

participant no more than one hour to prepare for the interview. In some instances, staff may do additional interviews with customers of the responding company or the monitor. Staff conservatively estimates that for each interview, two individuals (a company executive and a lawyer) will devote two hours (one hour preparing and one hour participating) each to responding to questions for a total of four hours. In addition, for approximately half of the divestitures, staff will seek to question two additional respondents, adding four participants (a company executive and a lawyer for each of the two additional respondents) devoting two hours each, for a total of eight additional hours. Assuming that staff evaluates up to 20 divestitures per year during the three-year clearance period, the total hours burden for the responding companies will be approximately 160 hours per year ((20 divestiture reviews x 4 hours for preparing and participating) + (10 divestiture reviews x 8 hours for preparing and participating)).

#### *Annual cost burden:*

Using the burden hours estimated above, staff estimates that the total annual labor cost, based on a conservative estimated average of \$425/hour for executives' and attorneys' wages, would be approximately \$68,000 (160 hours x \$425). There are no capital, start-up, operation, maintenance, or other similar costs to respondents.

#### *Review of Competition Advocacy Program*

The FTC's competition advocacy program draws on the Commission's expertise in competition and consumer protection matters to encourage federal and state legislators, courts and other state and federal agencies to consider the competitive effects of their proposed actions. The FTC Office of Policy Planning ("OPP") sends approximately 20 letters or written comments to different state and federal government officials annually, which provide guidance on the likely competitive effects of various laws or regulations.

In the past, OPP has evaluated the effectiveness of these advocacy comments by surveying comment recipients and other relevant decision makers. OPP intends to continue this evaluation by sending a written questionnaire to relevant parties between six and nine months after an advocacy comment is sent. Most of the questions ask the respondent to agree or disagree with a statement concerning the advocacy comment that they received. Specifically, these questions

inquire as to the applicability, value, persuasive influence, public effect, and informative value of the FTC's comments. The questionnaire also provides respondents with an opportunity to provide additional remarks related either to the written comments received or the FTC's advocacy program in general. Participation is voluntary.

OPP staff estimates that on average, respondents will take 30 minutes or less to complete the questionnaire and 15 minutes of administrative time to prepare the response for mailing. Accordingly, staff estimates that each respondent will incur 45 minutes of burden resulting in a cumulative total of 15 burden hours per year (45 minutes of burden per respondent x 20 respondents per year). OPP staff does not intend to conduct any follow-up activities that would involve the respondents' participation.

#### *Annual cost burden:*

OPP staff estimates a conservative hourly labor cost of \$100 for the time of the survey participants (primarily state representatives and senators) and an hourly labor cost of \$16 for administrative support time. Thus, staff estimates a total labor cost of \$54 for each response (30 minutes of burden at \$100 per hour plus 15 minutes of burden at \$16 per hour). Assuming 20 respondents will complete the questionnaire on an annual basis, staff estimates the total annual labor costs will be approximately \$1,080 (\$54 per response x 20 respondents). There are no capital, start-up, operation, maintenance, or other similar costs to respondents.

#### **(d) Applicant Tracking Form: 292 hours**

The FTC's Human Resources Management Office surveys job applicants on their ethnicity, race, and disability status in order to determine if recruitment is effectively reaching all aspects of the relevant labor pool, in compliance with management directives from the Equal Opportunity Employment Commission. Response by applicants is optional. The information obtained is used for evaluating recruitment only and plays no part in the selection of who is hired. The information is not provided to selecting officials. Instead, the information is used in summary form to determine trends over many selections within a given occupational or organizational area. The information is treated in a confidential manner. No information from the form is entered into the official

personnel file of the individual selected and all forms are destroyed after the conclusion of the selection process. The format of the questions on ethnicity and race are compliant with OMB requirements and comparable to those used by other agencies.

Based upon past activity, the FTC staff estimates that up to 7,000 applicants will submit the form as part of the new online application process and that the form will require approximately 2.5 minutes to complete, for an annual burden total of approximately 292 hours (7000 applicants x 2.5 minutes to complete the form).

#### *Annual cost burden:*

The cost per respondent should be negligible. Participation is voluntary and will not require any labor expenditures by respondents. There are no capital, start-up, operation, maintenance, or other similar costs to the respondents.

