

Order to Maintain Assets

IN THE MATTER OF

TRONOX LIMITED,

NATIONAL INDUSTRIALIZATION COMPANY (TASNEE),

NATIONAL TITANIUM DIOXIDE COMPANY LIMITED (CRISTAL),

AND

CRISTAL USA INC.

DECISION AND ORDER IN REGARD TO ALLEGED VIOLATIONS OF SECTION 5 OF THE
FEDERAL TRADE COMMISSION ACT AND SECTION 7 OF THE CLAYTON ACT

Docket No. 9377; File No. 171 0085

Order to Maintain Assets, April 10, 2019 - Decision and Order, May 28, 2019

This case addresses the \$1.325 billion acquisition by Tronox Limited of Cristal, which is the titanium dioxide business of Saudi Arabia based National Industrialization Company. The complaint, 166 F.T.C. 544, alleges that the acquisition would violate Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act by significantly reducing competition in the market for titanium dioxide in North America. In his Initial Decision, 166 F.T.C. 564, the Administrative Law Judge (“ALJ”) concluded that Complaint Counsel established a presumption of liability by showing that the acquisition will lead to undo concentration in the relevant market and provided substantial evidence demonstrating that the North American chloride TiO₂ market is vulnerable to coordinated conduct, which would be enhanced by the acquisition. The ALJ also found that Respondents’ arguments regarding entry and efficiencies were unsupported by the evidence and ordered Respondents to terminate the Acquisition Agreement and cease and desist from taking any actions to consummate the Acquisition Agreement. 166 F.T.C. 717. The Respondents appealed the Initial Decision. On a joint motion from the parties, the Commission withdrew the matter from adjudication for the purpose of considering a consent proposal. The Commission issued an Order to Maintain Assets and, after considering the public comments, ordered Respondents to divest the TiO₂ Assets to Ineos.

Participants

For the *Commission*: Cem Akleman, Steven Dahm, Eric Elmore, Sean Hughto, Joonsuk Lee, Meredith Levert, Victoria Lippincott, Jon Nathan, Blake Risenmay, Kristian Rogers, Lily Rudy, Robert Tovsky, and Cecelia Waldeck.

For the *Respondents*: Matt Reilly, Kirkland & Ellis; Pete Levitas, Arnold & Porter Kaye Scholer.

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The Federal Trade Commission (“Commission”), having issued its administrative Complaint charging Tronox Limited, National Industrialization Company (TASNEE), National Titanium Dioxide Company Limited (Cristal), and Cristal USA Inc. (each a “Respondent,” and collectively “Respondents”) with violations 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,

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and the Respondents having been served with a copy of the Complaint, together with a notice of contemplated relief, and having filed their answers denying said charges; and

The Commission thereafter having filed a motion in the United States District Court for the District of Columbia seeking a preliminary injunction under Section 13(b) of the Federal Trade Commission Act to prevent Respondents from consummating the proposed Acquisition until the administrative review process and any later judicial proceedings had concluded, and the District Court having granted such motion and issuing an opinion concluding that the Commission had: (i) met its legal burden under Section 13(b); (ii) demonstrated a likelihood that the proposed Acquisition would substantially lessen competition in the relevant markets; and (iii) shown that a preliminary injunction was in the public interest; and

The Administrative Law Judge having issued an initial decision, based on full consideration of the entire record, concluding that Respondents' proposed Acquisition, if consummated, may substantially lessen competition within the relevant product and geographic markets alleged in the Complaint, and ordering that the Acquisition be enjoined pursuant to Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act; and

Respondents, their attorneys, and counsel for the Commission, having thereafter executed an Agreement Containing Consent Orders ("Consent Agreement"), containing: (1) an admission by Respondents of all the jurisdictional facts set forth in the aforesaid Complaint; (2) waivers and other provisions as required by the Commission's Rules; (3) certain representations made by Respondents solely for the purpose of achieving a settlement in this matter concerning the effects of the acquisition that is the subject of the Complaint; and (4) a proposed Decision and Order and Order to Maintain Assets; and

The Secretary of the Commission having thereafter withdrawn the matter from adjudication in accordance with § 3.25(d) of its Rules; and

The Commission having thereafter considered the matter and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments in conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, now in conformity with the procedure prescribed in § 3.25(f) of its Rules, the Commission makes the following jurisdictional findings and issues the following Order to Maintain Assets:

1. Respondent Tronox Limited is a public company organized, existing, and doing business under, and by virtue of the laws of Western Australia, with its executive offices and principal place of business located at 263 Tresser Blvd #1100, Stamford, Connecticut 06901.
2. Respondent National Industrialization Company ("TASNEE") is a limited company organized, existing, and doing business under, and by virtue of, the laws of the Kingdom of Saudi Arabia, with its executive offices and principal place of business located at Building C3, Business Gate, Eastern Ring Road, Cordoba

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Area, Riyadh 11496, Kingdom of Saudi Arabia. TASNEE is the majority owner and ultimate parent of Respondent National Titanium Dioxide Company Limited (Cristal).

3. Respondent National Titanium Dioxide Company Limited (“Cristal”) is a corporation organized, existing, and doing business under, and by virtue of, the laws of the Kingdom of Saudi Arabia, with its executive offices and principal place of business located at Sari Street, Al Rabwah District, P.O. Box 13586, Jeddah, Kingdom of Saudi Arabia 21414, Jeddah, Saudi Arabia. Cristal’s primary U.S. subsidiary is Respondent Cristal USA Inc.
4. Respondent Cristal USA Inc. is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its executive offices and principal place of business located at 6752 Baymeadow Drive, Glen Burnie, MD 21060 USA.
5. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of Respondents, and this proceeding is in the public interest.
6. For the sole purpose of settling this matter with the Commission, Respondents do not dispute that the likely effect of the Acquisition, if consummated, may be substantially to lessen competition within the relevant product and geographic markets alleged in the Complaint and as determined by the initial decision of the Administrative Law Judge in this matter.

I.(Definitions)

IT IS ORDERED that, as used in this Order to Maintain Assets, the following definitions, and all other definitions used in the Consent Agreement and the Decision and Order, shall apply:

- A. “Asset Maintenance Period” means the period commencing on the date the Commission issues this Order to Maintain Assets and ending on the Divestiture Date.
- B. “Assets To Be Maintained” means the TiO₂ Assets and the TiO₂ Business.
- C. “Decision and Order” means:
 1. The proposed Decision and Order contained in the Consent Agreement in this matter until issuance of a final Decision and Order by the Commission; and

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2. The Final Decision and Order issued by the Commission in this matter, following the issuance of a final Decision and Order by the Commission.

II.(Asset Maintenance)

IT IS FURTHER ORDERED that during the Asset Maintenance Period, Respondents shall operate the Assets To Be Maintained in the ordinary course of business consistent with past practices, and shall:

- A. Take such actions as are necessary to maintain the full economic viability, marketability, and competitiveness of the Assets To Be Maintained, to minimize any risk of loss of competitive potential of the Assets To Be Maintained, to operate the Assets To Be Maintained in a manner consistent with applicable laws and regulations, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Assets To Be Maintained, except for ordinary wear and tear. Respondents shall not sell, transfer, encumber, terminate the operations of, or otherwise impair the Assets To Be Maintained (other than in the manner prescribed in the Decision and Order or this Order to Maintain Assets), nor take any action that lessens the full economic viability, marketability, or competitiveness of the Assets To Be Maintained; and
- B. Conduct or cause to be conducted the Assets To Be Maintained in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance efforts) and as may be necessary to preserve the full economic viability, marketability, and competitiveness of the Assets To Be Maintained, and shall use best efforts to preserve the existing relationships with suppliers, customers, employees, governmental authorities, vendors, landlords, creditors, agents, and others having business relationships with the Assets To Be Maintained. Included in the above obligations, Respondents shall, without limitation:
 1. Make any payment required to be paid under any contract or lease when due, and otherwise satisfy all liabilities and obligations associated with the Assets To Be Maintained;
 2. Provide the Assets To Be Maintained with sufficient financial and other resources to operate at least at current rates of operation, to meet all capital calls, to perform routine or necessary maintenance, to repair or replace facilities and equipment, and to carry on at least at their scheduled pace all capital projects, business plans, development projects, and commercial activities;

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3. Provide such other resources as may be necessary to respond to competition against the Assets To Be Maintained, prevent diminution in sales of the Assets To Be Maintained, and maintain the competitive strength of the Assets To Be Maintained;
4. Provide support services at levels customarily provided by Respondents;
5. Maintain all licenses, permits, approvals, authorizations, or certifications related to or necessary for the operation of the Assets To Be Maintained, and otherwise operate the Assets To Be Maintained in accordance and compliance with all regulatory obligations and requirements;
6. Maintain the Business Information of the Assets To Be Maintained;
7. Maintain the working conditions, staffing levels, and a work force of equivalent size, training, and expertise associated with the Assets To Be Maintained, including:
 - a. Continuing to provide each of the TiO₂ Employees with all employee benefits offered by Respondents, including regularly scheduled or merit raises and bonuses, and regularly scheduled vesting of all benefits;
 - b. Providing reasonable financial incentives to encourage TiO₂ Employees to continue in his or her position until the Divestiture Date, and as may be necessary to facilitate the employment of such TiO₂ Employees by the proposed Acquirer following the Divestiture Date;
 - c. When vacancies occur, replacing the employees in the regular and ordinary course of business, in accordance with past practice; and
 - d. Not transferring any of the TiO₂ Employees to any of Respondents' assets or businesses that Respondents will not be divesting; and
8. Not reduce, change, or modify in any material respect, the levels of production, quality, pricing, service, or customer support typically associated with the Assets To Be Maintained, other than changes in the ordinary course of business.

