



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.

## ORDER

### I.

**I. UNORDERED** that, as used in this Order, the following definitions shall apply:

- A. "Respondent Owens Corning" or "Owens Corning" means Owens Corning, a corporation, its directors, officers, employees, agents, attorneys, representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Owens Corning, and the respective directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns of each.
- B. "Saint Gobain" means Compagnie de Saint Gobain, a corporation, its directors, officers, employees, agents, attorneys, representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Saint Gobain, and the respective directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns of each.
- C. "Commission" means the Federal Trade Commission.
- D. "Acquisition" means the proposed acquisition by Respondent Owens Corning of certain fiberglass reinforcements and composite fabrics assets from Saint Gobain pursuant to and as described in the Purchase Agreement dated as of July 26, 2007 by and between "Owens Corning, Société De Participations Financieres Et Industrielles S.A.S., and the Other Parties Named Herein."
- E. "Acquisition Date" means the date on which the Acquisition is consummated.

- F. “AGY” means AGY Holding Corp., a privately held company, organized, existing and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 2556 Wagener Road, Aiken, South Carolina 29801.
- G. “AGY Acquisition Agreement” means the Asset Purchase Agreement dated as of August 31, 2007 between Owens Corning Composite Materials, LLC and AGY Huntington LLC, with amendments, attachments, exhibits, and schedules thereto, attached as Confidential Appendix B to this Order.
- H. “Confidential Business Information” means all information that is not in the public domain related to research, development, manufacture, marketing, commercialization, distribution, importation, cost, pricing, supply, sales, sales support, or use of the particular assets.
- I. “CFM” means continuous filament mat.
- J. “Designated OC Employee” means those persons, or persons identified in Confidential Appendix A to this Order.
- K. “Divestiture Trustee” means any trustee appointed by the Commission pursuant to Paragraph IV of this Order.
- L. “Effective Date of OC Glass Fiber Divestiture” means the date on which Respondent (or a Divestiture Trustee) divests to the OC Acquirer the OC North American CFM Business completely and as required by Paragraphs II or IV of this Order.
- M. “Governmental Entity” means any Federal, state, local or non-U.S. government or any court, legislature, governmental agency or governmental commission or any judicial or regulatory authority of any government.
- N. “Intellectual Property” means any intellectual property including, but not limited to, software, computer programs, patents, know-how, goodwill, technology, trade secrets, technical information, marketing information, protocols, research and development, quality control information, trademarks, trade names, service marks, logos, and the modifications or improvements to such intellectual property.
- O. “Marbles” means glass fiber marbles used in the production of, among other things, CFM at the OC Huntingdon Facility.
- P. “Marbles Furnace” means the furnace for the production of Marbles including, all attachments and assets used on, attached to, appurtenant or adjacent to, or directly related to the furnace and used in the operation of the furnace in the production or distribution of Marbles produced at the OC Anderson Facility, and includes, but is not limited to:
1. copies of all books, records, and documents, including but not limited to electronically stored documents and records produced in an electronically readable form, together with all necessary instructions and software, or access to software licenses, relating to the Marbles Furnace and to the production,

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.
- U. “OC Anderson Facility” means the Owens Corning manufacturing facility, located at Highway 81 S, Anderson, South Carolina, 29624, which includes approximately 178 acres of land on which the manufacturing facility sits.
- V. “OC Battice Facility” means the Owens Corning glass fiber reinforcements manufacturing facility, located at Rue de Maestricht, Battice, Leige 4641.
- W. “OC Bushing Fabrication Business” means the fabrication of bushings conducted by OC in Concord, NC, Rio Claro, Brazil, and Ibaraki, Japan.
- X. “OC CFM Divestiture Agreement” means either the AGY Acquisition Agreement or any other agreement that receives the prior approval of the Commission between Respondent and an OC Acquirer (or between a Divestiture Trustee and an OC Acquirer), as well as all amendments, exhibits, attachments, agreements, and schedules thereto, related to the divestiture of the OC North American CFM Business pursuant to Paragraphs II or IV of this Order.
- Y. “OC CFM Intellectual Property” means all Intellectual Property relating to the design, manufacture, and sale of CFM designed, manufactured, or sold by, or on behalf of, Owens Corning, even where such Intellectual Property has not been reduced to practice or commercialized including, but not limited to:
1. manufacturing process technology and technology for equipment used in the manufacturing process, such as bushings and windings;

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

- (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, *PROVIDED, HOWEVER*, such lease shall include terms that allow the OC Acquirer to terminate such lease at any time, without penalty, with at least five (5) days prior notice to Respondent Owens Corning;
  - 4. an agreement for the acquisition of Marbles Inventory.

*PROVIDED, HOWEVER*, the OC North American CFM Business does not include the OC Bushing Fabrication Business or the OC Guelph Facility.

DD. “Person” means any individual, partnership, association, company or corporation.

EE. “Plastic Reinforcements Products” means products which are manufactured by melting quarry inputs (combinations of silica, clay, and other materials) in a refractory-lined furnace to create molten glass which is drawn through a surface with one or more holes to create filaments. The filaments are then treated by various chemical and physical processes to alter their properties so that these products can be used in a wide variety of reinforcement applications to provide, among other things, strength, thermal or chemical resistance.



## II.

### I ~~IS~~ R HER 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. *PROVIDED, HOWEVER,* Respondent shall have up to sixty (60) days following the grant of such OC CFM Intellectual Property license to deliver documents or information from locations other than the OC Huntingdon Facility and the OC Anderson Facility.
  3. Respondent shall grant to the Acquirer a royalty-free, fully paid-up, perpetual, irrevocable license to or copies of, where appropriate, the OC Furnace Technology for the purpose of the production, marketing, distribution or sale of CFM. *PROVIDED, HOWEVER,* Respondent shall have up to sixty (60) days following the grant of such OC Furnace Technology license to deliver documents or information from locations other than the OC Huntingdon Facility and the OC Anderson Facility.
- B. If, at the time the Commission determines to make this Order final, the Commission notifies Respondent that AGY is not an acceptable acquirer of the OC North American CFM Business or that the manner in which the divestiture was accomplished is not acceptable, then, after receipt of such written notification:
1. Respondent shall immediately notify AGY of the notice received from the Commission and shall as soon as practicable effect the rescission of the AGY Acquisition Agreement; and

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

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:
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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.

**I N F O R M E R 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.

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**I I F R HER 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

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



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 connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent of the net assets of the Respondent. The Commission.

9. The Divestiture Trustee shall report in writing to Respondent and to the

- 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.

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**I I N F R H E R O R D E R E D** that:

- A. Beginning from the date the Respondent signs the Consent Agreement until sixty (60) days after the Effective Date of OC Glass Fiber Divestiture, Respondent shall:
1. facilitate employment interviews between each Designated OC Employee and the OC Acquirer, including providing the names and contact information for such employees and allowing such employees reasonable opportunity to interview with the OC Acquirer, and shall not discourage such employee from participating in such interviews;
  2. not interfere in employment negotiations between each Designated OC Employee and the OC Acquirer;
  3. with respect to each Designated OC Employee who receives an offer of employment from the OC Acquirer:
    - a. not prevent, prohibit, or restrict, or threaten to prevent, prohibit, or restrict the Designated OC Employee from being employed by the OC Acquirer, and shall not offer any incentive to the Designated OC Employee to decline employment with the OC Acquirer;
    - b. cooperate with the OC Acquirer in effecting transfer of the Designated OC Employee to the employ of the OC Acquirer, if the Designated OC Employee accepts an offer of employment from the OC Acquirer;
    - c. elimiTJ0Acce

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

*PROVIDED, HOWEVER*, that prior notification shall not be required by this paragraph for a transaction for which Notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

*PROVIDED, FURTHER, HOWEVER*, that prior notification shall not be required by this paragraph for an acquisition, if Respondent acquires no more than one percent of the outstanding securities or other equity interest in an entity described in this Paragraph VI.

## ¶ II.

**I I~~S~~F R HER ORDERED** that:

- A. Within thirty (30) days after the date this Order becomes final, and every sixty (60) days thereafter until Respondent has fully complied with Paragraphs II, IV, and V.A of this Order, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondent shall submit at the same time a copy of its report concerning compliance with this Order to the Divestiture Trustee or the Monitor, if any Divestiture Trustee or Monitor has been appointed pursuant to this Order. Respondent shall include in its report, among other things that are required from time to time, a full description of the efforts being made to comply with the relevant Paragraphs of the Order, including a description of all substantive contacts or negotiations related to the divestiture of the relevant assets and the identity of all parties contacted. Respondent shall include in its report copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning completing the obligations.
- B. Beginning twelve (12) months after the date this Order becomes final, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it has complied, is complying, and will comply with this Order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with the Order and copies of all written communications to and from all persons relating to this Order.

## ¶ III.

**I I~~S~~F R HER ORDERED** that Respondent shall notify the Commission at least thirty (30) days prior to any:

- A. proposed dissolution of the Respondent;
- B. proposed acquisition, merger or consolidation of each Respondent; or

- C. any other change in the Respondent, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

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**I I~~N~~F R HER ORDERED** that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written

CONFIDENZIAL APPENDICE A

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CONFIDENTIAL APPENDIX B

OC CFM DEPARTMENT AGREEMENT

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