FEDERAL TRADE COMMISSION
PROTECTING AMERICA'S CONSUMERS

FTC Challenges Proposed Merger of Major Titanium Dioxide Companies

Agency alleges that combining Tronox Limited and Cristal would reduce competition for white pigment used in a variety of products ranging from paint to plastic

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FOR RELEASE

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TAGS: Manufacturing | Industrial Goods | Bureau of Competition | Competition | Merger | Horizontal

The Federal Trade Commission issued an administrative complaint challenging the merger of two top suppliers of chloride process titanium dioxide ("TiO2"), a white pigment used in a wide variety of products including paint, industrial coatings, plastic, and paper.

The FTC's administrative complaint [a public version of which will be linked to this news release shortly] charged that Tronox Limited's proposed acquisition of competitor Cristal, for $1.67 billion and a 24 percent stake in the combined entity, would violate the antitrust laws by significantly reducing competition in the North American market (comprised of the United States and Canada) for chloride process titanium dioxide. The FTC alleges that the acquisition, if consummated, would increase the risk of coordinated action among the remaining competitors, and increase the risk of future anticompetitive output reductions by Tronox.

The Commission also authorized agency staff to seek a temporary restraining order and preliminary injunction in federal court, if necessary, to maintain the status quo pending an administrative trial on the merits.

Stamford, Conn.-based Tronox, and Cristal, which is headquartered in Saudi Arabia, are two of the top three producers of chloride process titanium dioxide in the North American market.

Titanium dioxide is manufactured using either a chloride process or a sulfate process. According to the FTC's complaint, the vast majority of titanium dioxide sold in the United States and Canada is made using the chloride process, which produces brighter, more durable coatings than the sulfate process. The FTC alleges that, in the North American market, sulfate titanium dioxide is not a viable substitute for chloride process titanium dioxide. The complaint notes that the major customers for titanium dioxide in the North American market, principally coatings manufacturers, could not easily or cost-effectively shift away from chloride process titanium dioxide in favor of sulfate process titanium dioxide.

The Commission alleges that without a remedy, the acquisition would allow the newly merged firm and the other top supplier, Chemours Company, to control the vast majority of chloride titanium dioxide sales in the North American market and more than 80 percent of chloride titanium dioxide manufacturing capacity in the North American market.

According to the complaint, the acquisition would increase the likelihood of successful coordination among the remaining four suppliers. The market is already dominated by a few large players with a history of seeking to support higher prices by restricting production.

According to the complaint, proprietary technology and the significant investment needed to build a new titanium dioxide plant constitute significant barriers to entry into the market from new producers, and expansion by existing producers sufficient to defeat anticompetitive effects in the North American market is unlikely.

Recently, the Third U.S. Circuit Court of Appeals observed in Valspar Corp. v. E.I. DuPont de Nemours and Co., 873 F.3d 185 (3rd Cir. 2017) that the titanium dioxide industry "is an oligopoly" that is "dominated by a handful of firms" and has "substantial barriers to entry." The Third Circuit recognized further that the industry is "primed for anticompetitive interdependence" and "it operated in that manner," without the need for an explicit conspiracy. The evidence supporting the FTC's complaint shows that the proposed merger would make that situation even worse—a classic case for prohibiting a merger under Section 7 of the Clayton Act.

The complaint names Tronox, Cristal's U.S. agent Cristal USA, and Cristal's ultimate parent companies, Saudi Arabia-based National Industrialization Company and National Titanium Dioxide Company Limited.

On December 3, 2017, Tronox issued a press release announcing that "the waiting period in the United States under the Hart-Scott-Rodino Act expired at 11:59 p.m. EST on Dec. 1, 2017 without further action by or communication from the U.S. Federal Trade Commission." However, the statutory waiting period had expired on or about Oct. 7, 2017, and the subsequent period was the subject of a written agreement not to close between the merging firms and Commission staff. That agreement required the parties to provide Commission staff 10 business days of advance notice before consummating the transaction. At the time of Tronox's press release, the company was aware that the matter was pending before the Commission for imminent further action, and that it could not close the proposed acquisition because of still pending reviews in other jurisdictions.

The Commission vote to issue the administrative complaint and to authorize staff to seek a temporary restraining order and preliminary injunction in federal court was 2-0. The administrative trial is scheduled to begin on May 8, 2018.

NOTE: The Commission issues an administrative complaint when it has "reason to believe" that the law has been or is being violated, and it appears to the Commission that a proceeding is in the public interest. The issuance of the administrative complaint marks the beginning of a proceeding in which the allegations will be tried in a formal hearing before an administrative law judge.

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