

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Maureen Ohlhausen, Acting Chairman
Terrell McSweeney

In the Matter of

Tronox Limited
a corporation,

National Industrialization Company
(TASNEE)
a corporation,

National Titanium Dioxide Company
Limited (Cristal)
a corporation,

And

Cristal USA Inc.
a corporation.

Docket No. 9377

5 (' \$ & 7 (' PUBLIC VERSION

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act ("FTC Act"), and by virtue of the authority vested in it by the FTC Act, the Federal Trade Commission ("Commission") having reason to believe that Respondents Tronox Limited ("Tronox") and National Titanium Dioxide Company Limited ("Cristal") have executed a merger agreement in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, which if consummated would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint pursuant to Section 5(b) of the FTC Act, 15 U.S.C. § 45(b), and Section 11(b) of the Clayton Act, 15 U.S.C. § 21(b), stating its charges as follows:

manufactured using either the chloride process, which comprises the vast majority of TiO₂ produced and purchased in North America, or the sulfate process (“sulfate TiO₂”).

2. The U.S. Court of Appeals for the Third Circuit recently characterized the TiO₂ industry as an “oligopoly” that is “dominated by a handful of firms with “substantial barriers to entry.” Absent injunctive relief, two firms, Tronox and The Chemours Company (“Chemours”), would 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 substantially increase concentration in an already concentrated market and would result in post-acquisition market concentration levels for the sale of chloride TiO₂ to North American customers that exceed those presumed likely to result in anticompetitive effects under both the Federal Trade Commission and U.S. Department of Justice Horizontal Merger Guidelines (“Merger Guidelines”) and the relevant case law.

3. The Acquisition would substantially lessen competition in the North American market for chloride TiO₂ in at least two ways. First, the Acquisition would increase the likelihood of coordination in an already ~~not~~able oligopoly market with an extensive history of price-fixing litigation and settlements. It removes one of only a few remaining competitors; consolidates the overwhelming majority of North American chloride TiO₂ sales and production

sufficient to offset the Acquisition's anticompetitive effects is also unlikely. Over the last decade, more North American TiO₂ production capacity has been removed through plant and line closures than added by expansions or increases in TiO₂ imports or other adjustments in global TiO₂ trade flows likely to offset the anticompetitive effects of the Acquisition

6. Respondents cannot show cognizable efficiencies that would offset the likely and substantial competitive harm from the Acquisition.

II. JURISDICTION AND VENUE

7. Respondents are, and at all relevant times have been, engaged in activities in or affecting "commerce" as defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12.

8. The Acquisition constitutes an acquisition subject to Section 7 of the Clayton Act, 15 U.S.C. § 18.

III. RESPONDENTS

9. Tronox is a publicly traded company incorporated in Australia and headquartered in Stamford, Connecticut. Tronox is a vertically integrated company that mines titanium ore and other minerals and manufactures and sells chloride TiO₂ pigment. In 2016, Tronox's TiO₂ business generated North American sales of approximately \$410 million. Tronox operates one TiO₂

feedstock facilities in Australia, Brazil, and Saudi Arabia. Cristal is a named party to the Acquisition agreement.

12. Cristal USA Inc, a Delaware corporation, operates a large chloride TiO₂ manufacturing complex in Ashtabula, Ohio, and a research facility outside Baltimore, Maryland. Cristal USA's management, including strategy, sales and marketing, is integrated into the management and operation of Cristal.

IV. THE ACQUISITION

13. Pursuant to a February 21, 2017 agreement, Tronox seeks to acquire Cristal's TiO₂ business for \$1.67 billion in cash and a 24% stake in the combined entity.

V. BACKGROUND

A. Titanium Dioxide

14. TiO₂ is an essential pigment used to add whiteness, brightness, and opacity to

B. Market Participants and Industry Dynamics

18. The North American TiO₂ industry is an oligopoly dominated by five major producers Tronox, Cristal, Chemours, Kronos, and Venator. These companies produce and sell TiO₂ both in North America and in other regions. All North American production is chloride TiO₂ with the exception of a small Kronos-owned sulfate TiO₂ plant in Canada.

19. Chemours, a DuPont spin-off, is currently the largest TiO₂ company in North America and globally. Chemours has two plants in the United States, one in DeLisle, Mississippi and the other in New Johnsonville, Tennessee. Chemours also has plants in Mexico and Asia. Chemours' plants produce only chloride TiO₂.

20. The two other major North American TiO₂ companies—Kronos and Venator—jointly own a 50-50 joint venture that operates a chloride TiO₂ plant in Westlake, Louisiana. Kronos also operates a TiO₂ plant in Canada and four plants in Europe. Venator, a Huntsman spin-off, operates six TiO₂ plants in Europe and one plant in Asia. While Venator is the second largest TiO₂ company in the world by capacity, its presence in North America—limited to half of the output of the joint venture plant in Louisiana—is the smallest among the five major North American producers. Outside of the United States, Kronos and Venator produce both chloride TiO₂ (rutile) and sulfate TiO₂ (rutile and anatase).

