

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Deborah Platt Majoras, Chairman
Pamela Jones Harbour
Jon Leibowitz
William E. Kovacic
J. Thomas Rosch

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In the Matter of)
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OWENS CORNING,)
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a corporation.)
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_____)

Docket No. C-
DECISION AND ORDER

[Public Record Version]

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Owens Corning (“Respondent”) of certain fiberglass reinforcements and composite fabrics assets of Compagnie de Saint Gobain (“Saint Gobain”) and Respondent having been furnished thereafter with a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge Respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such

Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and thereupon having issued its Complaint, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

1. Respondent Owens Corning is a publicly traded company, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at One Owens Corning Parkway, Toledo, Ohio 43659.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. "Respondent Owens Corning" or "Owens Corning" means Owens Corning, a corporation, its directors, officers, employees, agents, attorneys, representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Owens Corning, and the respective directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns of each.
- B. "Saint Gobain" means Compagnie de Saint Gobain, a corporation, its directors, officers, employees, agents, attorneys, representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Saint Gobain, and the respective directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns of each.
- C. "Commission" means the Federal Trade Commission.
- D. "Acquisition" means the proposed acquisition by Respondent Owens Corning of certain fiberglass reinforcements and composite fabrics assets from Saint Gobain pursuant to and as described in the Purchase Agreement dated as of July 26, 2007 by and between "Owens Corning, Société De Participations Financieres Et Industrielles S.A.S., and the Other Parties Named Herein."
- E. "Acquisition Date" means the date on which the Acquisition is consummated.

- F. “AGY” means AGY Holding Corp., a privately held company, organized, existing and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 2556 Wagener Road, Aiken, South Carolina 29801.
- G. “AGY Acquisition Agreement” means the Asset Purchase Agreement dated as of August 31, 2007 between Owens Corning Composite Materials, LLC and AGY Huntington LLC, with amendments, attachments, exhibits, and schedules thereto, attached as Confidential Appendix B to this Order.
- H. “Confidential Business Information” means all information that is not in the public domain related to research, development, manufacture, marketing, commercialization, distribution, importation, cost, pricing, supply, sales, sales support, or use of the particular assets.
- I. “CFM” means continuous filament mat.
- J. “Designated OC Employee” means those persons, or persons identified in Confidential Appendix A to this Order.
- K. “Divestiture Trustee” means any trustee appointed by the Commission pursuant to Paragraph IV of this Order.
- L. “Effective Date of OC Glass Fiber Divestiture” means the date on which Respondent (or a Divestiture Trustee) divests to the OC Acquirer the OC North American CFM Business completely and as required by Paragraphs II or IV of this Order.
- M. “Governmental Entity” means any Federal, state, local or non-U.S. government or any court, legislature, governmental agency or governmental commission or any judicial or regulatory authority of any government.
- N. “Intellectual Property” means any intellectual property including, but not limited to, software, computer programs, patents, know-how, goodwill, technology, trade secrets, technical information, marketing information, protocols, research and development, quality control information, trademarks, trade names, service marks, logos, and the modifications or improvements to such intellectual property.
- O. “Marbles” means glass fiber marbles used in the production of, among other things, CFM at the OC Huntingdon Facility.
- P. “Marbles Furnace” means the furnace for the production of Marbles including, all attachments and assets used on, attached to, appurtenant or adjacent to, or directly related to the furnace and used in the operation of the furnace in the production or distribution of Marbles produced at the OC Anderson Facility, and includes, but is not limited to:
1. copies of all books, records, and documents, including but not limited to electronically stored documents and records produced in an electronically readable form, together with all necessary instructions and software, or access to software licenses, relating to the Marbles Furnace and to the production,

marketing, distribution, or sale of products produced by the Marbles furnace; *PROVIDED, HOWEVER*, that if any such books, records, or documents also include matters not related to the Marbles Furnace or Marbles produced at the OC Anderson Facility, then only those portions of the books, records, and documents that relate to the furnace that produces Marbles at the OC Anderson Facility or the Marbles produced at the facility may be included;

