UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Deborah Platt Majoras, Chairman**
Orson Swindle
Thomas B. Leary
Pamela Jones Harbour
Jonathan Leibowitz

In the Matter of **Hoechst AG,** **a corporation, and** **Rhone-Poulenc S.A.,** **a corporation,** **to be renamed** **Aventis S.A.,** **a corporation.**	**Docket No. C-3919**

ORDER REOPENING AND MODIFYING ORDER

On December 16, 2004, Aventis S.A. ("Aventis"), the successor to respondents Hoechst AG and Rhone-Poulenc S.A. named in the consent order issued by the Commission on January 18, 2000, in Docket No. C-3919 ("Order"), filed its Petition of Aventis to Reopen and Modify Order ("Petition"), seeking to set aside those provisions relating to the divestiture of Aventis' interest in Rhodia, a French chemical company. For the reasons stated below, the Commission has determined to grant the Petition.

When the Order was initially issued, the Commission determined that the merger of Rhone-Poulenc and Hoechst would, among other things, increase the likelihood of coordinated interaction in the market for cellulose acetate.[1] Specifically, the Commission found that Rhodia competes in the U.S. cellulose acetate market through its participation in Primester, a joint venture with Eastman Chemical Company ("Eastman"). The U.S. market also includes Celanese

[1]Cellulose acetate is a thermoplastic that is used to produce, among other products, cigarette filters, tool handles, tapes and films. In applications where it is used, there are no cost effective substitutes.

Limited ("Celanese") and Eastman on its own, apart from its participation in the Primester joint venture. Rhone-Poulenc and Hoechst owned Rhodia and Celanese, respectively, prior to the merger that created Aventis. The merger therefore raised a competitive concern relating to Primester and Celanese.

Ultimately, undertakings entered into with the Directorate General for Competition of the European Commission ("EC") and supplemented by the Order resolved the competitive concern relating to Primester and Celanese in two steps. First, the EC undertakings required Hoechst to spin off Celanese. Second, the EC undertakings and the Order required the parties to reduce Aventis' holdings in Rhodia because the Kuwait Petroleum Company ("KPC"), a former Hoechst shareholder, would hold a controlling interest in Celanese and a working interest in Aventis after the merger. It was because of concerns that KPC would be in a position post-merger to coordinate the actions of Celanese, Primester (through Aventis/Rhodia), and perhaps Eastman through Primester, that the Commission required Aventis to reduce its holdings in Rhodia. The Order thus is designed and intended to sever the potential KPC influence on Rhodia/Primester.

Paragraph VI. of the Order, as modified, requires Aventis to reduce its interest in Rhodia to five (5) percent or less by April 22, 2005.[2] The Order also requires Aventis to maintain unsold Rhodia voting securities in escrow with a proxy system that prevents Aventis from exercising its voting rights, and restricts Aventis from influencing or receiving confidential information concerning Rhodia's cellulose acetate business. The Order therefore limits KPC's ability to coordinate the interaction between Rhodia, through Aventis, and Celanese.

KPC has recently divested all of its shares in Celanese to BCP Crystal Acquisition Group GmBH & Co. KG, an entity affiliated with the Blackstone Group ("Blackstone"), a U.S. based private equity fund. On February 2, 2004, Blackstone launched a friendly public takeover of Celanese and announced that, if successful, it intended to take Celanese private. On April 2, 2004, Blackstone and Celanese announced that the tender offer was successful, with 83.6% of issued and outstanding shares being tendered, and that all the conditions precedent to the completion of the offer had been met. Pursuant to the tender offer, KPC tendered all of its shares in Celanese to Blackstone.

Aventis offers two reasons why the Order provisions relating to the divestiture of the Rhodia shares should be set aside. First, Aventis asserts that the modifications are necessary because changed conditions of fact (*i.e.,* KPC's tender of its interest in Celanese to Blackstone)

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[2]Aventis previously filed two petitions to reopen and modify the Order as it relates to the required divestiture of its Rhodia shares. The first petition was filed on September 16, 2002, and the second petition was filed on September 30, 2003. In both instances, the Commission granted Aventis' petition to reopen and modify on public interest grounds. Specifically, the Commission determined that Rhodia's precarious financial condition warranted an order modification that, in essence, gave Aventis a longer period of time to divest the Rhodia shares.

render the Order provisions relating to the divestiture of the Rhodia shares obsolete. Second, Aventis argues that the modifications are warranted because it is in the public interest to set aside the divestiture requirements in an attempt to preserve Rhodia's financial viability.

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. § 45(b), provides that the Commission shall reopen an order to consider whether it should be modified if the respondent "makes a satisfactory showing that changed conditions of law or fact" so require. A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes either eliminate the need for the order or make continued application of it inequitable or harmful to competition.[3]

Section 5(b) also provides that the Commission may also reopen and modify an order when, although changed circumstances would not require reopening, the Commission determines that the public interest so requires. Respondents are therefore invited in petitions to show how the public interest warrants the requested modification.[4] In the case of "public interest" requests, FTC Rule of Practice 2.51(b) requires an initial "satisfactory showing" of how modification would serve the public interest before the Commission determines whether to reopen an order and consider all of the reasons for and against its modification.[5]

A "satisfactory showing" requires, with respect to public interest requests, that the requester make a *prima facie* showing of a legitimate public interest reason or reasons justifying relief. A request to reopen and modify will not contain a "satisfactory showing" if it is merely conclusory or otherwise fails to set forth by affidavit(s) specific facts demonstrating in detail the reasons why the public interest would be served by the modification.[6] This showing requires that the requester demonstrate, for example, that there is a more effective or efficient way of achieving the purposes of the order, that the order in whole or part is no longer needed, or that there is some other clear public interest that would be served if the Commission were to grant the requested relief. In addition, this showing must be supported by evidence that is credible and reliable.