**William Blumenthal,**

*General Counsel.*

[FR Doc. E8-16508 Filed 7-18-08; 8:45 am]

**BILLING CODE 6750-01-S**

## **FEDERAL TRADE COMMISSION**

**[File No. 081 0079]**

### **Flow International Corporation; Analysis of the Proposed Consent Order to Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed Consent Agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order — embodied in the consent agreement — that would settle these allegations.

**DATES:** Comments must be received on or before August 8, 2008.

**ADDRESSES:** Interested parties are invited to submit written comments. Comments should refer to "Flow International, File No. 081 0079," to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 135-H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Comments

containing confidential material must be filed in paper form, must be clearly labeled "Confidential," and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).<sup>1</sup> The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form by following the instructions on the web-based form at <http://secure.commentworks.com/ftc-Flow>. To ensure that the Commission considers an electronic comment, you must file it on that web-based form.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC website, to the extent practicable, at [www.ftc.gov](http://www.ftc.gov). As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (<http://www.ftc.gov/ftc/privacy.shtm>).

**FOR FURTHER INFORMATION CONTACT:** Charles Harwood or Joseph Lipinsky, FTC Northwest Regional Office, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, (206) 220-6350.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the

complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for July 10, 2008), on the World Wide Web, at (<http://www.ftc.gov/os/2008/07/index.htm>). A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

## 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 ("Consent Agreement") from Flow International Corporation ("Flow"). The proposed Consent Agreement is designed to remedy the likely anticompetitive effects arising from Flow's proposed acquisition of OMAX Corporation ("OMAX"). Under the terms of the Consent Agreement, Flow will grant a royalty-free license to two Omax patents relating to waterjet controllers to any firm that seeks a license.

### II. Background

Flow and OMAX are the leading manufacturers of waterjet cutting systems in the United States. Waterjet cutting systems use high pressure water and garnet to cut a wide variety of materials from steel to stone. The two companies have developed PC-based controllers that automatically compensate for the unique characteristics of how the waterjet cuts, such as taper (the waterjet expands after leaving the nozzle, forming a cone shape) and lag (the faster the cutting head moves, the more the waterjet will trail behind the cut). The controllers and related technology differentiate these two firms from other competitors in the marketplace. However, the controllers and related technology are also the subject of ongoing litigation between the two companies. In 2004, OMAX filed suit alleging that Flow's products infringed its patents pertaining to controllers. Flow counterclaimed alleging that OMAX infringed its patents pertaining to controllers.

Flow, a publicly traded company headquartered in Kent, Washington, is the leading manufacturer of waterjet

cutting systems in the United States market. OMAX is a privately-held company headquartered in Kent, Washington. OMAX owns two very broad U.S. patents covering its controller. OMAX's controller is a significant factor behind its position as the second leading supplier of waterjet cutting systems in the United States.

On December 5, 2007, Flow signed an exclusive option agreement to negotiate the acquisition of OMAX. Under the agreement, Flow and OMAX will work to negotiate a definitive agreement for Flow to acquire OMAX. Upon closing, Flow would pay approximately \$109 million in cash and stock with the potential for a contingent earn-out in two years of up to \$26 million. The closing will also settle the long-running and expensive patent litigation between Flow and OMAX.

### III. The Draft Complaint

The draft complaint alleges that the transaction may substantially lessen competition in the market for the development, manufacture, marketing, and sale of waterjet cutting systems. A waterjet cutting system contains four main parts: (1) Pump, (2) cutting head, (3) cutting table, and (4) controller.

Waterjet cutting systems are used by a wide variety of industrial machine tool customers. These customers range from job shops, which produce a wide variety of short-run parts, and use waterjet cutting systems to complement their traditional milling machines, lasers and flame cutters, to aerospace shops that use waterjet cutting systems because they cut without damaging materials that are affected by heat, such as titanium and aluminum. Industrial machine tool customers, as well as others, can increase cutting speed and minimize set-up time by using a waterjet cutting system instead of an alternative cutting technology. Cutting speed is affected by pump pressure, the number of cutting heads used on the system, and the sophistication of the controller. Controllers are often the least expensive means of improving cutting speed and have the further virtue of reducing set-up time if they are easily programmable. To compensate for the unique characteristics of how the waterjet cuts, controllers can improve the quality of the cut by, among other things, automatically adjusting the speed of the cut.

