

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and 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 thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent CPIV is a limited partnership organized, existing and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 1001 Pennsylvania Avenue, N.W., Suite 220 South, Washington, DC 20004-2505.
2. Respondent PQ is a corporation organized, existing and doing business under and by virtue of the laws of Pennsylvania, with its office and principal place of business located at 300 Lindenwood Drive, Valleybrooke Corporate Center, Malvern, PA 19355-1740.
3. Respondent INEOS, the controlling interest of which is owned by James Ratcliffe, is a corporation organized, existing, and doing business under and by virtue of the laws of the United Kingdom, with its office and principal place of business located at Hawkslease, Chapel Lane, Lyndhurst, Hampshire SO43 7FG United Kingdom.
4. Respondent James Ratcliffe is an individual with his office and principal place of business located at Hawkslease, Chapel Lane, Lyndhurst, Hampshire SO43 7FG United Kingdom.
5. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents and the proceeding is in the public interest.

ORDER

I.

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

- A. “CPIV” means Carlyle Partners IV, L.P., its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Carlyle Partners IV, L.P., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

16 C.F.R. § 4.3 (a).

- L. “Direct Cost” means the cost of direct labor and direct material used to provide the relevant assistance or service.
- M. “Divestiture Trustee” means a trustee appointed by the Commission pursuant to the relevant provisions of this Order.
- N. “Effective Date” means the date on which the Acquisition occurs.
- O. “Governmental Entity” means any Federal, state, local or non-U.S. government, or any court, legislature, governmental agency, or governmental commission, or any judicial or regulatory authority of any government.
- P. “Interim Monitor” means any monitor appointed pursuant to the relevant provisions of this Order or of the related Order to Maintain Assets.
- Q. “Law” means all laws, statutes, rules, regulations, ordinances, and other pronouncements by any Governmental Entity having the effect of law.
- R. “Oak Hill Acquisition Company, LLC “ means Oak Hill Acquisition Company, LLC, its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Oak Hill Acquisition Company, LLC and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- S. “Patents” means all patents, patent applications, and statutor

- U. “Product Licensed Intellectual Property” means the following:
1. Patents;
 2. trade secrets, know-how, techniques, data, inventions, practices, methods, and other confidential or proprietary technical, business, and other information, and all rights in any jurisdiction to limit the use or disclosure thereof, that are related to Product and that have been routinely used in the production of Product at the Utica Sodium Silicate Plant as of the Closing Date.
- V. “Product Marketing Materials” means all marketing materials related to Product produced at the Utica Sodium Silicate Plant as of the Closing Date, including, without limitation, all advertising materials, training materials, product data, price lists, mailing lists, sales materials (e.g., detailing reports; vendor lists; sales data; reimbursement data), marketing information (e.g., competitor information; research data; market intelligence

Y. “Services and Utilities” means:

1. maintenance of certain easements, including but not limited to, vehicular and pedestrian access, rail access, Sewers, Etc. easements;
2. provision of certain services, including but not limited to, utility services, information technology services, and office space; and
3. provision of certain commodities, including but not limited to steam, potable water, water that is softened by means of water softener equipment, electrical power, natural gas, fuel oil, and water generated as a result of the production activities at the Utica Facility that are not related to the Utica Sodium Silicate Plant.

Z. “Sewers, Etc.”

entered into with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees, and joint venture partners;

5. a list of all targeted customers for Product and the planned or proposed pricing of Product for such customers;
 6. all Product Marketing Materials;
 7. all governmental approvals, consents, licenses, permits, waivers, or other authorizations relating to Product held by Respondents CPIV and PQ;
 8. all rights of Respondents CPIV and PQ under any warranty and guarantee, express or implied, relating to Product;
 9. all books, records, and files;
 10. the Utica Sodium Silicate Plant, including, but not limited to:
 - a. all plant facilities, machinery, equipment, furniture, fixtures, tools, vehicles, transportation and storage facilities, and supplies;
 - b. all rights in and to inventories of products, raw materials, supplies and parts, including work-in-process and finished goods;
 - c. all customer and vendor lists, catalogs, sales promotion literature, and advertising materials; and
 11. Services and Utilities as provided in a Services Agreement;
- BB. “Utica Facility” means Respondent PQ’s facility containing plants for the production of various products including metasilicate, epsom salts, and Product, situated at 340 East Grove Street, Utica, Illinois 61373-0410.
- CC. “Utica Sodium Silicate Plant” means the plant for the production of Product located at the Utica Facility.

II.

IT IS FURTHER ORDERED that:

- A. Not later than five (5) Days after the Effective Date, Respondents shall divest the Sodium Silicate Assets, absolutely and in good faith, to Oak Hill Acquisition Company, LLC (“Oak Hill”) pursuant to and in accordance with the Asset Purchase Agreement (which agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of Oak Hill or to reduce any obligations of the Respondents under such agreement), and such agreement, if it becomes the Remedial Agreement related to the Sodium Silicate Assets, is incorporated by reference into this Order and made a part hereof. If Respondents do not divest the Sodium Silicate Assets to Oak Hill within five (5) Days after the Effective Date, the Commission may appoint a Divestiture Trustee to divest the Sodium Silicate Assets;

provided, however, that if Respondents have divested the Sodium Silicate Assets to Oak Hill after the Commission has accepted this Order for public comment but prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that Oak Hill is not an acceptable purchaser of the Sodium Silicate Assets, then Respondents shall immediately rescind the transaction with Oak Hill and shall divest the Sodium Silicate Assets within six (6) months from the date the Order becomes final, absolutely and in good faith, at no minimum price, to a Commission-approved Acquirer and only in a manner that receives the prior approval of the Commission;

provided further that if the Respondents have divested the Sodium Silicate Assets to Oak Hill after the Commission has accepted this Order for public comment but prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies the Respondents that the manner in which the divestiture was accomplished is not acceptable, the Commission may direct the Respondents, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture of the Sodium Silicate Assets to Oak Hill (including, but not limited to, entering into additional agreements or arrangements) as the Commission may determine are necessary.

- C. Respondents shall:
1. submit to the Commission-approved Acquirer, at Respondents' expense, all Confidential Business Information;
 2. deliver such Confidential Business Information as follows: (1) in good faith; (2) as soon as practicable, avoiding any delays in transmission of the respective information; and (3) in a manner that ensures its completeness and accuracy and that fully preserves its usefulness;
 3. pending complete delivery of all such Confidential Business Information to the Commission-approved Acquirer, provide the Commission-approved Acquirer and the Interim Monitor (if any has been appointed) with access to all such Confidential Business Information and employees who possess or are able to locate such information for the purposes of identifying the books, records, and files related to Product at the Utica Facility that contain such Confidential Business Information and facilitating the delivery in a manner consistent with this Order;
 4. not use, directly or indirectly, any such Confidential Business Information, other than as necessary to comply with the following: (1) the requirements of this Order; (2) the Respondents' obligations to the Commission-approved Acquirer under the terms of any Remedial Agreement related to the Sodium Silicate Assets; or (3) applicable Law; *provided, however*, that Respondents may use Confidential Business Information which does not relate solely to the Utica Sodium Silicate Plant; and
 5. not disclose or convey any such Confidential Business Information, directly or indirectly, to any person except the Commission-approved Acquirer.
- D. For a period of up to two (2) years from the Closing Date, upon reasonable notice and request by the Commission-approved Acquirer, Respondents shall make available to the Commission-approved Acquirer, at no greater than Direct Cost, such personnel, assistance and training to enable the Commission-approved Acquirer to operate the Sodium Silicate Assets in substantially the same manner as Respondents operated the Sodium Silicate Assets immediately prior to the Closing Date.
- E. Respondents shall, as of the Closing Date, enter into an employee services agreement, which, if the Asset Purchase Agreement is the Remedial Agreement shall be the Employee Services Agreement at Exhibit C thereof, with the Commission-approved Acquirer for the provision of employee services for the job classifications set forth in the collective bargaining agreement between Respondent PQ and employees at the Utica Sodium Silicate Plant ("Utica Sodium Silicate Plant Employees"), and for the services of such other employees and individuals as the Respondents and the Commission-approved

Acquirer may agree:

1. no later than ten (10) days before the Closing Date, Respondents shall (i) provide to the Commission-approved Acquirer a list of all Utica Sodium Silicate Plant Employees, (ii) allow the Commission-approved Acquirer an opportunity to interview any Utica Sodium Silicate Plant Employees, and (iii) allow the Commission-approved Acquirer to inspect the personnel files and other documentation relating to such Utica Sodium Silicate Plant Employees, to the extent permissible under applicable laws;
2. respondents shall (i) not offer any incentive to any Utica Sodium Silicate Plant Employee to decline providing employee services to the Commission-approved Acquirer, (ii) remove any contractual impediments with Respondents, excluding Respondent PQ's collective bargaining agreement with such Utica Sodium Silicate Plant Employees, that may deter any Utica Sodium Plant Employee from providing employee services to the Commission-approved Acquirer, including, but not limited to,

- F. At such time that the Commission-approved Acquirer initiates collective bargaining with Utica Sodium Silicate Plant Employees, Respondents shall:
1. not offer any incentive to any Utica Sodium Silicate Plant Employee to decline to enter into a collective bargaining agreement with the Commission-approved Acquire

Technology License Agreement at Exhibit K thereto shall apply.

H. Any Remedial Agreement rela

requirements of the Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner consistent with the purposes of the Order and in consultation with the Commission;

2. The Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission;
3. The Interim Monitor shall serve until the completion by Respondents of the divestiture of the Sodium Silicate Assets required to be divested pursuant to the Decision and Order in a manner that fully satisfies the requirements of the Order and notifica the

submitted to the Interim Monitor by Respondents, and any reports submitted by the Commission-approved Acquirer with respect to the performance of Respondents' obligations under the Order or the Remedial Agreement. Within one (1) month from the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning performance by Respondents of their obligations under the Orders; and

8. Respondents may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a cugBT144.0000 667.4400 Tancnt.me

appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 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 shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (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.
- C. Not later than ten (10) Days after the appointment of a Divestiture Trustee, Respondents shall execute a trust agreement 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 effect the divestiture required by the Order.
- D. 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:

1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver or otherwise convey the assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed.
2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed Divestiture Trustee, by the court; *provided, however*, the Commission may extend the divestiture period only two (2) times.
3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities related to the relevant assets that are required to be assigned, granted, licensed,

other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Divestiture Trustee, by the court, 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 the Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

6. Respondents shall indemnify the 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 in

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VI.

IT IS FURTHER ORDERED that Respondents shall provide a copy of this Order to each of Respondent's officers, employees, or agents having managerial responsibility for any of Respondent's obligations under Paragraphs II through V of this Order, no later than ten days from the date this Order becomes final.

VII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) Days prior to any proposed (1) dissolution of the Respondents, (2) acquisition, merger, or consolidation of Respondents, or (3) other change in the Respondents that may affect compliance obligations arising out of the order, including, but not limited to, assignment, the creation or dissolution of subsidiaries, or any other change

APPENDIX I

TO THE DECISION AND ORDER

ASSET PURCHASE AGREEMENT

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