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[3] S. Rep. No. 96-500, 96th Cong., 2d Sess. 9 (1979) (significant changes or changes causing unfair disadvantage); *Louisiana-Pacific Corp.*, Docket No. C-2956, Letter to John C. Hart (June 5, 1986), at 4 (unpublished) ("Hart Letter"). *See also United States v. Louisiana-Pacific Corp.*, 967 F.2d 1372, 1376-77 (9th Cir. 1992) ("A decision to reopen does not necessarily entail a decision to modify the Order. Reopening may occur even where the petition itself does not plead facts requiring modification.").

[4] Hart Letter at 5; 16 C.F.R. § 2.51.

[5] 16 C.F.R. § 2.51(b). *See also Supplementary Information*, *Amendment to* 16 C.F.R. § 2.51(b), August 15, 2001, ("Amendment").

[6] 16 C.F.R. § 2.51.

If, after determining that the requester has made the required showing, the Commission decides to reopen the order, the Commission will then consider and balance all of the reasons for and against modification. In no instance does a decision to reopen an order oblige the Commission to modify it,[7] and the burden remains on the requester in all cases to demonstrate why the order should be reopened and modified. The petitioner's burden is not a light one in view of the public interest in repose and the finality of Commission orders.[8] All information and material that the requester wishes the Commission to consider shall be contained in the request at the time of filing.[9]

The Commission has determined that changed conditions of fact and the public interest require a reopening and modification as requested by Aventis. Among other things, the purpose of the Order is to maintain competition in the market for cellulose acetate, by severing the common link between Celanese and Rhodia (*i.e.,* KPC). The Order contemplated that, by requiring Aventis to divest its Rhodia shares, KPC would no longer have any influence over Rhodia, thereby making coordination between Rhodia and Celanese impossible to achieve. Once KPC transferred of all of its shareholdings in Celanese to Blackstone, KPC no longer had any ability to coordinate the activities of both Celanese and Rhodia. It therefore appears that one of the goals of the Order was accomplished, albeit through a different mechanism, and divestiture of the Rhodia shares is no longer necessary.

The Commission also finds that it is in the public interest to reopen and set aside those Order provisions relating to the divestiture of the Rhodia shares. Rhodia remains in severe financial difficulty. Rhodia's shares currently trade at approximately € 1-2 per share, down from € 22 per share in the months that followed the Aventis transaction, and Rhodia's debt remains extremely high. A continued requirement that Aventis divest its Rhodia shares may force Rhodia's share price down further. Such a result could worsen Rhodia's already precarious financial situation and may ultimately harm competition in the cellulose acetate market.

For these reasons, the Commission finds that changed conditions of fact and the public interest requires a modification of the Order. KPC's potential coordination of Rhodia and Celanese, which resulted in the Rhodia divestiture requirement, is no longer possible because KPC has no continued interest in Celanese. Further, it appears that Rhodia's financial condition may worsen if Aventis, as a large shareholder, is required to divest its interest in the company. Therefore, the reasons to modify the order outweigh the reasons to retain it as written. Accordingly,

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[7]*See United States v. Louisiana-Pacific Corp.*, 967 F.2d 1372, 1376-77 (9th Cir. 1992) (reopening and modification are independent determinations).

[8]*See Federated Department Stores, Inc. v. Moitie*, 425 U.S. 394 (1981) (strong public interest considerations support repose and finality).

[9]16 C.F.R. § 2.51(b).

IT IS ORDERED that this matter be, and it hereby is, reopened;

IT IS FURTHER ORDERED that Paragraphs VI.B through VI.D, VII and VIII of the Order be, and they hereby are, set aside, as of the effective date of this Order;

IT IS FURTHER ORDERED that Paragraph IX of the Order be, and it hereby is, modified, as of the effective date of this Order, to read as follows:

> That within thirty (30) days after the date this Order becomes final and every sixty (60) days thereafter until Respondents have fully complied with the provisions of Paragraphs II.B. through II.G., or until a trustee has been appointed pursuant to Paragraph IV.A., and Respondents have complied with Paragraph VI.A. of this Order, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order. Respondents shall submit at the same time a copy of their report concerning compliance with this Order to any Interim Trustee(s) who has been appointed. Respondents shall include in their reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraph II.B. through II.G. and Paragraph VI.A. of the Order, including a description of all substantive contacts or negotiations for the divestiture and the identities of all parties contacted. Respondents shall include in their reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning completing the obligations. After completing the obligations required under Paragraphs II.B. though II.G. and Paragraph VI.A. of this Order, Respondents shall submit reports, setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with the Order, every year beginning on the anniversary of the date this Order became final until and including the tenth anniversary of the date of this Order.; and

IT IS FURTHER ORDERED that Paragraph XII. of the Order be, and it hereby is, modified, as of the effective date of this Order, to read as follows:

> That this Order shall terminate at the earlier of: (1) April 13, 2010; or (2) after the divestitures required by Paragraphs II.B. through II.F., IV., V., and VI. of this Order have been accomplished.

By the Commission, Chairman Majoras recused.

Donald S. Clark
Secretary

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ISSUED: April 13, 2005