

Interlocutory Orders, Etc.

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. Order, February 11, 2020

Order granting respondent's unopposed Motion to Withdraw this Matter from adjudication.

ORDER WITHDRAWING MATTER FROM ADJUDICATION
PURSUANT TO RULE 3.26(c) OF THE COMMISSION RULES OF PRACTICE

On February 7, 2020, counsel for all the Respondents in this proceeding filed a Motion to the Commission for Withdrawal of the Matter from Adjudication. Also on February 11, 2020, Complaint Counsel filed a Response to Respondent's Motion, advising that Complaint Counsel do not oppose Respondents' Motion. Accordingly,

IT IS ORDERED, pursuant to Rule 3.26(c) of the Commission Rules of Practice, 16 C.F.R. § 3.26(c), that this matter in its entirety be and it hereby is withdrawn from adjudication, and that all proceedings before the Administrative Law Judge be and they hereby are stayed.

By the Commission, Chairman Simons recused.

Interlocutory Orders, Etc.

IN THE MATTER OF
**AXON ENTERPRISE, INC.,
AND
SAFARILAND, LLC**

Docket No. 9389. Order, February 27, 2020

Opinion and Order denying respondent's motion to stay this administrative proceeding until entry of a final judgment on Axon's complaint seeking declaratory and injunctive relief in federal district court or, in the alternative, until entry of an order in that court on Axon's motion for a preliminary injunction.

ORDER DENYING RESPONDENT'S MOTION FOR A STAY

On January 10, 2020, Respondent Axon Enterprise, Inc. ("Axon") filed a motion to stay this administrative proceeding until entry of a final judgment on Axon's complaint seeking declaratory and injunctive relief in federal district court or, in the alternative, until entry of an order in that court on Axon's motion for a preliminary injunction. Complaint Counsel oppose the motion. For the reasons stated below, we deny Axon's motion to stay.

I. BACKGROUND

On January 3, 2020, the Commission filed an administrative complaint against Respondents Axon and Safariland, LLC ("Safariland") challenging Axon's acquisition of VieVu, LLC ("VieVu") from Safariland. According to the Complaint, Axon is a leading manufacturer and supplier of body-worn cameras and digital evidence management systems (collectively "BWC Systems"), and VieVu is its closest competitor. FTC Compl. ¶¶ 1-2, 36. Axon purchased VieVu from Safariland in May 2018. *Id.* ¶ 2. The Complaint alleges that, after the acquisition, Axon enacted substantial price increases, limited the availability of VieVu BWC Systems to customers, and stopped developing new generations of VieVu hardware and software. *Id.* ¶¶ 6-7. The Complaint asserts that Axon plans [REDACTED] *Id.* ¶ 7. Further, the Complaint alleges that, as part of the acquisition, Respondent Safariland agreed not to compete with Axon and not to solicit Axon's customers, including with respect to products and services not related to the acquisition, and both Axon and Safariland agreed not to affirmatively solicit each other's employees, all for 10 years or longer. *Id.* ¶¶ 12, 44-53. According to the Complaint, the acquisition agreement and the acquisition, including the non-compete agreements, violate Section 5 of the Federal Trade Commission Act (FTC Act) and/or Section 7 of the Clayton Act. *Id.* ¶¶ 57-60.

Hours before the Commission filed its complaint, Respondent Axon filed an injunctive and declaratory judgment action in the District of Arizona. Count I of that action alleges that "[t]he imminent administrative proceeding" against Axon violates Axon's Fifth Amendment due process and equal protection rights by subjecting Axon to unfair procedures before an administrative body rather than a trial before a neutral, federal judge. Axon Compl. ¶¶ 57-60. Count II alleges that the Commission's structure is on its face unconstitutional under Article II because Commissioners are