

**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

ORDER TO MAINTAIN ASSETS

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”) with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and the Respondents having been served with a copy of the Complaint, together with a notice of contemplated relief, and having filed their answers denying said charges; and

The Commission thereafter having filed a motion in the United States District Court for the District of Columbia seeking a preliminary injunction under Section 13(b) of the Federal Trade Commission Act to prevent Respondents from consummating the proposed Acquisition

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 markets alleged in the Complaint, and ordering that the Acquisition be enjoined pursuant to Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act; and

Respondents, their attorneys, and counsel for the Commission, having thereafter executed an Agreement Containing Consent Orders ("Consent Agreement"), containing: (1) an admission by Respondents of all the jurisdictional facts set forth in the aforesaid Complaint; (2) waivers and other provisions as required by the Commission's Rules; (3) certain representations made by Respondents solely for the purpose of achieving a settlement in this matter concerning the effects of the acquisition that is the subject of the Complaint; and (4) a proposed Decision and Order and Order to Maintain Assets; and

The Secretary of the Commission having thereafter withdrawn the matter from adjudication in accordance with § 3.25(d) of its Rules; and

The Commission having thereafter considered the matter and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments in conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, now in conformity with the procedure prescribed in § 3.25(f) of its Rules, the Commission makes the following jurisdictional findings and issues the following Order to Maintain Assets:

1. Respondent Tronox Limited is a public company organized, existing, and doing business under, and by virtue of the laws of Western Australia, with its executive offices and principal place of business located at 263 Tresser Blvd #1100, Stamford, Connecticut 06901.
2. Respondent National Industrialization Company ("TASNEE") is a limited company organized, existing, and doing business under, and by virtue of, the laws of the Kingdom of Saudi Arabia, with its executive offices and principal place of business located at Building C3, Business Gate, Eastern Ring Road, Cordoba Area, Riyadh 11496, Kingdom of Saudi Arabia. TASNEE is the majority owner and ultimate parent of Respondent National Titanium Dioxide Company Limited (Cristal).
3. Respondent National Titanium Dioxide Company Limited ("Cristal") is a corporation organized, existing, and doing business under, and by virtue of, the laws of the Kingdom of Saudi Arabia, with its executive offices and principal place of business located at Sari

Street, Al Rabwah District, P.O. Box 13586, Jeddah, Kingdom of Saudi Arabia 21414, Jeddah, Saudi Arabia. Cristal's primary U.S. subsidiary is Respondent Cristal USA Inc.

4. Respondent Cristal USA Inc. is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its executive offices and principal place of business located at 6752 Baymeadow Drive, Glen Burnie, MD 21060 USA.
5. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of Respondents, and this proceeding is in the public interest.
6. For the sole purpose of settling this matter with the Commission, Respondents do not dispute that the likely effect of the Acquisition, if consummated, may be substantially to lessen competition within the relevant product and geographic markets alleged in the Complaint and as determined by the initial decision of the Administrative Law Judge in this matter.

I. (Definitions)

IT IS ORDERED that, as used in this Order to Maintain Assets, the following definitions, and all other definitions used in the Consent Agreement and the Decision and Order, shall apply:

- A. "Asset Maintenance Period" means the period commencing on the date the Commission issues this Order to Maintain Assets and ending on the Divestiture Date.
- B. "Assets To Be Maintained" means the TiO₂ Assets and the TiO₂ Business.
- C. "Decision and Order" means:
 1. The proposed Decision and Order contained in the Consent Agreement in this matter until issuance of a final Decision and Order by the Commission; and
 2. The Final Decision and Order issued by the Commission in this matter, following the issuance of a final Decision and Order by the Commission.

