

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.

F. “AGY” means AGY Holding Corp., a privately held company, organized, existing and

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.

4. all plans (including proposed and tentative plans, whether or not adopted), specifications, drawings, and other assets (including the non-exclusive right to

- (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

- (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,

~~in the OC Huntingdon Facility~~  
~~in the OC Huntingdon Facility~~

~~4~~ ~~in the OC Huntingdon Facility~~

~~PROVIDED, THAT HOWEVER, THE LEASE FOR THE MARBLES FURNACE OPERATIONAL AREAS~~

~~shall be for a term of twenty (20) years~~  
~~commencing on the date of the execution of this lease~~  
~~and shall be subject to the terms and conditions set forth herein~~  
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~~and shall be subject to the terms and conditions set forth herein~~



## 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.

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

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

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.



- 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

- 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**

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

~~REMOVED, UNRECORDED~~ interest in an entity described in this Paragraph R-56( V.I.R.) TJ12 17



**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]**