

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

COMMISSIONERS: **Joseph J. Simons, Chairman**
 Noah Joshua Phillips
 Rohit Chopra
 Rebecca Kelly Slaughter
 Christine S. Wilson

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

DECISION

The Federal Trade Commission (“Commission”), having issued its administrative Complaint charging Tronox Limited, National Industrialization Company (TASNEE), National Titanium Dioxide Company Limited (Cristal), and Cristal USA Inc. (each a “Respondent,” and collectively “Respondents”)

until the administrative review process and any later judicial proceedings had concluded, and the District Court having granted such motion and issuing an opinion concluding that the Commission had: (i) met its legal burden under Section 13(b); (ii) demonstrated a likelihood that the proposed Acquisition would substantially lessen competition in the relevant markets; and (iii) shown that a preliminary injunction was in the public interest; and

The Administrative Law Judge having issued an initial decision, based on full consideration of the entire record, concluding that Respondents' proposed Acquisition, if consummated, may substantially lessen competition within the relevant product and geographic

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of Saudi Arabia,

divisions, groups, and affiliates controlled by Cristal USA Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

E. “Ineos

N. “Confidential Business Information” means any non-public Business Information:

1. Obtained by Respondents prior to the Divestiture Date; or
2. Obtained by Respondent after the Divestiture Date, in the course of performing Respondents’ obligations under any Divestiture Agreement (including any Supply Agreement or Transition Assistance agreement);

Provided, however, that Confidential Business Information shall not include:

1. Information that is in the public domain when received by Respondents;
2. Information that is not in the public domain when received by Respondents and thereafter becomes public through no act or failure to act by Respondents;
3. Information that Respondents develop or obtain independently, without violating any applicable law or this Order, and without breaching any confidentiality obligation with respect to the information; and
4. Information that becomes known to Respondents from a third party not in breach of applicable law or a confidentiality obligation with respect to the information.

O. “Consent” means any approval, consent, ratification, waiver, or other authorization.

P. “Contract” means a contract, J 0 0a any approve (n)-4 (t)-6 a co.p(“C)l (hC /Dl (i)-2)l (h02 Tc -0.002

4.

- CC. “Shared Products” means TiO₂ products that, prior to the Divestiture Date, are produced by both the TiO₂ Business and Respondents’ retained businesses located outside North America, listed on Appendix III to this Order.
- DD. “Supply Agreement” means an agreement for Transitional Product Supply that has received the prior approval of the Commission.
- EE. “TiO₂” means titanium dioxide, titanium tetrachloride, and any intermediate products, by-products, co-products, combinations, or materials and formulations derived from or incorporating titanium dioxide or titanium tetrachloride, regardless of process, applications, devices, form, grade, finishing, or product type.
- FF. “TiO₂ Assets” means all of Respondent Cristal’s legal or equitable rights, title, and interests in and to all tangible and intangible assets, wherever located, relating to the TiO₂ Business (including assets removed and not replaced after the announcement of the Acquisition), including:
1. The Ashtabula Complex;
 2. The BATC Facility; *provided, however*, that the BATC Sublease may be substituted for the BATC Facility lease, if so requested by the Acquirer;
 3. The TiO₂ Business Exclusive Products and TiO₂ Business Exclusive Intellectual Property;
 4. Real property interests owned, leased or otherwise held, including easements and a

- b. Corporate, business, or other names of Respondents or any logo, trademark, service mark, domain name, trade or other name or any derivation thereof;
- c. Software that can readily be purchased or licensed from sources other than Respondents and that has not been materially modified (other than through user preference settings);
- d. Enterprise software that Respondent Cristal also uses in businesses other than the TiO2 Business;
- e. The portion of any books and records that contains information about any business other than the business divested to an Acquirer;
- f. Any original document that Respondents have a legal, contractual, or fiduciary obligation to retain the original; *provided, however*, that Respondents shall provide copies of the record and shall provide the Acquirer access to the original materials if copies are insufficient for regulatory or evidentiary purposes; and
- g. The following assets, unless the Commission, in its sole discretion and within 12 months of the date this Order is issued, determines in consultation with the Acquirer and the Monitor, that any such assets are necessary for the Acquirer to operate the TiO2 Assets or TiO2 Business in a manner that achieves the purposes of this Order:
 - i. Excluded Contracts;
 - ii. Shared Intellectual Property, but only if the Shared Intellectual Property License is granted pursuant to Paragraph II of this Order;
 - iii. Those assets listed at Non-Public Appendix X to this Order.