Provided, however, that Respondents shall not be in violation of this Paragraph II if Respondents take actions (i) that are explicitly permitted or required by any Divestiture Agreement, or (ii) that have been requested or agreed-to by an

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Acquirer, in writing, and approved in advance by the Monitor (in consultation with Commission staff), in all cases to facilitate the Acquirer's acquisition of the Assets To Be Maintained and consistent with the purposes of the Decision and Order.

III.(Additional Obligations)**IT IS FURTHER ORDERED** that:

- A. During and after the Asset Maintenance Period, Respondents shall not:
1. Provide, disclose, or otherwise make available any Confidential Business Information to any person, except as required or permitted by this Order to Maintain Assets, the Decision and Order, or a Divestiture Agreement; or
 2. Use any Confidential Business Information for any reason or purpose, other than as required or permitted by this Order to Maintain Assets, the Decision and Order, or a Divestiture Agreement.

Provided, however, that nothing in this Paragraph III shall prevent Respondents from retaining and using any tangible or intangible property that Respondents retain the right to use pursuant to this Order (including Shared Intellectual Property), provided further that to the extent that the use of such property involves disclosure of Confidential Business Information to another person, Respondents shall require such person to maintain the confidentiality of such Confidential Business Information under terms no less restrictive than Respondents' obligations under this Order.

- B. Respondents shall devise and implement measures to protect against the storage, distribution, and use of Confidential Business Information that is not permitted by this Order to Maintain Assets, the Decision and Order, or any Divestiture Agreement. These measures shall include, but not be limited to, restrictions placed on access by persons to information available or stored on any of Respondents' computers or computer networks.
- C. No later than 10 days after the Divestiture Date, and no less than annually for 3 years after the Divestiture Date, Respondents shall provide written notification of the restrictions on the use and disclosure of the Confidential Business Information by Respondents' personnel to all of its officers, directors, employees, or agents who may have possession or access to such Confidential Business Information. Respondents shall require such personnel to acknowledge in writing or electronically their receipt and understanding of these written instructions, and shall maintain custody of these written instructions and acknowledgments for inspection upon request by the Commission.

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- D. No later than 10 days after signing the Consent Agreement, Respondents, in consultation with the proposed Acquirer, for the purposes of ensuring an orderly transition, shall:
1. Develop and implement a detailed transition plan to ensure that the commencement of the operation of the TiO2 Business by the Acquirer is not delayed or impaired by the Respondents;
 2. Designate employees of Respondents knowledgeable about the operation of the TiO2 Assets and TiO2 Business, who will be responsible for communicating directly with the Acquirer, and the Monitor (if one has been appointed), for the purposes of assisting in the transfer to the Acquirer of the TiO2 Assets and TiO2 Business;
 3. Allow the Acquirer reasonable access to all Business Information related to the TiO2 Assets and TiO2 Business and to employees who possess or are able to locate such information; and
 4. Establish projected timelines for accomplishing all tasks necessary to effect the transition to the Acquirer in an efficient and timely manner.
- E. No later than the Divestiture Date, Respondents shall, at their sole expense, obtain each Consent required to transfer the TiO2 Assets, including Contracts and Governmental Authorizations; *provided however*, that Respondents shall assist the Acquirer in obtaining the Contracts or Governmental Authorizations which Respondents have no legal right to assign, transfer or sublicense (even by obtaining relevant Consents).
- F. Respondents shall cooperate and assist the Acquirer (or any other person with whom Respondents engage in negotiations to acquire the TiO2 Assets) with a due diligence investigation of the TiO2 Assets and the TiO2 Business, including by providing sufficient and timely access to all information customarily provided as part of a due diligence process.
- G. Respondents shall cooperate with and assist any proposed Acquirer of the TiO2 Assets to evaluate independently and offer employment to the TiO2 Employees, with such cooperation to include at least the following:
1. Not later than 5 business days after a request from a proposed Acquirer, Respondents shall, to the extent permitted by applicable law:
 - a. Provide to the proposed Acquirer a list of all TiO2 Employees and provide Employee Information for each; and

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- b. Allow the proposed Acquirer a reasonable opportunity to interview any TiO2 Employees;
2. Within 10 days after a request from a proposed Acquirer, Respondents shall provide an opportunity for the proposed Acquirer to:
 - a. Meet personally, and outside the presence or hearing of any employee or agent of Respondents, with any of the TiO2 Employees; and
 - b. Make offers of employment to any of the TiO2 Employees;
3. Respondents shall not directly or indirectly interfere with a proposed Acquirer's offer of employment to any one or more of the TiO2 Employees, not offer any incentive to TiO2 Employees to decline employment with a proposed Acquirer, and not otherwise interfere with the recruitment of any TiO2 Employees by a proposed Acquirer; and
4. Respondents shall remove any impediments within the control of Respondents that may deter any TiO2 Employees from accepting employment with a proposed Acquirer, including, but not limited to, removal of any non-compete or confidentiality provisions of employment or other contracts with Respondents that may affect the ability or incentive of those individuals to be employed by a proposed Acquirer, and shall not make any counteroffer to any TiO2 Employees who receive an offer of employment from the Acquirer; *provided, however*, that nothing in this Order shall be construed to require Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of any employee.

IV.(Purpose Clause)

IT IS FURTHER ORDERED that the purpose of this Order to Maintain Assets is to (i) maintain and preserve the Assets To Be Maintained as a viable, marketable, competitive, and ongoing business until the divestitures required by the Decision and Order are achieved; (ii) prevent interim harm to competition pending the relevant divestiture and other relief; and (iii) promote achieving the purposes of the Decision and Order.

V.(Monitor)

IT IS FURTHER ORDERED that:

- A. Gerald Colamarino shall serve as the Monitor pursuant to the agreement executed by the Monitor and Respondents, and attached as Appendix VIII ("Monitor

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Agreement”) and Non-Public Appendix VIII-1 (“Monitor Compensation”) to the Decision and Order. The Monitor is appointed to monitor Respondents’ compliance with the terms of this Order to Maintain Assets, the Decision and Order, and the Divestiture Agreement.

- B. No later than 1 day after the Acquisition Date, Respondents shall, pursuant to the Monitor Agreement, confer on the Monitor all rights, powers, and authorities necessary to permit the Monitor to monitor Respondents’ compliance with the terms of this Order to Maintain Assets, the Decision and Order, and the Divestiture Agreement, in a manner consistent with the purposes of the orders.
- C. Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
 - 1. The Monitor shall have the power and authority to monitor Respondents’ compliance with the divestiture and related requirements of this Order to Maintain Assets, the Decision and Order, and the Divestiture Agreement, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the orders.
 - 2. The Monitor shall act in consultation with the Commission or its staff, and shall serve as an independent third party and not as an employee or agent of the Respondents or of the Commission.
 - 3. The Monitor shall serve until 15 days after the Monitor has completed his/her final report pursuant to Paragraph VIII.H of the Decision and Order, or until such other time as may be determined by the Commission or its staff.
- D. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondents’ personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondents’ compliance with its obligations under this Order to Maintain Assets, the Decision and Order, and the Divestiture Agreement.
- E. Respondents shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor’s ability to monitor Respondents’ compliance with this Order to Maintain Assets, the Decision and Order, and the Divestiture Agreement.

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- F. The Monitor shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have the authority to employ, at the expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities.
- G. Respondents shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Monitor. For purposes of this Paragraph V.G, the term "Monitor" shall include all persons retained by the Monitor pursuant to Paragraph V.F of this Order to Maintain Assets.
- H. Respondents shall report to the Monitor in accordance with the requirements of this Order to Maintain Assets or the Decision and Order, and as otherwise provided in the Monitor Agreement approved by the Commission. The Monitor shall evaluate the reports submitted by the Respondents with respect to the performance of Respondents' obligations under this Order to Maintain Assets and the Decision and Order. Within 30 days from the date the Monitor receives the first such report, and every 90 days thereafter (and otherwise as the Commission or its staff may request), the Monitor shall report in writing to the Commission concerning performance by Respondents of their obligations under the orders. The Monitor shall submit a final report to the Commission within 30 days following the satisfaction by Respondents of all its obligations under Paragraphs II and IV of the Decision and Order, unless otherwise directed by the Commission or its staff.
- I. Respondents may require the Monitor and each of the Monitor's consultants, accountants, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Monitor from providing any information to the Commission.
- J. The Commission may require, among other things, the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.

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- K. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor:
1. The Commission shall select the substitute Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within 10 days after the notice by the staff of the Commission to Respondents of the identity of any proposed Monitor, Respondents shall be deemed to have consented to the selection of the proposed Monitor.
 2. Not later than 10 days after the appointment of the substitute Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all rights and powers necessary to permit the Monitor to monitor Respondents' compliance with the relevant terms of this Order to Maintain Assets, the Decision and Order, and the Divestiture Agreement in a manner consistent with the purposes of the orders and in consultation with the Commission.
- L. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order to Maintain Assets.
- M. The Monitor appointed pursuant to this Order to Maintain Assets may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of the Decision and Order.

VI.(Compliance Reports)**IT IS FURTHER ORDERED** that:

- A. Respondents shall:
1. Notify Commission staff via email at bccompliance@ftc.gov of:
 - a. The Acquisition Date, no later than 5 days after the Acquisition Date; and
 - b. The Divestiture Date, no later than 5 days after the Divestiture Date;
 2. Submit the complete Divestiture Agreement to the Commission at ElectronicFilings@ftc.gov and bccompliance@ftc.gov no later than 30 days after the Divestiture Date.

