

COMMISSIONERS: **Maureen K. Ohlhausen, Acting Chairman**
Terrell McSweeney

In the Matter of

EMERSON ELECTRIC CO.,
a corporation;

and

PENTAIR PLC,
a corporation.

Docket No. C-4615

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Emerson Electric Co. (“Emerson”) of the equity interests of certain subsidiaries (defined herein as “Pentair Valves & Controls Subsidiaries”) and related assets from their ultimate parent entity Pentair plc (“Pentair”) (Emerson and Pentair hereinafter collectively referred to as “Respondents”), and Respondents having been furnished thereafter with a copy of a draft of the Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents 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

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of the Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents 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 to accept the executed Consent Agreement and to place 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 issues its Complaint, makes the following jurisdictional findings, and issues this Order to Maintain Assets:

1. Respondent Emerson is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri with its principal executive offices located at 8000 West Florissant Avenue, St. Louis, Missouri 63136.
2. Respondent Pentair is a corporation organized, existing, and doing business under and by virtue of the laws of the Republic of Ireland with its principal executive offices located at 43 London Wall, London, EC2M 5TF, United Kingdom, and its United States address for service of process and the Complaint, the Decision and Order, and the Order to Maintain Assets, as follows: General Counsel, Pentair plc, c/o Flow Control US Holding Corporation, 5500 Wayzata Blvd., Suite 800, Golden Valley, Minnesota 55416-1251.
3. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order to Maintain Assets, the following definitions and the definitions used in the Consent Agreement and the proposed Decision and Order (and when made final and effective, the Decision and Order), which are incorporated herein by reference and made a part hereof, shall apply:

- A. “Emerson” means: Emerson Electric Co.; its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups, and affiliates, in each case controlled by Emerson Electric Co., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition, Emerson shall include the Pentair Valves & Controls Subsidiaries.
- B. “Pentair” means: Pentair plc; its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups, and affiliates, in each case controlled by Pentair plc, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Commission” means the Federal Trade Commission.

- D. “Respondents” means Emerson and Pentair, individually and collectively.
- E. “Decision and Order” means the:
1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance of a final and effective Decision and Order by the Commission; and
 2. Final Decision and Order following its issuance and service by the Commission in this matter.
- F. “Monitor” means any monitor appointed pursuant to Paragraph III of this Order to Maintain Assets or Paragraph III of the Decision and Order.
- G. “Orders” means the Decision and Order and this Order to Maintain Assets.
- H. “Westlock Business(es)” means the Business of Westlock and the Business associated with each of the Westlock Products to the extent such Businesses are owned by, controlled by, managed by, or licensed to, the Respondents.

II.

IT IS FURTHER ORDERED that from the date this Order to Maintain Assets becomes final and effective:

- A. Until Respondents fully transfer and deliver each of the respective Westlock Assets to an Acquirer, Respondents shall take such actions as are necessary to maintain the full economic viability, marketability, and competitiveness of the Westlock Business, to minimize any risk of loss of competitive potential for the Westlock Business, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Westlock Assets except for ordinary wear and tear. Respondents shall not sell, transfer, encumber, or otherwise impair the Westlock Assets (other than in the manner prescribed in the Decision and Order), nor take any action that lessens the full economic viability, marketability, or competitiveness of the Westlock Business.
- B. Until Respondents fully transfer and deliver each of the respective Westlock Assets to an Acquirer, Respondents shall maintain the operations of the Westlock Business in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance of the assets of such business) and/or as may be necessary to preserve the full economic viability, marketability, and competitiveness of the Westlock Business and shall use their best efforts to preserve the existing relationships with the following: suppliers; vendors and distributors; High Volume Accounts; end-use customers; Agencies; Standards and Certification Organizations; employees; and others having business relations with the Westlock Business. Respondents’ responsibilities shall include, but are not limited to, the following:

1. providing the Business related to each Westlock Product with sufficient working capital to operate at least at current rates of operation, to meet all capital calls with respect to such business, and to carry on, at least at their scheduled pace, all capital projects, business plans, and promotional activities for that Business;
 2. continuing, at least at their scheduled pace, any additional expenditures for each of the Businesses related to each Westlock Product authorized prior to the date the Consent Agreement was signed by the Respondents, including, but not limited to, all research, Development, manufacturing, distribution, marketing, and sales expenditures;
 3. providing such resources as may be necessary to respond to competition against each of the Westlock Products and/or to prevent any diminution in sales of each of the Westlock Products during and after the Acquisition process and prior to the complete transfer and delivery of the Westlock Assets to an Acquirer;
 4. providing such resources as may be necessary to maintain the competitive strength and positioning of each of the Westlock Products that were marketed or sold by Respondents prior to the date the Respondents entered the Acquisition Agreement, at the related High Volume Accounts;
 5. making available for use by the Westlock Business funds sufficient to perform all routine maintenance and all other maintenance as may be necessary to, and all replacements of, the Westlock Assets; and
 6. providing such support services (*e.g.*, handling of accounts receivable, accounts payable, internal and external auditing functions, tax, legal, treasury, payroll, benefits administration, information technology systems and support, and human resources management) to the Westlock Business as were being provided to such Westlock Business by Respondents as of the date the Consent Agreement was signed by Respondents.
- C. Until the Closing Date, Respondents shall maintain a work force that is (i) at least as large in size (as measured in full time equivalents) as, and (ii) comparable in training, and expertise to, what has been associated with the Westlock Business's last fiscal year.
- D. Until the Closing Date, Respondents shall not transfer any Westlock Core Employee out of the Westlock Business, reduce the responsibilities related to the Westlock Business of any Westlock Core Employee, or terminate the employment of any Westlock Core Employee other than for cause.

- E. Until the Closing Date, provide all Westlock Core Employees with reasonable financial incentives to continue in their positions and to research, Develop, manufacture and/or market the Westlock Product(s) consistent with past practices and/or as may be necessary to preserve the marketability, viability, and competitiveness of the Business related to each Westlock Product(s) and to ensure successful execution of the pre-Acquisition plans for that Westlock Product(s). Such incentives shall include a continuation of all employee compensation and benefits offered by a Respondent until the Closing Date(s) has occurred, including regularly scheduled raises, bonuses, and vesting of pension benefits (as permitted by Law); and
1. for a period of one (1) year from the Closing Date, not: (i) directly or indirectly solicit or otherwise attempt to induce any employee of the Acquirer with any amount of responsibility related to a Westlock Product ("Westlock Employee") to terminate his or her employment relationship with the Acquirer; or (ii) hire any Westlock Employee;

provided, however, a Respondent may hire any former Westlock Product Employee whose employment has been terminated by the Acquirer or who independently applies for employment with that Respondent, as long as that employee was not solicited in violation of the nonsolicitation requirements contained herein;

provided further, however, that this Paragraph does not require nor shall be construed to require a Respondent to terminate the employment of any employee or to prevent a Respondent from continuing to employ the Westlock Core Employees in connection with the Acquisition;

provided further, however, that a Respondent may do the following: (i) advertise for employees in newspapers, trade publications, or other media not targeted specifically at the Westlock Employees; or (ii) hire a Westlock Employee who contacts a Respondent on his or her own initiative without any direct or indirect solicitation or encouragement from that Respondent.
- F. Prior to the Closing Date, for the purposes of ensuring an orderly marketing and distribution transition, Respondents shall:
1. develop and implement a detailed transition plan to ensure that the commencement of the marketing, distribution, and sale of such Westlock Products by the Acquirer is not delayed or impaired by the Respondents;
 2. designate employees of Respondents knowledgeable about the marketing, distribution, and sale related to each of the Westlock Products who will be responsible for communicating directly with the Acquirer, and the Monitor (if one has been appointed), for the purposes of assisting in the transfer of the Westlock Business;

3. maintain and manage inventory levels of the Westlock Products in consideration of the marketing and distribution transition to the Acquirer;
4. continue to manufacture, market, distribute, and sell the Westlock Products;
5. allow the Acquirer access at reasonable business hours to all Confidential Business Information related to the Westlock Products and employees who possess or are able to locate such information for the purposes of identifying the books, records, and files directly related to the Divestiture Products that contain such Confidential Business Information pending the completed delivery of such Confidential Business Information to the Acquirer;
6. to the extent known or available to the specified Respondent, provide the Acquirer with a list of the inventory levels (weeks of supply) in the possession of each customer (*i.e.*, retailer, wholesaler, or distributor) by model or series on a regular basis and in a timely manner;
7. to the extent known by the specified Respondent, provide the Acquirer with anticipated reorder dates for each customer by model or series on a regular basis and in a timely manner; and
8. establish projected time lines for accomplishing all tasks necessary to effect the marketing and distribution transition to the Acquirer in an efficient and timely manner.

G. Pending divestiture of the Westlock Assets, Respondents shall:

1. not use, directly or indirectly, any Confidential Business Information related to the Westlock Business other than as necessary to comply with the following:
 - a. the requirements of this Order;
 - b. Respondents' obligations to the Acquirer under the terms of any related Remedial Agreement; or
 - c. applicable Law;
2. not disclose or convey any such Confidential Business Information, directly or indirectly, to any Person except (i) the Acquirer, (ii) other Persons specifically authorized by the Acquirer or staff of the Commission to receive such information, (iii) the Commission, or (iv) the Monitor (if any has been appointed); and

3. institute procedures and requirements to ensure that Respondents' employees:
 - a. do not provide, disclose, or otherwise make available, directly or indirectly, any Confidential Business Information in contravention of this Order to Maintain Assets; and
 - b. do not solicit, access or use any Confidential Business Information that they are prohibited from receiving for any reason or purpose.
- H. Not later than thirty (30) days from the earlier of (i) the Closing Date or (ii) the date this Order to Maintain Assets is issued by the Commission, each Respondent shall provide written notification of the restrictions on the use and disclosure of the Confidential Business Information related to the Divestiture Products by that Respondent's personnel to all of its employees who (i) may be in possession of such Confidential Business Information or (ii) may have access to such Confidential Business Information.
- I. Each Respondent shall give the above-described notification by e-mail with return receipt requested or similar transmission, and keep a file of those receipts for one (1) year after the Closing Date. Each Respondent shall provide a copy of the notification to the Acquirer. Each Respondent shall maintain complete records of all such notifications at that Respondent's registered office within the United States and shall provide an officer's certification to the Commission affirming the implementation of, and compliance with, the acknowledgment program. Each Respondent shall provide the Acquirer with copies of all certifications, notifications, and reminders sent to that Respondent's personnel.
- J. Each Respondent shall monitor the implementation by its employees and other personnel of all applicable restrictions with respect to Confidential Business Information, and take corrective actions for the failure of such employees and personnel to comply with such restrictions or to furnish the written agreements and acknowledgments required by this Order to Maintain Assets.
- K. The purpose of this Order to Maintain Assets is to maintain the full economic viability, marketability and competitiveness of the Westlock Business through their full transfer and delivery to an Acquirer; to minimize any risk of loss of competitive potential for the Westlock Business; and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Westlock Assets except for ordinary wear and tear.

III.

IT IS FURTHER ORDERED that:

- A. At any time after Respondents sign the Consent Agreement in this matter, the Commission may appoint a monitor (“Monitor”) to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by the Orders and the Remedial Agreements.
- B. The Commission shall select the Monitor, subject to the consent of Respondent Emerson, which consent shall not be unreasonably withheld. If Respondent Emerson 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 Emerson of the identity of any proposed Monitor, Respondents shall be deemed to have consented to the selection of the proposed Monitor.
- C. Not later than ten (10) days after the appointment of the Monitor, Respondent Emerson 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 each Respondent’s compliance with the relevant requirements of the Orders in a manner consistent with the purposes of the Orders.
- D. If a Monitor is appointed, each 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 each Respondent’s compliance with the divestiture and asset maintenance obligations and related requirements of the Orders, 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 Orders and in consultation with the Commission.
 - 2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.
 - 3. The Monitor shall serve until the latter of:
 - a. the date of completion by Respondents of all Westlock Assets and the transfer of the Manufacturing Technology, Product Intellectual Property and Product Licensed Intellectual Property in a manner that fully satisfies the requirements of this Order;
 - b. the Acquirer has obtained all the Product Approvals and Certifications, with respect to each Westlock Switch Box Product;

- c. the Acquirer is able to perform all of the accounts receivable, accounts payable, internal and external auditing functions, tax, legal, treasury, payroll, benefits administration, information technologies, and human resources management of Westlock that had, prior to the Closing Date, been performed by entities within Respondent Pentair or Respondent Emerson outside of Westlock Controls Corporation

provided, however, that, with respect to each Divestiture Product, the Monitor's service shall not extend more than four (4) years after the Order Date *unless* the Commission decides to extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders.

- E. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to each Respondent's personnel, books, documents, records kept in the ordinary course of business, facilities, and technical information, and such other relevant information as the Monitor may reasonably request, related to that Respondent's compliance with its obligations under the Orders, including, but not limited to, its obligations related to the relevant assets. Each 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 that Respondent's compliance with the Orders.
- F. The Monitor shall serve, without bond or other security, at the expense of Respondent Emerson, on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of Respondent Emerson, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities.
- G. Each 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 gross negligence, willful or wanton acts, or bad faith by the Monitor.
- H. Each Respondent shall report to the Monitor in accordance with the requirements of the Orders and as otherwise provided in any agreement approved by the Commission. The Monitor shall evaluate the reports submitted to the Monitor by a Respondent, and any reports submitted by each Acquirer with respect to the performance of a Respondent's obligations under the Orders or the Remedial Agreement(s). Within thirty (30) days from the date the Monitor receives these reports, the Monitor shall report in writing to the Commission concerning performance by each Respondent of its obligations under the Orders.

- I. Respondents 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*, that such agreement shall not restrict the Monitor from providing any information to the Commission.
- J. 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 related to Commission materials and information received in connection with the performance of the Monitor's duties.
- K. 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.
- L. 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 Orders.
- M. The Monitor appointed pursuant to this Order to Maintain Assets may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of the Decision and Order.

IV.

IT IS FURTHER ORDERED that within thirty (30) days after the date this Order to Maintain Assets is issued by the Commission, and every (30) days thereafter until Respondents have fully complied with this Order to Maintain Assets, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with the Orders. Each Respondent shall submit at the same time a copy of its report concerning compliance with the Orders to the Monitor, if any Monitor has been appointed. Each Respondent shall include in its reports, among other things that are required from time to time, a detailed description of its efforts to comply with the relevant paragraphs of the Orders, including:

- A. a detailed description of all substantive contacts, negotiations, or recommendations related to (i) the divestiture and transfer of all of the Westlock Assets and Westlock Business, (ii) the maintenance of the Westlock Business, and (iii) transitional services being provided by the relevant Respondent to the Acquirer; and
- B. a detailed description of the timing for the completion of such obligations.

provided, however, that, after the Decision and Order in this matter becomes final and effective, the reports due under this Order to Maintain Assets may be consolidated with, and submitted to the Commission on the same timing as, the reports required to be submitted by Respondents pursuant the Decision and Order.

V.

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

- A. any proposed dissolution of a Respondent;
- B. any proposed acquisition, merger, or consolidation of a Respondent; or
- C. any other change in a Respondent including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Orders.

VI.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to any Respondent made to its principal United States offices, registered office of its United States subsidiary, or its headquarters address, that each Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. access, during business office hours of that 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 that Respondent related to compliance with this Order, which copying services shall be provided by that Respondent at the request of the authorized representative(s) of the Commission and at the expense of that Respondent; and
- B. to interview officers, directors, or employees of that Respondent, who may have counsel present, regarding such matters.

VII.

IT IS FURTHER ORDERED that Respondent Pentair's obligations under this Order to Maintain Assets shall terminate on the date on which all of the following have occurred:

- A. Respondent Emerson has acquired over fifty (50) percent of the voting securities or equity interests of each of the Pentair Valves & Controls Subsidiaries;
- B. the Westlock Assets are completely owned and controlled either by Respondent Emerson or an Acquirer;

- C. with respect to any Westlock Product or related Product Intellectual Property or Manufacturing Technology, that is owned or controlled by Respondent Pentair prior to the Acquisition, Respondent Pentair has:
1. transferred all rights and assets that were owned or controlled by Respondent Pentair prior to the Acquisition and necessary to effect the related divestitures to either Respondent Emerson or the Acquirer;
 2. transferred or otherwise provided all rights, assets or other resources that were owned or controlled by Respondent Pentair prior to the Acquisition and necessary for Respondent Emerson to provide the services and assistance to the Acquirer described in Paragraph II.F. of the Decision and Order to Respondent Emerson; and
 3. secured all consents and waivers from all Third Parties that are necessary to divest the Westlock Assets to an Acquirer or certified that the Acquirer has executed all such agreements directly with each of the relevant Third Parties;
- D. with respect to any Product Licensed Intellectual Property, Respondent Pentair has granted or otherwise provided the rights to use such intellectual property either directly to the Acquirer, or to Emerson for the purposes of providing such rights to the Acquirer; and
- E. Respondent Pentair certifies to the Commission that all of the above-described acquisitions and transfers have occurred and all of the above-described consents and waivers from Third Parties have been provided to the Acquirer.

VIII.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate as to Respondent Emerson on the later of:

- A. three (3) days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. the day after the Closing Date; or

- C. the day after the all of the Product Intellectual Property has been provided to the Acquirer and the Manufacturing Technology related to each Westlock Product has been provided to the Acquirer in a manner consistent with the Technology Transfer Standards and the Monitor (if one has been appointed), in consultation with Commission staff and the Acquirer, notifies the Commission that all assignments, conveyances, deliveries, grants, licenses, transactions, transfers, and other transitions related to the provision of the Product Intellectual Property and Manufacturing Technology are complete; or
- D. the day the Commission otherwise directs that this Order to Maintain Assets is terminated.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED: April 27, 2017