2. raw materials in use at the time of the divestiture in the marbles furnace at the OC Anderson Facility, alloy metals currently used with the furnace at the OC Anderson Facility (or stored at and designated for use with the marbles furnace at the OC Anderson Facility, or held elsewhere on account for use with the marbles furnace at the OC Anderson Facility), work-in-process, finished goods, and packaging materials, *PROVIDED, HOWEVER*, Respondent may, at the OC Acquirer's option and with the Commission's approval, not sell all or some of the alloy metals to the OC Acquirer;
3. exclusive right to all Intellectual Property used solely in the operation of the Marbles Furnace or in the production, marketing, distribution, or sale of the Marbles produced at the OC Anderson Facility, and a non-exclusive right to all other Intellectual Property used in the operation of the Marbles Furnace and in the production, marketing, distribution, or sale of the products produced at the Marbles Furnace for the field of use of CFM;
4. all plans (including proposed and tentative plans, whether or not adopted), specifications, drawings, and other assets (including the non-exclusive right to use patents, know-how, and other Intellectual Property relating to such plans) related to the operation of the Marbles Furnace;
5. all licenses, permits, contracts, agreements, and understandings relating to the ownership and operation of the Marbles Furnace.

Q. "Marbles Furnace Operational Areas" means the:

1. areas appurtenant to and used in the operation of the Marbles Furnace including, but not limited to, loading and unloading areas, storage areas for inputs and inventory, at the OC Anderson Facility;
2. areas for the use of employees working at or on the Marbles Furnace at the OC Anderson Facility, similar to those areas available to Owens Corning employees working at the OC Anderson Facility, including, but not limited to, exits and entrances, parking areas, machine rooms, work rooms, break rooms, bathrooms, and locker rooms;
3. existing easements and rights of way relating to the Marbles Furnace;
4. related facilities required for the storage of Marbles produced at the OC Anderson Facility.

- R. “Marbles Inventory” means Respondent’s supply of Marbles at the OC Anderson Facility and Respondent’s warehouse in Commerce, South Carolina in existence at the time of the AGY Acquisition Agreement.
- S. “Marbles Raw Materials” means the raw materials necessary for the manufacture of Marbles.
- T. “OC Acquirer” means either AGY or any other entity that receives the prior approval of the Commission to acquire the OC North American CFM Business pursuant to Paragraphs II or IV of this Order.
- U. “OC Anderson Facility” means the Owens Corning manufacturing facility, located at Highway 81 S, Anderson, South Carolina, 29624, which includes approximately 178 acres of land on which the manufacturing facility sits.
- V. “OC Battice Facility” means the Owens Corning glass fiber reinforcements manufacturing facility, located at Rue de Maestricht, Battice, Leige 4641.
- W. “OC Bushing Fabrication Business” means the fabrication of bushings conducted by OC in Concord, NC, Rio Claro, Brazil, and Ibaraki, Japan.
- X. “OC CFM Divestiture Agreement” means either the AGY Acquisition Agreement or any other agreement that receives the prior approval of the Commission between Respondent and an OC Acquirer (or between a Divestiture Trustee and an OC Acquirer), as well as all amendments, exhibits, attachments, agreements, and schedules thereto, related to the divestiture of the OC North American CFM Business pursuant to Paragraphs II or IV of this Order.
- Y. “OC CFM Intellectual Property” means all Intellectual Property relating to the design, manufacture, and sale of CFM designed, manufactured, or sold by, or on behalf of, Owens Corning, even where such Intellectual Property has not been reduced to practice or commercialized including, but not limited to:
1. manufacturing process technology and technology for equipment used in the manufacturing process, such as bushings and windings;
 2. all United States and foreign patents, trademarks, trade names, domain names, service marks and copyrights and any applications for and registrations of such patents, trademarks, trade names, domain names, service marks and copyrights and any renewal, derivation, divisions, reissues, continuation, continuations-in part, modifications or extensions thereof or, if the patents have already been issued on the basis of said applications, the resulting patents;
 3. Intellectual Property relating to applications in which CFM products produced by Owens Corning are used;

4. all plans (including proposed and tentative plans, whether or not adopted), specifications, drawings, and other assets (including the non-exclusive right to use patents, know-how, and other Intellectual Property relating to such plans);
5. any other Intellectual Property used in the past by Owens Corning in the design, manufacture, and sale of CFM.

