Exhibit 5]. If 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.

A continuance is warranted under these circumstances because it will prevent unnecessary burden on the third parties and the parties, conserve the FTC’s resources for use in other matters, and will not prevent an expeditious Part III adjudication if it ultimately proceeds.

**a. A Continuance Will Ensure the Third Parties and the Parties Do Not Face Any Unnecessary Burden and Expense.**

A brief continuance of the administrative hearing and the related pre-hearing deadlines will ensure that the third parties and the parties do not face undue burden and spend significant resources preparing for a hearing that is unlikely to proceed irrespective of the preliminary injunction outcome. The Commission has previously recognized that “the public interest is not ideally served if litigants and third parties bear expenditures that later prove unnecessary.” Order Granting Continuance at 2, *In re Sanford Health*, D09376 (F.T.C. Nov. 3, 2017). The public interest would be best served if a brief continuance is granted.

Pursuant to the current Scheduling Order, the third parties will soon need to expend significant resources to meet upcoming pre-hearing deadlines. For example, the Scheduling Order currently requires the third parties to file motions for *in camera* treatment by January 7,

2020, only 18 days from now and immediately following the Christmas and New Year public holidays. During the course of the federal district court trial, the parties informed approximately 25 third parties that materials containing confidential information might be used during the proceeding, after which motions were filed by 23 third parties including by 21 outside counsel on their behalf. Docket, *FTC v. RAG-Stiftung*, No. 1:19-cv-02337-TJK (D.D.C. Nov. 4, 2019). Complaint Counsel and Respondents anticipate that these third parties will now be obliged to file motions for *in camera* treatment in the Part III proceeding by January 7 in order to protect their confidential information and commercial interests. The preparation of these motions is likely to require significant time and expense from the third parties to ensure compliance with the “strict standards” of the FTC’s confidentiality rule and to provide the required declarations or affidavits. Scheduling Order at 7, *In re RAG-Stiftung*, D09384 (F.T.C. Aug. 29, 2019). The requested continuance will postpone the January 7 deadline for motions for *in camera* treatment to February 25, 2020, thereby providing the third parties sufficient time to prepare motions for *in camera* treatment, if necessary, after the issuance of the federal court’s decision—or more likely, allowing the third parties to avoid the burden entirely when the Part III proceeding ultimately becomes moot.

In addition to pre-trial motions, the third parties and the parties will bear the expense of preparing for a potentially lengthy full trial. Significant preparation will be required to prepare for a hearing that can last up to 210 hours; by contrast, the preliminary injunction hearing was capped at 50 hours and still required material cost to the third parties. *See* 16 C.F.R. § 3.41(b); Joint Stipulated Case Management and Scheduling Order at 13, *FTC v. RAG-Stiftung*, No. 1:19-cv-02337-TJK (D.D.C. Nov. 4, 2019). Recent administrative hearings in merger cases have required 15 to 31 days of trial over more than a month. Initial Decision at 2-3, *In re Otto Bock*

*Healthcare North America, Inc.*, D09378 (F.T.C. May 6, 2019) (evidentiary hearing required 31 days between July 10, 2018 and October 4, 2018); Initial Decision at 1, *In re Tronox Limited*, D09377 (F.T.C. Dec. 14, 2018) (evidentiary hearing required 16 days between May 18, 2018 and June 22, 2018). In addition, third-party and party witnesses will bear the burden of traveling to Washington, DC, for testimony in the administrative proceeding beginning on January 22, which potentially could be terminated only two days later following the federal district court's anticipated decision date of January 24. These same third-party and party witnesses have already testified concerning the same issues in federal court, including associated preparation, travel, and opportunity costs related to their ordinary course responsibilities.

The requested continuance will postpone these deadlines to ensure that the third parties are not unnecessarily burdened and forced to bear material costs and to further expend resources to assess materials for confidential information, and to prepare and submit associated motions for *in camera* treatment, as well as prepare witnesses for testimony until necessary.

