UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. ROHM and HAAS COMPANY, Defendant.	Civil Action No. 86-3091 Filed: 11/10/86

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16(b)-(h)), the United States of America files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry with the consent of Rohm and Haas Company in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

This civil action began on _____, 1986, when the United States filed a Complaint alleging that the acquisition by Rohm and Haas Company (hereinafter "Rohm and Haas") of the assets of the ion exchange resins business of Duolite International, Inc. (hereinafter "Duolite USA"), a subsidiary of Diamond Shamrock Corporation (hereinafter "Diamond"), violated Section 7 of the Clayton Act (15 U.S.C. § 18). The Complaint alleges that the effect of the

acquisition may be substantially to lessen competition for sale in the production of ion exchange resins in the United States. Ion exchange resins are synthetic resinous beads principally used to remove objectionable ions from aqueous solutions thereby purifying the solutions. The Complaint requests that Rohm and Haas be required to divest the assets comprising the Duolite USA ion exchange resins business and to continue to operate the business until the earlier of the completion of the required divestiture or one hundred and eighty days after the filing of the Complaint.

The United States and Rohm and Haas have stipulated that the proposed Final Judgment may be entered after compliance with the Antitrust Procedures and Penalties Act. Entry of the proposed Judgment will terminate the action, except that the Court will retain jurisdiction to construe, modify, and enforce the Judgment, and to punish violations of the Judgment.

II. EVENTS GIVING RISE TO THE ALLEGED VIOLATION

On May 19, 1984, Rohm and Haas purchased from Diamond for about $45 million the Duolite USA ion exchange resins business and assets, located at Redwood City, California, and the Duolite International, S.A. (hereafter "Duolite France") ion exchange resins business and assets, located at Chauny, France. At the time of the acquisition, Rohm and Haas and

Duolite USA both produced ion exchange resins for sale in the United States. Rohm and Haas is now, and was then, the world's largest producer of ion exchange resins. At the time of the acquisition, Diamond, through Duolite USA and Duolite France and a facility located in Wales, was the world's second largest producer of such resins. In the United States, Rohm and Haas ranked first and Duolite USA ranked third based on sales. The Complaint alleges that in 1983, Rohm and Haas and Duolite USA together accounted for about $57 million or about 50 percent of the $112 million of United States sales of ion exchange resins.

The complaint alleges that for antitrust purposes the relevant product market is ion exchange resins and the relevant geographic market is the United States, and that the combination of the ion exchange resins businesses of Rohm and Haas and Duolite USA may substantially lessen competition in the ion exchange resins market in the United States in violation of Section 7 of the Clayton Act.

Ion exchange resins are used principally to remove objectionable ions from aqueous solutions. Resins are small, solid, water-insoluble, synthetic resinous beads that contain either positively or negatively charged replaceable ions. When resins are brought in contact with an aqueous solution, they exchange unobjectionable ions located on the beads for objectionable ions in the solution, thereby removing the

objectionable ions from the solution. Resins have a broad range of uses in three general applications: industrial water treatment; home water treatment; and specialty applications.

The Complaint alleges that the production of ion exchange resins for sale in the United States is highly concentrated. In 1983, Rohm and Haas accounted for approximately 35 percent of the sales of ion exchange resins in the United States, and Duolite USA accounted for 16 percent of United States sales. The Herfindahl-Hirschman Index ("HHI"), a measure of market concentration, was about 2559 in the market for ion exchange resins in the United States prior to Rohm and Haas' acquisition of Duolite USA. The combination of Rohm and Haas and Duolite USA increased the HHI 1020 points to a postmerger HHI of 3579.

Successful new entry into the production and sale of ion exchange resins involves significant time and costs. A small but significant nontransitory price increase would not induce new entry.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT AND ITS ANTICIPATED EFFECTS ON COMPETITION

The United States brought this action because the effect of the acquisition by Rohm and Haas of the assets of the ion exchange resins business of Duolite USA may be substantially to lessen competition in violation of Section 7 of the Clayton Act in the production of ion exchange resins for sale in the United States. The anticompetitive effects associated with Rohm and Haas' acquisition of the Duolite USA assets would be eliminated

if those assets could be sold to a purchaser that would operate the business as an active and independent competitor of Rohm and Haas.

To this end, Section IV of the proposed Final Judgment would require Rohm and Haas to divest the Duolite USA ion exchange resins assets it acquired from Diamond to a purchaser acceptable to the United States. In addition, this section of the proposed Final Judgment would require Rohm and Haas to continue to operate its Redwood City plant until the divestiture required by the proposed Final Judgement is completed, or at least until one hundred and eighty days after the filing of the Complaint in this action.

Section V of the proposed Final Judgment provides that the sale of the assets would be accomplished by First San Francisco Corporation, an independent broker, whose term of appointment will commence upon the filing of the Complaint. The independent broker, and not Rohm and Haas, would have the right to sell the business. The independent broker would be required to sell the ion exchange resins assets at the best price obtainable to a purchaser acceptable to the United States. If the independent broker has not accomplished the divestiture within one hundred and eighty (180) days after the Complaint is filed, the Court would have the power to enter such orders as it shall deem appropriate. Further, Rohm and Haas would be required to pay all of the independent broker's expenses in selling the assets.