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- B. Respondents shall file verified written reports (“compliance reports”) in accordance with the following:
1. Within 30 days after this Order to Maintain Assets is issued, and every 30 days thereafter until this Order to Maintain Assets terminates, Respondents shall submit to the Commission verified written reports (“compliance reports”) setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with all provisions of this Order to Maintain Assets and the Decision and Order. Each compliance report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondents are in compliance with this Order to Maintain Assets and the Decision and Order. Conclusory statements that Respondents have complied with their obligations under this Order to Maintain Assets and the Decision and Order are insufficient. Respondents shall include in their reports, among other information or documentation that may be necessary to demonstrate compliance, a full description of the measures Respondents have implemented or plan to implement to ensure that they have complied or will comply with each paragraph of this Order to Maintain Assets and the Decision and Order, and such supporting materials shall be retained and produced later if needed.
 2. Each compliance report shall be verified in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function. Respondents shall submit an original and 2 copies of each compliance report as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a), including a paper original submitted to the Secretary of the Commission and electronic copies to the Secretary at ElectronicFilings@ftc.gov and to the Compliance Division at bccompliance@ftc.gov. In addition, Respondents shall provide a copy of each compliance report to the Monitor if the Commission has appointed one in this matter.

Provided, however, that, after the Decision and Order in this matter is issued as final, the reports due under this Order to Maintain Assets may be consolidated with, and submitted to the Commission on the same timing as, the compliance reports required to be submitted by Respondents pursuant to the Decision and Order.

VII.(Change in Respondent)

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least 30 days prior to:

- A. Any proposed dissolution of Respondent Tronox Limited;

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- B. Any proposed acquisition, merger or consolidation of Respondent Tronox Limited; or
- C. Any other change in Respondents, including assignment and the creation, sale, or dissolution of subsidiaries, if such change may affect compliance obligations arising out of this Order.

VIII.(Access)

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and 5 days' notice to the relevant Respondent, made to its principal place of business as identified in this Order, registered office of its United States subsidiary, or its headquarters office, the notified Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all business and other records and all documentary material and electronically stored information as defined in Commission Rules 2.7(a)(1) and (2), 16 C.F.R. § 2.7(a)(1) and (2), in the possession or under the control of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at the request of the authorized representative of the Commission and at the expense of the Respondent; and
- B. To interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

IX.(Purpose)

IT IS FURTHER ORDERED that the purpose of this Order is to remedy the harm to competition the Commission alleged in its Complaint and ensure an Acquirer can operate the TiO₂ Business in a manner equivalent in all material respects to the manner in which Respondent Cristal operated the TiO₂ Business prior to the Acquisition.

X.(Term)

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate at the earlier of:

- A. 3 business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or

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- B. The day after Respondents' (or a Divestiture Trustee's) completion of the divestiture of the TiO₂ Assets, as described in and required by Paragraph II of the Decision and Order;

Provided, however, that if at the time such divestitures have been completed, the Decision and Order in this matter is not yet final, then this Order to Maintain Assets shall terminate three business days after the Decision and Order becomes final;

Provided, further, however, that if the Commission, pursuant to Paragraph II.C of the Decision and Order, requires the Respondents to rescind the divestitures to Ineos, then, upon rescission, the requirements of this Order to Maintain Assets shall again be in effect until the day after Respondents' (or a Divestiture Trustee's) completion of the divestiture of the assets required by the Decision and Order.

By the Commission.

DECISION

The Federal Trade Commission ("Commission"), having issued its administrative Complaint charging Tronox Limited, National Industrialization Company (TASNEE), National Titanium Dioxide Company Limited (Cristal), and Cristal USA Inc. (each a "Respondent," and collectively "Respondents") with violations 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 the Respondents having been served with a copy of the Complaint, together with a notice of contemplated relief, and having filed their answers denying said charges; and

The Commission thereafter having filed a motion in the United States District Court for the District of Columbia seeking a preliminary injunction under Section 13(b) of the Federal Trade Commission Act to prevent Respondents from consummating the proposed Acquisition until the administrative review process and any later judicial proceedings had concluded, and the District Court having granted such motion and issuing an opinion concluding that the Commission had: (i) met its legal burden under Section 13(b); (ii) demonstrated a likelihood that the proposed Acquisition would substantially lessen competition in the relevant markets; and (iii) shown that a preliminary injunction was in the public interest; and

The Administrative Law Judge having issued an initial decision, based on full consideration of the entire record, concluding that Respondents' proposed Acquisition, if consummated, may substantially lessen competition within the relevant product and geographic markets alleged in the Complaint, and ordering that the Acquisition be enjoined pursuant to Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act; and

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Respondents, their attorneys, and counsel for the Commission, having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing: (1) an admission by Respondents of all the jurisdictional facts set forth in the aforesaid Complaint; (2) waivers and other provisions as required by the Commission’s Rules; (3) certain representations made by Respondents solely for the purpose of achieving a settlement in this matter concerning the effects of the acquisition that is the subject of the Complaint; and (4) a proposed Decision and Order and Order to Maintain Assets; and

The Acting Secretary of the Commission having thereafter withdrawn the matter from adjudication in accordance with § 3.25(d) of its Rules; and

The Commission having thereafter considered the matter and having thereupon issued its Order to Maintain Assets and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of 30 days for the receipt and consideration of public comments in conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, now in conformity with the procedure prescribed in § 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Tronox Limited is a public company organized, existing, and doing business under, and by virtue of the laws of Western Australia, with its executive offices and principal place of business located at 263 Tresser Blvd, #1100, Stamford, Connecticut 06901.
2. Respondent National Industrialization Company (“TASNEE”) is a limited company organized, existing, and doing business under, and by virtue of, the laws of the Kingdom of Saudi Arabia, with its executive offices and principal place of business located at Building C3, Business Gate, Eastern Ring Road, Cordoba Area, Riyadh 11496, Kingdom of Saudi Arabia. TASNEE is the majority owner and ultimate parent of Respondent National Titanium Dioxide Company Limited (Cristal).
3. Respondent National Titanium Dioxide Company Limited (“Cristal”) is a corporation organized, existing, and doing business under, and by virtue of, the laws of the Kingdom of Saudi Arabia, with its executive offices and principal place of business located at Sari Street, Al Rabwah District, P.O. Box 13586, Jeddah, Kingdom of Saudi Arabia 21414, Jeddah, Saudi Arabia. Cristal’s primary U.S. subsidiary is Respondent Cristal USA Inc.
4. Respondent Cristal USA Inc. is a corporation, existing, organized, and doing business under and by virtue of the laws of the State of Delaware, with its executive offices and principal place of business located at 6752 Baymeadow Drive, Glen Burnie, MD 21060 USA.

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5. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of Respondents, and this proceeding is in the public interest.
6. For the sole purpose of settling this matter with the Commission, Respondents do not dispute that the likely effect of the Acquisition, if consummated, may be substantially to lessen competition within the relevant product and geographic markets alleged in the Complaint and as determined by the initial decision of the Administrative Law Judge in this matter.

ORDER**I.(Definitions)**

IT IS HEREBY ORDERED that, as used in this Order, the following definitions apply:

- A. “Tronox” means Tronox Limited, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Tronox Limited, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “TASNEE” means National Industrialization Company (TASNEE), its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by National Industrialization Company (TASNEE) (including, but not limited to, Respondent Cristal and Respondent Cristal USA), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Cristal” means National Titanium Dioxide Company Limited, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by National Titanium Dioxide Company Limited (including, but not limited to, Respondent Cristal USA), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- D. “Cristal USA” means Cristal USA Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Cristal USA Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- E. “Ineos” means INEOS AG, (a subsidiary of Ineos Limited), a company organized, existing, and doing business under and by virtue of the laws of Switzerland, with its offices and principal place of business located at 3 Avenue des Uttins, Rolle CH-1180, Switzerland, and its subsidiaries and affiliates, including INEOS Joliet US Holdco, LLC, a company organized, existing, and doing business under and

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by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 2600 South Shore Boulevard, Suite 250, League City, Texas 77573.

- F. “Commission” means the Federal Trade Commission.
- G. “Acquirer” means:
 - 1. Ineos; or
 - 2. Any other person that the Commission approves to acquire the TiO₂ Assets pursuant to this Decision and Order.
- H. “Acquisition” means the proposed acquisition by Respondent Tronox of Respondent Cristal’s titanium dioxide business pursuant to the terms set forth in the transaction agreement by and among Respondents dated as of February 21, 2017.
- I. “Acquisition Date” means the date Respondents consummate the Acquisition.
- J. “Ashtabula Complex” means Respondent Cristal’s TiO₂ facilities and assets located in Ashtabula, Ohio, including the production plants sometimes referred to as “Ashtabula Plant 1” and “Ashtabula Plant 2,” and all offices and related businesses and operations, including, but not limited to, co-generation facilities, air separation units, warehouses, landfills, supply ponds, water utility stations, and discharge, docking, and transportation facilities.
- K. “BATC Facility” means Respondent Cristal’s Baltimore Administrative & Technical Center facility located on leased space at 6752 Baymeadow Drive, in Glen Burnie, Maryland, which provides research, development, technical, support, and administrative services to, among other things, the TiO₂ Business.
- L. “BATC Sublease” means a sublease between Respondents and an Acquirer relating to the BATC Facility that has received the prior approval of the Commission.
- M. “Business Information” means books, records, data, and information, wherever located and however stored, used in the TiO₂ Business, including documents, written information, graphic materials, and data and information in electronic format, along with the unwritten knowledge of employees, contractors and representatives. Business Information includes records and information relating to research and development, manufacturing, process technology, engineering, production, sales, marketing, logistics, advertising, personnel, accounting, business strategy, information technology systems, customers, suppliers and all other aspects of the TiO₂ Business. For clarity, Business Information includes

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Respondents' right and control over information and material provided to any other person.

