

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Maureen K. Ohlhausen, Acting Chairman
Terrell McSweeney

_____)	
In the Matter of)	
)	
EMERSON ELECTRIC CO.,)	
a corporation;)	
)	
and)	Docket No. C-
)	
PENTAIR PLC,)	
a corporation.)	
_____)	

DECISION AND ORDER
[Public Record Version]

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Maintain Assets, 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 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 the Order, the following definitions 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. “Acquirer(s)” means the following:
1. a Person specified by name in this Order to acquire particular assets or rights that a Respondent is required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order and that has been approved by the Commission to accomplish the requirements of this Order in connection with the Commission’s determination to make this Order final and effective; or
 2. a Person approved by the Commission to acquire particular assets or rights that a Respondent is required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order.
- F. “Acquisition” means Respondent Emerson’s acquisition of the Pentair Valves & Controls Subsidiaries pursuant to the Acquisition Agreement.
- G. “Acquisition Agreement” means the *Share Purchase Agreement* dated as of August 18, 2016, by and between Emerson Electric Co. and Pentair Plc that was submitted by Emerson to the Commission in this matter. The Acquisition Agreement is contained in Non-Public Appendix I.
- H. “Acquisition Date” means the earlier of the following dates: (i) the date on which Respondent Emerson acquires fifty percent (50%) or more of the voting securities or other equity interests of any of the Pentair Valves & Controls Subsidiaries; or (ii) the date on which Respondent Emerson acquires anyf ee ds e tTd ()Tj -0.004 ires Tdu6(n)-304 -1.17 TebP0.00

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3. information that is protected by the attorney work product, attorney-client, joint defense, or other privilege prepared in connection with the Acquisition and relating to any United States, state, or foreign antitrust or competition Laws.
- M. “Copyrights” means rights to all original works of authorship of any kind directly related to a Westlock Product and any registrations and applications for registrations thereof within the United States of America.
- N. “Crane” means Crane Co., a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal executive offices located at 100 First Stamford Place, Stamford, Connecticut 06902.
- O. “Development” means all research and development activities, including, without limitation the following: design (including, without limitation, customized design for a particular customer(s)); process development; manufacturing scale-up; development-stage manufacturing; quality assurance/quality control development; statistical analysis and report writing; mechanical properties testing; performance testing; safety testing; conducting experiments for the purpose of obtaining or achieving any and all Product Approvals and Certifications. “Develop” means to engage in Development.
- P. “Direct Cost” means a cost not to exceed the cost of labor, material, travel, and other expenditures to the extent the costs are directly incurred to provide the relevant assistance or service. “Direct Cost” to the Acquirer for its use of any of a Respondent’s employees’ labor shall not exceed the average hourly wage rate for such employee.
- Q. “Divestiture Trustee” means the trustee appointed by the Commission pursuant to Paragraph IV of this Order.
- R. “Domain Name” means the domain name(s) (uniform resource locators), and registration(s) thereof, issued by any Person or authority that issues and maintains the domain name registration; *provided, however*, “Domain Name” shall not include any trademark or service mark rights to such domain names other than the rights to the Trademarks required to be divested.
- S. “Government Entity” means any Federal, state, local, or non-U.S. government; any court, legislature, government agency, government department, or government commission; or any judicial or regulatory authority of any government.
- T. “High Volume Account(s)” means any retailer, wholesaler, or distributor whose annual or projected annual purchase amounts, in units or in dollars, of a Westlock Product in the United States of America from a Respondent, was or was forecasted (prior to the contemplation of the Acquisition and subsequent divestiture) to be among the top twenty (20) highest such purchase amounts of that Respondent’s total sales of that Westlock Product to U.S. customers on any of the following dates: (i) the end of the last quarter that immediately preceded the date of the public announcement of the proposed Acquisition; (ii) the end of the last quarter that immediately preceded the Acquisition Date; (iii) the end of the last quarter that immediately preceded the Closing Date for the relevant assets; (iv) for forecasts of purchases of the Westlock Product, the quarter

immediately following the Closing Date.