Section VI of the proposed Final Judgment would provide the United States with an opportunity to review any proposed divestiture before it occurs. Under Section VI, the United States could request information from Rohm and Haas and the proposed purchaser to assess a proposed divestiture. If the United States requests such information from Rohm and Haas and the proposed purchaser, the divestiture could not be consummated until the United States certifies in writing that it is satisfied that Rohm and Haas and the proposed purchaser have provided the additional information. Rohm and Haas and the proposed purchaser could not consummate the divestiture until 20 days after they have supplied the information. If the United States were to object to a divestiture of the Duolite assets proposed under Section IV, the divestiture could not be completed unless approved by the Court.

Section VII of the proposed Final Judgment would prevent Rohm and Haas from financing without the permission of the United States all or any part of the divestiture required by the Final Judgment.

Under Section VIII, Rohm and Haas would be required, upon request of the purchaser, to use its best efforts to provide technical assistance to assist the purchaser to design an R&D laboratory, to advise the purchaser on the production of ion exchange resins, and to assist the purchaser to hire and train a sales and technical support staff for marketing resins. Section VIII also would require Rohm and Haas, if the purchaser

decides to relocate the production equipment currently located at the Redwood City plant, and requests Rohm and Haas' assistance, to advise the purchaser on the relocation. Rohm and Haas would be required to make all such assistance available at cost.

Section IX would require Rohm and Haas to provide the purchaser at no charge a list of customers for ion exchange resins produced at Redwood City.

Section X would require Rohm and Haas to provide current Rohm and Haas employees who leave Rohm and Haas to work for the purchaser the same severance package that Diamond offered to its employees at the time Rohm and Haas acquired Duolite. Section XIII would permit the United States to obtain information and documents concerning compliance with the proposed Final Judgment.

Finally, Section XV would provide that the Final Judgment would expire on the tenth anniversary of the date of entry of the Final Judgment.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the proposed Final Judgment would neither impair nor assist

the bringing of any private antitrust damage actions. Under provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), entry of the proposed Final Judgment would have no prima facie effect in any subsequent private lawsuit that may be brought against the defendant.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and defendant Rohm and Haas have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the Antitrust Procedures and Penalties Act, provided that the United States has not withdrawn its consent. The Act conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The Act provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wants to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to:

P. Terry Lubeck, Chief
Litigation II Section
Antitrust Division
U.S. Department of Justice
Washington, D.C. 20530

Under Section XIV. of the proposed Final Judgment, the Court would retain jurisdiction over this matter for the purpose of enabling the United States or Rohm and Haas to apply to the Court for such further orders or directions as may be necessary or appropriate for the construction, implementation, modification, or enforcement of compliance with the Judgment, or for the punishment of any violations of the Judgment.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered only one alternative to settling this matter with the proposed Final Judgment. The alternative considered was to file suit seeking, in addition to divestiture of the Duolite USA ion exchange resin assets, divestiture of the assets of the ion exchange resins business of Duolite France, which Rohm and Haas also acquired at the same time from Diamond. At the time of the acquisition, Duolite France's ion exchange resins business, which Rohm and Haas still operates in Chauny, France, produced resins for sale in the United States and France as well as other parts of the world in competition with Rohm and Haas.

The United States decided to accept the proposed Final Judgment, rather than to file suit seeking divestiture of the assets of both Duolite USA and Duolite France, because the

United States concluded that a prompt divestiture of Duolite USA would offer the best result for United States consumers of ion exchange resins. At the time Rohm and Haas acquired it, Duolite France played only a minor role in the United States ion exchange resins market. Duolite France accounted for about 6 percent of the combined sales in the United States of Duolite France and Duolite USA and only about one percent of total sales of all competitors in the United States market. Moreover, since the acquisition, Rohm and Haas has spent considerable time and money making the French facility more efficient, by combining its technology with that of Duolite France, and as a result, the French facility has substantially improved Rohm and Haas' competitive position in foreign markets. Rohm and Haas would argue in litigation that the pro-competitive effects resulting from these increased efficiencies far outweigh any alleged anticompetitive effect in the United States market attributable to the Duolite France assets.

Although the United States can present arguments to counter these points, a significant risk exists that after litigation on the merits, a court would order a divestiture limited to the assets of Duolite USA. In addition, litigation is not only risky but is also likely to be quite costly and lengthy. Accordingly, United States resin consumers would be denied, until the litigation was completed, the prospect of the

competition created by a prompt divestiture of the assets of Duolite USA.

Under the circumstances, the United States has determined that the public interest in preserving competition in the market for ion exchange resins would be served best by obtaining Rohm and Haas' consent to an enforceable decree requiring it to divest the assets of Duolite USA. Although the proposed Final Judgment may not be entered until the criteria established by the Antitrust Procedures and Penalties Act (15 U.S.C. § 16(b)-(h)) have been satisfied, the public will benefit immediately from the safeguards in the proposed Final Judgment because Rohm and Haas has stipulated to comply with the terms of the Judgment pending its entry by the Court.

VII. DETERMINATIVE DOCUMENTS

No documents were determinative in the formulation of the proposed Final Judgment. Consequently, the United States has not attached any such documents to the proposed Final Judgment.

Dated: , 1986

Respectfully submitted,

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