II. (Asset Maintenance)

IT IS FURTHER ORDERED that during the Asset Maintenance Period, Respondents shall operate the Assets To Be Maintained in the ordinary course of business consistent with past practices, and shall:

- A. Take such actions as are necessary to maintain the full economic viability, marketability, and competitiveness of the Assets To Be Maintained, to minimize any risk of loss of competitive potential of the Assets To Be Maintained, to operate the Assets To Be Maintained in a manner consistent with applicable laws and regulations, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Assets To Be Maintained, except for ordinary wear and tear. Respondents shall not sell, transfer,

encumber, terminate the operations of, or otherwise impair the Assets To Be Maintained (other than in the manner prescribed in the Decision and Order or this Order to Maintain Assets), nor take any action that lessens the full economic viability, marketability, or competitiveness of the Assets To Be Maintained; and

- A. Conduct or cause to be conducted the Assets To Be Maintained in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance efforts) and as may be necessary to preserve the full economic viability, marketability, and competitiveness of the Assets To Be Maintained, 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 Assets To Be Maintained. Included in the above obligations, Respondents shall, without limitation:
1. Make any payment required to be paid under any contract or lease when due, and otherwise satisfy all liabilities and obligations associated with the Assets To Be Maintained;
 2. Provide the Assets To Be Maintained with sufficient financial and other resources to operate at least at current rates of operation, to meet all capital calls, to perform routine or necessary maintenance, to repair or replace facilities and equipment, and to carry on at least at their scheduled pace all capital projects, business plans, development projects, and commercial activities;
 3. Provide such other resources as may be necessary to respond to competition against the Assets To Be Maintained, prevent diminution in sales of the Assets To Be Maintained, and maintain the competitive strength of the Assets To Be Maintained;
 4. Provide support services at levels customarily provided by Respondents;
 5. Maintain all licenses, permits, approvals, authorizations, or certifications related to or necessary for the operation of the Assets To Be Maintained, and otherwise operate the Assets To Be Maintained in accordance and compliance with all regulatory obligations and requirements;
 6. Maintain the Business Information of the Assets To Be Maintained;
 7. Maintain the working conditions, staffing levels, and a work force of equivalent size, training, and expertise associated with the Assets To Be Maintained, including:
 - a. Continuing to provide each of the TiO₂ Employees with all employee benefits offered by Respondents, including regularly scheduled or merit raises and bonuses, and regularly scheduled vesting of all benefits;

- b. Providing reasonable financial incentives to encourage TiO2 Employees to continue in his or her position until the Divestiture Date, and as may be necessary to facilitate the employment of such TiO2 Employees by the proposed Acquirer following the Divestiture Date;
 - c. When vacancies occur, replacing the employees in the regular and ordinary course of business, in accordance with past practice; and
 - d. Not transferring any of the TiO2 Employees to any of Respondents' assets or businesses that Respondents will not be divesting; and
8. Not reduce, change, or modify in any material respect, the levels of production, quality, pricing, service, or customer support typically associated with the Assets To Be Maintained, other than changes in the ordinary course of business.

Provided, however, that Respondents shall not be in violation of this Paragraph II if Respondents take actions (i) that are 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 Assets To Be Maintained and consistent with the purposes of the Decision and Order.

III. (Additional Obligations)

IT IS FURTHER ORDERED that:

- A. During and after the Asset Maintenance Period, Respondents shall not:
- 1. Provide, disclose, or otherwise make available any Confidential Business Information to any person, except as required or permitted by this Order to Maintain Assets, the Decision and Order, or a Divestiture Agreement; or
 - 2. Use any Confidential Business Information for any reason or purpose, other than as required or permitted by this Order to Maintain Assets, the Decision and Order, or a Divestiture Agreement.

Provided, however, that nothing in this Paragraph III shall prevent Respondents from retaining and using any tangible or intangible property that Respondents retain the right to use pursuant to this Order (including Shared Intellectual Property), provided further that to the extent that the use of such property involves disclosure of Confidential Business Information to another person, Respondents shall require such person to maintain the confidentiality of such Confidential Business Information under terms no less restrictive than Respondents' obligations under this Order.