Both Flow and OMAX produce waterjet cutting systems that feature relatively inexpensive yet sophisticated PC-based controllers that compensate for the unique characteristics of how the waterjet cuts. These controllers make Flow and OMAX each other's closest

<sup>1</sup> The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

competitors because only they manufacture waterjet cutting systems with the most advanced and efficient controllers.

The relevant geographic market within which to analyze the likely effects of the proposed transaction is the United States. The draft complaint further alleges that new entry would not prevent or counteract the anticompetitive effects of this acquisition. New entrants and existing competitors are deterred by the risk of violating the OMAX patents from developing and producing competitive waterjet cutting systems. Developing an efficient controller that clearly works-around the potential reach of OMAX's patents would likely be an expensive and time-consuming process, with no guarantee of success.

The draft complaint also alleges that Flow's acquisition of OMAX, if consummated, may substantially lessen competition in the market for the development, manufacture, marketing, and sale of waterjet cutting systems in the United States in violation 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, by eliminating direct competition between Flow and OMAX and increasing the likelihood that Flow will unilaterally exercise market power.

#### IV. The Terms of the Consent Agreement

The proposed Consent Agreement will remedy the Commission's competitive concerns about the proposed acquisition. Under the terms of the proposed consent order, Flow must grant a royalty-free license to each competitor who seeks to license the two broad OMAX patents relating to controllers that Flow will acquire with its acquisition of OMAX.

Currently Flow and OMAX are each other's closest competitor because they each offer an efficient PC-based controller that compensates for the unique characteristics of how a waterjet cuts. OMAX's two patents make the development of such a controller substantially more expensive and risky. Requiring Flow to grant a royalty-free license to these patents will ensure that other firms are able to replace the competition that would otherwise have been eliminated by the proposed acquisition.

While Flow has two patents relating to controllers, its patents are significantly narrower in scope than the OMAX patents and, as a result, do not prevent current or future competitors from offering a viable waterjet cutting system. Current and future competitors

will not need licenses to these narrow patents in order to compete effectively in this market. Other aspects of Flow's and OMAX's business, such as customer lists, brand names, key employees, or the other parts of waterjet cutting systems, are easily duplicated by current competitors or future entrants. Consequently, to restore the competition lost by Flow's acquisition of OMAX, the proposed consent order eliminates the entry barrier faced by current waterjet cutting system competitors and future entrants by giving them a royalty-free license to the OMAX patents.

#### V. Opportunity for Public Comment

The proposed consent order has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the proposed consent order and the comments received and will decide whether it should withdraw from the agreement or make the proposed consent order final.

By accepting the proposed consent order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite public comment on the proposed consent order, in order to aid the Commission in its determination of whether to make the proposed consent order final. This analysis is not intended to constitute an official interpretation of the proposed consent order nor is it intended to modify the terms of the proposed consent order in any way.

By direction of the Commission.

Donald S. Clark,  
*Secretary.*

[FR Doc. E8-16506 Filed 7-18-08; 8:45 am]

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#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

##### **National Institute for Occupational Safety and Health; Decision To Evaluate a Petition To Designate a Class of Employees at the Brookhaven National Laboratory, Upton, NY, to be Included in the Special Exposure Cohort**

**AGENCY:** National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services (HHS) gives notice as

required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees at the Brookhaven National Laboratory, Upton, New York, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

*Facility:* Brookhaven National Laboratory.

*Location:* Upton, New York.

*Job Titles and/or Job Duties:* All workers.

*Period of Employment:* January 1, 1947 through December 31, 2007.

**FOR FURTHER INFORMATION CONTACT:**

Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C-46, Cincinnati, OH 45226, Telephone 1-800-CDC-INFO (1-800-232-4636) or directly at 1-513-533-6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to [OCAS@CDC.GOV](mailto:OCAS@CDC.GOV).

Dated: June 30, 2008.

**John Howard,**

*Director, National Institute for Occupational Safety and Health.*

[FR Doc. E8-16606 Filed 7-18-08; 8:45 am]

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#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

##### **National Institute for Occupational Safety and Health; Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort**

**AGENCY:** National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services (HHS) gives notice concerning the final effect of the HHS decision to designate a class of employees at the Kellex/Pierpont facility in Jersey City, New Jersey, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On May 30, 2008, as provided for under 42 U.S.C. 7384q(b), the Secretary of HHS designated the following class of employees as an addition to the SEC: