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Subject: FW: Tronox
Date: Wed, 13 Feb 2019 14:06:28 +0000

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Tronox, FTC See 'Progress' On Deal To Clear \$2.4B Cristal Buy

By [Bryan Koenig](#)

Law360 (February 12, 2019, 9:00 PM EST) -- [Tronox Ltd.](#) said Tuesday it has "made significant progress" in settlement talks to resolve a [Federal Trade Commission](#) challenge over competitive concerns from a planned \$2.4 billion deal with chemical mining and processing company Cristal.

That progress comes as Tronox appeals an FTC administrative law judge's [December findings](#) that the merger could hurt competition and drive up prices for a certain type of titanium dioxide, a white pigment. In a statement, Tronox said it and the FTC had filed a joint motion seeking a delay of the company's appeal to the agency's commissioners, reflecting "progress in advancing settlement discussions."

"Tronox and the staff of the FTC have made significant progress in our settlement discussions and all parties continue to work constructively and diligently to address concerns raised by the FTC," Tronox President and CEO Jeffry N. Quinn said in a statement.

According to the company's announcement, Tronox is continuing [to push a remedy](#) calling for the divestiture of an Ohio facility to INEOS Enterprises AG for \$700 million to win clearance.

In challenging the merger, the FTC had argued the deal could drive up prices for chloride-based titanium dioxide in the U.S. and Canada. The pigment is used in a range of products, from paints and industrial coatings to plastic and paper, and the commission is concerned with a version made with chloride, rather than sulfate.

In early December, Administrative Law Judge D. Michael Chappell agreed that the deal would create a "highly concentrated" market and increase the likelihood of coordination among the remaining players in the space after the merger. He also found Tronox and Cristal had not made a compelling enough argument about the benefits of the deal to save it.

On Tuesday, Quinn stood by the proposed sale of Cristals' North American titanium dioxide business to INEOS that Tronox says should address the FTC's competition concerns.

"We continue to believe that INEOS' demonstrated success in operating chemical businesses will inject new energy into the North American TiO₂ industry to the benefit of consumers," Quinn said. "We appreciate the diligence and attention given by all parties to advancing remedy discussions so we may finalize the Cristal acquisition and turn our focus toward unlocking value for our shareholders and better serving our global customers."

The FTC declined comment Tuesday and a copy of the joint stay motion was not immediately available.

Judge Chappell's initial decision late last year came after a [REDACTED] federal judge issued [a preliminary injunction](#) in September preventing the deal from closing until the FTC's administrative process concludes. Because that injunction was issued, the ALJ's decision was subject to automatic review by the full commission.

According to the ALJ's initial decision, the companies argued the relevant market should include versions of the pigment made using both the chloride and sulfate processes, but the judge found that they differ. Testimony from various manufacturers, as well as Tronox's own business documents, show the chloride version is of a higher quality and cannot be substituted with the sulfate version, the judge found.

The companies also tried to argue that North America was not a relevant market for the merger analysis because all manufacturers of titanium dioxide compete in a global market. But Judge Chappell found that suppliers set their prices on a regional basis, and that buyers of the pigment cannot turn to suppliers in other regions.

The case is In the Matter of Tronox Ltd.; National Industrialization Co. (TASNEE); National Titanium Dioxide Co. Ltd. (Cristal); and Cristal USA Inc., docket number 9377, before the Federal Trade Commission.