GG. “TiO2 Business” means the research, development, manufacture, commercialization, distribution, marketing, exportation, advertisement, and sale of TiO2 in or from North America by Respondent Cristal.

HH. “TiO2 Business Exclusive Intellectual Property” means Intellectual Property that, prior to the Divestiture Date, is used or held for use by the TiO2 Business and not by any of Respondents’ retained businesses, including the Intellectual Property described in Non-Public Appendix IV to this Order.

II. “TiO2 Business Exclusive Products” means TiO2 products that, prior to the Divestiture Date, are produced, sold, or held for use by the TiO2 Business and not by any of Respondents’ retained businesses, including the products listed on Appendix II to this Order.

JJ. “TiO2 Employees” means:

- 1. Respondents’ employees who were employed by or under contract with the TiO2 Business (including, among others, all employees of the Ashtabula Complex and BATC Facility), or who regularly dedicated a portion of his/her time supporting, supervising, or working on behalf of the TiO2 Business, at any time between January 1, 2017 and the Divestiture Date; and

2. Any other of Respondents' employees or contractors who have advised, consulted, supervised, or performed work for or on behalf of the TiO2 Business (including on a part-time, temporary, or ad hoc basis) at any time between January 1, 2017 and the Divestiture Date;

Provided, however, that TiO2 Employees may exclude those employees listed on Non-Public Appendix IX to this Order ("Retained Shared Employees").

- KK. "Transition Assistance" means services, assistance, cooperation, training and access to personnel regarding the transfer and operation of the TiO2 Business, including, but not limited to, accounting and finance, human resources (employee benefits, payroll, etc.) information technology and systems, logistics (purchasing, distribution, warehousing, supply chain management, etc.), manufacturing (technology, technology transfer, operating permits and licenses, regulatory compliance, quality control, manufacturing processes and troubleshooting, etc.), research and development, and sales and marketing (including customer service, supply chain management, and customer transfer logistics, etc.).
- LL. "Transitional Product Supply" means Respondents' provision of supply of TiO2, and/or any component or input thereof (including supplies of feedstock and raw materials), to an Acquirer.

II. (Divestiture)

IT IS FURTHER ORDERED that:

- A. Within 30 days of the Acquisition Date, Respondents shall divest, absolutely and in good

any TiO₂ product in North America, and (iv) commercialize, distribute, market, import, export, advertise and sell any TiO₂ product worldwide;

shall be at least 24 months after the Divestiture Date; and

2. Allow the Acquirer to terminate, in whole or part, any Transition Assistance provisions of the Divestiture Agreement upon commercially reasonable notice and without cost or penalty.
- 3.

4. Respondents shall remove any impediments within the control of Respondents that may deter any TiO2 Employees from accepting employment with a proposed Acquirer, including, but not limited to, removal of any non-compete or confidentiality provisions of employment or other contracts with Respondents that may affect the ability or incentive of those individuals to be employed by a proposed Acquirer, and shall not make any counteroffer to any TiO2 Employees who receive an offer of employment from the Acquirer; *provided, however*, that nothing in this Order shall be construed to require Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of any employee;
 5. Respondents shall provide TiO2 Employees with sufficient financial incentives to continue in their positions, and as may be necessary to facilitate the employment of such TiO2 Employees by the proposed Acquirer. Such incentives shall include a continuation of all employee compensation and benefits offered by Respondents, including regularly scheduled or merit raises and bonuses, regularly scheduled vesting of pension benefits, and additional incentives as may be necessary.
- B. If, at any point within 6 months of the Divestiture Date, the Commission, in consultation with the Acquirer and the Monitor, determines in its sole discretion that the Acquirer should have the ability to interview, make offers of employment to, or hire any employee designated as a Retained Shared Employee on Non-Public Appendix IX, then the Commission may notify Respondents that such employee is to be removed from the Retained Shared Employees list, and the provisions of this Paragraph V shall apply to such employee as of that notification date.
- C. For a period of 2 years from the Divestiture Date, Respondents shall not, directly or indirectly, solicit or induce, or attempt to solicit or induce, any TiO2 Employee who has accepted an offer of employment with, or who is employed by, an Acquirer to terminate his or her employment relationship with the Acquirer.
- Provided, however*, a violation of this provision will not occur if:
1. The TiO2 Employee's employment has been terminated by the Acquirer;
 2. Respondents advertise for employees in newspapers, trade publications, or other media not targeted specifically at any one or more of the employees of the Acquirer; or
 3. Respondents hire a TiO2 Employee who has applied for employment with Respondents, provided that such application was not solicited or induced in violation of this Order.

VI. (Asset Maintenance)

IT IS FURTHER ORDERED

- A. Take such actions as are necessary to maintain the full economic viability, marketability, and competitiveness of the TiO2 Assets, to minimize any risk of loss of competitive potential of the TiO2 Assets, to operate the TiO2 Assets in the regular and ordinary course of business and in accordance with past practice and in a manner consistent with applicable laws and regulations, and to prevent the destruction, removal, wasting, deterioration, or impairment of the TiO2 Assets (including regular repair and maintenance effort), except for ordinary wear and tear. Respondents shall not sell, transfer, encumber, terminate the operations of, or otherwise impair the TiO2 Assets (other than in the manner prescribed in this Order), nor take any action that lessens the full economic viability, marketability, or competitiveness of the TiO2 Assets; and
- B. Conduct or cause to be conducted the TiO2 Business in the regular and ordinary course of business and in accordance with past practice and as may be necessary to preserve the full economic viability, marketability, and competitiveness of the TiO2 Business, 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 TiO2 Business;

Provided, however, that Respondents shall not be in violation of this Paragraph VI if Respondents take actions (i) as explicitly permitted or required by any Divestiture Agreement, or (ii) that have been requested or agreed-to by an Acquirer, in writing, and approved in advance by the Monitor (in consultation with Commission staff), in all cases to facilitate the Acquirer's acquisition of the TiO2 Assets and consistent with the purposes of the Order.

VII. (Additional Obligations)

IT IS FURTHER ORDERED that:

- A. 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

acts, or bad faith by the Monitor. For purposes of this Paragraph VIII.G, the term “Monitor” shall include all persons retained by the Monitor pursuant to Paragraph VIII.F of this Order.

- H. Respondents shall report to the Monitor in accordance with the requirements of this Order or the Order to Maintain Assets, 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 and the Order to Maintain Assets. 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 this Order unless otherwise directed by the Commission or its staff.
- I. Respondents may require the Monitor and each of the Monitor’s consultants, accountants, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Monitor from providing any information to the Commission.
- J. The Commission may require, among other things, the Monitor and each of the Monitor’s consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor’s duties.
- K. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor:
 - 1. The Commission shall select the substitute Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within 10 days after the notice by the staff of the Commission to Respondents of the identity of any proposed Monitor, Respondents shall be deemed to have consented to the selection of the proposed Monitor.
 - 2. Not later than 10 days after the appointment of the substitute Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all rights and powers necessary to permit the Monitor to monitor Respondents’ compliance with the relevant terms of this Order, the Order to Maintain Assets, and the Divestiture Agreement in a manner consistent with the purposes of the orders and in consultation with the Commission.
- L. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.
- M. The Monitor appointed pursuant to (i)ary to

IX. (Divestiture Trustee)

IT IS FURTHER ORDERED that:

