

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION



**ORIGINAL**

Docket No. 9377

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.

**Non-Party KPMG's Motion for *In Camera* Treatment**

Non-party KPMG LLP, by and through its undersigned counsel and pursuant to 16 C.F.R. § 3.45(b), hereby moves for *in camera* treatment of certain documents and testimony identified herein for an indefinite period. In support of this Motion, KPMG respectfully refers to and incorporates the Affidavit of Andrew W.G. Nolan (the "Nolan Affidavit"), attached hereto as Exhibit A.

Tronox Limited ("Tronox") engaged KPMG to provide certain consulting services to Tronox related to its proposed acquisition of certain portions of National Industrialization Company, National Titanium Dioxide Company Limited, and Cristal USA Inc. (collectively

referred to as “Cristal”). In connection with the above-captioned matter, KPMG produced documents to the parties and KPMG, as an entity, and one of its personnel provided deposition testimony related to KPMG’s engagement.

On April 19, 2018, by separate letters, counsels for the Federal Trade Commission and Tronox each notified KPMG that they intend to introduce certain KPMG documents and testimony into evidence at the upcoming administrative trial, which are identified as follows (collectively, the “KPMG Documents”):

- KPMG-FTC 0031666 – KPMG Synergy Due Diligence Assistance, January 30, 2017 – marked as Exhibit PX4206 and identified by both counsel;
- KPMG-FTC-0007213 – Hexagon ProForma EBIT by Country, 2017 – marked as Exhibit PX4207 and identified by both counsel;
- KPMG-FTC 0031934-45 – KPMG Statement of Work for Tronox Limited, Sign-to-Close: Detailed Synergy Development Workstream, March 7, 2017 – marked as Exhibit PX4209 and identified by both counsel;
- KPMG-FTC 0032526-654 - Integration Planning CEO Update, October 26-27, 2017 – identified by Tronox counsel only; and
- Deposition Transcript of Andrew Nolan, in his individual capacity and as a corporate representative for KPMG LLP, March 28, 2018 – marked as Exhibit PX7045 and identified by both counsel.

These documents identified here were each created by KPMG in connection with its engagement to provide consulting services to Tronox relating to Tronox’s proposed acquisition of Cristal. The deposition testimony identified here contains extensive discussion about the documents and the contents of the documents.

**A. KPMG Adopts Tronox's Arguments for *In Camera* Treatment.**

Under Rule 3.45(b), a request for *in camera* treatment may be granted if “public disclosure will likely result in a clearly defined, serious injury.” In considering whether to grant *in camera* treatment, the Court may consider the following factors: (1) the extent to which the information is known outside of the business; (2) the extent to which it is known by employees and others within the business; (3) the extent of measures taken to protect the information's secrecy; (4) the value of the information to the business and its competitors; (5) the effort or investment made in developing the information; and (6) the ease or difficulty with which the information could be acquired or duplicated by others. *In re Bristol-Myers Co.*, 90 F.T.C. 455, 456-57 (1977).

KPMG understands that Tronox is also submitting a request for *in camera* treatment for, *inter alia*, documents containing Tronox (i) Trade Secrets, (ii) Capacity, Production, and Inventory Information, and (iii) Business Plans. KPMG further understands that Tronox will argue that the public disclosure of that information would result in a clearly defined, serious injury to Tronox based on an analysis of each of the *Bristol-Myers* factors.

As a consultant engaged by Tronox, KPMG received confidential, commercially sensitive information about Tronox's business, including information in the nature of trade secrets, capacity, production, and inventory information, and business plans. Indeed, the KPMG Documents contain information generated from Tronox's internal systems that was used by KPMG in its engagement to assist Tronox management in evaluating the potential acquisition of Cristal. Nolan Affidavit at ¶ 13. Thus, each of the arguments that Tronox asserts in support of its request for *in camera* treatment for these categories of information apply with equal force to

the Tronox information contained in the KPMG Documents. As such, KPMG hereby adopts the arguments asserted by Tronox in its request for *in camera* treatment of certain trial exhibits.