N. "Confidential Business Information" means any non-public Business Information:

1. Obtained by Respondents prior to the Divestiture Date; or
2. Obtained by Respondent after the Divestiture Date, in the course of performing Respondents' obligations under any Divestiture Agreement (including any Supply Agreement or Transition Assistance agreement);

Provided, however, that Confidential Business Information shall not include:

1. Information that is in the public domain when received by Respondents;
2. Information that is not in the public domain when received by Respondents and thereafter becomes public through no act or failure to act by Respondents;
3. Information that Respondents develop or obtain independently, without violating any applicable law or this Order, and without breaching any confidentiality obligation with respect to the information; and
4. Information that becomes known to Respondents from a third party not in breach of applicable law or a confidentiality obligation with respect to the information.

O. "Consent" means any approval, consent, ratification, waiver, or other authorization.

P. "Contract" means a contract, lease, sub-lease and other agreement or obligation, whether written or unwritten.

Q. "Direct Cost" means traceable and incremental costs incurred to provide the product or service. Direct Cost to an Acquirer for the labor of a Respondent's employee shall not exceed the then-current average wage rate for such employee, including benefits.

R. "Divestiture Agreement" means:

1. Ineos Divestiture Agreement; or
2. Any agreement between Respondents (or a Divestiture Trustee appointed pursuant to Paragraph IX of this Order) and an Acquirer to purchase the TiO₂ Assets, and all amendments, exhibits, attachments, ancillary agreements (including any Supply Agreement, BATC Sublease, Shared

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Intellectual Property License, or agreements to provide Transition Assistance), and schedules thereto.

- S. “Divestiture Date” means the date on which Respondents (or a Divestiture Trustee appointed pursuant to Paragraph IX of this Order) close on the divestiture of the TiO₂ Assets as required by Paragraph II of this Order.
- T. “Employee Information” means, for each TiO₂ Employee, a profile prepared by Respondents summarizing the employment history of each employee and including, as requested by the proposed Acquirer and to the extent permitted by applicable law:
1. Name, job title or position, date of hire, and effective service date;
 2. Specific description of the employee’s responsibilities;
 3. The base salary or current wages;
 4. Most recent bonus paid, aggregate annual compensation for Respondents’ last fiscal year, and current target or guaranteed bonus, if any;
 5. Employment status (*i.e.*, active or on leave or disability; full-time or part-time);
 6. Any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and
 7. At the proposed Acquirer’s option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the employee.
- U. “Excluded Contracts” means those Contracts listed at Non-Public Appendix VII to this Order.
- V. “Governmental Authorization” means any license, registration, or permit issued, granted, given or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement.
- W. “Ineos Divestiture Agreement” means the agreement by and among Respondents and Ineos, dated as of March 14, 2019, and all amendments, exhibits, attachments, ancillary agreements (including Supply Agreements, BATC Sublease, Shared Intellectual Property License, or agreements to provide Transition Assistance), and schedules thereto, attached to this Order as Non-Public Appendix I.
- X. “Intellectual Property” means intellectual property of any kind, including patents, patent applications, mask works, trademarks, service marks, copyrights, trade

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dress, commercial names, internet web sites, internet domain names, inventions, discoveries, written and unwritten know-how, process technology, engineering technology, product technology, product rights, trade secrets, and proprietary information.

- Y. “Replacement Contracts” means Contracts entered into by Respondents in advance of the Divestiture Date that: (i) replace Shared Contracts with separate Contracts for the TiO₂ Business; and (ii) provide the TiO₂ Business with no less favorable terms, services, and economic benefits as it would have had under the Shared Contracts.
- Z. “Shared Contracts” means Contracts that relate to both the TiO₂ Business and other businesses retained by Respondents, as identified on Non-Public Appendix VI to this Order.
- AA. “Shared Intellectual Property” means Intellectual Property (other than trademarks) that, prior to the Divestiture Date, is used by both the TiO₂ Business and Respondents’ retained businesses outside North America, including the Intellectual Property listed on Non-Public Appendix V to this Order.
- BB. “Shared Intellectual Property License” means one or more Intellectual Property licenses granted by Respondents to an Acquirer relating to the production and sale of Shared Products and the use of Shared Intellectual Property that has received the prior approval of the Commission.
- CC. “Shared Products” means TiO₂ products that, prior to the Divestiture Date, are produced by both the TiO₂ Business and Respondents’ retained businesses located outside North America, listed on Appendix III to this Order.
- DD. “Supply Agreement” means an agreement for Transitional Product Supply that has received the prior approval of the Commission.
- EE. “TiO₂” means titanium dioxide, titanium tetrachloride, and any intermediate products, by-products, co-products, combinations, or materials and formulations derived from or incorporating titanium dioxide or titanium tetrachloride, regardless of process, applications, devices, form, grade, finishing, or product type.
- FF. “TiO₂ Assets” means all of Respondent Cristal’s legal or equitable rights, title, and interests in and to all tangible and intangible assets, wherever located, relating to the TiO₂ Business (including assets removed and not replaced after the announcement of the Acquisition), including:
1. The Ashtabula Complex;

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2. The BATC Facility; *provided, however*, that the BATC Sublease may be substituted for the BATC Facility lease, if so requested by the Acquirer;
3. The TiO₂ Business Exclusive Products and TiO₂ Business Exclusive Intellectual Property;
4. Real property interests owned, leased or otherwise held, including easements and appurtenances, together with buildings, facilities and other structures, and improvements thereto;
5. Intangible rights and property, including Intellectual Property, owned, used, or licensed (as licensor or licensee) by Respondent, going concern value, goodwill, and telephone listings, internet sites and social media accounts;
6. Tangible personal property (other than inventories or accounts receivable), whether owned or leased, including machinery, equipment, tools, furniture, office equipment, computer hardware, supplies, materials, vehicles, together with all express or implied warranties by manufacturers, sellers or lessors and all maintenance records and operating manuals;
7. Inventories and accounts receivable;
8. Business Information;
9. Contracts, and all outstanding offers or solicitations to enter into any Contract, and all rights thereunder and related thereto; *provided, however*, that Replacement Contracts may be substituted for Shared Contracts; and
10. Governmental Authorizations and all pending applications therefor or renewals thereof;

Provided, however, the TiO₂ Assets need not include:

- a. Corporate headquarters of Respondents Tronox, TASNEE, and Cristal;
- b. Corporate, business, or other names of Respondents or any logo, trademark, service mark, domain name, trade or other name or any derivation thereof;
- c. Software that can readily be purchased or licensed from sources other than Respondents and that has not been materially modified (other than through user preference settings);

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- d. Enterprise software that Respondent Cristal also uses in businesses other than the TiO2 Business;
 - e. The portion of any books and records that contains information about any business other than the business divested to an Acquirer;
 - f. Any original document that Respondents have a legal, contractual, or fiduciary obligation to retain the original; *provided, however*, that Respondents shall provide copies of the record and shall provide the Acquirer access to the original materials if copies are insufficient for regulatory or evidentiary purposes; and
 - g. The following assets, unless the Commission, in its sole discretion and within 12 months of the date this Order is issued, determines in consultation with the Acquirer and the Monitor, that any such assets are necessary for the Acquirer to operate the TiO2 Assets or TiO2 Business in a manner that achieves the purposes of this Order:
 - i. Excluded Contracts;
 - ii. Shared Intellectual Property, but only if the Shared Intellectual Property License is granted pursuant to Paragraph II of this Order;
 - iii. Those assets listed at Non-Public Appendix X to this Order.
- GG. “TiO2 Business” means the research, development, manufacture, commercialization, distribution, marketing, exportation, advertisement, and sale of TiO2 in or from North America by Respondent Cristal.
- HH. “TiO2 Business Exclusive Intellectual Property” means Intellectual Property that, prior to the Divestiture Date, is used or held for use by the TiO2 Business and not by any of Respondents’ retained businesses, including the Intellectual Property described in Non-Public Appendix IV to this Order.
- II. “TiO2 Business Exclusive Products” means TiO2 products that, prior to the Divestiture Date, are produced, sold, or held for use by the TiO2 Business and not by any of Respondents’ retained businesses, including the products listed on Appendix II to this Order.
- JJ. “TiO2 Employees” means:
- 1. Respondents’ employees who were employed by or under contract with the TiO2 Business (including, among others, all employees of the Ashtabula Complex and BATC Facility), or who regularly dedicated a

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portion of his/her time supporting, supervising, or working on behalf of the TiO₂ Business, at any time between January 1, 2017 and the Divestiture Date; and

2. Any other of Respondents' employees or contractors who have advised, consulted, supervised, or performed work for or on behalf of the TiO₂ Business (including on a part-time, temporary, or ad hoc basis) at any time between January 1, 2017 and the Divestiture Date;

Provided, however, that TiO₂ Employees may exclude those employees listed on Non-Public Appendix IX to this Order ("Retained Shared Employees").