- A. If Respondents have not fully complied with the obligations of Paragraph II of this Order, the Commission may appoint one or more Divestiture Trustees to divest any or all of the TiO₂ Assets, enter Supply Agreements and agreements for Transition Assistance, grant the Shared Intellectual Property License, and perform Respondents' other obligations in a manner that satisfies the requirements of this Order. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to divest the required assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph IX shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including one or more court-appointed Divestiture Trustees, pursuant to Section 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 may select one or more Divestiture Trustees, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Commission may appoint one Divestiture Trustee or separate Divestiture Trustees to divest one or more of the TiO₂ Assets, enter Supply Agreements and agreements for Transition Assistance, grant the Shared Intellectual Property License, and perform Respondents' other obligations in a manner that satisfies the requirements of this Order. Any Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, and stated in writing their reasons for opposing, the selection of any proposed Divestiture Trustee within 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.
1. Not later than 10 days after the appointment of a Divestiture Trustee, Respondents shall execute a trust agreement for any divestitures required by this Order 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 effectuate the divestitures required by, and satisfy the additional obligations imposed by this Order. Any failure by Respondents to comply with a trust agreement approved by the Commission shall be a violation of this Order.
 2. 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:
 - a. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to effectuate the divestitures required by, and satisfy the additional obligations (including obligations to

provide Transition Assistance, Transitional Product Supply, and grant the Shared Intellectual Property

assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. Any Divestiture Trustee shall account for all monies derived from the divestitures and all expenses incurred. After approval by the Commission 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 Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of any 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.

- f. Respondents shall indemnify any 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, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, malfeasance, willful or wanton acts, or bad faith by the Divestiture Trustee.
 - g. Any Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
 - h. Any Divestiture Trustee shall report in writing to Respondents and to the Commission every 30 days concerning the Divestiture Trustee's efforts to accomplish the divestitures.
 - i. Respondents may require any Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
- C. If the Commission determines that any 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 IX.
- D. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of any Divestiture Trustee, issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures required by this Order.

X. (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 ve vd (s 2 (e))Tj [(a)T5mJ 0.0012 -n 0.92 0 a.D2 (pl)-2 i.92 0 a.i[4 (nt)i.92 0

compliance report to the Monitor if the Commission has appointed one in this matter.

XI. (Change in Respondent)

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least 30 days prior to:

- A. Any proposed dissolution of Respondent Tronox Limited;
- B. Any proposed acquisition, merger or consolidation of Respondent Tronox Limited; or
- C. Any other change in Respondents, including assignment and the creation, sale, or dissolution of subsidiaries, if such change may affect compliance obligations arising out of this Order.

XII. (Access)

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and 5 days' notice to the relevant Respondent, made to its principal place of business as identified in this Order, registered office of its United States subsidiary, or its headquarters office, the notified Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all business and other records and all
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XIV. (Term)

IT IS FURTHER ORDERED that this Order shall terminate 10 years from the date it is issued.

By the Commission.

April J. Tabor
Acting Secretary

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APPENDIX I

Ineos Divestiture Agreement

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

APPENDIX II

TiO₂ Business Exclusive Products

Tiona 596
Tiona 596(S) slurry
Tiona 595 slurry
Tiona 188
Tiona RCS-P
Tiona RCL-6
Tiona RCL-2
Tiona RCS-2
Tiona RCL-188
Tiona RCL-535
Tiona RCS-535

APPENDIX III

Shared Products

Tiona RCL-4

Tiona RCL-69

Tiona 595

Tiona 696

Tiona RCL-9

Tiona RCL-722

All aqueous and anhydrous grades of TiCl_4

APPENDIX IV

TiO₂ Business Exclusive Intellectual Property

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

APPENDIX V

Shared Intellectual Property

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

APPENDIX VI

Shared Contracts

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

APPENDIX VII

Excluded Contracts

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

APPENDIX VIII
Monitor Agreement

APPENDIX VIII-1

Monitor Compensation

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

APPENDIX X

Excluded Assets

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