

## Tronox/Cristal: FTC Market Tests Proposed Ineos Remedy, Boosting Settlement Prospects

### FTC Update

Tronox's (TROX) latest proposal to fix antitrust concerns with its planned acquisition of Cristal's titanium dioxide business—a divestiture to U.K. chemical company Ineos—is being market tested by Federal Trade Commission staff, sources familiar with the matter said.

Under the proposal, Tronox would divest Cristal's Ashtabula, Ohio facility to Ineos, the sources said. As part of the market test, agency staff attorneys recently spoke with titanium dioxide customers, including paint, coatings and plastics companies, to determine whether the proposed remedy would resolve their concerns with the proposed merger, the sources said.

The solicitation of market feedback shows that staff is seriously considering the fix, raising the possibility that the FTC and Tronox could move toward settling the agency's suit to block the Cristal acquisition before an administrative judge is set to rule on the case late next month.

FTC staff's treatment of the settlement offer contrasts with its approach to Tronox's earlier proposal to fix the Cristal deal's antitrust issues by divesting the Ashtabula facility to Venator, an existing titanium dioxide market participant. The FTC never conducted a full market test of that remedy offer, the sources said.

London-based Ineos is one of the world's largest chemical firms by revenue, according to its most recent annual report. The company's chemical production includes ethylene, propylene and ethylene oxide, but not titanium dioxide.

Cristal's operations in Ashtabula, Ohio include two titanium dioxide plants and represent the company's entire production presence in North America. The facility's sale to Ineos would eliminate the overlap between Tronox and Cristal in North American titanium dioxide production and broadly restore pre-merger market concentration.

In suing to block the Tronox/Cristal acquisition in December 2017, the FTC alleged that the deal would lessen competition in the sale of titanium dioxide to North American customers.

A Tronox spokesperson declined to comment beyond the company's most recent earnings call. An FTC spokesperson declined to comment. Spokespeople for Cristal and Ineos didn't respond to requests for comment.

**Progress.** Tronox CEO Jeff Quinn said on a November 6 earnings call that the company had made “substantial progress” in discussions with an unnamed acquirer for the Ashtabula facility, adding that the companies and buyer were “engaged in ongoing discussions with the FTC” that could conclude in the coming days.

“We are optimistic that the FTC will come to the conclusion that the proposed remedial transaction addresses their concerns about the Cristal transaction,” Quinn said.

Tronox and Cristal had entered into a July 16 agreement with Venator that included a 75-day exclusivity period for discussions around the sale of the Ashtabula facility. That exclusivity window expired on October 1 without a definitive agreement.

**FTC history.** The Tronox/Cristal transaction has been characterized by an unusual and lengthy FTC process.

Tronox announced an agreement to acquire Cristal’s titanium dioxide business on February 21, 2017 for \$1.67 billion in cash and a 24 percent stake in the combined entity.

The FTC challenged the deal on December 5, 2017. But because the merger remained under review in Europe, the FTC didn’t immediately seek a preliminary injunction in federal district court, and instead pursued a challenge in its in-house administrative tribunal.

The EC cleared the deal on July 4, subject to a divestiture of Tronox’s global business in titanium dioxide pigment for paper laminate. In response, the FTC filed a July 10 motion for preliminary injunction in federal district court, which Judge Trevor McFadden granted on September 5, barring the transaction’s close pending the in-house tribunal’s decision.

The in-house evidentiary hearing concluded on June 22. Judge D. Michael Chappell, the FTC’s in-house administrative law judge, is slated to issue his decision on the deal on or before December 19.

**Settlement timing.** But Chappell’s pending decision could complicate settlement prospects.

As the agency’s reviews of the Praxair/Linde and Fresenius/NxStage transactions have shown, merger settlement talks under the new slate of FTC commissioners have been unusually time consuming.

Even if FTC staff and the Bureau of Competition’s front office conclude that the Ineos proposal would address their competition concerns, the agency’s commissioners would still need time to evaluate and vote on the settlement package.

It's not clear that such a process could conclude before December 19 unless the commission is motivated to accelerate a vote to avoid the possibility of a litigation loss.

If a settlement package is near completion, the FTC could also seek to suspend the in-house litigation prior to the December 19 deadline for Chappell's decision.

Despite the looming deadline, the FTC enjoys significant leverage in remedy discussions, given that it has already won a federal court injunction against the deal and is awaiting a decision in its "home court" in-house tribunal, where the losing party's appeal is directly to commissioners themselves.