PROVIDED, HOWEVER, OC CFM Intellectual Property does not include Intellectual Property related to Advantex™ glass, oxygen-firing processes, advanced glass melting, furnace designs, and OC Furnace Technology.

Z. “OC Furnace Technology” means:

1. all Intellectual Property related to Owens Corning’s furnaces located at, and furnace technology and furnace processes used in the OC Guelph Facility and the OC Battice Facility;
2. a copy of all plans (including proposed and tentative plans, whether or not adopted), specifications, drawings, and other assets (including the non-exclusive right to use patents, know-how, and other Intellectual Property relating to such plans) related to Owens Corning’s furnaces located at, and furnace technology and furnace processes used in the OC Guelph Facility and the OC Battice Facility.

AA. “OC Guelph Facility” means the Owens Corning glass fiber reinforcements manufacturing facility located in Guleph, Ontario, NIH6P6, Canada.

BB. “OC Huntingdon Facility” means the Owens Corning glass fiber continuous filament mat manufacturing facility, located at 1200 Susquehanna Ave., Huntingdon, Pennsylvania, 16652, which includes approximately 19 acres of land on which the manufacturing facility sits.

CC. “OC North American CFM Business” means the Owens Corning North American glass fiber continuous filament mat business including, but not limited to:

1. the OC Huntingdon Facility and:
 - a. all tangible and real assets used in the operation of the OC Huntingdon Facility, including any leasehold, ownership, fee, or any other interest in real estate at the OC Huntingdon Facility grounds in Huntingdon, Pennsylvania, and in the production or distribution of the products produced at the facility, and includes, but is not limited to,
 - (1) the main plants;
 - (2) rail cars, trucks, and other vehicles owned by Respondent Owens Corning related to the transportation and distribution of products produced or used in the OC Huntingdon Facility; and

- (3) raw materials including, but not limited to, alloy metals currently used at the OC Huntingdon Facility, or stored at and designated for use at the OC Huntingdon Facility, or held elsewhere on account for use at the OC Huntingdon Facility, work-in-process inventories, stores and spares, inventories, packaging materials, finished goods inventories, finished goods in transit to offsite storage or to customers, and offsite inventory, *PROVIDED, HOWEVER*, Respondent may, at the OC Acquirer's option and with the Commission's approval, not sell all or some of the alloy metals to the OC Acquirer;
- b. all books, records, and documents, including but not limited to electronically stored documents and records produced in an electronically readable form, together with all necessary instructions and software, or access to software licenses to the OC Acquirer, relating to the OC Huntingdon Facility and to the production, marketing, distribution, or sale of products produced at the facility; *PROVIDED, HOWEVER*, that if any such books, records, or documents also include matters not related to the OC Huntingdon Facility or products produced at the OC Huntingdon Facility, then only those portions of the books records and documents that relate to the OC Huntingdon Facility or the products produced at the facility may be included;
- c. all Intellectual Property used solely in the operation of the OC Huntingdon Facility or in the production, marketing, distribution, or sale of the products produced at the OC Huntingdon Facility, and a non-exclusive right for the purpose of the production, marketing, distribution or sale of CFM to all other Intellectual Property used in the operation of the OC Huntingdon Facility and in the production, marketing, distribution, or sale of the products produced at the OC Huntingdon Facility;
- d. all contracts, agreements, and understandings, relating to the manufacture, transportation, storage, marketing, distribution, or sale of the products produced at the OC Huntingdon Facility, which includes but is not limited to:
 - (1) agreements under which the OC Huntingdon Facility receives electricity, natural gas, or other inputs at or for the OC Huntingdon Facility; *PROVIDED, HOWEVER*, any current or future supply contract for Marbles is excluded and prohibited unless a separate contract for Marbles is expressly agreed to as part of the OC CFM Divestiture Agreement;
 - (2) agreements for services provided to the OC Huntingdon Facility, including, but not limited to, rail, trucking, capital maintenance, and technology;