- KK. "Transition Assistance" means services, assistance, cooperation, training and access to personnel regarding the transfer and operation of the TiO₂ Business, including, but not limited to, accounting and finance, human resources (employee benefits, payroll, etc.) information technology and systems, logistics (purchasing, distribution, warehousing, supply chain management, etc.), manufacturing (technology, technology transfer, operating permits and licenses, regulatory compliance, quality control, manufacturing processes and troubleshooting, etc.), research and development, and sales and marketing (including customer service, supply chain management, and customer transfer logistics, etc.).
- LL. "Transitional Product Supply" means Respondents' provision of supply of TiO₂, and/or any component or input thereof (including supplies of feedstock and raw materials), to an Acquirer.

II.(Divestiture)

IT IS FURTHER ORDERED that:

- A. Within 30 days of the Acquisition Date, Respondents shall divest, absolutely and in good faith and at no minimum price, the TiO₂ Assets to Ineos, pursuant to the Ineos Divestiture Agreement.
- B. No later than the Divestiture Date, Respondents shall grant the Shared Intellectual Property License to Ineos providing:
1. An exclusive (even as to Respondents), royalty-free, fully paid-up, perpetual, irrevocable, transferable, and sublicensable right to manufacture Shared Products in North America, and prohibiting Respondents on a perpetual basis from using Shared Intellectual Property to manufacture Shared Products in North America; *provided, however*, that the Shared Intellectual Property License need not prohibit Respondents from: (i) selling Shared Products into North America if such products are made at a Respondent facility located outside of North America; or (ii) making aqueous and anhydrous grades of TiCl₄ in North America

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2. A non-exclusive, royalty-free, fully paid-up, perpetual, irrevocable, transferable, and sublicensable right to use Shared Intellectual Property to: (i) make TiO₂ (including but not limited to Shared Products) in North America; (ii) operate the TiO₂ Business, including by extending existing products and services, developing new products and services, and expanding, constructing, or operating additional production facilities in North America, (iii) research, develop and manufacture any TiO₂ product in North America, and (iv) commercialize, distribute, market, import, export, advertise and sell any TiO₂ product worldwide;
3. An option to acquire, at a price and pursuant to terms set forth in the Ineos Divestiture Agreement, a non-exclusive, royalty-free, perpetual, irrevocable, transferable, and sublicensable right to use Shared Intellectual Property in the construction, conversion, expansion, retrofitting, opening, or operation of a TiO₂ production facility located outside North America in the territory described in the Ineos Divestiture Agreement (or multiple TiO₂ facilities if acquired as part of a single transaction) and to manufacture, produce, and sell TiO₂ products (including Shared Products) at or from such facilities; *provided, however*, that the option may expire 10 years after the Divestiture Date if the Acquirer has not elected to exercise the option within that time;

Provided, however, that the Shared Intellectual Property License relating to all the foregoing rights and options may limit: (i) transferability to the sale of the TiO₂ Business and the applicable licensed facility(ies); and (ii) sublicensability to third parties acting for or on behalf of Ineos and its affiliates.

- C. If Respondents have divested the TiO₂ Assets and granted the Shared Intellectual Property License to Ineos before the Commission issues this Order, and the Commission subsequently notifies Respondents that:
 1. Ineos is not an acceptable Acquirer of the TiO₂ Assets, then Respondents shall:
 - a. Within 5 days of notification by the Commission, rescind the Ineos Divestiture Agreement,
 - b. Within 120 days of the date the Commission notifies Respondents that Ineos is not an acceptable Acquirer, divest the TiO₂ Assets as an ongoing business, absolutely and in good faith, at no minimum price, and grant the Shared Intellectual Property License, to an Acquirer and in a manner that receives the prior approval of the Commission, and
 - c. Set forth the manner in which they will divest the TiO₂ Assets, and comply with the other provisions of this Order, in a proposed

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Divestiture Agreement that is submitted to the Commission for the prior approval required by this Order; or

2. The manner of the divestiture is not acceptable, then the Commission will direct the Respondents (or appoint a Divestiture Trustee) to modify the divestiture in the manner the Commission determines is necessary to satisfy the requirements of this Order, which may include entering into additional agreements or arrangements, or modifying a Divestiture Agreement.
- D. Respondents shall deliver the Business Information to the Acquirer as soon as practicable after the Divestiture Date in a manner that ensures their completeness, accuracy and usefulness and meets the reasonable requirements of the Acquirer.
- E. No later than the Divestiture Date, Respondents shall, at their sole expense, obtain each Consent required to transfer the TiO₂ Assets, including Contracts and Governmental Authorizations; *provided however*, that Respondents shall assist the Acquirer in obtaining the Contracts or Governmental Authorizations which Respondents have no legal right to assign, transfer or sublicense (even by obtaining relevant Consents).
- F. Respondents shall cooperate and assist the Acquirer (or any other person with whom Respondents engage in negotiations to acquire the TiO₂ Assets) with a due diligence investigation of the TiO₂ Assets and the TiO₂ Business, including by providing sufficient and timely access to all information and employees customarily provided as part of a due diligence process.

III.(Divestiture Agreement)

IT IS FURTHER ORDERED that:

- A. The Divestiture Agreement shall be incorporated by reference into this Order and made a part hereof, and any failure by Respondents to comply with the terms of the Divestiture Agreement shall constitute a violation of this Order; *provided, however*, that the Divestiture Agreement shall not limit, or be construed to limit, the terms of this Order. To the extent any provision in the Divestiture Agreement varies from or conflicts with any provision in the Order such that Respondents cannot fully comply with both, Respondents shall comply with the Order.
- B. Respondents shall not modify, replace, or extend the terms of the Divestiture Agreement after the Commission issues the Order without the prior approval of the Commission, except as otherwise provided in Commission Rule 2.41(f)(5), 16 C.F.R. § 2.41(f)(5).

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IV.(Transition Assistance)**IT IS FURTHER ORDERED** that:

- A. Until Respondents have transferred all Business Information included in the TiO₂ Assets, Respondents shall provide the Acquirer with access to records and information (wherever located and however stored) that Respondents have not yet transferred to the Acquirer, and to employees who possess the records and information.
- B. Respondents shall provide the Acquirer with Transition Assistance sufficient (i) to efficiently transfer the TiO₂ Assets to the Acquirer and (ii) to operate the TiO₂ Assets and TiO₂ Business in a manner equivalent in all material respects to the manner in which Cristal operated the TiO₂ Assets and TiO₂ Business prior to the Acquisition, and shall:
 - 1. Provide Transition Assistance:
 - a. As set forth in a Divestiture Agreement, or as otherwise reasonably requested by the Acquirer (whether before or after the Divestiture Date),
 - b. At the price set forth in a Divestiture Agreement, or if no price is set forth, at Direct Cost, and
 - c. For a period sufficient to meet the requirements of this paragraph, which shall be at least 24 months after the Divestiture Date; and
 - 2. Allow the Acquirer to terminate, in whole or part, any Transition Assistance provisions of the Divestiture Agreement upon commercially reasonable notice and without cost or penalty.
 - 3. Respondents shall not seek to limit any damages (such as indirect, special, and consequential damages) which Acquirer would be entitled to receive in the event of Respondents' breach of any agreement relating to the provision of Transition Assistance.
- C. Respondents shall provide Transitional Product Supply pursuant to a Supply Agreement that has been approved by the Commission.
- D. Respondents shall not cease providing Transition Assistance or Transitional Product Supply due to a breach by the Acquirer of a Divestiture Agreement or Supply Agreement, and shall not limit the damages (including indirect, special, and consequential damages) that an Acquirer is entitled to receive in the event of Respondents' breach of a Divestiture Agreement or Supply Agreement.

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V.(Employees)**IT IS FURTHER ORDERED** that:

- A. Respondents shall cooperate with and assist any proposed Acquirer of the TiO₂ Assets to identify, evaluate independently, offer employment to, and hire the TiO₂ Employees, with such cooperation and assistance including at least the following:
1. Not later than 5 business days after a request from a proposed Acquirer, Respondents shall, to the extent permitted by applicable law:
 - a. Provide to the proposed Acquirer a list of all TiO₂ Employees and provide Employee Information for each; and
 - b. Allow the proposed Acquirer a reasonable opportunity to interview any TiO₂ Employees;
 2. Within 10 days after a request from a proposed Acquirer, Respondents shall provide an opportunity for the proposed Acquirer to:
 - a. Meet personally, and outside the presence or hearing of any employee or agent of Respondents, with any of the TiO₂ Employees; and
 - b. Make offers of employment to any of the TiO₂ Employees;
 3. Respondents shall not directly or indirectly interfere with a proposed Acquirer's offer of employment to any one or more of the TiO₂ Employees, not offer any incentive to TiO₂ Employees to decline employment with a proposed Acquirer, and not otherwise interfere with the recruitment of any TiO₂ Employees by a proposed Acquirer;
 4. Respondents shall remove any impediments within the control of Respondents that may deter any TiO₂ Employees from accepting employment with a proposed Acquirer, including, but not limited to, removal of any non-compete or confidentiality provisions of employment or other contracts with Respondents that may affect the ability or incentive of those individuals to be employed by a proposed Acquirer, and shall not make any counteroffer to any TiO₂ Employees who receive an offer of employment from the Acquirer; *provided, however*, that nothing in this Order shall be construed to require Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of any employee;

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5. Respondents shall provide TiO2 Employees with sufficient financial incentives to continue in their positions, and as may be necessary to facilitate the employment of such TiO2 Employees by the proposed Acquirer. Such incentives shall include a continuation of all employee compensation and benefits offered by Respondents, including regularly scheduled or merit raises and bonuses, regularly scheduled vesting of pension benefits, and additional incentives as may be necessary.
- B. If, at any point within 6 months of the Divestiture Date, the Commission, in consultation with the Acquirer and the Monitor, determines in its sole discretion that the Acquirer should have the ability to interview, make offers of employment to, or hire any employee designated as a Retained Shared Employee on Non-Public Appendix IX, then the Commission may notify Respondents that such employee is to be removed from the Retained Shared Employees list, and the provisions of this Paragraph V shall apply to such employee as of that notification date.
- C. For a period of 2 years from the Divestiture Date, Respondents shall not, directly or indirectly, solicit or induce, or attempt to solicit or induce, any TiO2 Employee who has accepted an offer of employment with, or who is employed by, an Acquirer to terminate his or her employment relationship with the Acquirer.