**b. A Continuance Will Conserve the FTC's Resources Until Needed.**

The requested continuance will similarly conserve the resources of both the Administrative Law Judge and FTC staff, permitting those resources to be allocated elsewhere in furtherance of the Commission's mission. Before the hearing begins, the parties and the third parties are required to file motions *in limine* and associated responses, motions for *in camera* treatment and associated responses, and pretrial briefs, as well as present at a prehearing conference. See Scheduling Order at 4, *In re RAG-Stiftung*, D09384 (F.T.C. Aug. 29, 2019). The hearing before the Administrative Law Judge will then begin on January 22, 2020. *Id.* at 5. The requested continuance will ensure that neither the Administrative Law Judge nor FTC staff

devote time to these activities and otherwise preparing for and presiding over or participating in the proceeding until necessary.

**c. A Brief Continuance Will Not Prevent An Expeditious Hearing.**

The brief postponement of the hearing and related pre-trial deadlines will not prevent the Commission from expeditiously proceeding with the administrative hearing if it ultimately takes place. “[A] short delay in the start of the administrative hearing would not harm the Commission or the public interest should it be necessary for the administrative adjudication to go forward.” Order Granting Continuance at 2, *In re Advocate Health Care Network*, D09369 (F.T.C. May 6, 2016). A continuance of 49 days will only briefly postpone the hearing as is necessary to prevent needless burden, while allowing sufficient time for the third parties to prepare their motions for *in camera* treatment if ultimately needed.

**2. A Continuance Under These Circumstances Is Consistent with Prior Commission Orders.**

The Commission has previously granted continuances under similar circumstances. In *Advocate Health/NorthShore*, the Commission found good cause and granted a 22-day continuance of the administrative hearing and pre-hearing deadlines as a result of the related preliminary injunction proceeding in federal district court. Order Granting Continuance, *In re Advocate Health Care Network*, D09369 (F.T.C. May 6, 2016). The parties’ reasoning for requesting a continuance included that a decision on the preliminary injunction was expected close in time to the start of the administrative hearing. Joint Expedited Motion for a 22-Day Stay of Administrative Proceedings at 2, *In re Advocate Health Care Network*, D09369 (F.T.C. Apr. 27, 2016). In granting the continuance, the Commission referenced the respondents’ representations that they would abandon the transaction if a preliminary injunction was granted or file a motion for withdrawal or a stay under Rule 3.26 if the preliminary injunction was

denied—both of which Evonik and PeroxyChem also represent here. Order Granting Continuance at 2, *In re Advocate Health Care Network*, D09369 (F.T.C. May 6, 2016). In addition, the Commission referenced reasoning that is consistent with this Motion, namely that the continuance would eliminate burden on the third parties as the administrative hearing could become moot and that the continuance would not prejudice the Commission. *Id.* The Commission subsequently granted a further continuance that the parties requested after the preliminary injunction hearing concluded and before the federal district court’s decision. Order Granting Continuance at 1, *In re Advocate Health Care Network*, D09369 (F.T.C. June 2, 2016). Similarly, in *Sanford Health/Mid Dakota Clinic*, the Commission granted several continuances of the administrative proceeding as a result of the ongoing federal court preliminary injunction proceeding. Order Granting Continuance, *In re Sanford Health*, D09376 (F.T.C. Nov. 3, 2017); Order Granting Further Continuance of Administrative Proceedings, *In re Sanford Health*, D09376 (F.T.C. Nov. 21, 2017). One continuance was granted as the parties waited for the federal district court’s decision to prevent unnecessary burden on the third parties, as “the public interest is not ideally served if litigants and third parties bear expenditures that later prove unnecessary.” Order Granting Further Continuance of Administrative Proceedings at 2, *In re Sanford Health*, D09376 (F.T.C. Nov. 21, 2017). Consistent with the Commission’s reasoning in those cases, the similar circumstances presented in this case support the issuance of a continuance.

The Administrative Law Judge also recognized the benefits of a continuance. During the initial Scheduling Conference, the Administrative Law Judge requested that the parties jointly seek a continuance of the administrative proceeding if a ruling in the preliminary injunction

proceeding was still pending. Pretrial Conference Transcript at 10:8-10, *In re RAG-Stiftung*, D09384 (F.T.C. Aug. 29, 2019).

Complaint Counsel and Respondents respectfully submit that good cause to continue the hearing and related deadlines under Rule 3.41 exists and request that the continuance be granted.

**RELIEF REQUESTED**

For all of the foregoing reasons, Complaint Counsel and Respondents jointly and respectfully request that the Commission exercise its discretion under Rule 3.41(b) and/or Rule 3.41(f) to postpone the commencement of the administrative hearing by 49 days, or until such later date as may be convenient for the Chief Administrative Law Judge and the Commission. Complaint Counsel and Respondents also request an extension of all interim pre-trial deadlines for 49 days.