- (3) agreements and contracts with customers for products produced exclusively by the OC Huntingdon Facility;
 - e. all joint ventures relating to the operation of the OC Huntingdon Facility and the production, marketing, distribution, or sale of the products produced at the OC Huntingdon Facility;
 - f. all plans (including proposed and tentative plans, whether or not adopted), specifications, drawings, and other assets (including the non-exclusive right to use patents, know-how, and other Intellectual Property relating to such plans) related to the operation of the OC Huntingdon Facility including, but not limited to bushing designs;
 - g. existing easements and rights of way;
 - h. related facilities required for the operation or the storage of products produced or used at the OC Huntingdon Facility;
 - i. all licenses, permits, contracts, agreements, and understandings relating to the ownership and operation of the OC Huntingdon Facility;
2. the Marbles Furnace;
 3. a twenty (20) year lease for the Marbles Furnace Operational Areas, *PROVIDED, HOWEVER*, such lease shall include terms that allow the OC Acquirer to terminate such lease at any time, without penalty, with at least five (5) days prior notice to Respondent Owens Corning;
 4. an agreement for the acquisition of Marbles Inventory.

PROVIDED, HOWEVER, the OC North American CFM Business does not include the OC Bushing Fabrication Business or the OC Guelph Facility.

DD. “Person” means any individual, partnership, association, company or corporation.

EE. “Plastic Reinforcements Products” means products which are manufactured by melting quarry inputs (combinations of silica, clay, and other materials) in a refractory-lined furnace to create molten glass which is drawn through a surface with one or more holes to create filaments. The filaments are then treated by various chemical and physical processes to alter their properties so that these products can be used in a wide variety of reinforcement applications to provide, among other things, strength, thermal or chemical resistance.

II.

IT IS FURTHER ORDERED that:

- A. Within ten (10) days after the Acquisition Date:
1. Respondent shall divest the OC North American CFM Business in good faith to AGY, pursuant to and in accordance with the AGY Acquisition Agreement (which agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of AGY or to reduce any obligations of Respondent under such agreements), and such agreement, if approved by the Commission as the OC CFM Divestiture Agreement, is incorporated by reference into this Order and made a part hereof as Confidential Appendix C.

PROVIDED, HOWEVER, with respect to assets that are to be divested or agreements entered into pursuant to this paragraph at the Acquirer's option, Respondent need not divest such assets or enter into such agreements only if the Acquirer chooses not to acquire such assets or enter into such agreements and the Commission approves the divestiture without such assets or agreements.
 2. Respondent shall grant to the Acquirer a worldwide, royalty-free, fully paid-up, perpetual, irrevocable, license to or copies of, where appropriate, the OC CFM Intellectual Property for the purpose of the production, marketing, distribution or sale of CFM. *PROVIDED, HOWEVER,* Respondent shall have up to sixty (60) days following the grant of such OC CFM Intellectual Property license to deliver documents or information from locations other than the OC Huntingdon Facility and the OC Anderson Facility.
 3. Respondent shall grant to the Acquirer a royalty-free, fully paid-up, perpetual, irrevocable license to or copies of, where appropriate, the OC Furnace Technology for the purpose of the production, marketing, distribution or sale of CFM. *PROVIDED, HOWEVER,* Respondent shall have up to sixty (60) days following the grant of such OC Furnace Technology license to deliver documents or information from locations other than the OC Huntingdon Facility and the OC Anderson Facility.
- B. If, at the time the Commission determines to make this Order final, the Commission notifies Respondent that AGY is not an acceptable acquirer of the OC North American CFM Business or that the manner in which the divestiture was accomplished is not acceptable, then, after receipt of such written notification:
1. Respondent shall immediately notify AGY of the notice received from the Commission and shall as soon as practicable effect the rescission of the AGY Acquisition Agreement; and

