

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

05 18 2018
590792

COMMISSIONERS: Joseph Simons, Chairman
Maureen Ohlhausen
Rohit Chopra
Noah Phillips
Rebecca Slaughter

ORIGINAL

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

COURT: Does everybody understand how this is going to go?

MR. WILLIAMS: Yes, Your Honor.

COURT: Does that take care of it?

MR. VOTE: Yes, Your Honor.

(Pretrial Conf. Tr. 42: 1-13.)

Complaint Counsel's responses to Respondents' interrogatories are long overdue. Tronox, Ltd. ("Tronox") served interrogatories on Complaint Counsel four-and-a-half months ago, on

Complaint Counsel did supplement its responses to Cristal Interrogatories #'s 1 and 8 by again providing exemplary, non-exhaustive lists of information and documents. (5/17/2018, Complaint Counsel's Supp. Resps. and Objs. to Cristal's Contention Inter. (1, 8), Exhibit B.) In response to Cristal Interrogatory #1, rather than "[i]dentify[ing] all adjustments to production levels by TiO₂ producers that You contend were for the purpose of supporting higher prices rather than the result of maintenance or operational issues," Complaint Counsel provided a list of "examples" of production adjustments. Complaint Counsel also objected "that this Interrogatory incorrectly assumes that adjustments to production levels cannot be for the purpose of both influencing prices and for maintenance or other operational reasons." But the interrogatory assumed nothing of the sort; it simply asked Complaint Counsel for any evidence it would put forward in support of a contention that any producer ever adjusted output for the purpose of supporting higher prices instead of as a result of maintenance or operational issues. If the evidence does not exist, then Respondents should be entitled to narrow the issues through this discovery request.

At the same time Complaint Counsel amended its response to two of the interrogatories, and without calling for a meet-and-confer beforehand, Complaint Counsel filed its motion for clarification. But the Court's instructions were clear and consistent with the law. Respondents will object at trial to Complaint Counsel's reliance on materials not asserted in its responses to Respondents' discovery requests. To be clear, Respondents' contention interrogatories are appropriate and explicitly contemplated by the Part 3 rules. Rule 3.35(a)(2) requires that each interrogatory be answered "fully." Rule 3.35(b) expressly provides that interrogatories are "not necessarily objectionable merely because an answer ... involves an opinion or contention." The

know, in advance of trial, whether Complaint Counsel will contend that *any* producer has adjusted output solely for price purposes and not for maintenance, and if so, when and where.

“The purpose of interrogatories is to narrow the issues and thus help determine what evidence will be needed at trial.” *In re N. Texas Specialty Physicians*, 2003 WL 22936410, at *2. Complaint Counsel’s responses to Respondents’ contention interrogatories are plainly inadequate and do not narrow the issues to determine what evidence will be needed at trial. Respondents should not be required to guess Complaint Counsel’s support for the contentions on which it relies to build its case. Respondents respectfully ask the Court to reiterate its statement at the final prehearing conference: that if a party *could have* provided information in response to an interrogatory and failed to do so, that party cannot later rely on the omitted information at trial. The Court cannot be any clearer than that.

Dated: May 18, 2018

Respectfully Submitted By:

/s/ Michael F. Williams, P.C. _____

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I hereby certify that on May 18, 2018, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

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The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

I also certify that I caused the foregoing document to be served via email to:

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Counsel supporting Complaint

Counsel for Respondents National Industrialization Company (TASNEE), The National Titanium Dioxide Company Limited (Cristal), and Cristal USA, Inc.

/s/ Michael F. Williams
Michael F. Williams

Counsel for Respondents Tronox Limited

CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

May 18, 2018

By: /s/ Michael F. Williams
Michael F. Williams

EXHIBIT A

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

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

answers in response to an individual interrogatory does not waive any of Complaint Counsel's general objections as to the other interrogatories.

SPECIFIC OBJECTIONS AND RESPONSES

Subject to the foregoing, Complaint Counsel provides the following responses to Respondents' Interrogatories:

RESPONSES TO TRONOX'S CONTENTION INTERROGATORIES:

Tronox Interrogatory No. 3

Identify all of the specific documents, data, and/or persons with knowledge who you contend support your allegation that the TiO₂ industry is an oligopoly.

Response to Tronox Interrogatory No. 3

In addition to its General Objections, Complaint Counsel specifically objects to this interrogatory as unduly burdensome to the extent it seeks to compel Complaint Counsel to undertake investigation, discovery, and analysis on behalf of Respondent Tronox. In general, there are many documents, data, and persons that demonstrate that the industry as a whole operates as an oligopoly. For example: The decision of the U.S. Court of Appeals for the Third Circuit in *Valspar Corp. v. E. I. Du Pont De Nemours & Co.*, 873 F.3d 185 (2017); the decision of U.S. District Judge Richard D. Bennett in *In re Titanium Dioxide Antitrust Litigation*, 959 F. Supp. 2d 799 (D. Md. 2013); Public Statements by Tronox, (e.g., PX9005); and other documents and testimony: PX1030; PX1091; PX2242; PX6000; PX7025; PX1300; PX1046; PX1047; PX2035; PX5000; PX1178; PX1187; PX1037; PX1091; PX1153; PX1435; PX2050; PX1048; PX1305; PX1432; PX1448; PX1099; PX5004; PX7026; PX1300.

Tronox Interrogatory No. 4

Identify all of the specific documents, data, and/or persons with knowledge who you contend support you allegation that the sale of chloride TiO₂ is a relevant product market.

Response to Tronox Interrogatory No. 4

In addition to its General Objections, Complaint Counsel specifically objects to this interrogatory as unduly burdensome to the extent it seeks to compel Complaint Counsel to undertake investigation, discovery, and analysis on behalf of Respondent Tronox. Complaint Counsel specifically objects that the phrase “sale of chloride TiO₂ is a relevant product market” mischaracterizes the relevant markets alleged in the Complaint. In general, there are many documents, data, and persons that support the importance of chloride TiO₂ to North American customers. For example: Testimony of Customers (e.g., PX7044, PX8003, PX8006, PX7016, PX8001, PX8000, PX7025, PX7020; PX7030); Testimony of Chloride TiO₂ suppliers (e.g., PX8002, PX8004); Public Statements of Tronox (e.g., PX9012); and other documents: PX1322; PX1399; PX1427; PX9121; PX9104; PX9062; PX9049; PX5000; PX5002; PX5004.

Tronox Interrogatory No. 5

Identify the specific documents, data, and/or persons with knowledge who you contend support your allegation that the relevant geographic market is the sale of TiO₂ to North American customers.

Response to Tronox Interrogatory No. 5

In addition to its General Objections, Complaint Counsel specifically objects to this interrogatory as unduly burdensome to the extent it seeks to compel Complaint Counsel to undertake investigation, discovery, and analysis on behalf of Respondent Tronox. Complaint Counsel specifically objects that the phrase “the relevant geographic market is the sale of TiO₂ to North American customers” mischaracterizes the relevant markets alleged in the Complaint. In general, there are many documents, data, and persons that support markets of sales of chloride or rutile TiO₂ to North American customers. For example: Testimony of Tronox personnel (e.g., PX7001; PX7026); Testimony of Cristal personnel (e.g., PX2252; PX7043; PX7037); Public

Statements of Tronox (e.g., PX9008; PX9006); Testimony by Customers (e.g., PX7016; PX7025); and other documents and testimony: PX8002; PX8003; PX8004; PX1021; PX2039; PX2041; PX1345; PX1456; PX1739; PX1682; PX2315; PX2356; PX1105; PX2030; PX5000; PX1349; PX2027; PX1008; PX5004.

Tronox Interrogatory No. 6

Identify the specific documents, data, and/or persons with knowledge who you contend support your allegation that Tronox and its competitors, including Cristal, have conspired, colluded, coordinated (explicitly or tacitly), or engaged in parallel

Identify the specific documents, data, and/or persons with knowledge who you contend support your allegations that the Proposed Acquisition will result in anticompetitive effects.

Response to Tronox Interrogatory No. 7

In addition to its General Objections, Complaint Counsel specifically objects to this interrogatory as unduly burdensome to the extent it seeks to compel Complaint Counsel to undertake investigation, discovery, and analysis on behalf of Respondent Tronox. In general, there are a vast number of documents that support a likelihood of anticompetitive effects resulting from the Proposed Acquisition, including all the documents cited in these responses.

acknowledged that the “overwhelming portion” of its projected “synergies are ex U.S.” PX9101. To the extent that there is a portion of the remaining synergies fall within the United States or North America, Tronox bears the burden of demonstrating which of those synergies are cognizable efficiencies under the Merger Guidelines that will benefit the market for sales of chloride TiO₂ to North American customers. As described in response to Tronox Interrogatory No. 7, there are many examples of documents that support the likelihood of anticompetitive effects. Furthermore, there are many documents and testimony that call into question the cognizability of Respondents’ claimed efficiencies, for example: PX9101; PX9087; PX7008; PX7018; PX7006; PX2205; PX2206; PX7009; PX1286; PX2202; PX1079; PX7038; PX9000; PX1284; PX7012; PX1281; PX7042; PX2373; PX7017; PX1418; PX7023; PX5001; PX5002; PX5003; PX5005.