21. Beyond the major North American TiO₂ producers, there are smaller regional manufacturers of TiO₂, primarily located in Eastern Europe and Asia. The TiO₂ produced by these fringe manufacturers is virtually all sulfate TiO₂, is generally lower quality than that manufactured by the five major TiO₂ companies, and is mostly sold in local or regional markets outside North America. Over the last decade, producers in China have increased their exports of TiO₂, primarily into markets in Asia, South America, Europe, and the Middle East. Almost all Chinese TiO₂ has been lower quality sulfate TiO₂, and very little has been exported to North America. Similarly, although a few Chinese manufacturers have recently begun producing chloride TiO₂, their production has been limited, and only

23. Given relatively inelastic demand for chloride TiO₂, the major North American TiO₂ producers recognize that by limiting the supply of chloride TiO₂ available in North America they are better able to stabilize or increase North American prices. Several of these companies have curtailed or restricted their North American chloride TiO₂ output over the past several years to prop up prices. Tronox publicly states in an earnings call that it manages or restricts production to support higher TiO₂ pricing and believes that the other producers have done the same. Tronox and major North American chloride TiO₂ producers have curtailed output by temporarily idling production lines, lowering production rates, or permanently closing plants. They have also allowed chloride TiO₂ inventory to build up, exported North American production, and slowed or delayed production increases in an effort to increase or maintain higher prices.

24. In recent years, Tronox and Chemours have been able to (or) 3 (total) -21 ent 4 Tc 0 djTc 0 djTc 0 d
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when [chloride] prices were over \$4,000 per ton," substantially higher than sulfate prices at that time.

33. Competitive conditions differ by region and TiO₂ producers employ different pricing strategies for sales in the North American market than in other parts of the world. As a result, North American purchasers of TiO₂ pay different prices and terms than other regions. Over the past several years, North American prices and margins have generally been higher and more stable than other regions.

34. Beyond pricing differences, North American purchasers of TiO₂ have a number of distinct demand characteristics compared to TiO₂ purchasers in other regions. For example, most North American customers buy and strongly favor chloride TiO₂.

39. In the market for the sale of chloride TiO₂ to North American customers (“North American chloride TiO₂ market”), the Acquisition would result in a post-Acquisition HHI exceeding 3,000, with an increase in the HHI of more than 700. Thus, the Acquisition would result in concentration that establishes a presumption of competitive harm in the North American chloride TiO₂ market

40. In the market for the sale of rutile TiO₂ to North American customers (“North American rutile TiO₂ market”), the Acquisition would result in a post-Acquisition HHI exceeding 2,500, with an increase in the HHI of more than 550. Thus, the Acquisition would result in concentration that establishes a presumption of competitive harm in the North American rutile TiO₂ market.

41. Therefore, the Acquisition is presumptively unlawful under relevant case law and the Merger Guidelines.

VIII.

45. North American chloride TiO₂ companies also have a strong awareness of their competitors' pricing. They all issue customer pricing letters and several make public price announcements. Moreover, because many customers have "meet or release" clauses in their contracts, customers often relay competitors' customer-specific pricing information to their TiO₂ suppliers.

46. This transparency will only grow with the Acquisition. Today Cristal, unlike the other major North American TiO₂ companies, is not a publicly traded company and discloses less detail about its operations. By incorporating Cristal's entire TiO₂ production into Tronox, the Acquisition would not only eliminate an important competitor, it would also make information regarding Cristal's operations significantly more accessible to the remaining North American TiO₂ companies. Thus, the Acquisition would further enhance the likelihood for coordination by among other aspects, increasing market transparency among the remaining competitors and making coordination easier to maintain.

47. Having competed against each other in an oligopolistic market environment for many years, the major North American TiO₂ companies have recognized their mutual interdependence and aligned incentives. Tronox, along with the other publicly traded North American TiO₂ producers, openly discuss these market dynamics during their public earnings calls. For example, during an earnings call in 2016, Tronox's then-CEO explained the industry's strategy to manage production to drive TiO₂ prices higher as follows: "I can tell you that . . . last year, Huntsman, . . . Cristal, Chemours, and we all lowered our plant utilization rates. And we all talked about declining inventories which we had set as a goal. That is that we wanted to reduce inven(e)4(s)-1(w)2(hi)-2(c)4dNo
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In a February 2016 presentation to Cristal, consulting firm McKinsey concluded that

The Acquisition is likely to increase the level of anticompetitive conscious parallelism in the North American chloride TiO₂ market, resulting in higher chloride TiO₂ prices for consumers.

B. The Acquisition Would Increase Tronox's Incentive and Ability to Curtail Output

50. Tronox has consistently acknowledged the tight link between North American chloride TiO₂ prices and North American production. In a 2015 earnings call, Tronox's then-CEO stated that "by managing our production, so that inventories get reduced to normal or below normal levels; and when that happens, prices will rise." Indeed, Tronox built its 2016 budget based on

And Tronox reaffirmed its commitment to this strategy even after agreeing to purchase Cristal, stating that

Allowing Tronox to acquire Cristal, thereby doubling its size in North America will increase Tronox's incentive and ability to decrease or restrict output intended for North American customers, thus leading to higher prices.

51. Tronox has a history of seeking to support North American chloride TiO₂ prices by curtailing output in North America. These efforts

2016 Tronox document observes,

Consequently, Chinese exports to North America are unlikely to increase substantially for the foreseeable future.

or before the fourteenth (14th) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts
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3. A requirement that, for a period of time, Tronox and Cristal provide prior notice to the Commission of acquisitions, mergers, consolidations, or any other combinations of their businesses in the relevant markets with any other company operating in the relevant markets.
4. A requirement to file periodic compliance reports with the Commission.
5. Any other relief appropriate to correct or remedy the anticompetitive effects of the transaction or to restore Cristal as a viable, independent competitor in the relevant markets.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D.C., this fifth day of December 2017.

By the Commission.

Donald S. Clark
Secretary

SEAL: