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and exported to and from every region of the world. Specifically, TiO2 customers in the U.S. Canada are supplied significantly by imports, and prices in these countries are co-integrated wit global prices, indicating a global market. Statistical analysis confirms that Complaint Couns proposed U.S./Canada market fails Complaint Counselôs own test for determining whether market is properly defined: if a hypothetical monopolist tried to impose a small but significant non-transitory increase in price ñ (SSNIPò) for TiO2 in the U.S. and Canada, TiO2 producers fr other regions of the world would send product to that market, rendering the price inc unprofitable.

Complaint Counselôs chloride-only product market is improperly defined, too. All rutile TiO2, whether produced by the chloride or the sulfate process, is interchangeable in the vas majority of applications. As a result, prices of chloride- and sulfate-produced TiO2 are co integrated, showing that they trade in a single market. And here again, Complaint Cou proposed chloride-only market fails Complaint Counselôs own hypothetical monopolist test because the market response from sulfate-process TiO2 producers would render any SSNIP unprofitable.

In a properly defined geographic and product market (the global market for all rutile TiO2) post-transaction market concentration would be too low to pose a threat to competition. Complai Counsel is able to show concentration numbers capable of threatening competition only by adopting its gerrymandered, chloride-only, sales to U.S./Canada market definition. Inde

in investigations that the TiO2 market is a single, global market for all rutile TiO2, whethe produced by the chloride or the sulfate process. Complaint Counselôs proposed market is resu driven and does not correspond to reality.

Even if Complaint Counselôs proposed market were properly defined, this transactio would still be pro-competitive because, as described, it will expand TiO2 output and delive verifiable, substantial, transaction-specific synergies. Additionally, Chinese TiO2 producers a powerful new market entrants who are rapidly gaining shares of North American TiO2 sales changing the competitive makeup of the market and decreasing concentration.

Complaint Counsel nevertheless purports to show that competitive effects are likely post-transaction in the form of unilateral output reductions or coordinated effects, but the evidenc cannot support Complaint Counselôs claims. Profitability in the TiO2 industry depends on runni production facilities full-out, maximizing output to reduce marginal fixed costs. Complain Counselôs examples of past output reductions in the industry did not cause price increases an were never intended to do so: these were rational business decisions responding to dire economi conditions. Furthermore, economic modeling confirms that the combined company coul profitably decrease output unilaterally because of the natural response of competitors. To be sur Complaint Counselôs economic expert purports to show otherwise, but Dr. Nicholas Hillôs calculations adopt unjustifiable assumptions that bias his simulation toward predicting unilater output reduction. When those unjustifiable assumptions are replaced with assumptions that reality, Dr. Hillôs own model shows that small reductions in output will prompt competitiv responses that render the reduction unprofitable.

Complaint Counsel claims that coordination already occurs in the TiO2 industry and tha post-transaction coordination is likely, but here again, Complaint Counselôs evidence cannot bac

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5 [redacted].

6 [redacted]

7 [redacted] (citing R I 198 (TZMI, "TiO2 Pi g ent Supply / emand," Nov. 2017)).

B. The Transacting Companies.

1. Tronox, Ltd.

Tronox, Ltd. is a public company traded on the New York Stock Exchange (T R). Tronox's co 1 orate headquarters are in Stamford, Connecticut, and it is registered to do business under the laws of Australia. Tronox manufactures pigment at three plants: Hamilton (Mississippi), Kwinana (Australia), and Botlek (The Netherlands). Tronox also conducts mining and other feedstock operations to supply its pigment plants, as follows: at the KwaZulu-Natal Sands operation (South A f ica), Tronox mines mineral sands and operates a smelter complex to produce titanium slag; at the Namakwa Sands operation (South A f ica), Tronox mines mineral sands and operates a smelter complex to produce titanium slag; and at the Weste r Australia operation, Tronox mines mineral sands and re f nes ilmenite to produce synthetic r tile.[8]

Overall, Tronox is long on feedstock. Tronox's mining facilities produce more feedstock than the company's TiO2 manu f cturing f cilities can use. As a result, Tronox sells some of its f edstock to other TiO2 manufacturers. Many manufacturers, however, prefer to source their feedstock f om non-competitor suppliers because in the event of shortage, a competitor supplier will prioritize its own needs. As a result, during some time periods, Tronox experiences decreased feedstock demand and is le f with unused feedstock capacity.[9]

2. Cristal, Ltd.

The National Titanium Dioxide Company Ltd. (hereafter, "Cristal"), is a privately held company registered under the laws of the Kingdom of Saudi Arabia. The National Industrialization Company ("TASNEE") is a joint stock company registered under the laws of the Kingdom of Saudi Arabia. TASNEE owns 79% of Cristal. Cristal USA, Inc. is a wholly owned

[8]

subsidiaiy of Cristal through which Cristal conducts its business activities in the United States. Cristal operates TiO2 pi g ent manu f cturing f cilities on five continents: Ashtabula I (Ohio), Ashtabula II (Ohio), Yanbu (Saudi Arabia), Stallingborough (United Kingdom), Bunbmy (Australia), Bahia (Brazil), Tikon (China), and Thann (France). Cristal mines feedstock in Brazil and Australia. Cristal's mines yield ve!y little high-grade feedstock,

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C. The Transaction.

Tronox has proposed to acquire Cristal in a $2.4 billion transaction that will pro

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cyclical pricing is well recognized in the industry. Price cycles typically last between 18 and 60 months and proceed in phases, with a peak consisting of accelerating price increases and strong sales volumes, and a trough characterized by falling prices as customers with large accumulated inventories purchase less TiO2.[19]

Even at the peak of a price cycle, however, margins in the industry are thin.[20] Thin margins are caused by several factors: (1) the commodity nature of TiO2 in most applications; (2) producers' relatively high fixed costs; and (3) structural impediments that prevent TiO2 producers from matching supply to demand.[21] High fixed costs place a premium on increasing plant utilization, which is a primary financial goal in the industry.[22] Achieving higher utilization rates dilutes fixed costs and allows producers to reduce prices.[23] Low utilization rates are not economically feasible; raising utilization rates has a significant positive effect on profitability.[24]

As a cyclical industry that suffers deep demand troughs and enjoys thin margins even in the best of times, TiO2 production is highly competitive.

LEGAL STANDARD

Section 7 of the Clayton Act prohibits a corporation from acquiring another where "the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly." 15 U.S.C. § 18. In a case challenging a transaction under the Clayton Act, Complaint

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Counsel has the ñultimate burden of proving a Section 7 violatî *United States v. Sungard Data Sys., Inc.)*&SG"&

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proposed acquisitionôs probable effect on competition.ò *FTC v. Staples, Inc.)*&S

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ARGUMENT

I. ALL RUTILE TiO2 COMPETES IN THE GLOBAL MARKET REGARDLESS OF PRODUCTION PROCESS.

Complaint Counselôs theory of this case depends on defining an artificially narrow market confined to only chloride TiO2 sold in North America. Complaint Counsel has failed to meet its burden to show that is a properly defined relevant market. *See In re Polypore Int'l, Inc.*

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Chemours expolis [redacted] from the United States, which is more than the entire production of any one single plant.[33]

Tronox's competitors also acknowledge impolis as a source of competition against their products and prices. [redacted]

TiO2 producers in evely region of the world, including Nolih America, supply their products globally. Trade fows in and out of Nolih America amply demonstrate that the Nolih American market does not operate in isolation. The sum of all imports to and expolis fom North America each year is *greater* than total Nolih American TiO2 consumption.[37] In paiiicular, imports account f r nearly a quaiier of TiO2 consumption in Nolih America,[38] while at most - of the TiO2 produced in Nolih A erica is shipped to customers in Nolih America to stay in the region.[39] Moreover, the amount of TiO2 impolied to Nolih America is rising yeai by year. In 2010, impolied TiO2 accounted for - of North American consumption, but by 2016, that number had risen to - of N0lih American consumption.[40] This substantial increase in expolis is disproportion - io

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Complaint Counselôs results-driven, sales to ñNorth Americaò market is particularly artificial because it limits ñNorth Americaò to the United States and Canada while excluding Mexico. Numerous industry resources, including those on which Complaint Counselôs expert, Dr. Hill, relies, include Mexico as part of North America when reporting information about the TiO2 industry.[48] While that convention is not universal among industry analysts, it is plainly consistent with the reality of TiO2 production on the North American continent: Mexico is an easily accessible source of TiO2 for U.S. customers. Since 2016, competitor Chemours has relocated TiO2 production capacity formerly located in the United States W h m c c

[redacted]

Customer-specific pricing infonnation confinns that prices equilibrate across regions because producers can choose to purchase TiO2 globally and use that reality as leverage when negotiating price. For example, large, multinational paint companies have si ificant buying power when purchasing fom TiO2 manufacturers and [redacted][58] Customers are also encouraging increasing impo1ts fom China into No1th America to expand customers' buying power in negotiations with North American producers. The globalizing price pressures at work in the TiO2 market are only increasing as a result of si ificant market consolidation due to mergers and acquisitions among leading TiO2 customers. This globalization is forcing [redacted][60]

TiO2 trade flows outside of No1th America also afect available supply within North America, frther demonstrating the global reality of the TiO2 market. When Chinese expo1ts supply customers that had been previously supplied by TiO2 produced in No1th America, the result is additional product in No1th America [redacted]

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3. In the United States/Canada geographic market, a hypothetical monopolist would not be able to impose a SSNIP.

Applying the hypothetical monopolist test to Complaint Counsel's so-called North American (United States/Canada) geographic market reveals that the market is not properly defined. North American customers have the incentive and ability to turn to the significant quantities of TiO_2

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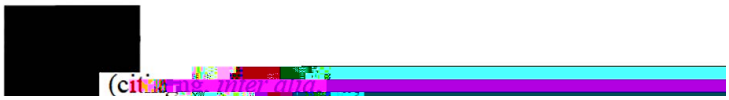

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competitors in the relevant market, with an approximate share of production and share of capacity.[102] Even if Complaint Counsel can show a relevant market limited to U.S. sales, the Merger Guidelines, Ä5.2, provide that, in a commodity market, market share should be calculated based on capacity readily available to serve the market. Thus, even in a TiO2 market limited to U.S. sales, market share should be calculated globally because global TiO2 production serves North America.

II. EVEN IF COMPLAINT COUNSEL HAS ESTABLISHED A PRIMA FACIE CASE, RESPONDENTS CAN REBUT IT.

Even if Complaint Counsel has established a prima facie case, it is a weak one, and Respondents will rebut it. ñIn *General Dynamics KHFUHPH&RUWDKRIJKDWOKRXK vð*

1. The economics of TiO2 production incentivize operating at peak capacity to maximize effciency.

The TiO2 industiy bears exceptionally high fixed

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is ah-eady contributing financially, technically, and operationally to bring the Jazan slagger into operation.[122] Tronox will loan up to $125 million to f cilitate slagger staii-up. Successfully initiating production at the Jazan slagger will inject approximately - of additional high-grade f edstock into the combined company's feedstock supply.[123] This quantity of high-grade f edstock would be enough to f ed the annual needs of the world's largest most productive TiO2 production facility.[124] Tronox has conducted in-depth diligence in developing its plan to repair the Jazan slagger.[125]

3. The combined company will further reduce fixed costs through operating rates.

The combined company will further reduce f xed costs by increasing its operating rates through implementing Tronox's established, proven best practices.

Historically, Cristal's Yanbu (Saudi Arabia) pigment plant has operated well below nameplate capacity.[126] Despite attempts to expand Yanbu's capacity, Cristal has been persistently unable to address existing bottlenecks and other challenges that limit operations at Yanbu.[127] Tronox, however, is uniquely positioned to improve operations at Yanbu because the facility r ns on technology owned by Tronox's f rmer parent company, Ke l -McGee, and Tronox operates that same technology to great success at its Hamilton (Mississippi) pi g ent plant.[128] Since 2012, on average, Yanbu operates at - of nameplate capacity, while Hamilton operates at - of

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123 [redacted]

124 [redacted]; R 0105 (TZMI, "Global TiO2 Pigment Producers

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B. China Is A Powerful New Market Entrant And Is Rapidly Gaining Share Of North American Sales.

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tenn supply contract established to f ther collaboration between Lomon Billions and PPG, Lomon Billions built a chloride plant in Henan China using technology provided by PPG.[142] Beginning in December 2015, PPG sta1ted using chloride

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3. Dr. Hill's economic modeling, when per f rmed cor rectly, does not show that the combined company could pro f tably decrease production unilaterally.

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digits, and profts were plummeting into negative te1Tito1y. Indeed, at the worst times in the downward cycle, Tronox's fnancial outlook eerily resembled its condition around the time when it declared [redacted]

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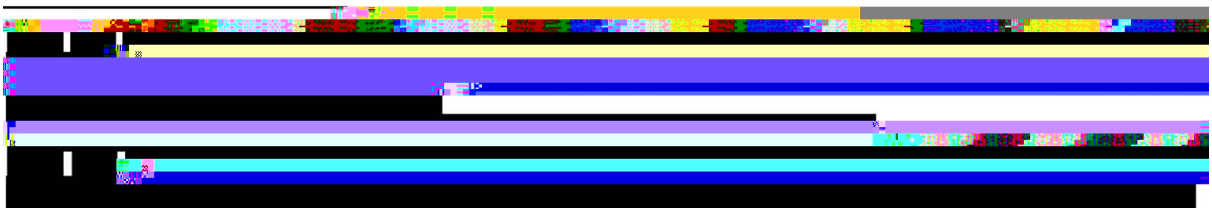

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[redacted].[194] [redacted]

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[196] [redacted]

[redacted].[197] These widely used contract provisions leave substantially all of the risk created by fluctuations in TiO2 prices on the producers, not the customers.

These large and power f l customers are success f l in negotiating vigorously to lower prices, and pitting competitors against each other, because producers must keep their plants r nning " f ll-out" to maximize pro f tability. Thus, even small reductions in sales can put severe financial strnin on producers.

Ordinaiy comse documents f om Respondents and non-paiiies are replete with instances of TiO2 producers engaging in intense competition f r customers.[198] Competition for Respondents' business comes not just f om "Weste r " producers- C hemoms (fo1merly DuPont), Venator (fonnerly Huntsman), and Kronos - but also f om other global producers such as Lomon Billions and ISK, as well as other Chinese producers. [redacted]

2. Price announcements are a legitimate part of the competitive process.

Complaint Counsel cites producers' public price increase announcements, some of which occuned close in time and were similai in amount, as evidence that TiO2 producers tacitly

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TiO2 customers also flex their buying power by sponsoring entiy and expansion. •

[redacted] The countervailing buying power of customers is only growing st:onger, as evidenced by recent consolidation amongst Respondents' downst·eam customers.[210]

Customers can insulate themselves fom the volatility of the TiO2 price cycle by stoc k iling product, which fmiher exacerbates price volatility for TiO2 producers. To hedge against variance in TiO2 prices over time, and because TiO2 is easily shipped and can be stored f r long periods without spoilage, customers will o fen buy excess TiO2 to store as inventoiy in anticipation of price peaks. When customers sense demand is waning, they "de-stock," or stai releasing their TiO2 inventories, and stop buying TiO2, which sends price on a downward cascade.[211]

In sum, customers' countervailing buying power also shows the competitive vitality of the TiO2 market, which makes Complaint Counsel's coordination theoiy all the more implausible when tested against the realities of the TiO2 marketplace.

4. TiO2 suppliers have different incentives and cost structures, which makes coordination extremely difficult and highly unlikely.

Each producer's incentives are unique to its paiiicular circumstances, making aligning those incentives through coordination difficult or impossible. Although TiO2 producers sell similar products, their methods and the costs of producing TiO2 products differ dramatically fom

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209 RX0229 (ec. 15, 2015 PPG Press Release, "PPG Begins Using Chloride-Based TiO2 fom Henan Billions in Coatings Production") at 1.

210 [redacted]

211 [redacted]

producer to producer. Specifically, TiO2 producers have a diversity of (1) cost positions and (2) scales of operations, such as capacity and production. This wide diversity of incentives among competing producers, both globally and within North America, fmstrntes the ability of competitors even to reach tenns of agreement for a coordinated scheme, much less to monitor perfonnance under or en f rce any agreement.[212]

The cost of producing TiO2 di f ers substantially across producers, as well as across di f erent plants operated by any given producer. As a result, each producer has a di f erent optimal price for a given product, so any one price is unlikely to satis f the interests of each competitor.[213] These cost points are also quite volatile, requiring individual producers to adjust price regularly to account f r changing costs. The degree to which producers are sensitive to shi f s in different types of costs varies widely f om producer to producer. Even i f suppliers could reach an a g eement on pricing or quite

pricing and the lack of trnnsparency regarding production decisions. TiO2 pricing is not published. Rather, TiO2 pricing is the result of individualized negotiations between a producer and a customer, and the price of a given product at a gF

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b. The record from the civil litigation is outdated.

The *Guidelines* [illegible]

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241 [redacted].

242 [redacted]

243 [redacted]

244 RX0199 (Aug. 19, 2010 Horizontal Merger Guidelines) at [redacted]

245 See [redacted] RX1021 (Apr. 10, 2015 Gristch Am. Answers & Counterclaims) [redacted]

/s/ Michael F. Williams, P.C.
Michael F. Williams, P.C.
Matthew J. Reilly, P.C.
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 2005
(202) 879-5000
(202) 879-5200 (facsimile)

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Counsel supporting Complaint

Counsel for Respondents National Industrialization Company2753

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Michael Becker
Kirkland & Ellis LLP
mbecker@kirkland.com
Respondent

Karen McCartan DeSantis
Kirkland & Ellis LLP
kdesantis@kirkland.com
Respondent

Megan Wold
Kirkland & Ellis LLP
megan.wold@kirkland.com
Respondent

Michael DeRita
Kirkland & Ellis LLP
michael.derita@kirkland.com
Respondent

Charles Loughlin
Attorney
Federal Trade Commission
cloughlin@ftc.gov
Complaint

Cem Akleman
Attorney
Federal Trade Commission
cakleman@ftc.gov
Complaint

Thomas Brock
Attorney
Federal Trade Commission
TBrock@ftc.gov
Complaint

Krisha Cerilli
Attorney
Federal Trade Commission
kcerilli@ftc.gov
Complaint

Steven Dahm
Attorney
Federal Trade Commission
sdahm@ftc.gov
Complaint

E. Eric Elmore
Attorney
Federal Trade Commission
eelmore@ftc.gov
Complaint

Sean Hughto
Attorney
Federal Trade Commission

shughto@ftc.gov
Complaint

Joonsuk Lee
Attorney
@aRocj T* teKfC C Mission

Federal Trade Commission
cwaldeck@ftc.gov
Complaint

Katherine Clemons
Associate
Arnold & Porter Kaye Scholer LLP
katherine.clemons@arnoldporter.com
Respondent

Eric D. Edmondson
Attorney
Federal Trade Commission
eedmondson@ftc.gov
Complaint

David Morris
Attorney
Federal Trade Commission
DMORRIS1@ftc.gov
Complaint

Zachary Avallone
Kirkland & Ellis LLP
zachary.avallone@kirkland.com
Respondent

Rohan Pai
Attorney
Federal Trade Commission
rpai@ftc.gov
Complaint

Rachel Hansen
Associate
Kirkland & Ellis LLP
rachel.hansen@kirkland.com
Respondent

Peggy D. Bayer Femenella
Attorney
Federal Trade Commission
pbayer@ftc.gov
Complaint

Grace Brier
Kirkland & Ellis LLP
grace.brier@kirkland.com
Respondent

Alicia Burns-Wright
Attorney
Federal Trade Commission
aburnswright@ftc.gov
Complaint

I hereby certify that on May 16, 2018, I served via other means, as provided in 4.4(b) of the foregoing Respondents Pre-Trial Brief, upon:

Seth Weiner
Arnold & Porter Kaye Scholer LLP
Respondent

Andrew Pruitt
Attorney