

ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDER TO AID PUBLIC COMMENT

I. Introduction

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Order from Owens Corning (“Respondent”). The Consent Agreement is intended to resolve anticompetitive effects stemming from Owens Corning’s proposed acquisition of certain glass fiber reinforcements and composite fabric assets from Compagnie de Saint Gobain (“Saint Gobain”). The Consent Agreement includes a proposed Decision and Order which requires Respondent Owens Corning to divest its North American Continuous Filament Mat (“CFM”) Business, which includes the CFM production facility in Huntingdon, Pennsylvania, the Marbles Furnace in Anderson, South Carolina, which supplies the Huntingdon facility, and related technology and other assets used in the CFM business. The proposed Decision and Order also requires the licensing of all Owens Corning intellectual property related to the production of CFM and certain CFM furnace technology.

Owens Corning and Saint Gobain originally planned to combine their respective glass fiber reinforcement businesses in a new entity to be called Owens Corning Vetrotex Reinforcements. The new entity was to be owned 60 percent by Owens Corning and 40 percent by Saint Gobain. In response to antitrust concerns, the parties restructured the transaction and entered into an acquisition agreement whereby Owens Corning will acquire Saint Gobain’s glass fiber reinforcements and composite fabric business assets worldwide with several important exclusions. Owens Corning will not acquire Saint Gobain’s glass fiber reinforcements assets

II. The Proposed Complaint

According to the Commission's proposed complaint, the relevant product market in which to analyze the effects of Saint Gobain's sale of assets to Owens Corning is the market for the development, manufacture, and sale of CFM and related technology. CFM is an input in the production of non-electrical laminate, marine parts and accessories, and other products where its strength and other desirable characteristics make it the most cost effective material to use. The relevant product is used to increase mechanical performance, such as stiffness and strength, as well as chemical resistance. The relevant geographic market is North America, including imports.

The proposed complaint alleges that the market for CFM is highly concentrated and that Saint Gobain and Owens Corning have been the primary competitors in these markets for many years. According to the proposed complaint, Owens Corning and Saint Gobain account for more than 90 percent of the CFM sold in North America. The only other substantial supplier is PPG Industries, a firm that accounted for less than 10 percent of the CFM sold in the United States

The proposed Decision and Order also allows for the parties to enter into transition agreements for the short term provision of services, including an agreement for the supply of the raw materials for the production of Marbles. Moreover, the proposed Decision and Order precludes Owens Corning and Saint Gobain from entering into any agreement that would impair the value of the assets retained by Saint Gobain. The proposed Decision and Order contains a