Date: December 20, 2019

/s/ James Rhilinger

James Rhilinger  
Amy Dobrzynski  
Daniel Matheson  
Dominic Vote  
Federal Trade Commission  
Bureau of Competition  
600 Pennsylvania Avenue, NW  
Washington, DC 20580  
Tel: 202-326-2871  
Email: jrhilinger@ftc.gov

*Counsel Supporting the Complaint*

/s/ Eric Mahr

Eric Mahr  
Andrew J. Ewalt  
Justin Stewart-Teitelbaum  
Laura C. Onken  
Sarah M. Melanson  
Freshfields Bruckhaus Deringer US LLP  
700 13th Street NW, 10th Floor  
Washington, DC 20005  
Tel: 202-777-4545  
Email: eric.mahr@freshfields.com

*Counsel for Respondents RAG-Stiftung,  
Evonik Industries AG, Evonik Corporation,  
and Evonik International Holding, B.V.*

/s/ Mike G. Cowie

Mike G. Cowie  
James A. Fishkin  
Shari Ross Lahlou

**PUBLIC**

Brian E. Rafkin  
Anna Aryankalayil  
Blair Kuykendall  
Dechert LLP  
1900 K Street, NW  
Washington, DC 20006

*Counsel for 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.*

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;**

Docket No. 9384

**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.**

**[PROPOSED] ORDER GRANTING JOINT EXPEDITED MOTION FOR  
CONTINUANCE OF ADMINISTRATIVE PROCEEDINGS**

Good cause having been shown,

IT IS HEREBY ORDERED THAT Complaint Counsel's and Respondents' Joint Expedited Motion for Continuance of Administrative Proceedings is GRANTED; and

- 1) Commencement of the evidentiary hearing in this matter is moved by 49 days from January 22, 2020 to March 11, 2020; and
- 2) All other interim pre-hearing deadlines be extended by 49 days.

By the Commission.

Donald S. Clark  
Secretary

ISSUED:

# Exhibit 1

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UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of: )  
)  
In re: RAG-Stiftung, Evonik )  
Industries, AG, Evonik Corporation, )  
Evonik International Holding, B.V. )  
)  
and )  
)  
One Equity Partners Secondary Fund, )  
LP, One Equity Partners V. L.P., )  
Lexington Capital Partners VII (AIVI), )  
L.P., PeroxyChem Holding Company LLC, )  
PeroxyChem Holdings L.P., )  
PeroxyChem Holdings, LLC, )  
PeroxyChem Holdings, L.P., )  
PeroxyChem Holdings, LLC, )  
PeroxyChem LLC, and )  
PeroxyChem Cooperatief U.S., )  
)  
Respondents. )  
-----)

THURSDAY, AUGUST 29, 2019  
1:00 P.M.

PRETRIAL CONFERENCE  
PUBLIC RECORD

BEFORE THE HONORABLE D. MICHAEL CHAPPELL  
Chief Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C.

Reported by: Susanne Bergling, RMR-CRR-CLR

## Pretrial Conference

Evonik Industries, et al.

8/29/2019

1 JUDGE CHAPPELL: Anything to add?

2 MR. MAHR: Yes, Your Honor. When we met with  
3 Judge Kelly, we informed him of kind of the commercial  
4 realities of this transaction. Those are that the last  
5 closing date is February 3rd, 2020, and that makes  
6 February 4th, 2020, the first date on which either party  
7 can terminate the transaction.

8 We told Judge Kelly that it was our belief that,  
9 in order to assure that the transaction can close, we  
10 would need a ruling from him, if possible, by January  
11 24th, 2020, on the preliminary injunction motion,  
12 because in our view, as in many of these cases, we think  
13 that will decide, as a practical matter, the fate of the  
14 transaction.

15 And he indicated to us that he thought that could  
16 be done. He obviously didn't make any promises, but he  
17 thought that could be done.

18 JUDGE CHAPPELL: I'm concerned about this trial  
19 date. I've been doing this a while. I don't know how  
20 many rodeos this has been, but it's been a lot, and only  
21 one -- actually, no case, no merger case has ever gone  
22 to trial where the Government's filed the preliminary  
23 injunction request up front. We had one that went to  
24 trial where they failed to file for preliminary  
25 injunction until down the road, and if you're wondering,

# Exhibit 2

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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FEDERAL TRADE COMMISSION, CV No. 1:19-cv-02337-TJK  
  
Plaintiff, Washington, DC  
v. Monday, August 5, 2019  
1:00 p.m.  
RAG-STIFTUNG, et al.,  
  
Defendants.

----- x  
-----  
TRANSCRIPT OF STATUS CONFERENCE  
HELD BEFORE THE HONORABLE TIMOTHY J. KELLY  
UNITED STATES DISTRICT JUDGE  
-----

APPEARANCES VIA TELECONFERENCE:

For the Plaintiff: James E. Rhilinger, III, Esq.  
Amy E. Dobrzynski, Esq.  
Daniel J. Matheson, Esq.  
FEDERAL TRADE COMMISSION  
Bureau of Competition  
Mergers II Division  
400 Seventh Street, SW  
Washington, DC 20024  
(202) 326-2871

For the Defendants: Eric J. Mahr, Esq.  
Andrew J. Ewalt, Esq.  
FRESHFIELDS BRUCKHAUS DERINGER US LLP  
700 13th Street, NW  
10th Floor  
Washington, DC 20005  
(202) 777-4545

Michael G. Cowie, Esq.  
James A. Fishkin, Esq.  
DECHERT, LLP  
1900 K Street, NW  
Washington, DC 20006  
(202) 261-3339

Court Reporter: Timothy R. Miller, RPR, CRR, NJ-CCR  
Official Court Reporter  
U.S. Courthouse, Room 6722  
333 Constitution Avenue, NW  
Washington, DC 20001  
(202) 354-3111

1 we're -- plan to make good progress on that this week.

2 THE COURT: All right. Anything to add from  
3 Mr. Mahr and Mr. Cowie?

4 MR. MAHR: This is Eric Mahr.

5 I agree with what Mr. Rhilinger said. I think you  
6 have experienced counsel on both sides and we'll be able to  
7 agree on as much as possible.

8 I'll -- you asked for external events and, maybe,  
9 I'll just flag here, first is that the end closing date --  
10 the outside closing date under the parties' agreement is  
11 February 3rd, 2020, and the FTC has requested and the  
12 parties to the transaction agreed to provide notice of  
13 closing five business days before that. So the practical  
14 matter from the preliminary injunction proceeding before  
15 Your Honor, the parties would need a ruling by January 24th,  
16 2020, in order to close. And, as you may know, in these  
17 kind of proceedings, while there is an administrative  
18 proceeding that goes along at the same time as the  
19 proceeding before Your Honor, I can tell you in general, but  
20 also in this case, the -- this proceeding will decide the  
21 fate of the merger, and the FTC proposed and we agreed to a  
22 -- subject, obviously, to your availability and your  
23 agreement -- a trial date of November 12th, the day after  
24 Veterans Day, which would allow us to get the case tried and  
25 to you by -- before the week of Thanksgiving. And we hope,

1 first of all, that you're available then; and, secondly,  
2 that that would give you enough time to rule before that  
3 January 24th date.

4 THE COURT: All right. Well, that's very helpful.  
5 I certainly don't -- this is my first experience with this  
6 type of proceeding. So I have no -- I'm completely  
7 comfortable with counsel educating me as we go along and not  
8 assuming that I've done 100 of these, but -- number one.

9 Number two is, obviously, I will check. I  
10 actually have a fall that's been filling up with dates and  
11 trial dates. So I will take a look at that when the parties  
12 -- whatever they submit, I will certainly take a look at  
13 what you submit and see if it can fit in with my  
14 availability, but in any event, I think, certainly, we have  
15 enough time with the drop-dead date being toward the end of  
16 February. I don't anticipate that being an issue.

17 All right. So should I -- let me put it this way.  
18 When would the -- I will -- do the parties see a need for me  
19 to order a case management order to be filed by a specific  
20 time or are you far enough along that, look, whether it's  
21 the end of this week or early next week, that's not really  
22 -- it's not really necessary for me to order anything?

23 MR. RHILINGER: James Rhilinger --

24 MR. MAHR: This is Eric --

25 Go ahead, James.

# Exhibit 3

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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FEDERAL TRADE COMMISSION, CV No. 1:19-cv-02337-TJK  
Plaintiff,  
v. Washington, DC  
Friday, December 13, 2019  
RAG-STIFTUNG, et al., 2:00 p.m.  
Defendants.  
----- x

TRANSCRIPT OF EVIDENTIARY HEARING, DAY 9  
\*\*\* AFTERNOON SESSION \*\*\*  
HELD BEFORE THE HONORABLE TIMOTHY J. KELLY  
UNITED STATES DISTRICT JUDGE

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APPEARANCES:

For the Plaintiff: James E. Rhilinger, III, Esq.  
Amy E. Dobrzynski, Esq.  
Dominic Vote, Esq.  
FEDERAL TRADE COMMISSION  
Bureau of Competition  
Mergers II Division  
400 Seventh Street, SW  
Washington, DC 20024  
(202) 326-2871

For the Defendants: Andrew J. Ewalt, Esq.  
Jan M. Rybnicek, Esq.  
Sarah M. Melanson, Esq.  
Eric J. Mahr, Esq.  
FRESHFIELDS BRUCKHAUS DERINGER US LLP  
700 13th Street, NW  
10th Floor  
Washington, DC 20005  
(202) 777-4545

Shari R. Lahlou, Esq.  
Michael G. Cowie, Esq.  
James A. Fishkin, Esq.  
DECHERT, LLP  
1900 K Street, NW  
Washington, DC 20006  
(202) 261-3339

Court Reporter: Timothy R. Miller, RPR, CRR, NJ-CCR  
Official Court Reporter  
U.S. Courthouse, Room 6722  
333 Constitution Avenue, NW  
Washington, DC 20001

1 data and give you an opinion myself as soon as I can?

2 MR. MAHR: We just have one, and it's about that  
3 -- we've been talking with the FTC about filing a joint  
4 motion to ask the Federal Trade Commission to stay the Part  
5 3 hearing, which is scheduled to start on, I think, January  
6 21st. And the FTC has asked us to check back with you to  
7 see if you still believe you're on schedule to make a ruling  
8 by January 24th, because that would help them be able to  
9 join our motion to put off and save the costs of that Part 3  
10 litigation between now and then.

11 THE COURT: I think -- remind me the day -- that's  
12 right. It was the 24th, was the day you all had told me you  
13 would --

14 MR. MAHR: That's correct.

15 THE COURT: Correct. Okay. I think the answer is  
16 yes right now, but I have something that -- I have some  
17 parties in here on Monday that could -- might affect that.  
18 So I would say I think that's correct for now, and I will  
19 let the parties know if that changes. How's that?

20 MR. MAHR: Thank you, Your Honor.

21 THE COURT: All right. How would that -- tell me  
22 how that would -- it's scheduled for the 21st? How -- tell  
23 me how -- explain to me what you're putting off and how --  
24 if I -- let me put it this way. If I told you, no, I'm not  
25 on track, what would the consequence of that be?

1           MR. MAHR: Well, I think the biggest consequence  
2 wouldn't have to do with the Part 3 hearing. It would have  
3 to do with the transaction itself. February 3rd is the last  
4 day for closing. On February 4th, either party can  
5 terminate unilaterally. There's an agreement and a timing  
6 agreement with the FTC that we have to give them five days  
7 ahead. When you do all the business day math, January 24th  
8 is the last day. That is -- that swamps any concern about  
9 the Part 3 proceeding. The Part 3 proceeding -- there would  
10 be pretrial meetings. We would have to go there and do  
11 another opening statement on the 21st.

12           THE COURT: All right. I think I understand the  
13 posture. So yes, I'm on track for the 24th. I will let you  
14 all know if that changes. I don't necessarily expect to,  
15 but something might be coming my way Monday that could  
16 affect it.

17           With that being the only housekeeping matter, I  
18 want to say I thought -- I really appreciate the parties  
19 working together on this, coming up with only two documents  
20 to argue about in terms of admissibility. I thought  
21 everyone's presentation was really great. And now,  
22 unfortunately, I -- the ball's in my court, and I will do my  
23 best to turn it around as soon as I can.

24           And if there's nothing further, counsel are  
25 dismissed.

# Exhibit 4

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

**In the Matter of**

**RAG-Stiftung,**  
**Evonik Industries AG,**  
**Evonik Corporation,**  
**Evonik International Holding B.V.,**  
**One Equity Partners Secondary Fund,**  
**L.P.,**  
**One Equity Partners V, L.P.,**  
**Lexington Capital Partners VII (AIV I),**  
**L.P.,**  
**PeroxyChem Holding Company LLC,**  
**PeroxyChem Holdings, L.P.,**  
**PeroxyChem Holdings LLC,**  
**PeroxyChem LLC**  
**and**  
**PeroxyChem Cooperatief U.A.**

Docket No. 9384

**DECLARATION OF DR. NORBERT LÖW**

I, Dr. Norbert Löw, hereby certify the following:

1. I am Head of Antitrust Law & Compliance at Evonik Industries AG.
2. I am authorized to execute this declaration on behalf of Evonik Industries AG.
3. Evonik Industries AG and its wholly owned subsidiaries, Evonik Corporation and Lullaby LLC, entered into an Agreement and Plan of Merger on November 7, 2018 to acquire PeroxyChem (the "Proposed Acquisition").

**PUBLIC**

4. On August 2, 2019, the Federal Trade Commission filed an administrative complaint challenging the Proposed Acquisition as a violation of Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act (“administrative proceeding”).
5. On August 2, 2019, the Federal Trade Commission also filed a complaint in the United States District Court for the District of Columbia (“District Court”) seeking a temporary restraining order and preliminary injunction to enjoin the Proposed Acquisition until the administrative proceeding is adjudicated.
6. On August 5, 2019, the District Court granted a stipulated temporary restraining order preventing Evonik and PeroxyChem from consummating the Proposed Acquisition until after 11:59 PM Eastern Time on the fifth business day following the District Court’s decision on the motion for preliminary injunction.
7. Evonik commits to the Federal Trade Commission that it will abandon the Proposed Acquisition without further litigating the administrative proceeding in the event that the District Court grants the preliminary injunction or, if Evonik and PeroxyChem appeal the District Court’s decision, that order is affirmed on appeal.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: Dec 19, 2019



---

Dr. Norbert Löw  
Head of Antitrust Law & Compliance  
Evonik Industries AG

# Exhibit 5

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of

RAG-Stiftung,

Evonik Industries AG,

Evonik Corporation,

Evonik International Holding B.V.,

One Equity Partners Secondary Fund,  
L.P.,

One Equity Partners V, L.P.,

Lexington Capital Partners VII (AIV I),  
L.P.,

PeroxyChem Holding Company LLC,

PeroxyChem Holdings, L.P.,

PeroxyChem Holdings LLC,

PeroxyChem LLC

and

PeroxyChem Cooperatief U.A.

Docket No. 9384

DECLARATION OF P. PETE ZOGRAFAKIS

I, P. Pete Zografakis, hereby certify the following:

1. I am the Executive Vice President, General Counsel and Chief Compliance Officer at PeroxyChem.
2. I am authorized to execute this declaration on behalf of PeroxyChem.

3. Evonik Industries AG and its wholly owned subsidiaries, Evonik Corporation and Lullaby LLC, entered into an Agreement and Plan of Merger on November 7, 2018 to acquire PeroxyChem (the “Proposed Acquisition”).
4. On August 2, 2019, the Federal Trade Commission filed an administrative complaint challenging the Proposed Acquisition as a violation of Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act (“administrative proceeding”).
5. On August 2, 2019, the Federal Trade Commission also filed a complaint in the United States District Court for the District of Columbia (“District Court”) seeking a temporary restraining order and preliminary injunction to enjoin the Proposed Acquisition until the administrative proceeding is adjudicated.
6. On August 5, 2019, the District Court granted a stipulated temporary restraining order preventing Evonik and PeroxyChem from consummating the Proposed Acquisition until after 11:59 PM Eastern Time on the fifth business day following the District Court’s decision on the motion for preliminary injunction.
7. PeroxyChem commits to the Federal Trade Commission that it will abandon the Proposed Acquisition without further litigating the administrative proceeding in the event that the District Court grants the preliminary injunction or, if Evonik and PeroxyChem appeal the District Court’s decision, that order is affirmed on appeal.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: 12/20/2019

  
\_\_\_\_\_  
P. Pete Zografakis  
Executive Vice President, General Counsel  
and Chief Compliance Officer  
PeroxyChem

**CERTIFICATE OF SERVICE**

I hereby certify that on December 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  
Washington, DC 20580

I also hereby certify that I caused a true and correct copy of the foregoing documents to be served upon the following via email:

James Rhilinger  
Amy Dobrzynski  
Cecelia Waldeck  
Daniel Matheson  
Dominic Vote  
Frances Anne Johnson  
Michael Blevins  
Michael Lovinger  
Sean Hughto  
Stephen Santulli  
Steven Dahm  
Federal Trade Commission  
600 Pennsylvania Ave., NW  
Washington, DC 20580

*Complaint Counsel*

Mike G. Cowie  
James A. Fishkin  
Shari Ross Lahlou  
Brian E. Rafkin  
Anna Aryankalayil  
Blair Kuykendall  
Dechert LLP  
1900 K Street, NW  
Washington, DC 20006

*Counsel for 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.*

Dated: December 20, 2019

By: s/ Justin Stewart-Teitelbaum  
Justin Stewart-Teitelbaum

**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: December 20, 2019

By: s/ Justin Stewart-Teitelbaum  
Justin Stewart-Teitelbaum

Notice of Electronic Service

**I hereby certify that on December 20, 2019, I filed an electronic copy of the foregoing Joint Expedited Motion for Continuance, with:**

D. Michael Chappell  
Chief Administrative Law Judge  
600 Pennsylvania Ave., NW  
Suite 110  
Washington, DC, 20580

Donald Clark  
600 Pennsylvania Ave., NW  
Suite 172  
Washington, DC, 20580

**I hereby certify that on December 20, 2019, I served via E-Service an electronic copy of the foregoing Joint Expedited Motion for Continuance, upon:**

Amy Dobrzynski  
Attorney  
Federal Trade Commission  
adobrzynski@ftc.gov  
Complaint

Cecelia Waldeck  
Attorney  
Federal Trade Commission  
cwaldeck@ftc.gov  
Complaint

Daniel Matheson  
Attorney  
Federal Trade Commission  
dmatheson@ftc.gov  
Complaint

Dominic Vote  
Attorney  
Federal Trade Commission  
dvote@ftc.gov  
Complaint

Frances Anne Johnson  
Attorney  
Federal Trade Commission  
fjohnson@ftc.gov  
Complaint

James Rhilinger  
Attorney  
Federal Trade Commission  
jrhilinger@ftc.gov  
Complaint

Michael Blevins  
Attorney  
Federal Trade Commission  
mblevins@ftc.gov  
Complaint

Michael Lovinger  
Attorney

Federal Trade Commission  
mlovinger@ftc.gov  
Complaint

Sean Hughto  
Attorney  
Federal Trade Commission  
shughto@ftc.gov  
Complaint

Stephen Santulli  
Attorney  
Federal Trade Commission  
ssantulli@ftc.gov  
Complaint

Steven Dahm  
Attorney  
Federal Trade Commission  
sdahm@ftc.gov  
Complaint

Eric Mahr  
Partner  
Freshfields Bruckhaus Deringer US LLP  
eric.mahr@freshfields.com  
Respondent

Andrew Ewalt  
Partner  
Freshfields Bruckhaus Deringer US LLP  
andrew.ewalt@freshfields.com  
Respondent

Justin Stewart-Teitelbaum  
Counsel  
Freshfields Bruckhaus Deringer US LLP  
justin.s-t@freshfields.com  
Respondent

Mike Cowie  
Dechert LLP  
mike.cowie@dechert.com  
Respondent

James Fishkin  
Partner  
Dechert LLP  
James.Fishkin@dechert.com  
Respondent

Shari Ross Lahlou  
Dechert LLP  
shari.lahlou@dechert.com  
Respondent

Brian Rafkin  
Dechert LLP  
brian.rafkin@dechert.com  
Respondent

Anna Aryankalayil  
Dechert LLP  
anna.aryankalayil@dechert.com

Respondent

Blair Kuykendall  
Dechert LLP  
blair.kuykendall@dechert.com  
Respondent

Laura Onken  
Senior Associate  
Freshfields Bruckhaus Deringer US LLP  
laura.onken@freshfields.com  
Respondent

Justin Stewart Teitelbaum  
Attorney