Provided, however, a violation of this provision will not occur if:

1. The TiO2 Employee's employment has been terminated by the Acquirer;
2. Respondents advertise for employees in newspapers, trade publications, or other media not targeted specifically at any one or more of the employees of the Acquirer; or
3. Respondents hire a TiO2 Employee who has applied for employment with Respondents, provided that such application was not solicited or induced in violation of this Order.

VI.(Asset Maintenance)

IT IS FURTHER ORDERED that, pending divestiture of the TiO2 Assets, Respondents shall operate the TiO2 Assets in the ordinary course of business consistent with past practices, and shall:

- A. Take such actions as are necessary to maintain the full economic viability, marketability, and competitiveness of the TiO2 Assets, to minimize any risk of loss of competitive potential of the TiO2 Assets, to operate the TiO2 Assets in the regular and ordinary course of business and in accordance with past practice and in a manner consistent with applicable laws and regulations, and to prevent the destruction, removal, wasting, deterioration, or impairment of the TiO2 Assets

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(including regular repair and maintenance effort), except for ordinary wear and tear. Respondents shall not sell, transfer, encumber, terminate the operations of, or otherwise impair the TiO2 Assets (other than in the manner prescribed in this Order), nor take any action that lessens the full economic viability, marketability, or competitiveness of the TiO2 Assets; and

- B. Conduct or cause to be conducted the TiO2 Business in the regular and ordinary course of business and in accordance with past practice and as may be necessary to preserve the full economic viability, marketability, and competitiveness of the TiO2 Business, and shall use best efforts to preserve the existing relationships with suppliers, customers, employees, governmental authorities, vendors, landlords, creditors, agents, and others having business relationships with the TiO2 Business;

Provided, however, that Respondents shall not be in violation of this Paragraph VI if Respondents take actions (i) as explicitly permitted or required by any Divestiture Agreement, or (ii) that have been requested or agreed-to by an Acquirer, in writing, and approved in advance by the Monitor (in consultation with Commission staff), in all cases to facilitate the Acquirer's acquisition of the TiO2 Assets and consistent with the purposes of the Order.

VII.(Additional Obligations)

IT IS FURTHER ORDERED that:

- A. No later than 10 days after signing the Consent Agreement, Respondents, in consultation with the proposed Acquirer, for the purposes of ensuring an orderly transition, shall:
1. Develop and implement a detailed transition plan to ensure that the commencement of the operation of the TiO2 Business by the Acquirer is not delayed or impaired by the Respondents;
 2. Designate employees of Respondents knowledgeable about the operation of the TiO2 Assets and TiO2 Business, who will be responsible for communicating directly with the Acquirer, and the Monitor (if one has been appointed), for the purposes of assisting in the transfer to the Acquirer of the TiO2 Assets and TiO2 Business;
 3. Allow the Acquirer reasonable access to all Business Information related to the TiO2 Assets and TiO2 Business and to employees who possess or are able to locate such information; and
 4. Establish projected timelines for accomplishing all tasks necessary to effect the transition to the Acquirer in an efficient and timely manner.

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- B. After the Divestiture Date, Respondents shall not:
1. Provide, disclose, or otherwise make available any Confidential Business Information to any person, except as required or permitted by this Order or a Divestiture Agreement; or
 2. Use any Confidential Business Information for any reason or purpose, other than as required or permitted by this Order or a Divestiture Agreement;
- Provided, however,* that nothing in this Paragraph VII shall prevent Respondents from retaining and using any tangible or intangible property that Respondents retain the right to use pursuant to this Order (including Shared Intellectual Property), provided further that to the extent that the use of such property involves disclosure of Confidential Business Information to another person, Respondents shall require such person to maintain the confidentiality of such Confidential Business Information under terms no less restrictive than Respondents' obligations under this Order.
- C. Respondents shall devise and implement measures to protect against the storage, distribution, and use of Confidential Business Information that is not permitted by this Order or any Divestiture Agreement. These measures shall include, but not be limited to, restrictions placed on access by persons to information available or stored on any of Respondents' computers or computer networks.
- D. No later than 10 days after the Divestiture Date, and no less than annually for 3 years after the Divestiture Date, Respondents shall provide written notification of the restrictions on the use and disclosure of the Confidential Business Information by Respondents' personnel to all of its officers, directors, employees, or agents who may have possession or access to such Confidential Business Information. Respondents shall require such personnel to acknowledge in writing or electronically their receipt and understanding of these written instructions, and shall maintain custody of these written instructions and acknowledgments for inspection upon request by the Commission.
- E. Notwithstanding this Paragraph VII of this Order, and subject to the Order to Maintain Assets, Respondent may use Confidential Business Information:
1. For the purpose of performing Respondents' obligations under this Order, the Order to Maintain Assets, or the Divestiture Agreements; and
 2. To ensure compliance with legal and regulatory requirements, or as necessary to defend against legal claims.

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VIII.(Monitor)**IT IS FURTHER ORDERED** that:

- A. Gerald Colamarino shall serve as the Monitor pursuant to the agreement executed by the Monitor and Respondents, and attached as Appendix VIII (“Monitor Agreement”) and Non-Public Appendix VIII-1 (“Monitor Compensation”). The Monitor is appointed to monitor Respondents’ compliance with the terms of this Order, the Order to Maintain Assets, and the Divestiture Agreement.
- B. No later than 1 day after the Acquisition Date, Respondents shall, pursuant to the Monitor Agreement, confer on the Monitor all rights, powers, and authorities necessary to permit the Monitor to monitor Respondents’ compliance with the terms of this Order, the Order to Maintain Assets, and the Divestiture Agreement, in a manner consistent with the purposes of the orders.
- C. Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
 - 1. The Monitor shall have the power and authority to monitor Respondents’ compliance with the divestiture and related requirements of this Order, the Order to Maintain Assets, and the Divestiture Agreement, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the orders.
 - 2. The Monitor shall act in consultation with the Commission or its staff, and shall serve as an independent third party and not as an employee or agent of the Respondents or of the Commission.
 - 3. The Monitor shall serve until 15 days after the Monitor has completed his/her final report pursuant to Paragraph VIII.H of this Order, or until such other time as may be determined by the Commission or its staff.
- D. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondents’ personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondents’ compliance with its obligations under this Order, the Order to Maintain Assets, and the Divestiture Agreement.
- E. Respondents shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor’s ability to monitor Respondents’ compliance with this Order, the Order to Maintain Assets, and the Divestiture Agreement.

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- F. The Monitor shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have the authority to employ, at the expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities.
- G. Respondents shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Monitor. For purposes of this Paragraph VIII.G, the term "Monitor" shall include all persons retained by the Monitor pursuant to Paragraph VIII.F of this Order.
- H. Respondents shall report to the Monitor in accordance with the requirements of this Order or the Order to Maintain Assets, and as otherwise provided in the Monitor Agreement approved by the Commission. The Monitor shall evaluate the reports submitted by the Respondents with respect to the performance of Respondents' obligations under this Order and the Order to Maintain Assets. Within 30 days from the date the Monitor receives the first such report, and every 90 days thereafter (and otherwise as the Commission or its staff may request), the Monitor shall report in writing to the Commission concerning performance by Respondents of their obligations under the orders. The Monitor shall submit a final report to the Commission within 30 days following the satisfaction by Respondents of all its obligations under Paragraphs II and IV of this Order unless otherwise directed by the Commission or its staff.
- I. Respondents may require the Monitor and each of the Monitor's consultants, accountants, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Monitor from providing any information to the Commission.
- J. The Commission may require, among other things, the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.
- K. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor:
 - 1. The Commission shall select the substitute Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If

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Respondents have not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within 10 days after the notice by the staff of the Commission to Respondents of the identity of any proposed Monitor, Respondents shall be deemed to have consented to the selection of the proposed Monitor.

2. Not later than 10 days after the appointment of the substitute Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all rights and powers necessary to permit the Monitor to monitor Respondents' compliance with the relevant terms of this Order, the Order to Maintain Assets, and the Divestiture Agreement in a manner consistent with the purposes of the orders and in consultation with the Commission.
- L. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.
- M. The Monitor appointed pursuant to this Order may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of this Order.

IX.(Divestiture Trustee)**IT IS FURTHER ORDERED** that:

- A. If Respondents have not fully complied with the obligations of Paragraph II of this Order, the Commission may appoint one or more Divestiture Trustees to divest any or all of the TiO₂ Assets, enter Supply Agreements and agreements for Transition Assistance, grant the Shared Intellectual Property License, and perform Respondents' other obligations in a manner that satisfies the requirements of this Order. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to divest the required assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph IX shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including one or more court-appointed Divestiture Trustees, pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondents to comply with this Order.
- B. The Commission may select one or more Divestiture Trustees, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Commission may appoint one Divestiture Trustee or separate Divestiture Trustees to divest one or more of the TiO₂ Assets, enter Supply Agreements and

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agreements for Transition Assistance, grant the Shared Intellectual Property License, and perform Respondents' other obligations in a manner that satisfies the requirements of this Order. Any Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, and stated in writing their reasons for opposing, the selection of any proposed Divestiture Trustee within 10 days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

1. Not later than 10 days after the appointment of a Divestiture Trustee, Respondents shall execute a trust agreement for any divestitures required by this Order that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effectuate the divestitures required by, and satisfy the additional obligations imposed by this Order. Any failure by Respondents to comply with a trust agreement approved by the Commission shall be a violation of this Order.
2. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
 - a. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to effectuate the divestitures required by, and satisfy the additional obligations (including obligations to provide Transition Assistance, Transitional Product Supply, and grant the Shared Intellectual Property License) imposed by, this Order.
 - b. The Divestiture Trustee shall have 1 year after the date the Commission approves each trust agreement described herein to accomplish the divestitures required by this Order, which shall be subject to the prior approval of the Commission. If, however, at the end of the 1 year period, the Divestiture Trustee has submitted a plan to satisfy the divestiture obligations of this Order, or believes that such obligations can be achieved within a reasonable time, the period may be extended by the Commission, or, in the case of a court-appointed Divestiture Trustee, by the court; *provided, however*, that the Commission may extend the period only 2 times.
 - c. Subject to any demonstrated legally recognized privilege, any Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant

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assets that are required to be divested by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as any Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede any Divestiture Trustee's accomplishment of the divestiture. Any delays caused by Respondents shall extend the time under this Paragraph IX for a time period equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.

- d. Any Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestitures shall be made in the manner that receives the prior approval of the Commission and to an Acquirer that receives the prior approval of the Commission as required by this Order; *provided, however*, if any Divestiture Trustee receives bona fide offers for any asset to be divested from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondents from among those approved by the Commission; *provided further, however*, that Respondents shall select such entity within 5 days after receiving notification of the Commission's approval.
- e. Any Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. Any Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. Any Divestiture Trustee shall account for all monies derived from the divestitures and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of any Divestiture Trustee shall be based at least in significant part on a commission arrangement

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contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

- f. Respondents shall indemnify any Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, malfeasance, willful or wanton acts, or bad faith by the Divestiture Trustee.
 - g. Any Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
 - h. Any Divestiture Trustee shall report in writing to Respondents and to the Commission every 30 days concerning the Divestiture Trustee's efforts to accomplish the divestitures.
 - i. Respondents may require any Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
- C. If the Commission determines that any Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph IX.
- D. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of any Divestiture Trustee, issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures required by this Order.

X.(Compliance Reports)

IT IS FURTHER ORDERED that:

- A. Respondents shall:
- 1. Notify Commission staff via email at bccompliance@ftc.gov of:

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- a. The Acquisition Date, no later than 5 days after the Acquisition Date; and
 - b. The Divestiture Date, no later than 5 days after the Divestiture Date;
 2. Submit the complete Divestiture Agreement to the Commission at ElectronicFilings@ftc.gov and bccompliance@ftc.gov no later than 30 days after the Divestiture Date.
- B. Respondents shall file verified written reports (“compliance reports”) in accordance with the following:
1. Respondents shall submit an interim compliance report 30 days after the Order is issued, and additional interim reports every 30 days thereafter until Respondents have fully complied with the provisions of Paragraph II; annual compliance reports one year after the date this Order is issued, and annually for the next 4 years on the anniversary of that date; and additional compliance reports as the Commission or its staff may request;
 2. Each compliance report shall set forth in detail the manner and form in which Respondents intend to comply, are complying, and have complied with this Order. Each compliance report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondents are in compliance with the Order. Conclusory statements that Respondents have complied with their obligations under the Order are insufficient. Respondents shall include in their reports, among other information or documentation that may be necessary to demonstrate compliance, a full description of the measures Respondents have implemented or plan to implement to ensure that they have complied or will comply with each paragraph of the Order, a description of all substantive contacts or negotiations for the divestitures and the identities of all parties contacted, and such supporting materials shall be retained and produced later if needed.
 3. Respondents shall verify each compliance report in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function. Respondents shall submit an original and 2 copies of each compliance report as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a), including a paper original submitted to the Secretary of the Commission and electronic copies to the Secretary at ElectronicFilings@ftc.gov and to the Compliance Division at bccompliance@ftc.gov. In addition, Respondents shall provide a copy of each compliance report to the Monitor if the Commission has appointed one in this matter.

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XI.(Change in Respondent)

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least 30 days prior to:

- A. Any proposed dissolution of Respondent Tronox Limited;
- B. Any proposed acquisition, merger or consolidation of Respondent Tronox Limited; or
- C. Any other change in Respondents, including assignment and the creation, sale, or dissolution of subsidiaries, if such change may affect compliance obligations arising out of this Order.

XII.(Access)

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and 5 days' notice to the relevant Respondent, made to its principal place of business as identified in this Order, registered office of its United States subsidiary, or its headquarters office, the notified Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all business and other records and all documentary material and electronically stored information as defined in Commission Rules 2.7(a)(1) and (2), 16 C.F.R. § 2.7(a)(1) and (2), in the possession or under the control of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at the request of the authorized representative of the Commission and at the expense of the Respondent; and
- B. To interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

XIII.(Purpose)

IT IS FURTHER ORDERED that the purpose of this Order is to remedy the harm to competition the Commission alleged in its Complaint and ensure an Acquirer can operate the TiO₂ Business in a manner equivalent in all material respects to the manner in which Respondent Cristal operated the TiO₂ Business prior to the Acquisition.

XIV.(Term)

IT IS FURTHER ORDERED that this Order shall terminate May 28, 2029.

By the Commission.

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APPENDIX I

Ineos Divestiture Agreement

[Redacted From the Public Record Version, But Incorporated By Reference]

APPENDIX II

TiO₂ Business Exclusive Products

Tiona 596
Tiona 596(S) slurry
Tiona 595 slurry
Tiona 188
Tiona RCS-P
Tiona RCL-6
Tiona RCL-2
Tiona RCS-2
Tiona RCL-188
Tiona RCL-535
Tiona RCS-535

APPENDIX III

Shared Products

Tiona RCL-4
Tiona RCL-69
Tiona 595
Tiona 696
Tiona RCL-9
Tiona RCL-722
All aqueous and anhydrous grades of TiCl₄

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APPENDIX IV**TiO2 Business Exclusive Intellectual Property****[Redacted From the Public Record Version, But Incorporated By Reference]****APPENDIX V****Shared Intellectual Property****[Redacted From the Public Record Version, But Incorporated By Reference]****APPENDIX VI****Shared Contracts****[Redacted From the Public Record Version, But Incorporated By Reference]****APPENDIX VII****Excluded Contracts****[Redacted From the Public Record Version, But Incorporated By Reference]**

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APPENDIX VIII

Monitor Agreement

APPENDIX VIII-1

Monitor Compensation

[Redacted From the Public Record Version, But Incorporated By Reference]

APPENDIX IX

Retained Shared Employees

[Redacted From the Public Record Version, But Incorporated By Reference]

APPENDIX X

Excluded Assets

[Redacted From the Public Record Version, But Incorporated By Reference]

ANALYSIS OF CONSENT ORDERS TO AID PUBLIC COMMENT**1. INTRODUCTION**

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) with Tronox Limited (“Tronox”), National Industrialization Company (“TASNEE”), National Titanium Dioxide Company Limited (“Cristal”), and Cristal USA Inc. The purpose of the Consent Agreement is to remedy the anticompetitive effects that would result from Tronox’s proposed acquisition of Cristal’s titanium dioxide (“TiO₂”) business.

On February 21, 2017, Tronox announced that it had entered into a definitive agreement to acquire all of Cristal’s TiO₂ business for \$1.67 billion and a 24 percent stake in the combined entity (“Acquisition”). The proposed Acquisition would combine two of the three largest producers of TiO₂ manufactured through the chloride process (“chloride TiO₂”) in the United States and Canada (“North America”). On December 5, 2017, the Commission issued an administrative Complaint challenging the proposed Acquisition and authorized staff to seek, if necessary, a preliminary injunction in federal district court. The Commission’s Complaint alleged that the proposed Acquisition, if consummated, would violate 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, by substantially lessening competition in the market for the sale of chloride TiO₂ to North American customers (“North American chloride TiO₂ market”). After extensive pre-trial discovery, the administrative trial before the Administrative Law Judge (“ALJ”) began on May 18, 2018 and was conducted over sixteen hearing days until June 22, 2018.

In July 2018, because Tronox could have closed the transaction before the ALJ could issue a decision, however, the Commission filed a federal complaint in the U.S. District Court for the District of Columbia to seek a preliminary injunction. After a three-day hearing at the federal district court, Judge Trevor N. McFadden ruled for the Commission and issued an opinion and order granting the motion for a preliminary injunction on September 12, 2018. In his opinion, Judge McFadden found that the Commission established a strong presumption of anticompetitive effects in the market for chloride TiO₂ in North America and that the parties’ rebuttal evidence did not overcome the presumption. After the completion of the federal court action, the ALJ issued an Initial Decision on December 7, 2018. Like the decision in the federal court, the ALJ found that the Acquisition may substantially lessen competition in the relevant market in violation of Section 7 of the Clayton Act and Section 5 of the FTC Act. The parties thereafter engaged with Commission staff in settlement discussions to resolve the Commission’s concerns relating to lost competition in the North American chloride TiO₂ market.

