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UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **William E. Kovacic, Chairman**
Pamela Jones Harbour
Jon Leibowitz
J. Thomas Rosch

In the Matter of	)	
THE DOW CHEMICAL COMPANY, a corporation.	)	**Docket No. C-4243**

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and of the Clayton Act, and by virtue of the authority vested by said Acts, the Federal Trade Commission (the "Commission"), having reason to believe that respondent Dow Chemical Company ("Dow"), a corporation, and Rohm and Haas Company ("Rohm & Haas"), a corporation, both subject to the jurisdiction of the Commission, have agreed to an acquisition by Dow of Rohm & Haas in violation of 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, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENT

1. Respondent Dow is a corporation organized and existing under the laws of the State of Delaware, with its principle place of business at 2030 Dow Center, Midland, MI 48674. Dow is a global company engaged in a wide variety of chemical businesses, including the research, development, manufacture, and sale of acrylic monomers, acrylic latex polymers, and hollow sphere particles.

II. JURISDICTION

2. Dow is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affects commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

III. THE PROPOSED TRANSACTION

3. Pursuant to an Agreement and Plan of Merger (the "Merger Agreement") dated July 10, 2008, Dow proposes to purchase all of the outstanding shares of Rohm & Haas in a transaction valued at $18.8 billion, including $3.5 billion in debt assumptions. Both Dow and Rohm & Haas manufacture, market, and sell acrylic monomers and acrylic polymers.

IV. THE RELEVANT PRODUCT MARKETS

4. For the purposes of this Complaint, the relevant lines of commerce in which to analyze the effects of the acquisition are: (a) glacial acrylic acid; (b) butyl acrylate; (c) ethyl acrylate; (d) acrylic latex polymers for traffic paint; and (d) hollow sphere particles. There are no practical substitutes for any of the relevant products.

5. Glacial acrylic acid is an acrylic monomer made from purifying crude acrylic acid. Glacial acrylic acid is used primarily in the production of superabsorbent polymers which are used in personal care and hygiene products, such as diapers.

6. Butyl acrylate is an acrylic monomer used primarily to produce polymers for paints and architectural coatings because it provides for a soft and flexible film.

7. Ethyl acrylate is an acrylic monomer used to produce polymers that are used in textile applications where abrasion resistance is required.

8. Acrylic latex polymers for traffic paint is a type of polymer uniquely produced and used in traffic paint. The purpose of acrylic latex polymer in traffic paint is to act as a binder, i.e., to keep the coating ingredients together; to bind the coating to the road surface; and to adhere glass beads that are used in traffic paint to the actual coating.

9. Hollow sphere particles are a type of polymer used by paper companies to impart gloss, brightness, and opacity to paper.

V. THE RELEVANT GEOGRAPHIC MARKET

10. The relevant geographic market within which to analyze the likely effects of the proposed transaction is no broader than North America. Acrylic monomer imports for glacial acrylic acid, butyl acrylic acid, and ethyl acrylic acid have established a small presence in North America, but their competitive impact has been constrained by increases in production costs overseas, by increases in shipping costs, and by growing demand overseas. There are virtually no imports of acrylic polymers, including latex polymers for traffic paint and hollow sphere particles, due to the large amounts of water contained in these latex polymers making long-distance shipping relatively expensive.

VI. CONCENTRATION IN THE RELEVANT MARKETS

11. Each of the acrylic monomer markets is highly concentrated. Post-acquisition, Dow would have an over 40 percent share of the glacial acrylic acid market. Its share of the butyl acrylate market would exceed 75 percent; and its share of ethyl acrylate market would approach 90 percent. After the acquisition, the only other producer that would be similarly situated to Dow would be BASF, which, like Dow, produces large amounts of both acrylic monomers and polymers.

12. Dow and Rohm & Haas are the only two commercial producers of acrylic polymers for traffic paint and hollow sphere particles. As a result, Dow's acquisition of Rohm and Haas would result in a merger to monopoly in those markets.

VII. CONDITIONS OF ENTRY

13. Entry into the relevant acrylic monomer markets for glacial acrylic acid, butyl acrylate and ethyl acrylate would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the acquisition. The design, construction, and licensing requirements for an acrylic monomer facility that produces these products would require an investment of hundreds of millions of dollars and would take several years to complete. Expansion by fringe competitors would also be costly and is unlikely to occur.

14. Entry into latex polymers for traffic paint would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the acquisition. Dow and Rohm and Haas have patented formulas for their latex polymers used in traffic paint and state by state approval is required before new suppliers or formulas can be used in traffic paint.

15. Entry into hollow sphere particles would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the acquisition. Product development of hollow sphere particles would be difficult and time consuming due to the patents and trade secrets associated with the product and the great deal of experience in producing and manufacturing hollow sphere particles necessary to provide a quality product.

VIII. EFFECTS OF THE ACQUISITION

16. The effects of the acquisition, if consummated, may be substantially to lessen competition and tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45. Specifically, the acquisition would:

a. eliminate actual, direct, and substantial competition between Dow and Rohm & Haas in the relevant markets;

b. increase the likelihood that Dow will exercise market power unilaterally in the relevant markets; and

c. increase the likelihood of coordinated interaction among competitors in the markets for glacial acrylic acid, butyl acrylate and ethyl acrylate.

IX. VIOLATIONS CHARGED

17. The Merger Agreement described in Paragraph 3 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

18. The transaction described in Paragraph 3, if consummated, would constitute a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-third day of January, 2009, issues its Complaint against said Respondent.

By the Commission.

SEAL

Donald S. Clark
Secretary