RESPONSES TO CRISTAL’S CONTENTION INTERROGATORIES:

Cristal Interrogatory No. 1

Identify all adjustments to production levels by TiO₂ producers that You contend were for the purpose of supporting higher prices rather than the result of maintenance or operational issues, including the dates of such conduct, the producer who adjusted its production, the plant at which production was adjusted, the amount by which TiO₂ output was adjusted, the grades of TiO₂ affected, and the amount by which prices were higher than they otherwise would have been (total and for each grade of TiO₂ affected).

Response to Cristal Interrogatory No. 1

In addition to its General Objections, Complaint Counsel specifically objects to this interrogatory as unduly burdensome to the extent it calls for Complaint Counsel to identify adjustments to production level by producers or plants other than those used to serve the North American market, and that it seeks Complaint Counsel to undertake investigation, discovery, and analysis on behalf of Respondent Cristal. Complaint Counsel further objects that this

Interrogatory incorrectly assumes that adjustments to production levels cannot be for the purpose of both influencing prices and for maintenance or other operational reasons. Dr. Nicholas Hill has analyzed output at Respondents' North American plants, and that analysis shows that Respondents periodically reduce output at their plants. *See* PX5000. For example, Tronox slowed production in 2015 for the purpose of influencing price but may also have conducted maintenance while production was slowed.

Cristal Interrogatory No. 8

Identify all of the specific documents, data, information, and/or persons with knowledge (including a specific description of relevant knowledge the persons have) who You contend support Your allegation in paragraph 34 of the Complaint that “North American purchasers of TiO₂ also have a number of distinct demand characteristics compared to TiO₂ purchasers in other regions,” and provide a description of all distinct demand characteristics of North American purchasers and why North American purchasers have such distinct demand characteristics.

Response to Cristal Interrogatory No. 8

Complaint Counsel reiterates

include: PX7044, PX8003, PX8006, PX7016, PX8001, PX8002, PX8004; PX8000, PX7025,
PX7020; PX1322; PX1399; PX1427; PX9121; PX9104; PX9062; PX9049; PX5000; PX5002;
PX5004; PX9012.

Dated: May 14, 2018

By: Dominic Vote

Dominic Vote
Bureau of Competition
Federal Trade Commission
400 7th Street, S.W.
Washington, D.C. 20024

Counsel Supporting the Complaint

CERTIFICATE OF SERVICE

I hereby certify that on May 14, 2018, I delivered via electronic mail a copy of the foregoing document to:

EXHIBIT B

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of

**Tronox Limited
a corporation,**

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And

**Cristal USA Inc.
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Docket No. 9377

**COMPLAINT COUNSEL’S SUPPLEMENTAL RESPONSES AND OBJECTIONS TO
RESPONDENT CRISTAL’S CONTENTION INTERROGATORIES (1, 8)**

Complaint Counsel hereby supplements the responses to Respondent Cristal’s Contention Interrogatories (“Respondent’s Interrogatories”). Subject to the General and Specific Objections below, and without waiving these objections, Complaint Counsel answers as follows:

GENERAL OBJECTIONS

Complaint Counsel reiterates the General Objections made in the March 1, 2018 Response to Cristal’s First Set of Interrogatories. The General Objections apply to all of Respondent’s Interrogatories and are hereby incorporated by reference into each of the following responses. The assertion of the same, similar, or additional objections or the provision of partial answers in response to an individual interrogatory does not waive any of Complaint Counsel’s general objections as to the other interrogatories.

**SPECIFIC OBJECTIONS AND SUPPLEMENTAL RESPONSES TO CRISTAL'S
CONTENTION INTERROGATORIES:**

Cristal Interrogatory No. 1

Identify all adjustments to production levels by TiO₂ producers that You contend were for the purpose of supporting higher prices rather than the result of maintenance or operational issues, including the dates of such conduct, the producer who adjusted its production, the plant at which production was adjusted, the amount by which TiO₂ output was adjusted, the grades of TiO₂ affected, and the amount by which prices were higher than they otherwise would have been (total and for each grade of TiO₂ affected).

