

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

TRONOX LTD.,
NAT'L INDUSTRIALIZATION CO.
NAT'L TITANIUM DIOXIDE CO. LTD.,
and
CRISTAL USA, INC.,

Defendants.

Civil Action No. ____-cv-____

ORAL ARGUMENT REQUESTED

**PLAINTIFF FEDERAL TRADE COMMISSION'S MOTION
FOR A PRELIMINARY INJUNCTION**

Plaintiff Federal Trade Commission moves this Court pursuant to Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. § 53(b), for a preliminary injunction against the proposed merger involving Defendants Tronox Limited, National Industrialization Company, National Titanium Dioxide Company, and Cristal USA, Inc., until the final conclusion of the Commission's proceedings to determine whether the merger is lawful. A trial before an Administrative Law Judge has already been completed in the Commission's administrative proceeding, and a preliminary injunction is necessary to prevent the Defendants from merging their operations while a decision in that proceeding is pending. The Commission has provided a detailed memorandum in support of this motion.

The Commission has determined that it has "reason to believe" that the proposed merger of Defendants would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act, 15 U.S.C. § 45. The Commission voted to authorize the administrative complaint in

this matter on December 5, 2017. The administrative trial began on May 18, 2018 and has been completed. The record for the administrative trial closed on June 27, 2018.

Section 13(b) applies the same standard for temporary restraining orders and preliminary injunctions. 15 U.S.C. § 53(b) (“Upon a proper showing that, weighing the equities and considering the Commission’s likelihood of ultimate success, such action would be in the public interest, and after notice to the defendant, a temporary restraining order or a preliminary injunction may be granted without bond.”). As the U.S. Court of Appeals for the D.C. Circuit has made clear, under Section 13(b) of the Federal Trade Commission Act, a preliminary injunction should issue when “such action would be in the public interest—as determined by a weighing of the equities and a consideration of the Commission’s likelihood of success on the merits.” *FTC v. H.J. Heinz Co.*, 246 F.3d 708, 714 (D.C. Cir. 2001). Here, as explained in detail in the accompanying Memorandum in Support, a preliminary injunction is in the public interest because the Commission’s complaint counsel is likely to succeed on the merits in the ongoing administrative proceeding, and because strong public equities favor effective enforcement of the antitrust laws and preserving the status quo pending the completion of that proceeding. *Id.* at 726 (“The principal public equity weighing in favor of preliminary injunctive relief is the public interest in effective enforcement of the antitrust laws.”). Furthermore, without provisional relief, Defendants can “scramble the eggs”—that is, merge their operations and make it extremely difficult, if not impossible, for competition to be restored to its previous state if the merger is subsequently found to be illegal.

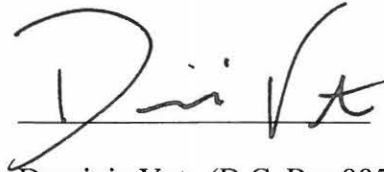
Thus, as more fully set forth in the attached Memorandum, injunctive relief is necessary to maintain the status quo until the Commission has had the opportunity to resolve whether the

merger is unlawful. Plaintiff is available for a scheduling conference to further discuss the preliminary injunction.

A proposed order is attached.

Dated: July 10, 2018

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. Vote", written over a horizontal line.

Dominic Vote (D.C. Bar 985637)
Deputy Assistant Director
Federal Trade Commission
Bureau of Competition
400 Seventh Street, S.W.
Washington, D.C. 20024
202-326-3505
dvote@ftc.gov

*Counsel for Plaintiff Federal Trade
Commission*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of July, 2018, I served the foregoing on the following counsel via electronic mail:

Michael F. Williams
Kirkland & Ellis LLP
655 Fifteenth Street, NW
Washington, D.C. 20005
michael.williams@kirkland.com

Counsel for Defendant Tronox Limited

Peter Levitas
Arnold & Porter Kaye Scholer LLP
601 Massachusetts Avenue, NW
Washington, D.C. 20001
peter.levitas@arnoldporter.com

*Counsel for Defendants National
Industrialization Company, National Titanium
Dioxide Company Limited, and Cristal USA,
Inc.*



Dominic Vote
Counsel for Plaintiff Federal Trade Commission