To remedy the anticompetitive effects that would result from the proposed Acquisition in the North American chloride TiO₂ market, the proposed Decision and Order (“Order”) contained in the Consent Agreement requires Tronox to divest Cristal’s North American TiO₂ business to INEOS Enterprises (“Ineos”) no later than 30 days from the close of the Acquisition. The divestiture package includes all of Cristal’s North American TiO₂ production assets, including two chloride TiO₂ manufacturing plants located in Ashtabula, Ohio, a research, development, and administrative support facility near Baltimore, Maryland, necessary intellectual property

Analysis to Aid Public Comment

associated with the manufacture and sale of chloride TiO₂ in and from North America, an option to acquire rights to use the licensed intellectual property to produce chloride TiO₂ products at a new manufacturing facility outside North America, customer contracts in North America with respect to chloride TiO₂, the ability to hire all Cristal personnel necessary to operate the business, and access to various transitional services. In short, the Consent Agreement provides Ineos with everything it needs to compete effectively in the North American chloride TiO₂ market, along with the ability to produce globally in the future if the business opportunity arises.

The Commission has placed the Consent Agreement on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Consent Agreement and the comments received, and decide whether it should withdraw from the Consent Agreement, modify it, or make the Order final.

2. THE PARTIES

Tronox, a publicly traded company headquartered in Stamford, Connecticut, is one of the top three manufacturers of chloride TiO₂ in North America. Tronox operates one TiO₂ pigment manufacturing plant in Hamilton, Mississippi, and two other plants in Botlek, the Netherlands, and Kwinana, Australia. Tronox's three plants produce chloride TiO₂ exclusively.

Cristal, headquartered in Jeddah, Saudi Arabia, is a corporation majority-owned by National Industrialization Company ("TASNEE"), a limited company, headquartered in Riyadh, Saudi Arabia. Cristal's primary U.S. subsidiary is Cristal USA Inc., a corporation with its executive offices and principal place of business located in Glen Burnie, Maryland. Cristal, through various subsidiaries, owns and operates chloride TiO₂ manufacturing plants in Ashtabula, Ohio, the United Kingdom, Australia, and Saudi Arabia. Cristal also produces sulfate TiO₂ at plants in Brazil, China, and France. All of Cristal's TiO₂ production in North America is chloride TiO₂.

3. THE RELEVANT MARKET FOR CHLORIDE TIO₂ IN NORTH AMERICA

The relevant product market in which to assess the competitive effects of the proposed Acquisition is chloride TiO₂. TiO₂ is a white pigment used to provide opacity, whiteness, and brightness to a vast array of products, including paint, industrial coatings, plastics, paper, and other products. Chloride TiO₂ has distinct, superior characteristics that cannot be provided by any other type of TiO₂, including sulfate TiO₂. Most North American customers would not substitute sulfate TiO₂ for chloride TiO₂ in response to a small but significant increase in price.

The relevant geographic market is North America, defined as the United States and Canada. The North American market has competitive dynamics, including pricing and demand characteristics, that differ from other geographic regions and limit the ability of North American customers to engage in arbitrage across different geographic regions. Import duties, shipping and handling costs, and other logistical challenges would render such efforts uneconomical and impractical.

Analysis to Aid Public Comment

The market for chloride TiO₂ in North America is characterized by a limited number of suppliers. Tronox and Cristal are two of the three largest producers of chloride TiO₂ in North America and together with The Chemours Company, the top three TiO₂ companies control the vast majority of chloride TiO₂ sales to North American customers and more than 80 percent of overall North American chloride TiO₂ manufacturing capacity.

The proposed Acquisition would cause the already concentrated North American chloride TiO₂ market to become even more concentrated, increasing the Herfindahl-Hirschman Index (“HHI”) by more than 700, resulting in a post-Acquisition HHI exceeding 3,000. This increase in concentration far exceeds the thresholds set out in the *Horizontal Merger Guidelines* for raising a presumption that the Acquisition would create or enhance market power.

4. EFFECTS OF THE ACQUISITION

As both the federal and administrative courts have already determined, absent a divestiture, the proposed Acquisition is likely to cause competitive harm in the North American chloride TiO₂ market. As stated in the Decision, for the sole purpose of settling this matter, Tronox and Cristal do not dispute that the likely effect of the proposed Acquisition, if consummated without a divestiture, may be substantially to lessen competition in the North American chloride TiO₂ market. Tronox and Cristal are two of the three largest producers of chloride TiO₂ in North America. The proposed Acquisition would have anticompetitive effects in two ways: (1) increasing the likelihood of anticompetitive coordination among the North American chloride TiO₂ companies; and (2) increasing Tronox’s incentive and ability to unilaterally curtail production of chloride TiO₂ in North America, which would lead to higher prices for chloride TiO₂ in North America.

5. ENTRY

Entry into the North American chloride TiO₂ market is neither likely nor timely to deter or counteract any anticompetitive effects of the proposed Acquisition. The chloride TiO₂ market is characterized by substantial barriers to entry. Market participants confirmed that building a new TiO₂ plant would take multiple years and a large capital investment. Moreover, chloride plants rely on closely held proprietary technology. Expansion or repositioning by the remaining firms that would defeat anticompetitive effects is also unlikely in the already mature North American chloride TiO₂ market.

6. THE PROPOSED CONSENT AGREEMENT

The proposed Consent Agreement restores the competition that would have been lost from the proposed Acquisition by requiring Tronox to divest Cristal’s North American TiO₂ business to Ineos, a multinational corporation comprised of chemical manufacturing businesses. The proposed divestiture package provides everything needed for Ineos to compete effectively in the North American chloride TiO₂ market.

Under the Order, Tronox is required to divest Cristal’s North American TiO₂ business to Ineos no later than 30 days from the close of the Acquisition. The divestiture package consists of

Analysis to Aid Public Comment

the following: two chloride TiO₂ manufacturing plants and all related facilities in Ashtabula, Ohio; other physical assets in North America, such as a research and development, and administrative support facility near Baltimore (“Baltimore Administration and Technical Center” or “BATC”) and research and development equipment located at BATC; the ability to hire the relevant Cristal personnel located in North America, including all employees at the Ashtabula complex and almost all of the support personnel located at BATC; transfer or license of all intellectual property right necessary to manufacture chloride TiO₂ products at Ashtabula; an option, exercisable by Ineos during a ten-year period after closing, to acquire rights to use the licensed intellectual property to produce chloride TiO₂ products at a new manufacturing facility outside North America; and customer contracts related to Cristal’s chloride TiO₂ sales in North America. The Order also provides that, during a discrete period, the Commission has a limited ability to modify the lists of excluded assets and retained employees if needed for Ineos to run the business effectively.

The Order requires that, at the request of Ineos, Tronox must provide transition assistance for a period of at least two years, and imposes other terms designed to ensure the viability of the divested business. The Commission also requires the parties to maintain all of the assets in the ordinary course of business pending divestiture to Ineos, and is issuing a separate Order to Maintain Assets at the time it accepts the Consent Agreement for public comment.

A Monitor will oversee Tronox’s compliance with the obligations set forth in the Order, the Order to Maintain Assets, and the divestiture agreements. If Tronox does not fully comply with the divestiture requirements of the Order, the Commission may appoint a Divestiture Trustee to divest Cristal’s North American TiO₂ business and perform Tronox’s other obligations consistent with the Order.

The purpose of this analysis is to facilitate public comment on the Consent Agreement to aid the Commission in determining whether it should make the Consent Agreement final. This analysis is not an official interpretation of the proposed Consent Agreement and does not modify its terms in any way.

Complaint

IN THE MATTER OF

JAMES V. GRAGO, JR.
D/B/A
CLIXSENSE.COMCONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF SECTION 5 OF THE FEDERAL
TRADE COMMISSION ACT

Docket No. C-4678; File No. 172 3003
Complaint, June 19, 2019 – Decision, June 19, 2019

This consent order addresses James V. Grago, Jr.'s use of information security protocols for an online rewards website. The complaint alleges that Respondent has violated Section 5(a) of the Federal Trade Commission Act by failing to provide adequate security for consumer's personal information collected through his website. The consent order prohibits Respondent from false or deceptive statements regarding the extent to which Respondent maintains and protects the privacy, security, confidentiality, or integrity of Personal Information, including the extent to which it utilizes (1) encryption techniques and (2) security techniques.

Participants

For the *Commission*: *Andrea Arias, Monique F. Einhorn, and Jamie Hine.*

For the *Respondents*: *Ryan Blaney, JB Kelly, and Bryan Mosca, Cozen O'Connor.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that James V. Grago, Jr., individually and doing business as ClixSense.com, a sole proprietorship ("Respondent"), has violated the provisions of the Federal Trade Commission Act ("FTC Act"), and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent is James V. Grago, Jr. ("Grago"), individually and doing business as ClixSense.com ("ClixSense"), which operates as a sole proprietorship with its principal office or place of business in Hampstead, North Carolina. Respondent Grago is the sole owner of ClixSense. Individually or in concert with others, he controlled or had the authority to control, or participated in the acts and practices alleged in this complaint.

2. The acts and practices of Respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act.

RESPONDENT'S BUSINESS ACTIVITIES

3. Since 2010, Respondent Grago has owned and operated ClixSense. ClixSense generated revenues of \$6.7 million in 2015 and \$9.1 million in 2016. ClixSense's users are individual consumers who earn money from ClixSense by viewing advertisements, performing online tasks, or completing online surveys.