ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDER
TO AID PUBLIC COMMENT
In the Matter of Owens Corning, File No. 061-0281

I. Introduction

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

Owens Corning and Saint Gobain originally planned to combine their respective glass fiber reinforcement businesses in a new entity to be called Owens Corning Vetrotex Reinforcements. The new entity was to be owned 60 percent by Owens Corning and 40 percent by Saint Gobain. In response to antitrust concerns, the parties restructured the transaction and entered into an acquisition agreement whereby Owens Corning will acquire Saint Gobain's glass fiber reinforcements and composite fabric business assets worldwide with several important exclusions. Owens Corning will not acquire Saint Gobain's glass fiber reinforcements assets located in the United States. Additionally, certain assets located in Europe will be divested pursuant to an agreement entered into between the parties and the European Commission. However, under the proposed acquisition, Owens Corning will still acquire Saint Gobain's assets used in the design, manufacture, and sale of CFM, a unique glass fiber reinforcement product. Saint Gobain competes in CFM in the United States using CFM produced at its facility in Besana, Italy. The proposed Consent Agreement and Decision and Order are designed to address competition concerns in the CFM market.

The Decision and Order calls for divestiture of Owens Corning's CFM Business to AGY Holding Company ("AGY"), or another Commission-approved buyer in the event that AGY is determined not to be acceptable. The Consent Agreement, if finally accepted by the Commission, would settle charges that the proposed acquisition may substantially lessen competition in the market for CFM. The Commission has reason to believe that Respondent's proposed acquisition would violate 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.

II. The Proposed Complaint

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

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

The proposed complaint alleges that the proposed acquisition would reduce competition by eliminating direct competition between these two companies. The proposed complaint further alleges that entry into the relevant market would not be timely, likely, or sufficient to deter or offset the proposed joint venture's adverse competitive effects.

III. Terms of the Proposed Order

Under the proposed Decision and Order, Owens Corning will divest its CFM business to AGY within ten (10) days after acquiring certain worldwide glass fiber reinforcements and composite fabric assets from Saint Gobain. AGY, based in Aiken, South Carolina, develops, manufactures, and markets a wide range of glass fiber yarns and reinforcement materials. As an existing participant in the glass fiber reinforcement business, AGY is well-positioned to compete effectively in the CFM business.

The proposed Decision and Order requires Owens Corning to divest its Huntingdon Facility that produces CFM. In addition, Owens Corning is required to divest the Marbles Furnace located in Anderson, South Carolina, that currently supplies the Huntingdon Facility with essential glass fiber marbles used in the production of CFM at Huntingdon. Also, Owens Corning is required to grant AGY two licenses. The first license is to Owens Corning intellectual property, wherever located, related to the production, marketing, and distribution of CFM. The second license is to Owens Corning furnace technology used in the Owens Corning Guelph and Owens Corning Battice facilities related to CFM. The purpose of the divestiture and licensing is to give AGY all assets and know-how necessary for the production and sale CFM products.

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

IV. Opportunity for Public Comment

The proposed Decision and Order has been placed on the public record for thirty (30) days to receive comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will review the Consent Agreement and comments received and decide whether to withdraw its agreement or make final the Consent Agreement's proposed Order.

The purpose of this analysis is to facilitate public comment on the proposed Decision and Order. This analysis is not intended to constitute an official interpretation of the Consent Agreement and the proposed Decision and Order.