- B. Respondents shall devise and implement measures to protect against the storage, distribution, and use of Confidential Business Information that is not permitted by this Order to Maintain Assets, the Decision and Order, or any Divestiture Agreement. These measures shall include, but not be limited to, restrictions placed on access by persons to information available or stored on any of Respondents' computers or computer networks.
- C. No later than 10 days after the Divestiture Date, and no less than annually for 3 years after the Divestiture Date, Respondents shall provide written notification of the restrictions on the use and disclosure of the Confidential Business Information by Respondents' personnel to all of its officers, directors, employees, or agents who may have possession or access to such Confidential Business Information. Respondents shall require such personnel to acknowledge in writing or electronically their receipt and understanding of these written instructions, and shall maintain custody of these written instructions and acknowledgments for inspection upon request by the Commission.
- D. 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 to the Acquirer in an efficient and timely manner.
- E. No later than the Divestiture Date, Respondents shall, at their sole expense, obtain each Consent required to transfer the TiO2 Assets, including Contracts and Governmental Authorizations; *provided however*, that Respondents shall assist the Acquirer in obtaining the Contracts or Governmental Authorizations which Respondents have no legal right to assign, transfer or sublicense (even by obtaining relevant Consents).
- F. Respondents shall cooperate and assist the Acquirer (or any other person with whom Respondents engage in negotiations to acquire the TiO2 Assets) with a due diligence investigation of the TiO2 Assets and the TiO2 Business, including by providing sufficient and timely access to all information customarily provided as part of a due diligence process.
- G. Respondents shall cooperate with and assist any proposed Acquirer of the TiO2 Assets to evaluate independently and offer employment to the TiO2 Employees, with such cooperation to include at least the following:

1. Not later than 5 business days after a request from a proposed Acquirer, Respondents shall, to the extent permitted by applicable law:
 - a. Provide to the proposed Acquirer a list of all TiO2 Employees and provide Employee Information for each; and
 - b. Allow the proposed Acquirer a reasonable opportunity to interview any TiO2 Employees;
2. Within 10 days after a request from a proposed Acquirer, Respondents shall provide an opportunity for the proposed Acquirer to:
 - a. Meet personally, and outside the presence or hearing of any employee or agent of Respondents, with any of the TiO2 Employees; and
 - b. Make offers of employment to any of the TiO2 Employees;
3. Respondents shall not directly or indirectly interfere with a proposed Acquirer's offer of employment to any one or more of the TiO2 Employees, not offer any incentive to TiO2 Employees to decline employment with a proposed Acquirer, and not otherwise interfere with the recruitment of any TiO2 Employees by a proposed Acquirer; and
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.

IV. (Purpose Clause)

IT IS FURTHER ORDERED that the purpose of this Order to Maintain Assets is to (i) maintain and preserve the Assets To Be Maintained as a viable, marketable, competitive, and ongoing business until the divestitures required by the Decision and Order are achieved; (ii) prevent interim harm to competition pending the relevant divestiture and other relief; and (iii) promote achieving the purposes of the Decision and Order.

V. (Monitor)

IT IS FURTHER ORDERED that:

- A. Gerald Colamarino shall serve as the Monitor pursuant to the agreement executed by the Monitor and Respondents, and attached as Appendix VIII ("Monitor Agreement") and

Non-Public Appendix VIII-1 (“Monitor Compensation”) to the Decision and Order. The Monitor is appointed to monitor Respondents’ compliance with the terms of this Order to Maintain Assets, the Decision and Order, and the Divestiture Agreement.

- B. No later than 1 day after the Acquisition Date, Respondents shall, pursuant to the Monitor Agreement, confer on the Monitor all rights, powers, and authorities necessary to permit the Monitor to monitor Respondents’ compliance with the terms of this Order to Maintain Assets, the Decision and Order, and the Divestiture Agreement, in a manner consistent with the purposes of the orders.
- C. Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
 - 1. The Monitor shall have the power and authority to monitor Respondents’ compliance with the divestiture and related requirements of this Order to Maintain Assets, the Decision and Order, and the Divestiture Agreement, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the orders.
 - 2. The Monitor shall act in consultation with the Commission or its staff, and shall serve as an independent third party and not as an employee or agent of the Respondents or of the Commission.
 - 3. The Monitor shall serve until 15 days after the Monitor has completed his/her final report pursuant to Paragraph VIII.H of the Decision and Order, or until such other time as may be determined by the Commission or its staff.
- D. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondents’ personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondents’ compliance with its obligations under this Order to Maintain Assets, the Decision and Order, and the Divestiture Agreement.
- E. Respondents shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor’s ability to monitor Respondents’ compliance with this Order to Maintain Assets, the Decision and Order, and the Divestiture Agreement.
- F. The Monitor shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have the authority to employ, at the expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor’s duties and responsibilities.
- G. Respondents shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor’s duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations 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, willful or wanton

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

- H. Respondents shall report to the Monitor in accordance with the requirements of this Order to Maintain Assets or the Decision and Order, 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 to Maintain Assets and the Decision and Order. 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 the Decision and 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 to Maintain Assets, the Decision and Order, 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 to Maintain Assets.

- M. The Monitor appointed pursuant to this Order to Maintain Assets may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of the Decision and Order.

VI.(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 verified written reports (“compliance reports”) in accordance with the following:
1. Within 30 days after this Order to Maintain Assets is issued, and every 30 days thereafter until this Order to Maintain Assets terminates, Respondents shall submit to the Commission verified written reports (“compliance reports”) setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with all provisions of this Order to Maintain Assets and the Decision and Order. Each compliance report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondents are in compliance with this Order to Maintain Assets and the Decision and Order. Conclusory statements that Respondents have complied with their obligations under this Order to Maintain Assets and the Decision and Order are insufficient. Respondents shall include in their reports, among other information or documentation that may be necessary to demonstrate compliance, a full description of the measures Respondents have implemented or plan to implement to ensure that they have complied or will comply with each paragraph of this Order to Maintain Assets and the Decision and Order, and such supporting materials shall be retained and produced later if needed.
 2. Each compliance report shall be verified in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function. Respondents shall submit an original and 2 copies of each compliance report as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a), including a paper original submitted to the Secretary of the Commission and electronic copies to the Secretary at ElectronicFilings@ftc.gov

and to the Compliance Division at bccompliance@ftc.gov. In addition, Respondents shall provide a copy of each compliance report to the Monitor if the Commission has appointed one in this matter.

Provided, however, that, after the Decision and Order in this matter is issued as final, the reports due under this Order to Maintain Assets may be consolidated with, and submitted to the Commission on the same timing as, the compliance reports required to be submitted by Respondents pursuant to the Decision and Order.

VII. (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.

VIII. (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 documentary material and electronically stored information as defined in Commission Rules 2.7(a)(1) and (2), 16 C.F.R. § 2.7(a)(1) and (2), in the possession or under the control of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at the request of the authorized representative of the Commission and at the expense of the Respondent; and
- B. To interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

IX. (Purpose)

IT IS FURTHER ORDERED that the purpose of this Order is to remedy the harm to competition the Commission alleged in its Complaint and ensure an Acquirer can operate the

TiO2 Business in a manner equivalent in all material respects to the manner in which Respondent Cristal operated the TiO2 Business prior to the Acquisition.

X. (Term)

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate at the earlier of:

- A. 3 business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. The day after Respondents' (or a Divestiture Trustee's) completion of the divestiture of the TiO2 Assets, as described in and required by Paragraph II of the Decision and Order;

Provided, however, that if at the time such divestitures have been completed, the Decision and Order in this matter is not yet final, then this Order to Maintain Assets shall terminate three business days after the Decision and Order becomes final;

Provided, further, however, that if the Commission, pursuant to Paragraph II.C of the Decision and Order, requires the Respondents to rescind the divestitures to Ineos, then, upon rescission, the requirements of this Order to Maintain Assets shall again be in effect until the day after Respondents' (or a Divestiture Trustee's) completion of the divestiture of the assets required by the Decision and Order.

By the Commission.

April J. Tabor
Acting Secretary

SEAL

ISSUED: April 10, 2019