ANALYSIS OF PROPOSED AGREEMENT CONTAINING CONSENT ORDER TO AID PUBLIC COMMENT

In the Matter of Keystone Holdings, LLC and Compagnie de Saint-Gobain

File No. 1010175

I. Introduction

The Federal Trade Commission ("Commission") has accepted for public comment, subject to final approval, an Agreement Containing Consent Order ("Consent Agreement") from Keystone Holdings LLC ("Keystone") and Compagnie de Saint-Gobain ("Saint-Gobain"). The purpose of the proposed Consent Agreement is to remedy the anticompetitive effects resulting from Keystone's proposed acquisition of certain Advanced Ceramics Business assets from Saint-Gobain ("proposed acquisition"). As originally structured, Keystone would have acquired Saint-Gobain's worldwide assets and businesses relating to the manufacture and sale of alumina wear tiles. To resolve the competitive concerns raised by the proposed acquisition, Keystone and Saint-Gobain have re-structured the original transaction to exclude Saint-Gobain's North American alumina wear tile business operated out of a facility in Latrobe, Pennsylvania.

Under the terms of the proposed Consent Agreement, Keystone is required for ten years to obtain prior approval from the Commission for the direct or indirect acquisition of Saint-Gobain's alumina wear tile business in Latrobe or certain other assets owned or controlled by Saint-Gobain relating to the research, development, marketing, and sale anywhere in the world of alumina wear tile produced or manufactured in North America. The proposed Consent Agreement also requires that Saint-Gobain for five years provide advance written notice to the Commission prior to leasing or selling the Latrobe, Pennsylvania facility or selling, assigning, or otherwise conveying substantially all its interest in the Saint-Gobain alumina wear tile business. In addition, with limited exceptions, Saint-Gobain is obligated to provide advance written notice to the Commission prior to closing the Latrobe, Pennsylvania facility or ceasing operation or production of alumina wear tiles at the facility.

The proposed Consent Agreement has been placed on the public record for thirty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement, modify it, or make it final.

On June 28, 2010, Keystone and Saint-Gobain entered into a merger agreement under which Keystone proposed to acquire Saint-Gobain's Advanced Ceramics Business, including facilities in Europe, North America, South America, and Asia for a purchase price of $245 million. As originally structured, the assets acquired by Keystone would have included the Latrobe facility and other assets relating to the manufacture and sale of alumina wear tiles. On December 2, 2010, however, in an effort to resolve competitive concerns relating to the original transaction, Keystone and Saint-Gobain amended their agreement to exclude from the sale Saint-Gobain's North American alumina wear tile business.

The Commission's complaint alleges that the initial proposed acquisition, if consummated, would violate 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, by lessening competition in the manufacture and sale of standard and pre-engineered alumina wear tile in North America. Although Saint-Gobain now proposes to retain its North American alumina wear tile business, a credible risk exists that the parties could re-negotiate the sale of Saint-Gobain's alumina wear tile business in the future, or that Saint-Gobain could sell the business upon terms that would reduce competition in the North American alumina wear tile markets. Therefore, the proposed Consent Agreement requires that Keystone obtain the Commission's prior approval in advance of any acquisition of Saint-Gobain's alumina wear tile business or related assets, and requires that Saint-Gobain provide written notice to the Commission prior to selling or ceasing its alumina wear tile business or selling or leasing its Latrobe, Pennsylvania facility. This remedy preserves competition in the North American markets for the manufacture and sale of alumina wear tile.

II. Parties

Keystone is the holding company of CoorsTek, Inc. ("CoorsTek"), which is a leading technical ceramics manufacturer, supplying ceramics based products for use in defense, medical, automotive, semiconductor, and power generation applications, among others. Keystone is headquartered in Golden, Colorado with facilities in North America, Europe and Asia. Keystone manufactures and sells alumina wear tile for use in high wear applications at its facilities in Golden, Colorado.

Saint-Gobain is a highly diversified, multinational company, headquartered in Courbevoie, France. The Advanced Ceramics Business includes ceramic components such as hot surface igniters, electro-ceramic parts for household appliances, ceramic balls for high-performance bearings, automobile water pump seals, special components for the semiconductor industry, agricultural spray nozzles, and other dense alumina components, such as alumina wear tile. Saint-Gobain manufactures and sells alumina wear tile out of its Latrobe, Pennsylvania facility. In 2009, Saint-Gobain's Advanced Ceramics Business achieved sales of 135 million euros.

III. The Products and Structure of the Alumina Wear Tile Markets

The Commission's complaint alleges that Keystone's acquisition of Saint-Gobain's North American alumina wear tile assets poses substantial antitrust concerns in both the pre-engineered and standard alumina wear tile markets, or alternatively, an all alumina wear tile market in North America. Alumina wear tile is used to line material-handling equipment to protect against abrasion and premature wear caused by the materials that pass through the equipment, extending the life of the equipment for years. Although other materials could be used as a wear solution these materials are not viable substitutes for alumina wear tile, as they do not have the unique price and wear attributes that are required in applications where alumina wear tile is commonly used.

The Commission's complaint alleges that the relevant markets within which to analyze the transaction are standard and pre-engineered alumina wear tile, or alternatively, all alumina wear tile. Standard alumina wear tile comes in a variety of predetermined sizes and shapes whereas pre-engineered alumina wear tile is custom made-to-order to fit complex shapes that standard tile sizes cannot accommodate.

The Commission's complaint alleges that the relevant geographic market in which to assess the impact of the proposed acquisition is North America. Successful participation in the market requires an established North American presence, most notably North American sales support and facilities from which to inventory and distribute alumina wear tile. Alumina wear tile companies that do not have an established presence in North America do not effectively compete for the business of U.S. alumina wear tile purchasers.

Keystone and Saint-Gobain are two of three significant suppliers of pre-engineered alumina wear tile and two of four significant suppliers of standard alumina wear tile in North America. In an all alumina wear tile market, Keystone and Saint-Gobain are two of four significant suppliers in North America. The acquisition would increase concentration levels substantially in markets that already are highly concentrated.

IV. Effects of the Acquisition

The Commission's complaint charges that the proposed acquisition would enhance the likelihood of collusion or coordinated interaction among the remaining firms in the market. Certain market conditions, including product homogeneity and the availability of detailed market information about customers and transactions are conducive to the firms reaching terms of coordination and detecting deviations from those terms.

The Commission's complaint also charges that Keystone's acquisition of Saint-Gobain's North American alumina wear tile assets would eliminate actual, direct, and substantial competition between CoorsTek and Saint-Gobain. By increasing CoorsTek's market share substantially, while at the same time eliminating the most significant competitor in the market, an acquisition of Saint-Gobain's North American alumina tile assets likely would allow CoorsTek to unilaterally charge higher prices for alumina wear tile.

The Commission's complaint alleges that significant impediments to entry, expansion or repositioning in the alumina wear tile markets make entry unlikely, untimely and likely unprofitable. The size of the investment and the time needed to enter the relevant markets relative to the size of the overall market is substantial. Entry is made more difficult due to reputational hurdles, and there is uncertainty that an entrant could secure the sales to make the investment profitable. As a result, new entry, expansion, or repositioning by other firms sufficient to achieve a significant market impact is unlikely to ameliorate the harms posed by the proposed transaction.

V. The Proposed Consent Agreement

The proposed Consent Agreement addresses the competitive risks of a future sale of Saint-Gobain's North American alumina tile business to Keystone or others. By imposing certain prior approval and prior notice conditions on Keystone and Saint-Gobain, the remedy serves to ensure that the assets of Saint-Gobain's North American alumina wear tile business will remain, and continue to compete, in the North American alumina wear tile markets.

Pursuant to the proposed Consent Agreement, for a period of ten years Keystone must obtain Commission approval prior to acquiring, directly or indirectly, Saint-Gobain's alumina wear tile assets. These assets primarily include the Latrobe facility, but also include assets of Saint-Gobain's alumina wear tile business or any interest in assets owned or controlled by Saint-Gobain relating to the research, development, marketing, and sale anywhere in the world of alumina wear tile produced and manufactured in North America.

Pursuant to the proposed Consent Agreement, for a period of five years Saint-Gobain must provide advance written notification to the Commission before selling all or substantially all of its North American alumina wear tile business to any person other than an affiliate. Saint-Gobain also must provide prior notice to the Commission before closing or ceasing operations at the Latrobe facility, subject to certain exceptions for maintenance, construction of improvements, and the like, and for involuntary closures due to force majeure, health and safety emergencies, and other such events.

As part of ensuring the continued viability of Saint-Gobain's alumina wear tile business, Keystone, pursuant to the proposed Consent Agreement, must comply with all terms of alumina wear tile business agreements between Keystone and Saint-Gobain. One of these agreements is a supply agreement for certain types of standard alumina tile produced at the Vinhedo, Brazil facility ("Vinhedo tile") that Keystone will acquire from Saint-Gobain. This supply agreement gives Saint-Gobain access to the alumina wear tile from the Vinhedo facility for a limited interim period, by which time Saint-Gobain will be required to find another source for the Vinhedo tile or produce it internally.

VI. Opportunity for Public Comment

The proposed Consent Agreement has been placed on the public record for thirty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will review the comments received, and decide whether to withdraw from the proposed Consent Agreement, modify it, or make it final. By accepting the proposed Consent Agreement subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to inform and invite public comment on the proposed Consent Agreement, including the proposed remedy, and to aid the Commission in its determination of whether to make the proposed Consent Agreement final. This analysis is not intended to constitute an official interpretation of the proposed Consent Agreement, nor to modify the terms of the proposed Consent Agreement in any way.