2. Respondent shall, within six (6) months from the date this Order becomes final, divest the OC North American CFM Business absolutely and in good faith, at no minimum price, to an acquirer that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission. *PROVIDED, HOWEVER*, with respect to assets that are to be divested or agreements entered into pursuant to this paragraph at the OC Acquirer's option, Respondent need not divest such assets or enter into such agreements only if the OC Acquirer chooses not to acquire such assets or enter into such agreements and the Commission approves the divestiture without such assets or agreements.
3. The Commission may appoint a Monitor pursuant to Paragraph III of this Order to assist Respondent in:
 - a. effectuating modifications to the OC CFM Divestiture Agreement or manner of divestiture of the OC North American CFM Business (including, but not limited to, entering into additional agreements or arrangements) as the Commission may determine are necessary to satisfy the requirements of this Order; and
 - b. taking such actions as are necessary to maintain the full economic viability, marketability and competitiveness of the OC North American CFM Business, including, but not limited to, monitoring the exchange of Confidential Business Information about the OC North American CFM Business to and between Respondent, to minimize any risk of loss of competitive potential for the businesses associated with the OC North American CFM Business, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the OC North American CFM Business except for ordinary wear and tear.
- C. Any OC CFM Divestiture Agreement that has been approved by the Commission between the Respondent (or a Divestiture Trustee) and an OC Acquirer of the OC North American CFM Business shall be deemed incorporated into this Order, and any failure by Respondent to comply with any term of such OC CFM Divestiture Agreement shall constitute a failure to comply with this Order.
- D. Respondent shall not enter into any agreement with Saint Gobain for Plastic Reinforcements Products that would, directly or indirectly, affect the viability, marketability and competitiveness of the Saint Gobain businesses and assets that are not sold to Respondent pursuant to the Acquisition.
- E. Until the Effective Date of OC Glass Fiber Divestiture, Respondent shall:
 1. take such actions as are necessary to maintain the viability and marketability of the OC North American CFM Business and to prevent the destruction, removal, wasting, deterioration, or impairment of the OC North American CFM Business except for ordinary wear and tear; and

2. not sell, transfer, encumber or otherwise impair the full economic viability, marketability, or competitiveness of the OC North American CFM Business.
- F. For the length of time during which Respondent leases the Marbles Furnace Operational Area to the OC Acquirer, Respondent shall:
1. except as requested by the OC Acquirer, take such actions as are necessary to prevent the destruction, removal, wasting, deterioration, or impairment of the Marbles Furnace and the Marbles Furnace Operational Area, *PROVIDED, HOWEVER,* Respondent shall not be responsible for changes to or problems of the Marbles Furnace or the Marbles Furnace Operational Area caused by the OC Acquirer; *PROVIDED, FURTHER, HOWEVER,* Respondent shall not be responsible for the maintenance, upkeep, rebuilding or replacement of the Marbles Furnace; *PROVIDED, FURTHER, HOWEVER,* Respondent shall give the OC Acquirer sixty (60) days prior notice of any facility maintenance, including ordinary and regular maintenance, when such maintenance may affect the operation of the Marbles Furnace or the OC Acquirer's access to the Marbles Furnace Operational Area; *PROVIDED, FURTHER, HOWEVER,* in the event Respondent cannot give the OC Acquirer sixty (60) days prior notice, then Respondent must notify the OC Acquirer as soon as it first notifies any persons at the OC Anderson Facility regarding maintenance or problems that may affect the operation of the Marbles Furnace or the OC Acquirer's access to the Marbles Furnace Operational Area; and
 2. maintain the Marbles Furnace and Marbles Furnace Operational Area in the same general way in which it maintains the other furnaces owned by Respondent and common areas of the OC Anderson Facility (to the extent the OC Acquirer complies with the lease terms) including, but not limited to, the uninterrupted provision of utilities and services, and Respondent shall allow access to the OC Anderson Facility.
- G. No later than the Effective Date of OC Glass Fiber Divestiture, Respondent shall:
1. secure all assignments, consents, and waivers, including rights of approval and rights of first refusal, from all private and Governmental Entities that are necessary for the divestiture of the OC North American CFM Business; and
 2. remove all non-compete agreements or other agreements as may be necessary to accomplish the divestiture of the OC North American CFM Business.
- H. Respondent shall, at the option of the Acquirer, no later than the Effective Date of OC Glass Fiber Divestiture, and as part of the OC CFM Divestiture Agreement, enter into one or more transition agreements for the short-term provision of services provided by Respondent to the OC Acquirer.
1. Such agreements may include, but are not limited to, an agreement for the supply of Marbles Raw Materials.

2. Respondent shall not terminate any transition agreement early:
 - a. without the written agreement of the Acquirer and thirty (30) days prior notice to the Commission; or,
 - b. in the case of a proposed unilateral termination by Respondent due to an alleged breach of an agreement by the Acquirer, sixty (60) days notice of such termination. *PROVIDED, HOWEVER*, such sixty (60) days notice shall only be given after the parties:
 - (1) have attempted to settle the dispute between themselves, and
 - (2) engaged in arbitration and received an arbitrator's decision, or
 - (3) received a final court decision after all appeals.
- I. After divestiture of the OC North American CFM Business, Respondent and Respondent's employees shall not receive, or have access to, or use or continue to use any Confidential Business Information about the OC North American CFM Business or about the production, transportation, delivery, storage, distribution, marketing, and sale of products of the OC Acquirer from the OC Huntingdon Facility except:
 1. As otherwise allowed in this Order;
 2. As provided for in a transition services agreement;
 3. As consented to by the OC Acquirer for provision to Respondent Owens Corning;
 4. As required by law;
 5. To the extent that necessary information is exchanged in the course of consummating the Acquisition;
 6. In negotiating agreements to divest assets pursuant to this Order and engaging in related due diligence;
 7. In complying with this Order;
 8. To the extent necessary to allow Respondent to comply with the requirements and obligations of the laws of the United States and other countries;
 9. In defending legal claims, investigations or enforcement actions threatened or brought against or related to the OC North American CFM Business; and
 10. In obtaining legal advice.

Respondent shall require any Persons with access to Confidential Business Information to immediately enter into agreements with the Respondent and OC Acquirer not to

disclose any Confidential Business Information to the Respondent or to any third party except for the purposes set forth in this paragraph.

- J. The purposes of this Paragraph II of the Order are: (1) to ensure the continuation of the OC North American CFM Business as a going concern in the same manner in which it conducted business as of the date the Consent Agreement is signed, and (2) to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

- A. At any time after Respondent signs the Consent Agreement in this matter, the Commission may appoint a Monitor to assure that Respondent expeditiously complies with all of its obligations and performs all of its responsibilities as required by this Order;
- B. The Commission shall select the Monitor, subject to the consent of Respondent, which consent shall not be unreasonably withheld. If the Respondent has not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed Monitor, Respondent shall be deemed to have consented to the selection of the proposed Monitor.
- C. Not later than ten (10) days after appointment of the Monitor, Respondent shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondent's compliance with the relevant terms of the Order in a manner consistent with the purposes of the Order.
- D. If a Monitor is appointed pursuant to this Paragraph III, Respondent shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
1. The Monitor shall have the power and authority to monitor the Respondent's compliance with the terms of the Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the Order and in consultation with the Commission including, but not limited to:
 - a. Assuring that Respondent expeditiously complies with all of its obligations and performs all of its responsibilities as required by the Decision and Order in this matter; and
 - b. Monitoring any transition services agreements.

2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.
 3. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondent's personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondent's compliance with its obligations under the Order. Respondent shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondent's compliance with the Order.
 4. The Monitor shall serve, without bond or other security, at the expense of Respondent on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of the Respondent, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. The Monitor shall account for all expenses incurred, including fees for services rendered, subject to the approval of the Commission.
 5. Respondent shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Monitor.
 6. The Monitor Agreement shall state that within one (1) month from the date the Monitor is appointed pursuant to this paragraph, and every sixty (60) days thereafter, the Monitor shall report in writing to the Commission concerning performance by Respondent of its obligations under the Order.
 7. Respondent may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *PROVIDED, HOWEVER*, such agreement shall not restrict the Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Monitor's duties.
- F. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor in the same manner as provided in this Paragraph III.

- G. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Order.
- H. A Monitor appointed pursuant to this Order may be the same person appointed as the Divestiture Trustee pursuant to the relevant provisions of this Order.

IV.

IT IS FURTHER ORDERED that:

- A. If Respondent has not fully complied with the obligations to divest the OC North American CFM Business as required by Paragraph II of this Order, the Commission may appoint a Divestiture Trustee to divest the OC North American CFM Business in a manner that satisfies the requirements of Paragraph II.

In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondent shall consent to the appointment of a Divestiture Trustee in such action to divest the OC North American CFM Business. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph IV shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondent to comply with this Order.

- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed Divestiture Trustee, Respondent shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- C. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestitures required by this Order.
- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph IV, Respondent shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to divest the OC North American CFM Business.
2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to divest the OC North American CFM Business absolutely and in good faith, at no minimum price, to an Acquirer that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period or periods may be extended by the Commission; *PROVIDED, HOWEVER*, the Commission may extend the divestiture period only two (2) times.
3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities related to the relevant assets that are required to be divested by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondent shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent shall extend the time for divestiture under this Paragraph IV in an amount equal to the delay, as determined by the Commission.
4. The Divestiture Trustee shall use best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an acquirer as required by this Order;

PROVIDED, HOWEVER, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondent from among those approved by the Commission;

PROVIDED FURTHER, HOWEVER, that Respondent shall select such entity within five (5) days after receiving notification of the Commission's approval.
5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all

monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of the Respondent, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

6. Respondent shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.
 7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
 8. The Divestiture Trustee shall act in a fiduciary capacity for the benefit of the Commission.
 9. The Divestiture Trustee shall report in writing to Respondent and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
 10. Respondent may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *PROVIDED, HOWEVER*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
 11. The Commission may, among other things, require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.
- E. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph IV.
- F. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

- G. The Divestiture Trustee(s) appointed pursuant to Paragraph IV of this Order may be the same Person appointed as the Monitor pursuant to Paragraph III of this Order.

V.

IT IS FURTHER ORDERED that:

- A. Beginning from the date the Respondent signs the Consent Agreement until sixty (60) days after the Effective Date of OC Glass Fiber Divestiture, Respondent shall:
1. facilitate employment interviews between each Designated OC Employee and the OC Acquirer, including providing the names and contact information for such employees and allowing such employees reasonable opportunity to interview with the OC Acquirer, and shall not discourage such employee from participating in such interviews;
 2. not interfere in employment negotiations between each Designated OC Employee and the OC Acquirer;
 3. with respect to each Designated OC Employee who receives an offer of employment from the OC Acquirer:
 - a. not prevent, prohibit, or restrict, or threaten to prevent, prohibit, or restrict the Designated OC Employee from being employed by the OC Acquirer, and shall not offer any incentive to the Designated OC Employee to decline employment with the OC Acquirer;
 - b. cooperate with the OC Acquirer in effecting transfer of the Designated OC Employee to the employ of the OC Acquirer, if the Designated OC Employee accepts an offer of employment from the OC Acquirer;
 - c. eliminate any contractual provisions or other restrictions entered into or imposed by Respondent that would otherwise prevent the Designated OC Employee from being employed by the OC Acquirer;
 - d. eliminate any confidentiality restrictions that would prevent the Designated OC Employee who accepts employment with the OC Acquirer from using or transferring to the Acquirer any information relating to the operation of the OC North American CFM Business;
 - e. pay, for the benefit of any Designated OC Employee who accepts employment with the OC Acquirer, all accrued bonuses, vested pensions, and other accrued benefits;
- B. Respondent shall, for a period of two (2) years following the Effective Date of OC Glass Fiber Divestiture, not, directly or indirectly, solicit, induce, or attempt to solicit or induce

any Designated OC Employee who is employed by the OC Acquirer to terminate his or her employment relationship with the OC Acquirer, unless that employment relationship has already been terminated by the OC Acquirer; *PROVIDED, HOWEVER*, Respondent may make general advertisements for employees including, but not limited to, in newspapers, trade publications, websites, or other media not targeted specifically at the OC Acquirer's employees; *PROVIDED FURTHER, HOWEVER*, Respondent may hire Designated OC Employees who apply for employment with Respondent as long as such employees were not solicited by Respondent in violation of this Paragraph.

