

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Joseph J. Simons, Chairman

Noah Joshua Phillips

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a corporation,

National Industrialization Company
(TASNEE)

a corporation,

National Titanium Dioxide Company
Limited (Cristal)

a corporation,

until the administrative review process

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
 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

A. 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 resources to ensure the continued operation of the Assets To Be Maintained.

- 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.
- 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

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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,

- 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.

- B. Respondents shall file verified written reports (“compliance reports”) in accordance with the following:

1. Within 30 days

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

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
- 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.

April J. Tabor
Acting Secretary

SEAL

ISSUED: April 10, 2019