

**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**      **William E. Kovacic, Chairman**  
                                 **Pamela Jones Harbour**  
                                 **Jon Leibowitz**  
                                 **J. Thomas Rosch**

|                                   |   |                          |
|-----------------------------------|---|--------------------------|
| _____                             | ) |                          |
| <b>In the Matter of</b>           | ) |                          |
|                                   | ) |                          |
| <b>Carlyle Partners IV, L.P.,</b> | ) |                          |
| <b>a limited partnership,</b>     | ) |                          |
|                                   | ) |                          |
| <b>PQ Corporation,</b>            | ) |                          |
| <b>a corporation,</b>             | ) | <b>Docket No. C-4233</b> |
|                                   | ) |                          |
| <b>INEOS Group Ltd.,</b>          | ) |                          |
| <b>a corporation, and</b>         | ) |                          |
|                                   | ) |                          |
| <b>James Ratcliffe,</b>           | ) |                          |
| <b>an individual.</b>             | ) |                          |
| _____                             | ) |                          |

**DECISION AND ORDER**

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Respondent Carlyle Partners IV, L.P. (“CPIV”), the parent of Respondent PQ Corporation (“PQ”), of US Silicas and certain foreign silicas assets of INEOS Silicas, a specialty inorganic chemical division of Respondent INEOS Group Ltd., the controlling interest of which is owned by Respondent James Ratcliffe, an individual (“collectively “INEOS”), and Respondents having been furnished thereafter with a copy of the draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge 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

Respondents, their attorneys, and counsel for the Commission having thereafter executed a Consent Agreement, an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of the Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and



- B. “PQ” means PQ Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by PQ Corporation and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “INEOS” means INEOS Group Ltd., its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by INEOS Group Ltd., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- D. “Commission” means the Federal Trade Commission.
- E. "Respondents" means CPIV, PQ, and INEOS, and James Ratcliffe individually and collectively.
- F. “Acquisition” means the October 11, 2007, proposed acquisition by CPIV for which a filing was made pursuant to the Hart-Scott-Rodino Antitrust Improvements Act on November 15, 2007, by CPIV.
- G. “Asset Purchase Agreement” means “Asset Purchase Agreement by and Between Oak Hill Acquisition Company, LLC and PQ Corporation” dated as of May 26, 2008, and amendments, exhibits, attachments, agreements, and schedules thereto, related to the Sodium Silicate Assets to be divested, that have been approved by the Commission to accomplish the requirements of this Order. The Asset Purchase Agreement is attached to this Order as non-public Appendix I.
- H. “Closing Date” means the date on which Respondents (or a Divestiture Trustee) and a Commission-approved Acquirer consummate a transaction to assign, grant, license, divest, transfer, deliver, or otherwise convey the relevant assets pursuant to this Order.
- I. “Commission-approved Acquirer” means the following: (1) an entity that is specifically identified in this Order to acquire particular assets that the Respondents are required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order and that has been approved by the Commission to accomplish the requirements of this Order in connection with the Commission’s determination to make this Order final; or (2) an entity approved by the Commission to acquire particular assets that the Respondents are required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order.
- J. “Confidential Business Information” means all information owned by, or in the possession or control of, Respondents that is not in the public domain related to the production, marketing, commercialization, distribution, importation, exportation, cost, pricing, supply, sales, sales support, or use of Product at the Utica Sodium Silicate Plant.

- K. “Day(s)” means the period of time prescribed under this Order as computed pursuant to 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

- 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

Y. “Services and Utilities” means:

1. maintenance of certain easements, including but not limited to, vehicular and pedestrian access, rail access, Sewers, Etc. easements;

4. all rights of Respondents CPIV and PQ under any contract related to Product 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

## 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;

*1/11/14*, 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;

*1/11/14*, 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 to satisfy the requirements of this Order.

- B. Respondents shall comply with all terms of the Remedial Agreement which shall be incorporated by reference and made a part of this Order. Failure by Respondents to perform under or comply with the Remedial Agreement shall also constitute a violation of this Order. Notwithstanding any paragraph, section, or other provision of the Remedial Agreement, Respondents shall not, without the prior approval of the Commission, modify any term of the Remedial Agreement or fail to satisfy each condition to the Commission-approved Acquirer’s obligation to acquire the Sodium Silicate Assets (whether or not



waived). The terms of the Remedial Agreement shall not be construed to vary from or contradict the terms of this Order.

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 require(o)-9.5r(o)3.5(l)-6.7(o)-.3(n)0k5(n).

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, any non-compete or confidentiality provisions of employment or other contracts with Respondents that would affect the ability of the Utica Sodium Silicate Plant Employees to provide employee services to the Commission-approved Acquirer, and (iii) not interfere with any Utica Sodium Silicate Plant Employee providing employee services to the Commission-approved Acquirer;
3. for a period of one year from the date this Order becomes final, Respondents shall not, directly or indirectly, enter into any arrangement, excluding collective bargaining arrangements conducted in the ordinary course of business, for the services of any Utica Sodium Silicate Plant Employee providing employee services to the Commission-approved Acquirer, unless the Utica Sodium Silicate Plant Employee’s services have been terminated by the Commission-approved Acquirer without the Utica Sodium Silicate Plant Employee’s consent; and
4. provide written notification of the restrictions on the use of the Confidential Business Information to all Respondents’ employees who are involved in the manufacturing, distribution, sale, or marketing of Product at the Utica Facility or who may have Confidential Business Information [“Designated Employees”]; and Respondents shall require each Designated Employee to execute an acknowledgment of his or her obligation regarding the Confidential Business Information. Respondents shall provide a copy of such notification to the Commission-approved Acquirer. Respondents shall maintain complete records at

the Utica Facility regarding the provision of notification to Designated Employees and shall provide an officer's certification to the Commission stating that such notification program has been implemented and is being complied with.

Respondents shall provide the Commission-approved Acquirer with co2(v)-.8(e)1pro 0042 2e2,5

3. Respondents shall covenant to the Commission-approved Acquirer that Respondents shall not join, file, prosecute or maintain any suit, in law or equity, against the Commission-approved Acquirer under any Patents licensed to the Commission-approved Acquirer pursuant to the Remedial Agreement, if such suit

on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondents' compliance with the relevant requirements of the Order in a manner consistent with the purpose of the Order.

- D. If one or more Interim Monitors are appointed pursuant to this Paragraph, Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of each Interim Monitor:
1. The Interim Monitor shall have the power and authority to monitor Respondents' compliance with the divestiture and asset maintenance obligations and related 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 notification by the Commission-approved Acquirer to the Interim Monitor that it is fully capable of producing Product pursuant to a Remedial Agreement independently of Respondents; ~~and, in addition, the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Order;~~
  4. Subject to any demonstrated legally recognized privilege, the Interim Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to Respondents' compliance with their obligations under the Order, including, but not limited to, their obligations related to the relevant assets.

6. Respondents shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties,

**IV.**

**IT IS FURTHER ORDERED** that:

- A. If Respondents have not fully complied with the obligations to assign, grant, license, divest, transfer, deliver or otherwise convey relevant assets as required by this Order, the

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; *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;* 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, divested, delivered or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend 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. 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 incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, to the extent that such losses, claims, damages,

agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

- E. If the Commission determines that a 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.
- F. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

## 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 in Respondents.

## VIII.

**IT IS FURTHER ORDERED** that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents made to their principal United States offices, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents related to compliance with this Order; and
- B. Upon five (5) Days' notice to Respondents and without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

## IX.

**IT IS FURTHER ORDERED** that this Order shall terminate on September 18, 2018.

By the Commission.

Donald S. Clark  
Secretary

SEAL  
ISSUED: September 18, 2008

**NON-PUBLIC**

**APPENDIX I**

**TO THE DECISION AND ORDER**

**ASSET PURCHASE AGREEMENT**

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