VI.

IT IS FURTHER ORDERED that for a period of ten (10) years from the date this Order becomes final, Respondent shall not:

- A. without the prior approval of the Commission, acquire, directly or indirectly, any assets divested pursuant to this Order, *PROVIDED, HOWEVER*, prior approval shall not be required by Respondent to take possession of or reacquire the Marbles Furnace, or what remains of the Marble Furnace, if and only if the OC Acquirer: (1) terminates the lease to the Marbles Furnace Operational Area, and (2) notifies Respondent that it is abandoning all of its rights to the Marbles Furnace. In such a situation, Respondent shall provide written notification to the Commission of the timing and terms of the termination and abandonment as soon as possible after Respondent receives notice from the OC Acquirer; and
- B. without providing advance written notification to the Commission in the manner described in this Paragraph VI, directly or indirectly, acquire any stock, share capital, equity or other interest in any Person, corporate or non-corporate that produces, or assets used in the design, manufacture, production or sale of, glass fiber reinforcements or composite fabrics.

Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (herein referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of Respondent and not of any other party to the transaction. Respondent shall provide the Notification to the Commission at least thirty days prior to consummating the transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondent shall not consummate the transaction until thirty days after submitting such additional information or documentary material. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition.

PROVIDED, HOWEVER, that prior notification shall not be required by this paragraph for a transaction for which Notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

PROVIDED, FURTHER, HOWEVER, that prior notification shall not be required by this paragraph for an acquisition, if Respondent acquires no more than one percent of the outstanding securities or other equity interest in an entity described in this Paragraph VI.

VII.

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days after the date this Order becomes final, and every sixty (60) days thereafter until Respondent has fully complied with Paragraphs II, IV, and V.A of this Order, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondent shall submit at the same time a copy of its report concerning compliance with this Order to the Divestiture Trustee or the Monitor, if any Divestiture Trustee or Monitor has been appointed pursuant to this Order. Respondent shall include in its report, among other things that are required from time to time, a full description of the efforts being made to comply with the relevant Paragraphs of the Order, including a description of all substantive contacts or negotiations related to the divestiture of the relevant assets and the identity of all parties contacted. Respondent shall include in its report copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning completing the obligations.
- B. Beginning twelve (12) months after the date this Order becomes final, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it has complied, is complying, and will comply with this Order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with the Order and copies of all written communications to and from all persons relating to this Order.

VIII.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any:

- A. proposed dissolution of the Respondent;
- B. proposed acquisition, merger or consolidation of each Respondent; or

- C. any other change in the Respondent, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

IX.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice, Respondent shall permit any duly authorized representative of the Commission:

- A. access, during office hours of Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondent related to compliance with this Order; and
- B. upon five (5) days' notice to Respondent and without restraint or interference from Respondent, to interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

X.

IT IS FURTHER ORDERED that this Order shall terminate ten (10) years from the date it becomes final.

By the Commission.

Donald S. Clark

Secretary

SEAL

ISSUED:

CONFIDENTIAL APPENDIX A

[Redacted From the Public Record Version But Incorporated By Reference]

DESIGNATED OC EMPLOYEES

Those persons listed in Sections 1.1(d) as Retained Employees and 1.1(e) as Transferred Employees of the Seller Disclosure Schedule to the AGY Acquisition Agreement.

CONFIDENTIAL APPENDIX B
OC CFM DIVESTITURE AGREEMENT

[Redacted From the Public Record Version But Incorporated By Reference]