Response to Cristal Interrogatory No. 1

In addition to its General Objections, Complaint Counsel specifically objects to this interrogatory as unduly burdensome to the extent it calls for Complaint Counsel to identify adjustments to production level by producers or plants other than those used to serve the North American market, and that it seeks Complaint Counsel to undertake investigation, discovery, and analysis on behalf of Respondent Cristal. Complaint Counsel further objects that this Interrogatory incorrectly assumes that adjustments to production levels cannot be for the purpose of both influencing prices and for maintenance or other operational reasons. Subject to the foregoing objections, Complaint Counsel answers by providing the following examples:

- A) Tronox adjusted production at Hamilton during the following periods: 1) August 2012 to October 2012; 2) September 2013 to February 2014; and 3) May 2015 to January 2016.

- E) Cristal idled and then subsequently closed its Hawkins Point Plant, MD in 2009–10.
- F) Cristal closed its facility in Le Havre, France in 2008.
- G) Tronox predecessor Kerr-McGee closed capacity in Savannah, GA in 2004.
- H) Tronox closed capacity in Savannah, GA in 2009.
- I) Chemours closed capacity in Edge Moor, DE in 2015.
- J) Chemours has idled capacity at New Johnsonville, TN since 2016.

Additional information regarding adjustments to output is available within the expert reports of Dr. Nicholas Hill—PX5000, PX5002, and PX5004—which were provided to Respondents on April 18, April 30, and May 10, respectively.

Cristal Interrogatory No. 8

Identify all of the specific documents, data, information, and/or persons with knowledge (including a specific description of relevant knowledge the persons have) who You contend support Your allegation in paragraph 34 of the Complaint that “North American purchasers of TiO₂ also have a number of distinct demand characteristics compared to TiO₂ purchasers in other regions,” and provide a description of all distinct demand characteristics of North American purchasers and why North American purchasers have such distinct demand characteristics.

Response to Cristal Interrogatory No. 8

Complaint Counsel reiterates the General Objections. Generally, North American customers demand chloride TiO₂ substantially more than in other regions (U.S. and Europe) and U.S. and European customers demand chloride TiO₂ substantially more than in other regions (U.S. and Europe) and U.S. and European customers demand chloride TiO₂ substantially more than in other regions (U.S. and Europe).

customers also demand the quality provided by the chloride TiO₂ offered by Respondents, as well as Chemours, Kronos, and Venator. Additional characteristics demanded by North American customers include: location, requirements for consistency of product, requirements for consistency of supply, and requirements for technical support.

The following is a non-exhaustive list of evidence in the record that supports this response:

The Expert Reports of Dr. Nicholas Hill, including materials and data cited or relied upon

The materials cited in Complaint Counsel's Pre-Trial Brief

Testimony from Customers, including exhibits used in depositions (PX7003, PX7016, PX7020, PX7025, PX7027, PX7030, PX7031, PX7033, PX7034, PX7039, PX7040, PX7044, PX7049; PX7051, PX8000, PX8001, PX8003, PX8006)

Tronox Earnings Call Transcripts (PX9000, PX9001, PX9002, PX9003, PX9004, PX9005, PX9006, PX9007, PX9008, PX9009, PX9010, PX9011, PX9012, PX9014, PX9015, PX9028, PX9030, PX9031, PX9032, PX9033, PX9034, PX9035, PX9036, PX9037, PX9099, PX9101).

Tronox Testimony, including exhibits used (PX7001, PX7002, PX7005, PX7006, PX7007, PX7011, PX7012, PX7013, PX7014, PX7019, PX7021, PX7022, PX7023, PX7024, PX7026, PX7029, PX7038, PX7041, PX7046, PX7047, PX7050).

Cristal Testimony, including exhibits used (PX7000, PX7004, PX7008, PX7009, PX7010, PX7017, PX7018, PX7032, PX7036, PX7037, PX7042, PX7043, PX7048; PX2246).

Supplier Testimony, including exhibits used in depositions (PX7015, PX7035, PX7052, PX7053, PX7054, PX8002, PX8004).

Many documents, including: PX1322; PX1399; PX1427; PX9121; PX9104; PX9062; PX9049; PX1003; PX1346; PX1324; PX2227; PX3038; PX1085; PX1449; PX1349; PX1317; PX1021; PX2462; PX2050.

The following customers have information about their requirements and preferences that supports the characteristics described above

Dated: May 17, 2018

By: Dominic Vote

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Bureau of Competition
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I hereby certify that on May 17, 2018, I served via other means, as provided in 4.4(b) of the foregoing Respondents Response to Complaint Counsel's Motion for Clarification, upon:

Seth Weiner
Arnold & Porter Kaye Scholer LLP
Respondent

Andrew Pruitt
Attorney