

IN THE MATTER OF

SAINT-GOBAIN/NORTON INDUSTRIAL CERAMICS CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE  
FEDERAL TRADE COMMISSION ACT

*Docket C-3673. Complaint, June 12, 1996--Decision, June 12, 1996*

This consent order requires, among other things, a Massachusetts-based corporation to divest businesses and associated assets in the United States markets for fused cast refractories, hot surface igniters, and silicon carbide refractory bricks. If the divestiture is not completed as required, the Commission may appoint one or more trustees to divest the remaining properties and assets.

*Appearances*

For the Commission: *Howard Morse, Robert Tovsky and William Baer.*

For the respondent: *Mark Leddy, Cleary, Gottlieb, Steen & Hamilton, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Compagnie de Saint-Gobain, through its wholly-owned subsidiary Societe Europeenne des Produits Refractaires ("SEPR"), has entered into a Stock Purchase Agreement with subsidiaries of the British Petroleum Company p.l.c. ("BP") whereby Compagnie de Saint-Gobain will acquire certain of the subsidiaries of BP that together comprise The Carborundum Company ("Carborundum"), and that as part of this agreement, Saint-Gobain/Norton Industrial Ceramics Corporation ("Saint-Gobain") will acquire the United States assets of Carborundum other than assets relating to ceramic fibers, in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and that such 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, and having reason to believe that Compagnie de Saint-Gobain has entered into

such agreements in restraint of trade in violation of Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint stating its charges as follows:

#### I. THE RESPONDENT

1. Respondent Saint-Gobain/Norton Industrial Ceramics Corporation is a corporation organized and existing under the laws of Delaware, with its principal place of business at One New Bond Street, Worcester, Massachusetts. Saint-Gobain is a wholly-owned indirect subsidiary controlled by Compagnie de Saint-Gobain, a French company with its principal place of business located at 18, avenue d'Alsace, 92400 Courbevoie, France.

2. At all times relevant herein, the respondent, Saint-Gobain, has been, and is now, engaged in commerce as "commerce" is defined in Section 4 of the FTC Act (15 U.S.C. 44) and Section 1 of the Clayton Act (15 U.S.C. 12), and is a corporation whose business is in or affecting commerce as defined in Section 4 of the Federal Trade Commission Act (15 U.S.C. 44).

#### II. THE PROPOSED ACQUISITION

3. On or about May 26, 1995, Compagnie de Saint-Gobain, through SEPR, and BP executed a Stock Purchase Agreement wherein Saint-Gobain agreed to acquire certain assets of Carborundum from BP.

4. Saint-Gobain and Carborundum are substantial direct competitors in several markets, including United States markets for fused cast refractories, hot surface igniters, and silicon carbide refractory bricks.

#### III. FUSED CAST REFRACTORIES

##### *A. Relevant Line of Commerce*

5. One relevant line of commerce within which to analyze the effects of the acquisition is the United States market for fused cast refractories. Fused cast refractories are highly dense brick or block materials typically comprised either of alumina, zirconia and silica

together or alumina alone. Glass manufacturers, including producers of float glass (flat glass for homes, offices and automobiles), container glass (for bottles and jars) and other types of glass products (*e.g.*, for video screens, light bulbs, lenses, and beakers), require fused cast refractories to line the interior of the furnaces in which they melt raw materials -- silica, soda ash, limestone, salt cake and dolomite -- into a homogenous mass of molten glass.

6. Fused cast refractories are used by glass manufacturers for their excellent wear-resistant properties. Glass manufacturers would not substitute to other materials for fused cast refractories even in response to a significant price increase. The use of other materials in the applications where fused cast refractories are currently used would generally lead to an unacceptable deterioration in glass quality, and would dramatically reduce the length of furnace campaigns, requiring more frequent costly and time-consuming furnace repairs.

7. Imports of fused cast refractories into the United States are small, and come primarily from Saint-Gobain. The potential for significant imports is constrained by overseas production costs, shipping and handling costs, and duties. Product availability and product quality issues also limit the competitiveness of most of the fused cast refractories produced overseas. In any event, customers in the United States would require extensive testing over several years before using fused cast refractories produced overseas.

8. Total sales of fused cast refractories in the United States are over \$45 million.

### *B. Market Concentration*

9. Saint-Gobain and Carborundum are the only two producers in the United States of fused cast refractories. Therefore, the United States fused cast refractory market is extremely concentrated as measured by the Herfindahl-Hirschmann Index (HHI), and the acquisition would result in a monopoly. In 1994, Carborundum accounted for the majority of sales of fused cast refractories in the United States, and Saint-Gobain accounted for the remainder. Even on a worldwide basis, Saint-Gobain is by far the largest producer of fused cast refractories, and Carborundum the second-largest, with a combined share of sales of approximately 70%.

10. Saint-Gobain has a dangerous probability of obtaining unilateral market power in the United States market for fused cast refractories.

### *C. Conditions of Entry*

11. Entry into the fused cast refractories market would not be timely, likely or sufficient to deter or offset reductions in competition resulting from the acquisition.

12. Product development and plant construction alone would take several years. Obtaining product qualification at glass producers, who require extensive life cycle testing before they will use fused cast refractories in their plants because these products are so critical to the manufacturing process, would require many more years. The total time from initial entry to significant market impact likely would be many years.

13. Entry would also be extremely unlikely as it would require a large sunk capital investment. Efficient production would require entry at a scale that would be relatively large compared to the total sales available in the fused cast refractories market, making entry more risky and unlikely.

### *D. Effects of the Acquisition*

14. The acquisition of Carborundum by Saint-Gobain may substantially lessen competition and tend to create a monopoly in the United States market for fused cast refractories because, among other things:

- a. It will increase concentration substantially in a highly concentrated market;
- b. It will eliminate substantial head-to-head competition between Saint-Gobain and Carborundum;
- c. It will leave Saint-Gobain as the sole producer of fused cast refractories in the United States, allowing Saint-Gobain unilaterally to exercise market power;
- d. It will likely result in increased prices for fused cast refractories; and
- e. It will likely result in diminished product innovation in fused cast refractories.

## IV. HOT SURFACE IGNITERS

*A. Relevant Line of Commerce*

15. A second line of commerce within which to analyze the effects of the acquisition is the United States market for hot surface igniters ("HSIs"). HSIs are ceramic devices which are used as the ignition source in the ignition control system of gas appliances such as range ovens, dryers and furnaces. Depending on the application, HSIs differ in design and price, and are not interchangeable among applications. HSIs are an extremely reliable and cost-effective ignition source for gas appliances.

16. For most of the applications in which HSIs are used, appliance manufacturers would not substitute for HSIs in response to even a significant price increase. Other products, including pilot ignition and spark ignition, are less efficient, less reliable and less cost-effective than HSIs for nearly all gas appliance applications. In addition, appliance manufacturers would need to do extensive product re-design and product testing before substituting another type of ignition source for HSIs.

17. Imports of HSIs into the United States are negligible. Because of differences in line voltages, appliance design and energy efficiency regulations, there is little demand for HSIs overseas, and little production. The only producer of HSIs outside the United States is a Japanese company, Kyocera, which has been trying for several years to develop a commercially viable HSI, and has obtained only minimal sales in the United States. The Kyocera HSI requires a more expensive ignition system.

18. Total sales of HSIs in the United States are over \$45 million.

*B. Market Concentration*

19. Saint-Gobain and Carborundum together account for nearly all HSI sales in the United States. The only other producer of HSIs in the United States is Igniter Systems, Inc. Igniter Systems' product quality and consistency are questioned by customers, and its sales are limited to a small volume of aftermarket sales.

20. The United States HSI market is extremely concentrated as measured by the Herfindahl-Hirschmann Index ("HHI"), and the acquisition would result in a near-monopoly. In 1994, Saint-Gobain

accounted for the large majority of sales of HSIs and Carborundum accounted for virtually all the remainder. Saint-Gobain's acquisition of Carborundum would increase the HHI to over 9800.

21. Even if one defined a market comprised of all ignition sources for the gas appliances in which HSIs are predominantly used, and included HSIs, pilot ignition and spark ignition, the combined share of Saint-Gobain and Carborundum would be close to 80% of total sales.

22. Saint-Gobain has a dangerous probability of obtaining unilateral market power in the United States market for HSIs.

### *C. Conditions of Entry*

23. There is a history of failed entry into the HSI market, and new entry would not be timely, likely or sufficient to deter or offset reductions in competition resulting from the acquisition. Designing and manufacturing HSIs would require several years for process development, plant construction, and product testing. Entry would require significant sunk investment with uncertain ultimate success. Efficient production would require entry at a scale that would be relatively large compared to the total sales available in the HSI market, making entry more risky and unlikely.

### *D. Effects of the Acquisition*

24. The acquisition of Carborundum by Saint-Gobain may substantially lessen competition and tend to create a monopoly in the HSI market in the United States because, among other things:

- a. It will increase concentration substantially in a highly concentrated market;
- b. It will eliminate substantial head-to-head competition between Saint-Gobain and Carborundum, who are each other's closest competitors in the research and development, manufacture, and sale of HSIs;
- c. It will allow Saint-Gobain unilaterally to exercise market power;
- d. It will likely result in increased prices for HSIs; and
- e. It will likely result in diminished product innovation in HSIs.

## V. SILICON CARBIDE REFRACTORY BRICKS

*A. Relevant Line of Commerce*

25. A third line of commerce within which to analyze the effects of the acquisition is the United States market for silicon carbide refractory bricks. Silicon carbide refractory bricks are fired ceramic bricks made from silicon carbide grain. These products are used to line the interior sidewalls of aluminum reduction cells, steel blast furnaces, and copper shaft furnaces.

26. Aluminum, steel and copper manufacturers would not substitute for silicon carbide bricks in response to even a significant price increase. The choice of a refractory material is sensitive primarily to the performance requirements as established by the design of the manufacturing facility in which the material will be used. Silicon carbide's excellent heat and oxidation resistance makes it a superior product for certain types of aluminum reduction cells, steel blast furnaces and copper shaft furnaces.

27. Imports of silicon carbide refractory bricks are minimal. Overseas production costs are generally higher than production costs in the United States, and imports would be constrained by added shipping and handling costs, and by duties, and would not constrain increased prices in the United States.

28. Total sales of silicon carbide refractory bricks in the United States are approximately \$15 million.

*B. Market Concentration*

29. The United States silicon carbide refractory brick market is extremely concentrated as measured by the Herfindahl-Hirschmann Index (HHI), and the acquisition would result in a near-monopoly. In 1994, Carborundum accounted for the majority of sales of silicon carbide refractory bricks in the United States, and Saint-Gobain virtually all of the rest. Saint-Gobain's acquisition of Carborundum would increase the HHI to over 9000.

30. Saint-Gobain has a dangerous probability of obtaining unilateral market power in the United States market for silicon carbide refractory bricks.

*C. Conditions of Entry*

31. Entry into the silicon carbide refractory brick market would not be timely, likely or sufficient to deter or offset reductions in competition resulting from the proposed acquisition. Designing and manufacturing silicon carbide refractory bricks would require product and process development, plant construction, and product testing, all of which could require several years of effort. In addition, entry would require significant sunk investment with uncertain ultimate success.

*D. Effects of the Acquisition*

32. The acquisition of Carborundum by Saint-Gobain may substantially lessen competition and tend to create a monopoly in the silicon carbide refractory bricks in the United States because, among other things:

- a. It will increase concentration substantially in a highly concentrated market;
- b. It will eliminate substantial head-to-head competition between Saint-Gobain and Carborundum, who are each other's closest competitors in the research and development, manufacture, and sale of silicon carbide refractory bricks;
- c. It will allow Saint-Gobain unilaterally to exercise market power; and
- d. It will likely result in increased prices for silicon carbide refractory bricks.

## VI. VIOLATIONS CHARGED

33. The acquisition agreement between Saint-Gobain and BP described in paragraph three violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

34. The proposed acquisition of Carborundum by Saint-Gobain would, if consummated, 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.

35. The proposed acquisition of Carborundum by Saint-Gobain, if consummated, would allow Saint-Gobain to monopolize the United



States markets for fused cast refractories, HSIs and silicon carbide refractory bricks, in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

#### DECISION AND ORDER

The Federal Trade Commission ("the Commission"), having initiated an investigation of the proposed acquisition by Compagnie de Saint-Gobain of certain of the subsidiaries of British Petroleum which together comprise The Carborundum Company ("Carborundum"), in which Saint-Gobain/Norton Industrial Ceramics Corporation ("Saint-Gobain") will acquire substantially all of the Carborundum assets in the United States, which acquisition is more fully described at paragraph I. (F) below, and Saint-Gobain having been furnished with a copy of a draft complaint that the Bureau of Competition has presented to the Commission for its consideration and which, if issued by the Commission, would charge Saint-Gobain with violations of the Clayton Act and Federal Trade Commission Act; and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said 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, 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 the respondent has violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, makes the following jurisdictional findings and enters the following order:

1. Respondent Saint-Gobain/Norton Industrial Ceramics is a corporation organized, existing and doing business under and by

virtue of the laws of the State of Delaware, with its principal office and place of business located at One New Bond Street, Worcester, Massachusetts.

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

## ORDER

### I.

As used in this order, the following definitions shall apply:

A. "*Respondent*" or "*Saint-Gobain*" means Saint-Gobain/Norton Industrial Ceramics Corporation, its directors, officers, employees, agents and representatives, its predecessors, successors, and assigns; subsidiaries, divisions, and groups and affiliates controlled by Saint-Gobain, and the respective directors, officers, employees, agents, representatives, successors and assigns of each; its domestic and foreign parents, including Compagnie de Saint-Gobain, and the subsidiaries, divisions, and groups and affiliates controlled by Compagnie de Saint-Gobain or any other domestic or foreign parent, and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

B. "*Carborundum*" means the companies and assets comprising The Carborundum Company that Saint Gobain proposes to acquire from BP pursuant to the Acquisition.

C. "*BP*" means The British Petroleum Company p.l.c.

D. "*Toshiba Monofrax*" means the joint venture between Carborundum and Toshiba Ceramics Company, Limited, pursuant to the Joint Venture Agreement dated December 20, 1965.

E. "*Commission*" means the Federal Trade Commission.

F. "*Acquisition*" means the acquisition described in the Stock Purchase Agreement entered into on May 26, 1995 by which Saint-Gobain has agreed to acquire and BP has agreed to convey certain rights and interests in, and title to, Carborundum.

G. "*Fused cast refractories*" means all grades or types of refractory products which are produced using a fused cast process, *i.e.*, melting components in electric furnaces and casting the molten

product into shaped products, including, but not limited to, fused cast AZS (alumina-zirconia-silica) and fused cast alumina.

H. "*Hot surface igniters*" means all silicon carbide hot surface igniters used in the ignition system of gas appliances.

I. "*Silicon carbide performance refractories*" means all refractory products composed of bonded silicon carbide grains.

J. "*Silicon carbide refractory bricks*" means all refractory products composed of bonded silicon carbide grains which are formed by hydraulic, mechanical or vibratory pressing, and are marketed for use in the manufacture of primary metals, including aluminum reduction cells, steel blast furnaces, and copper shaft furnaces.

K. "*Carborundum silicon carbide refractory brick technology*" means all patents, trade secrets, technology and know-how of Carborundum for producing any silicon carbide refractory brick product sold by Carborundum on or before the date of the Acquisition, all such information being sufficiently detailed for the commercial production and sale of such products, including, but not limited to, all technical information, data, specifications, drawings, design and equipment specifications, manuals, engineering reports, manufacturing designs and reports, operating manuals, and formulations, laboratory research, and quality control data.

L. "*Assets and Businesses*" means assets, properties, businesses, and goodwill, tangible and intangible, including, without limitation, the following:

1. All plant facilities, machinery, fixtures, equipment, vehicles, transportation and storage facilities, furniture, tools, supplies, stores, spare parts, and other tangible personal property;

2. All customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, technical information, dedicated management information systems, information contained in management information systems, rights to software, trademarks, patents and patent rights, inventions, trade secrets, technology, know-how, ongoing research and development, specifications, designs, drawings, processes and quality control data;

3. Raw material and finished product inventories and goods in process;

4. All right, title and interest in and to real property, together with appurtenances, licenses, and permits;

5. All right, title, and interest in and to the contracts entered into in the ordinary course of business with customers (together with associated bids), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;

6. All rights under warranties and guarantees, express or implied;

7. All separately maintained, as well as relevant portions of not separately maintained books, records and files; and

8. All items of prepaid expense.

M. "*Carborundum fused cast refractories properties to be divested*" means the Carborundum Monofrax Group, Carborundum's manufacturing facility in Falconer, New York, and any other Carborundum Assets and Businesses utilized in connection with the research, development, manufacture, distribution or sale of fused cast refractories (including any assets located at or research or development work ongoing or completed at the Carborundum Technology Center); provided, however, that the "*Carborundum fused cast refractories properties to be divested*" does not include the name "Carborundum" nor any interest of Carborundum in, or contractual relationship with, Toshiba Monofrax.

N. "*Carborundum igniters properties to be divested*" means Carborundum's hot surface igniter manufacturing facility in Mayaguez, Puerto Rico, and any other Carborundum Assets and Businesses utilized in connection with the research, development, manufacture, distribution or sale of hot surface igniters (including any assets located or research and development work done at the Carborundum Technology Center, and any rights of Carborundum in which any person has agreed not to compete with Carborundum in the manufacture or marketing of hot surface igniters); provided, however, that "*Carborundum igniters properties to be divested*" does not include the name "Carborundum."

O. "*Carborundum silicon carbide properties to be divested*" means Carborundum's Keasbey, New Jersey silicon carbide performance refractories manufacturing facility, and any other Carborundum Assets and Businesses utilized in connection with the research, development, manufacture, distribution or sale of all products, including silicon carbide refractory bricks and products, other than silicon carbide refractory bricks, manufactured at that plant (including such assets located, or research and development work

done, at the Carborundum Technology Center); provided, however, that "silicon carbide properties to be divested" does not include the name "Carborundum" or any Carborundum silicon carbide refractory manufacturing facilities other than the Keasbey, New Jersey plant, or any trade names used by Carborundum.

P. "*Carborundum properties to be divested*" means the Carborundum fused cast refractories properties to be divested, the Carborundum igniters properties to be divested, and the Carborundum silicon carbide properties to be divested.

Q. "*Carborundum Technology Center*" means Carborundum's research and development facility located in Niagara Falls, New York.

R. "*Saint-Gobain fused cast refractories properties to be divested*" means (i) Saint-Gobain's manufacturing facility in Louisville, Kentucky, and any other Saint-Gobain Assets and Businesses located in North America that are utilized in the research, development, manufacture, sale or distribution of fused cast refractories and (ii) any product or processing technology utilized in connection with the research, development, manufacture, distribution or sale of fused cast refractories (including any ongoing or completed research or development work within Saint-Gobain that is related to fused cast AZS refractories, fused cast alumina refractories, or to any other fused cast products produced or sold by Saint-Gobain in North America; provided, however, that such research shall not include research or development work that relates solely to process technology used by Societe Europeenne des Produits Refractaires in Europe).

S. "*Licensee*" means the person to whom the Carborundum silicon carbide refractory brick technology is licensed pursuant to paragraph II of this order.

T. "*License date*" means the date on which the Carborundum silicon carbide refractory brick technology is licensed following Commission approval pursuant to paragraph II of this order.

U. "*Remaining properties to be divested*" means the following:

1. The Carborundum fused cast refractories properties to be divested if the Carborundum fused cast refractories properties to be divested have not been divested, or divestiture of the Saint-Gobain fused cast refractories properties to be divested has not been

approved by the Commission and divested, by the time that a trustee is appointed in accordance with paragraph III of this order, and

2. The Carborundum igniters properties to be divested if the Carborundum igniter properties to be divested have not been divested by the time that a trustee is appointed in accordance with paragraph III of this order, and

3. The Carborundum silicon carbide properties to be divested if the Carborundum silicon carbide properties to be divested have not been divested, or a license to the Carborundum silicon carbide refractory brick technology has not been approved by the Commission and granted, by the time that a trustee is appointed in accordance with paragraph III of this order.

V. "*Viability and competitiveness*" of the properties to be divested means that such respective properties are capable of functioning independently and competitively in the fused cast refractories, hot surface igniters, and silicon carbide performance refractories businesses.

## II.

*It is further ordered, That:*

A. Respondent shall divest, absolutely and in good faith, at no minimum price, by the earlier of February 28, 1997, or one year from the date the Acquisition is consummated, the Carborundum fused cast refractories properties to be divested as an ongoing business, and shall also divest such additional ancillary Carborundum Assets and Businesses and effect such arrangements as are necessary to assure the viability and competitiveness of the Carborundum fused cast refractories properties to be divested.

B. Respondent may propose, and the Commission may in its sole discretion accept, in lieu of divestiture of the Carborundum fused cast refractories properties to be divested, divestiture of the Saint-Gobain fused cast refractories properties to be divested, to a person that receives the prior approval of the Commission, and in a manner that receives the prior approval of the Commission. Divestiture of the Saint-Gobain fused cast refractories properties to be divested shall, in order to obtain Commission approval, satisfy the purposes of this order and remedy the lessening of competition resulting from the

Acquisition as alleged in the Commission's complaint. Respondent's request that the Commission approve a divestiture of the Saint-Gobain fused cast refractories properties to be divested shall not toll the time in which it is required to divest the Carborundum fused cast refractories properties to be divested, except that if the Commission has not approved or disapproved such request within ninety (90) days of the date on which it was submitted, then, in the event of Commission disapproval of the request, the period shall be extended by the length of time in excess of ninety days before Commission disapproval. Respondent's request that the Commission approve divestiture of the Saint-Gobain fused cast refractories properties to be divested shall not eliminate the requirement that it divest the Carborundum fused cast refractories properties to be divested, unless such substitute divestiture is approved by the Commission and consummated in a timely fashion consistent with the requirements of this order.

C. Respondent shall divest, absolutely and in good faith, at no minimum price, by the earlier of February 28, 1997, or one year from the date the Acquisition is consummated, the Carborundum igniters properties to be divested as an ongoing business, and shall also divest such additional ancillary Carborundum Assets and Businesses and effect such arrangements as are necessary to assure the viability and competitiveness of the Carborundum igniters properties to be divested.

D. Respondent shall divest, absolutely and in good faith, at no minimum price, by the earlier of February 28, 1997, or one year from the date the Acquisition is consummated, the Carborundum silicon carbide properties to be divested, and shall also divest such additional ancillary Carborundum Assets and Businesses and effect such arrangements as are necessary to assure the viability and competitiveness of the Carborundum silicon carbide properties to be divested.

E. Respondent may propose, prior to the earlier of August 30, 1996, or six months from the date the Acquisition is consummated, and the Commission may in its sole discretion accept, in lieu of divestiture of the Carborundum silicon carbide properties to be divested, to grant, with no continuing royalties, a perpetual license to the Carborundum silicon carbide refractory brick technology to a person that obtains the prior approval of the Commission, in a manner that receives the prior approval of the Commission.

Licensing of the Carborundum silicon carbide refractory brick technology shall, in order to obtain Commission approval, satisfy the purposes of this order and remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint. In no event shall any licensing agreement pursuant to this paragraph contain any limitation on the products the licensee is permitted to produce, or the geographic area in which the licensee may produce such products. Respondent's request that the Commission approve a licensee shall not toll the time in which it is required to divest the Carborundum silicon carbide properties to be divested, except that if the Commission has not approved or disapproved such request within ninety (90) days of the date on which it was submitted, then, in the event of Commission disapproval of the request, the period shall be extended by the length of time in excess of ninety days before Commission disapproval. Respondent's request that the Commission approve a licensee shall not eliminate the requirement that it divest the Carborundum silicon carbide properties to be divested, unless such licensing is approved by the Commission and consummated in a timely fashion consistent with the requirements of this order.

F. If respondent licenses the Carborundum silicon carbide refractory brick technology pursuant to paragraph II.E. of this order, then for a period of six (6) months after the license date, upon reasonable notice and request from the licensee, respondent shall provide to the licensee information, technical assistance, and advice sufficient to effect the transfer to the licensee of the silicon carbide refractory brick technology and to enable the licensee to manufacture silicon carbide refractory bricks. Upon reasonable notice and request from the licensee, respondent shall also provide to the licensee consultation and training with knowledgeable employees of respondent, including a qualified engineer, at the licensee's facility for a period of time, not to exceed three (3) months, sufficient to satisfy the licensee's management that its personnel are adequately trained in the manufacture of silicon carbide refractory bricks. Respondent may require reimbursement from the licensee for all of its direct out-of-pocket expenses, including a reasonable labor loss fee for on-site assistance incurred in providing the services required by this paragraph II.F. of this order.

G. If respondent licenses the Carborundum silicon carbide refractory brick technology pursuant to paragraph II.E. of this order,