- U. “Law” means all laws, statutes, rules, regulations, ordinances, and other pronouncements by any Government Entity having the effect of law.
- V. “Manufacturing Employees” means all employees of a Respondent whose primary work responsibilities were in the Business of the Westlock Products within the eighteen (18) month period immediately prior to the Closing Date and have directly participated in any of the following: (i) defining the commercial manufacturing process, (ii) confirming that the manufacturing process is capable of reproducible commercial manufacturing, (iii) formulating the manufacturing process performance qualification protocol, (iv) controlling the manufacturing process to assure performance product quality, (v) assuring that during routine manufacturing the process remains in a state of control, (vi) collecting and evaluating data for the purposes of providing scientific evidence that the manufacturing process is capable of consistently delivering quality products, (vii) managing the operation of the manufacturing process, or (viii) managing the technological transfer of the manufacturing process to a different facility, of the Manufacturing Technology of a Westlock Product (unless such participation consisted solely of oversight of legal, accounting, tax, or financial compliance).
- W. “Manufacturing Equipment” means all fixtures, equipment (including, without limitation, technical equipment and computers), and machinery that is being used or has been used at the Westlock Production Facility at any time since the Respondents entered into the Acquisition Agreement, in the research, Development, or manufacture of a Westlock Product and that is suitable for use in the research, Development, or manufacture of a Westlock Product as of the Closing Date.
- X. “Manufacturing Technology” means all technology, trade secrets, know-how, designs, ideas, concepts and proprietary information (whether patented, patentable, or otherwise) used within the five (5) year period immediately prior to the Closing Date by Respondent Pentair (or its predecessor(s) in ownership of Westlock Controls Corporation) to manufacture each Westlock Product, including, but not limited to, the following:
 1. all product specifications, product designs and design protocols, including without limitation, the exact combination, design, array and identity and specifications of all components that achieve a particular set of application and end-use characteristics in a final Westlock Product;
 2. manufacturing processes, analytical methods, flow diagrams and other related manuals and drawings;
 3. standard operating procedures;
 4. quality assurance and control procedures;
 5. control history;
 6. research and Development records;
 7. annual product reviews;

8. supplier lists;

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5. engineering and procurement firms and valve automation centers.

HH. “Product Contracts” means all contracts or agreements between a Respondent and a Third party:

1. that make specific reference to a Westlock Product and pursuant to which any Third Party is obligated to purchase, or has the option to purchase without further negotiation of terms, that Westlock Product from a Respondent;
2. pursuant to which a Respondent had or has as of the Closing Date the ability to independently purchase the raw materials, inputs or component(s), or had planned to purchase the raw materials, inputs, or component(s) from any Third Party, for use in connection with the manufacture of a Westlock Product;
3. pursuant to which a Third Party manufactures or plans to manufacture a Westlock Product in order to provide it to a Respondent;
4. pursuant to which a Third Party markets, sells or distributes a Westlock Product;
5. pursuant to which a Third Party provides or plans to provide any part of the manufacturing process including, without limitation, the assembly or packaging of a Westlock Product;
6. pursuant to which a Third Party provides the Manufacturing Technology related to a Westlock Product to a Respondent;
7. pursuant to which a Third Party is licensed by a Respondent to use the Manufacturing Technology related to the Westlock Product;
8. constituting confidentiality agreements related to a Westlock Product;
9. involving any royalty, licensing, covenant not to sue, or similar arrangement related to a Westlock Product;
10. pursuant to which a Third Party provides any specialized services necessary to the research, Development, manufacture, or distribution of a Westlock Product to a Respondent including, but not limited to, consultation arrangements; and/or
11. pursuant to which any Third Party collaborates with a Respondent in the performance of research, Development, marketing, distribution, or selling of a Westlock Product or Westlock’s Business;
12. pursuant to which a Respondent leases building(s) or equipment related to the Business of Westlock;
13. pursuant to which a Respondent licenses Software related to the Business of Westlock;

provided, however

4. Trademarks;
5. Trade Dress;
6. trade secrets, know-how, techniques, data, inventions, practices, methods, and other confidential or proprietary technical, business, research, Development, and other information; and
7. rights to obtain and file for patents, trademarks, and copyrights and registrations thereof, and to bring suit against a Third Party for the past, present, or future infringement, misappropriation, dilution, misuse, or other violation of any of the foregoing;

provided, however, that “Product Intellectual Property” does not include the corporate names or corporate trade dress of “Emerson”, “Pentair”, or the related corporate logos thereof; or the corporate names or corporate trade dress of any other corporations or companies owned or controlled by a Respondent or the related corporate logos thereof (other than the corporate name and corporate trade dress of Westlock); or

4. product recall reports filed with any Agency or any Standards and Certification Organization related to a Westlock Product, and all reports, studies, and other documents related to such recalls;
5. investigation reports and other documents related to any out-of-specification results found in a Westlock Product;
6. reports related to a Westlock Product from any consultant or outside contractor engaged to investigate or perform testing for the purposes of resolving any product or process issues;
7. reports of vendors of the inputs used to produce a Westlock Product that relate to the specifications and testing of the production of a Westlock Product;
8. analytical methods development records related to a Westlock Product; and
9. manufacturing records related to a Westlock Product.

