

Interlocutory Orders, Etc.

IN THE MATTER OF

**TRONOX LIMITED,
NATIONAL INDUSTRIALIZATION COMPANY
(TASNEE),
NATIONAL TITANIUM DIOXIDE COMPANY
LIMITED (CRISTAL),
AND
CRISTAL USA INC.**

Docket No. 9377. Order, May 16, 2018

Order denying Tronox Limited and the National Titanium Dioxide Company of the Kingdom of Saudi Arabia's motion to stay the Part 3 evidentiary hearing scheduled to begin on May 18, 2018, and to temporarily withdraw this matter from adjudication "to allow renewed settlement discussions."

**ORDER DENYING RESPONDENTS' MOTION TO STAY AND
TEMPORARILY WITHDRAW THIS MATTER FROM ADJUDICATION**

On May 7, 2018, Tronox Limited ("Tronox") and the National Titanium Dioxide Company of the Kingdom of Saudi Arabia ("Cristal") moved the Commission to stay the Part 3 evidentiary hearing scheduled to begin on May 18, 2018, and to temporarily withdraw this matter from adjudication "to allow renewed settlement discussions." Motion at 2. Tronox and Cristal alternatively ask the Commission to reassess whether to seek a preliminary injunction in federal court in this matter. Motion at 5-6. Complaint Counsel oppose the requested stay and dispute the need for or benefit of seeking a preliminary injunction. For the reasons stated below, the Commission denies the Motion to Stay and Temporarily Withdraw this Matter from Adjudication.

Respondents argue that the Commission has good cause to stay this matter "to afford Respondents the opportunity to renew discussion with the Commission about the pro-competitive nature of this transaction" and to provide for settlement discussions. Motion at 2-3. Respondents explain that if the matter remains in Part 3 adjudication, settlement discussions might violate *ex parte* rules. Motion at 4.

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Neither the completion of discovery nor progress regarding settlements with other competition authorities provides good cause to stay this proceeding, withdraw it from Part 3, and restart discussions about whether a complaint was warranted. When the Commission issued its Complaint, it found reason to believe that Tronox and Cristal had executed a merger agreement in violation of Section 5 of the FTC Act, 5 U.S.C. § 45, which if consummated would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act. It is now in the public interest that the allegations in the Complaint be resolved expeditiously.

Importantly, Commission rules do not contemplate the actions Respondents seek. Commission Rule 3.25 provides a procedure for the withdrawal of a matter from Part 3 adjudication for the Commission to consider a *specific* settlement proposal after an administrative complaint has been issued. See 16 CFR § 3.25. Rule 3.25 does not provide for the withdrawal of a matter from adjudication for exploratory settlement talks or to allow respondents to renew discussions with Commissioners regarding the merits of a transaction.

Rule 3.25 requires that a motion to withdraw the matter from adjudication “be accompanied by a consent proposal.” 16 CFR § 3.25(b). Respondents do not provide a specific consent proposal; they only contend “recent events are likely to make settlement discussions productive.” Motion at 3. Moreover, the procedures provided by Rule 3.25 make clear that settlement discussions should be with Complaint Counsel, not the Commission.¹ If Respondents believe that “recent events are likely to make settlement discussions productive,” they may engage in settlement discussions with Complaint Counsel.

¹ Rule 3.25(c) provides for a stay and withdrawal from adjudication when a consent agreement accompanying the motion to withdraw has been executed by one or more respondents and by Complaint Counsel and has been approved by the appropriate Bureau Director. It also provides an alternative mechanism to provide a specific proposal to the Commission if the Administrative Law Judge certifies the motion and proposal to the Commission “upon a written determination that there is a reasonable possibility of settlement.” The motion and the Administrative Law Judge’s certification “shall not stay the proceedings before the Administrative Law Judge unless the Commission shall so order.” 16 CFR § 3.25(c).

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In the alternative, Respondents ask the Commission to reassess whether to file for a preliminary injunction in federal court. Respondents argue that this would be a “faster and more efficient means to resolve this matter.” Motion at 5. Respondents misunderstand the role of a preliminary injunction in the context of the Commission’s Part 3 adjudicative process. The Commission may seek a preliminary injunction to preserve the status quo, *i.e.*, to prevent consummation of the proposed transaction, until the administrative proceeding on the merits takes place. *See, e.g., FTC v. H.J. Heinz Co.*, 246 F.3d 708, 726-27 (D.C. Cir. 2001). At present, there is no need for a preliminary injunction action to preserve the status quo.

Accordingly,

IT IS HEREBY ORDERED that Respondents’ Motion to Stay and Temporarily Withdraw this Matter from Adjudication is **DENIED**.

By the Commission.

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IN THE MATTER OF

IMPAX LABORATORIES, INC.*Docket No. 9373. Order, May 31, 2018*

Order granting the joint motion to revise the briefing schedule for appeals in this matter.

ORDER REVISING BRIEFING SCHEDULE FOR APPEALS

Complaint Counsel and Respondent have filed a Joint Motion to revise the briefing schedule for appeals in this matter.¹ The parties requested these modest extensions due to the voluminous record and longstanding holiday and travel commitments that would be impacted in the absence of an extension. Pursuant to Commission Rule 4.3(b), 16 C.F.R. § 4.3(b), the Commission has determined, for good cause shown, to grant the Joint Motion. Accordingly,

IT IS ORDERED THAT opening briefs must be filed on or before July 2, 2018, and, if a party files an opening appeal brief by that date, its appeal from the Initial Decision will be treated as having been perfected in accordance with Commission Rule 3.52(b), 16 C.F.R. § 3.52(b);

IT IS FURTHER ORDERED THAT any answering brief must be filed on or before August 10, 2018; and

IT IS FURTHER ORDERED THAT any reply brief must be filed on or before August 24, 2018.

By the Commission.

¹ At the time of the Joint Motion, only Complaint Counsel had filed a Notice of Appeal. Subsequently, Respondent filed a Notice of Cross-Appeal.