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UNITED STATES OF AMERICA
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,

Respondents

DOCKET NO. 9377

Non-party Venator Materials PLC, by its attorneys, seeks leave to respond to Respondents' Joint Motion To Amend the Protective Order Governing Confidential Information.

Venator produced highly confidential information in response to a Subpoena Duces Tecum and a Civil Investigation Demand issued by the Federal Trade Commission during its

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Venator's response speaks directly to the effect that Respondents' motion would have on Venator's highly confidential information. Importantly, Venator could be prejudiced, and its ability to compete harmed, by the outcome of Respondents' motion.

Dated: February 1, 2018

Respectfully submitted,

/s/ William Vigdor
Evan Miller
Ryan Will

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ATTORNEYS FOR VENATOR

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similarly sensitive information. Yesterday, Respondents, which are competitors of Venator, emailed three subpoenas to Venator asking for extremely sensitive commercial information and testimony regarding pricing and other topics.

On January 19, 2018, Respondents jointly moved to modify the Protective Order to grant access to this sensitive information to select in-house counsel who, by their own testimony, routinely attend and participate in business planning meetings. Disclosures of highly confidential information of Venator to these individuals would be highly prejudicial to Venator. Declaration of Mahomed Maiter, Paragraph 9 (attached hereto as Exhibit A) (hereinafter, "Maiter Decl. ¶ __"); Declaration of Russell Stolle, Paragraph 15 (attached hereto as Exhibit B) (hereinafter, "Stolle Decl. ¶ __").

It is our understanding that the Commission plans to oppose the Respondents' motion,¹ and that the Commission's Rules of Practice for Adjudicatory Proceedings generally prohibit the amendment of the form protective order to grant in-house counsel access to confidential information. *See* Appendix A to 16 C.F.R. § ("Confidential material shall be disclosed only to: (a) . . . ; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), *provided they are not employees of a respondent*" (emphasis added)); FTC Proposed Rule Amendments with Request for Comment, 73 Fed. Reg. 58,832, 58,838 (Oct. 7, 2008) (noting that employing a form protective order ensures "that discovery obligations").

If the Court is inclined to grant Respondents' motion, Venator respectfully requests that the Court further amend the Protective Order to include a second level of confidential information

¹ Respondents' Motion states that Complaint Counsel opposes the Motion. *See* Respondents' Mot. at 1, n.1.

for highly sensitive commercial information and to prohibit Respondents' in-house counsel from accessing that level of confidential material.

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this proceeding including in Venator's case particularly sensitive transaction level data. It is for

[REDACTED]

Argument

I. Venator Relied on the Court's Protective Order to Protect Highly Sensitive Commercial Information

This Court has previously held that a protective order is not a license to discover information that is not discoverable under the Federal Rules of Civil Procedure. *See* Amgen v. H. Lundbeck A/S, 2013 WL 1131033 (S.D. Cal. Mar. 14, 2013).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

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II.

If this Court is inclined to grant Respondents' motion, Venator respectfully requests that this Court further revise the Protective Order to establish a second level of confidential information—"highly confidential information"—and prohibit Respondents' in-house counsel from accessing such information. Venator requests that "highly confidential information" be

[REDACTED]

a competitor.

In their declarations, Messrs. Koutras and Kaye admit that they interact with individuals that are involved in competitive decision-making, and participate in meetings where competitively

competitive information is discussed. See Dep. Mem. Ex. A-43-4 and Ex. B-44. There is [REDACTED]

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is particularly acute. Accordingly, this Court should exclude this data from disclosure under the Protective Order.

As previewed above, in the event that this Court grants Respondents' motion, Venator

[REDACTED]

Add the following sentence to the end of Paragraph 1:

"Highly confidential information shall only be disclosed to the individuals identified below:

[REDACTED]

Add the following sentence to the end of Paragraph 7:

Highly confidential material shall only be disclosed to the individuals identified below:

[REDACTED]

Conclusion

In reliance on the Protective Order, Venator did not object to the Commission providing highly confidential commercial information to outside counsel for the Respondents. In light of Respondents' request to now make such information available to its in-house counsel, Venator respectfully requests that if the Court were to grant Respondents' motion such grant be limited to

ensure that "highly confidential information" is not disclosed to anyone other than the individuals identified below:

[REDACTED]

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Dated: February 1, 2018

Respectfully submitted,

/s/ William Vigdor
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**ATTORNEYS FOR VENATOR
MATERIALS PLC**

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the sale of Titanium Dioxide by Venator, on detailed production and manufacturing data sets for the production of Titanium Dioxide by Venator, and on confidential business plans.

5. The customer-specific transaction-level data includes the line-item detail of each transaction conducted by Venator, showing customer-specific information including

customer name and address, product grade, price, quantity supplied, format of packaging and delivery, and ship-to-location (the "Customer-Specific Transaction-Level Data"). The detailed production and manufacturing data sets contain detailed information on production

levels and costs, production location, material flow, and other information.

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information because they are critical to developing and implementing pricing and customer strategies. This data is used to monitor and measure customer purchases and profits, to inform our negotiation strategy with customers, and to configure our commercial and competitive offer to individual customers. Venator would not share the Customer-Specific

Transaction Level Data and the Detailed Production and Manufacturing Data Set

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Mahomed Maiter

Mahomed Maiter

[REDACTED]

[REDACTED]

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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of
Tronox Limited,
a corporation,

[REDACTED]

DECLARATION OF RUSSELL R. STOLLE

1. My name is Russell R. Stolle. I am Senior Vice President, General Counsel, and Chief Compliance Officer of Venator Materials PLC ("Venator"). I submit this Declaration in Support of Non-Party Venator Material PLC's Response to Respondents' Joint Motion to Amend

[REDACTED]

4. I am aware of the circumstances surrounding the Federal Trade Commission's ("FTC") investigation of the merger of Tronox Limited ("Tronox") and National Titanium Dioxide Company Limited (Cristal) to the extent that it pertains to information requests made of Venator by the FTC and Venator's responses

[REDACTED]

5. On June 14, 2017, the FTC issued a subpoena duces tecum (the "SDT") and a

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

10. On December 7, 2017, the staff of the EPC informed [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

counsel that it was filing suit and would be required to disclose to outside counsel of Cristal and

Tronox and their experts the information produced to the EPC by Monsanto and [redacted]

[redacted]

[redacted]

[redacted]

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~~in the administrative proceeding and the ETC's order of suspension. Member did not...~~
[Redacted text block]


Russell R. Stolle

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Attachment A

From: Tovsky, Robert S. [mailto:RTOVSKY@ftc.gov]
Sent: Thursday, December 7, 2017 1:13 PM
To: Vigdor, William R. <wvigdor@velaw.com>
Subject: Tronox-Cristal

Dear Billy,

[REDACTED]

Commission's investigation of the proposed transaction between Tronox and Cristal. As described in the following FTC press release, <https://www.ftc.gov/news-events/press->

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CERTIFICATION OF ELECTRONIC FILING

[REDACTED]

/s/ William Vigdor

[REDACTED]

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CERTIFICATION OF SERVICE

I HEREBY CERTIFY that on this 1 of February 2018, that I filed the foregoing documents electronically using the FTC's E-Filing System, which will send notification of such filings to:

Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Rm. H-113
Washington, DC 20580

The Honorable D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Rm. H-110

[REDACTED]

I also hereby certify that I caused a true and correct copy of the foregoing documents to be served upon the following via electronic mail:

Bruce Hoffman
Haidee Schwartz
Chuck Loshkin

Dominic Vote
Jon Nathan

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Matt Reilly
Michael Williams
David Zott
Andrew Pruitt
Susan Davies
Michael Becker
Megan Wold
Karen McCartan DeSantis

James Cooper
Peter Levitas
Ryan Watts
Seth Weiner
Matthew Shultz
Albert Teng

Arnold & Porter Kaye Scholer Fierman

[REDACTED]

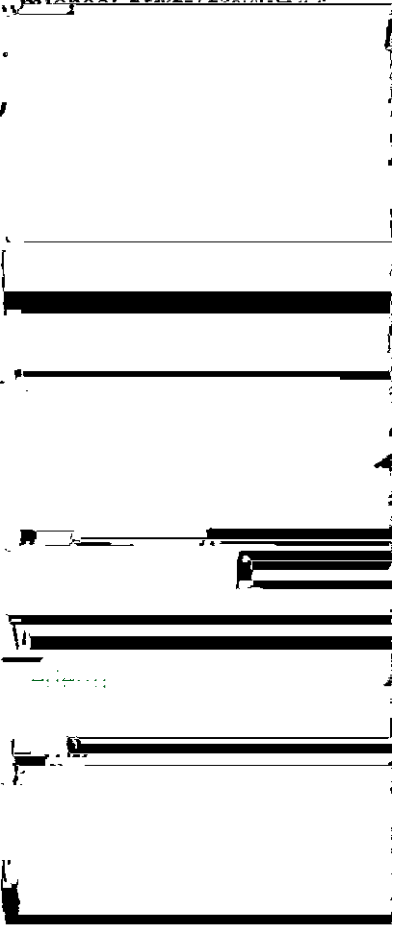
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