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4. any agreement between a Respondent and a Third Party to effect the assignment of assets or rights of that Respondent related to a Westlock Product to the benefit of an Acquirer that has been approved by the Commission to accomplish the requirements of this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto.

OO. “Research and Development Employees” means all salaried employees of a Respondent whose primary work responsibilities were in the Business of the Westlock Products within the eighteen (18) month period immediately prior to the Closing Date and who have directly participated in the research or Development of a Westlock Product (unless such participation consisted solely of oversight of legal, accounting, tax, or financial compliance) including, without limitation, engineers involved in new product development, hardware design, mechanical design, software design and Product Approvals and Certifications.

PP. “Research and Development Reports” means all research and Development records relating to the Westlock Products including, but not limited to:

1. inventory of research and development records, research history, research efforts, research notebooks, research reports, technical service reports, testing methods, invention disclosures, and know how related to the Westlock Products;
2. all correspondence to Westlock from Agencies and Standards and Certification

related to any of the foregoing and the content and information contained on any Website; provided however, that “Software” does not include software that is readily purchasable or licensable from sources other than the Respondents and which has not been modified in a manner material to the use or function thereof (other than user preference settings).

- TT. “Standards and Certification Organization(s)” means any non-governmental Person that provides audits and certifications of management systems and/or manufacturing processes or product assessments and certifications related to the Westlock Products (*e.g.*, American National Standards Institute, National Fire Protection Association, International Electrotechnical Commission (“IEC”), Intertek Testing & Certification Limited, National Electrical Manufacturers Association, Sira Certification Service, and Underwriters Laboratories)
- UU. “Switch Box Product(s)” means a valve position monitor, that is, a device that detects and indicates the position of a valve (such as whether the valve is open, completely closed, or some position there between) and communicates this position using a visual indicator and/or an electrical or other signal.
- VV. “Technology Transfer Standards” means requirements and standards sufficient to ensure that the information and assets required to be delivered to an Acquirer pursuant to this Order are delivered in an organized, comprehensive, complete, useful, timely (*i.e.*, ensuring no unreasonable delays in transmission), and meaningful manner. Such standards and requirements shall include, *inter alia*:
1. designating employees of a Respondent knowledgeable about the Manufacturing Technology (and all related intellectual property) 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 purpose of effecting such delivery *unless* such Persons are hired by the Acquirer;
 2. preparing technology transfer protocols and transfer acceptance criteria for both the processes and analytical methods related to the specified Westlo-0.0e eer

- g. Position Monitor: AccuTrak™ product line models/series: 3400 and 8400 (for rotary valve types, encapsulation and increased safety classification, ATEX/IEC standards);
 - h. Position Monitor: AccuTrak™ product line model 3479 MOD3;
 - i. Position Monitor: AccuTrak™ product line models/series: 5004 and 5044 (for rotary valve types, intrinsically safe classification, NEC standards);
 - j. Position Monitor: AccuTrak™ product line model 9468 (for rotary valve types, non-incendive classification, NEC standards);
 - k. Beacon Visual Position Indicator (AccuTrak™ product line); and
 - l. AVID® (Automated Valve Interface Device) products, including all products in the ZR, ZR Plus, PlantNet, SmartCal, and EaziCal product lines; and
2. limit switches and sensors, including the following: AccuTrak Silver Bullet Position Sensor – ATEX/IEC (for linear valve types, explosion proof classification, ATEX/IEC standards); AccuTrak Silver Bullet Position Sensor – NEC (for linear valve types, explosion proof classification, NEC standards); and all other limit switches and sensors researched, Developed, marketed or sold by Westlock (for rotary valves,

9. sanitary valve position and control monitors, including the following: position monitors in the AccuTrak product line models/series: AccuTrak 9881 and AccuTrak 9881-NEC; and sanitary control monitors in the Pharma II product line models/series: Pharma II 99P2/76P2/77P2 – NEC; Pharma II 99P2/76P2/77P2-IEC;
10. solenoid valves, including all solenoid valves in the Falcon product line;
11. all other products in the following Westlock product lines: AccuTrak, Digital EPIC, Falcon, ICoT, Intellis, Pharma II, and Quantum.

GGG.

“Westlock Product License” means a perpetual, non-exclusive, fully paid-up, and royalty-free license(s) under a Remedial Agreement with rights to sublicense to all Product Licensed Intellectual Property and all Manufacturing Technology related to general manufacturing know-how that was owned, licensed, held, or controlled by a Respondent:

1. to research and Develop each Westlock Product(s) for marketing, distribution, or sale within the United States of America;
2. to use, make, have made, distribute, offer for sale, promote, advertise, or sell each Westlock Product(s) within the United States of America;
3. to import or export each Westlock Product(s) to or from the United States of America to the extent related to the marketing, distribution, or sale of the Westlock Products in the United States of America; and
4. to have the Westlock Product(s) made anywhere in the world for distribution or sale within, or import into the United States of America;

provided, however, that for any Product Licensed Intellectual Property or Manufacturing Technology that is the subject of a license from a Third Party entered into by a Respondent prior to the Acquisition, the scope of the rights granted hereunder shall only be required to be equal to the scope of the rights granted by the Third Party to that Respondent.

HHH.

“Westlock Production Facility” means all assets comprising the facility located at 280 North Midland Ave, Saddle Brook, New Jersey 07663, including, without limitation, all of the following: real estate; buildings; warehouses; structures; Manufacturing Equipment; other equipment; machinery; tools; spare parts; personal property; furniture; fixtures; supplies associated with the facility; and other tangible property, owned, leased or operated on or behalf of Pentair and located at the address above.

III.

“Westlock Releasee(s)” means the following Persons:

1. the Acquirer;
2. any Person controlled by or under common control with the Acquirer;
3. licensees, sublicensees, manufacturers, suppliers, distributors, and customers of the Acquirer, or of such Acquirer-affiliated entities.

provided, however, Respondents may satisfy this requirement by certifying that the Acquirer has executed all such agreements directly with each of the relevant Third Parties.

D. Respondents shall:

1. submit to the Acquirer, at Respondents' expense, all Confidential Business Information;
2. deliver all Confidential Business Information to the Acquirer:
 - a. in good faith;
 - b. in a timely manner, *i.e.*, as soon as practicable, avoiding any delays in transmission of the respective information; and
 - c. in a manner that ensures its completeness and accuracy and that fully preserves its usefulness;
3. pending complete delivery of all such Confidential Business Information to the Acquirer, provide the Acquirer and the Monitor (if any has been appointed) with access to all such Confidential Business Information and employees who possess or are able to locate such information for the purposes of identifying the books, records, and files directly related to Westlock's Business that contain such Confidential Business Information and facilitating the delivery in a manner consistent with this Order;
4. not use, directly or indirectly, any such Confidential Business Information 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;
5. not disclose or convey any Confidential Business Information, directly or indirectly, to any Person except (i) the Acquirer, (ii) other Persons specifically authorized by that Acquirer or staff of the Commission to receive such information, (iii) the Commission, or (iv) the Monitor (if any has been appointed) and *except* to the extent necessary to comply with applicable Law; and

1. all Manufacturing Technology (including all related intellectual property); and
2. all rights to all Manufacturing Technology (including all related intellectual property) that is owned by a Third Party and licensed to a Respondent.

Respondents shall obtain any consents from Third Parties required to comply with this provision. Respondents shall not enforce any agreement against a Third Party or an Acquirer to the extent that such agreement may limit or otherwise impair the ability of that Acquirer to use or to acquire from the Third Party the Manufacturing Technology (including all related intellectual property). Such agreements include, but are not limited to, agreements with respect to the disclosure of Confidential Business Information related to such Manufacturing Technology. Not later than ten (10) days after the Closing Date, Respondents shall grant a release to each Third Party that is subject to such agreements that allows the Third Party to provide the relevant Manufacturing Technology to the Acquirer. Within five (5) days of the execution of each such release, Respondents shall provide a copy of the release to the Acquirer.