**B. The KPMG Documents Should be Given *In Camera* Treatment for Additional Reasons.**

Beyond the arguments asserted by Tronox in support of *in camera* treatment, KPMG requests *in camera* treatment for the KPMG Documents on its own behalf. The KPMG Documents at issue were created by KPMG personnel in furtherance of its engagement by Tronox. Nolan Affidavit at ¶ 7. This work necessarily involved a detailed analysis of many of the inner workings of Tronox, its business, and its operations, which is what KPMG received. Nolan Affidavit at ¶ 8.

As a professional services firm, KPMG's clients expect KPMG to maintain the confidentiality of their non-public information and KPMG makes every reasonable effort to do so. Nolan Affidavit at ¶ 10. Accordingly, when KPMG produced documents in the above-captioned matter, KPMG designated each of the documents as confidential pursuant to the protective order and designated Mr. Nolan's testimony as confidential at the time it was given. Nolan Affidavit at ¶ 11. Further, since receiving non-public Tronox information in connection with its engagement, KPMG has maintained the confidentiality of that information in KPMG's secure information systems. Nolan Affidavit at ¶ 12. If the Court were to deny the requested *in camera* treatment of the KPMG Documents, KPMG could suffer serious reputational injury in the consulting world due to the public release of the commercially sensitive information of KPMG's client. Nolan Affidavit at ¶ 14.

Further, KPMG's status as a third party in this proceeding is relevant to its request for *in camera* treatment. "There can be no question that the confidential records of businesses involved in Commission proceedings should be protected insofar as possible," *H.P. Hood & Sons, Inc.*, 58

F.T.C. 11184, 1186 (1961), and that third parties warrant “special solitude” in requests for *in camera* treatment for confidential materials. *See also In re Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500, 500 (1984) (“As a policy matter, extensions of confidential or *in camera* treatment in appropriate cases involving third party bystanders encourages cooperation with future adjudicative discovery requests.”). KPMG’s status as a third party here counsels in favor of *in camera* treatment of the KPMG Documents.

\* \* \* \* \*

The public dissemination of the KPMG Documents would result in substantial harm to KPMG’s customer, Tronox, and to KPMG, as a professional services firm. Therefore, for the reasons set forth above and the accompany Affidavit of Andrew W.G. Nolan, KPMG respectfully requests pursuant to 16 C.F.R. § 3.45(b) that the KPMG Documents receive *in camera* treatment for an indefinite period. In accordance with the FTC’s rules, a proposed order is attached hereto as Exhibit B.

May 1, 2018

Respectfully submitted,

/s/ Justin A. McCarty

Justin A. McCarty

Mayer Brown LLP

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Chicago, IL 60606

(312)-701-8718

Counsel for KPMG LLP

# Exhibit A

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**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**

**AFFIDAVIT OF ANDREW W.G. NOLAN**

1. I am over the age of eighteen and competent to testify to the following matters.
2. I am a Managing Director at KPMG and provided consulting services to Tronox Limited ("Tronox") related to its proposed acquisition of certain portions of National Industrialization Company, National Titanium Dioxide Company Limited, and Cristal USA Inc. (collectively referred to as "Cristal").
3. I have over nine years of consulting experience at KPMG, received a Bachelor of Commerce from the University of Melbourne, and a Masters in Business Administration from RMIT University.

4. I make this Affidavit on the basis of my professional experience as well as personal experience as a consultant to Tronox in its proposed acquisition.
5. I have been informed that both counsels for Tronox and for the Federal Trade Commission (“FTC”) intend to submit certain KPMG-produced documents as exhibits in the upcoming administrative trial in this matter. The documents identified by counsels are as follows:
  - a. KPMG-FTC 0031666 – KPMG Synergy Due Diligence Assistance, January 30, 2017;
  - b. KPMG-FTC-0007213 – Hexagon ProForma EBIT by Country, 2017;
  - c. KPMG-FTC 0031934-45 – KPMG Statement of Work for Tronox Limited, Sign-to-Close: Detailed Synergy Development Workstream, March 7, 2017;
  - d. KPMG-FTC 0032526-654 – Integration Planning CEO Update, October 26-27, 2017; and
  - e. Deposition Transcript of Andrew Nolan, March 28, 2018.
6. I have reviewed each of these documents.
7. These documents were prepared by me or other KPMG personnel in connection with our engagement by Tronox.
8. These documents, and my testimony about these documents, contain confidential, commercially sensitive information about Tronox including, but not limited to, detailed information about Tronox’s operations, information about Tronox’s capacity, production, and inventory, Tronox’s trade secrets, and Tronox’s business plans.
9. KPMG obtained the information contained in these documents solely so that KPMG could provide consultant services to Tronox.

10. As a professional services firm, I and KPMG make every reasonable effort to maintain the confidentiality of our clients' information.
11. These documents and my testimony about these documents were each designated as confidential pursuant to the protective order in this case at the time the documents were produced or when the testimony was taken.
12. KPMG has maintained the confidentiality of the Tronox information since receiving that information from Tronox.
13. To the best of my knowledge, the Tronox information contained in these documents was created pursuant to Tronox's engagement of KPMG and were generated using non-public information from Tronox's internal systems.
14. If the Court fails to provide the requested *in camera* treatment for the documents identified in this Affidavit both Tronox and KPMG are likely to suffer serious injury. Tronox is likely to suffer serious injury due to the public release of commercially and competitively sensitive business information. KPMG is likely to suffer serious injury due to the public release of commercially and competitively sensitive information of its client, for whom KPMG has an obligation to maintain confidentiality.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 1<sup>st</sup> day of May 2018 in the State of Illinois and the County of Cook.



Andrew W.G. Nolan

# Exhibit B

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

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

**PROPOSED ORDER**

On May 1, 2018, Non-Party KPMG filed a motion for *in camera* treatment of confidential business information contained in various documents and testimony that have been identified as potential trial exhibits:

IT IS HEREBY ORDERED that KPMG's Motion is GRANTED. The information set forth in the exhibits described as follows will be subject to *in camera* treatment under 16 C.F.R. § 3.45 and will be kept confidential and not placed in the public record of this proceeding for an indefinite and perpetual period.

- KPMG-FTC 0031666;

- KPMG-FTC 0031934;
- KPMG-FTC 0007213;
- KPMG-FTC 0032526; and
- Deposition Transcript of Andrew Nolan.

IT IS FURTHER ORDERED that only authorized Federal Trade Commission personnel, and court personnel concerned with judicial review may have access to the above-referenced information.

ORDERED: \_\_\_\_\_

D. Michael Chappell  
Administrative Law judge

DATED: \_\_\_\_\_

**CERTIFICATION OF SERVICE**

I HEREBY CERTIFY that on this 1st day of May 2018 that I filed the foregoing documents electronically using the FTC's E-Filing System, which will send notification of such filings to:

Donald S. Clark  
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600 Pennsylvania Avenue, N.W.  
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Washington, DC 20580  
electronicfilings@ftc.gov

The Honorable D. Michael Chappell  
Chief Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Rm. H-110  
Washington, DC 20580

I also hereby certify that I caused a true and correct copy of the foregoing documents to be served upon the following via electronic mail:

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(continued on next page)

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*Counsel for Respondent Tronox Limited*

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Industrialization Company (TASNEE),  
The National Titanium Dioxide Company  
Limited (Cristal), and Cristal USA, Inc.*

/s/ Justin A. McCarty  
Justin A. McCarty

*Counsel for KPMG LLP*

**CERTIFICATE FOR ELECTRONIC FILING**

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original that I possess and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

May 1, 2018

By: /s/ Justin A. McCarty  
Justin A. McCarty

Notice of Electronic Service

**I hereby certify that on May 01, 2018, I filed an electronic copy of the foregoing Non-Party KPMG's Motion for In Camera Treatment, with:**

D. Michael Chappell  
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600 Pennsylvania Ave., NW  
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Washington, DC, 20580

Donald Clark  
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**I hereby certify that on May 01, 2018, I served via E-Service an electronic copy of the foregoing Non-Party KPMG's Motion for In Camera Treatment, upon:**

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**I hereby certify that on May 01, 2018, I served via other means, as provided in 4.4(b) of the foregoing Non-Party KPMG's Motion for In Camera Treatment, upon:**

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