- F. Respondent Emerson shall designate employees of Respondent Emerson knowledgeable about the accounts receivable, accounts payable, internal and external auditing functions, tax, legal, treasury, payroll, benefits administration, information technology systems and support and human resources management of Westlock to provide services and assistance to the Acquirer, in the transfer and integration of the Business of Westlock into the Acquirer's business and for a time sufficient to enable the Acquirer to integrate and perform these functions independently of Respondent Emerson. Such services and assistance shall be provided by Respondent Emerson to the Acquirer at no greater than Direct Cost.
- G. Respondents shall require, as a condition of continued employment post-divestiture of the Westlock Assets, that each employee that has had responsibilities related to the marketing or sales of the Westlock Products within the one (1) year period prior to the Closing Date

4. until the Closing Date, provide all Westlock Core Employees with reasonable financial incentives to continue in their positions and to research, Develop, manufacture, market and/or sell the Westlock Product(s) consistent with past practices and/or as may be necessary to preserve the marketability, viability, and competitiveness of Westlock's Business and to ensure successful execution of the pre-Acquisition plans for the Westlock Product(s). Such incentives shall include a continuation of all employee compensation and benefits offered by a Respondent until the Closing Date(s) for the divestiture of the Westlock Assets has occurred, including regularly scheduled raises, bonuses, and vesting of pension benefits (as permitted by Law);

provided, 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; and

5. for a period of one (1) year after 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 Product Employee") to terminate his or her employment relationship with the Acquirer; or (ii) hire any Westlock Product 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 a Respondent may do the following: (i) advertise for employees in newspapers, trade publications, or other media not targeted specifically at the Westlock Product Employees; or (ii) hire a Westlock Product Employee who contacts a Respondent on his or her own initiative without any direct or indirect solicitation or encouragement from that Respondent.

- J. Until Respondents complete the divestitures required by this Order and fully provide, or cause to be provided, the Manufacturing Technology related to each Westlock Product to the Acquirer:

1. Respondents shall take actions as are necessary to: 3 -1.s7 0 Td : 0)Tj [(t)-2(o)]6(ld, t)-2(heeo)-4

- c. a method or device for monitoring, indicating, or communicating the position of a valve;

if such suit would have the potential directly to limit or interfere with that Acquirer's freedom to practice the following: (i

1. cooperate with that Acquirer and provide any and all necessary technical and legal assistance, documentation, and witnesses from that Respondent in connection with obtaining resolution of any pending patent litigation related to that Westlock Switch Box Product;
2. waive conflicts o

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 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.
2. The Monitor

G. Each Respondent shall indemnify the Monitor and hold the Monitor harmless against any

shall consent to the appointment of a Divestiture Trustee in such action to assign, grant, license, divest, transfer, deliver, or otherwise convey these assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph 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 a Respondent to comply with this Order.

- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, 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, Respondents 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, Respondents 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 divestiture required by this Order.
- D. Iet t1(i)-6(J -7ap (t)-2(7 Tw)6(Te40()r)5(s)1 0 Tw 0id)4f>T-os9 0 Td ((Te40()r)5(s)013 Tc 0.013 T

cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture(s). Any delays in divestiture caused by a Respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.

4. The Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture(s) 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 Person, and if the Commission determines to approve more than one such acquiring Person, the Divestiture Trustee shall divest to the acquiring Person selected by Respondents from among those approved by the Commission; *provided further, however*, that Respondents shall select such Person 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 Respondents, 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 Respondents, 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 Respondents, 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. Respondents 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 that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.

7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order;

B. to defend against, respond to, or otherwise participate in any litigation, investigation, audit, process, subpoena, or other proceeding relating to the divestiture or any other aspect of the Westlock Products or the assets and Businesses associated with those Westlock Products;

provided, however, that a Respondent may disclose such information as necessary for the purposes set forth in this Paragraph VII pursuant to an appropriate confidentiality order, agreement, or arrangement;

provided further, however, that pursuant to this Paragraph VII, a Respondent needing such access

VII.

IT IS FURTHER ORDERED that:

- A. Within five (5) days of the Acquisition Date, Respondent

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.

XI.

IT IS FURTHER ORDERED that this Order shall terminate on the date ten (10) years after the Order Date.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED:

**NON-PUBLIC APPENDIX II.A
AGREEMENTS RELATED TO THE DIVESTITURE**

[Redacted From the Public Record Version, But Incorporated By Reference]