

Complaint

**IN THE MATTER OF
KEYSTONE HOLDINGS, LLC AND COMPAGNIE DE
SAINT-GOBAIN, INC.**

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE
COMMISSION ACT

*Docket No. C-4314; File No. 101 0175
Filed February 7, 2011 – Decision February 7, 2011*

This consent order relates to allegations of anticompetitive effects resulting from Keystone Holdings LLC (“Keystone”) proposed acquisition of certain Advanced Ceramics Business assets from Compagnie de Saint-Gobain (“Saint-Gobain”) in violation of Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. According to the complaint, in the proposed acquisition, as originally structured, Keystone would have acquired Saint-Gobain’s worldwide assets and businesses relating to the manufacture and sale of alumina wear tiles, including Saint-Gobain’s North American alumina wear tile business in Latrobe, Pennsylvania. To resolve competitive concerns raised by the proposed acquisition, Keystone and Saint-Gobain re-structured the original transaction to exclude Saint-Gobain’s alumina wear tile business in Latrobe. Under the order, Keystone is required for ten years to obtain prior approval from the Commission for the direct or indirect acquisition of Saint-Gobain’s alumina wear tile business in Latrobe or certain other assets owned or controlled by Saint-Gobain relating to the alumina wear tile made in North America. The order requires Saint-Gobain for five years to provide advance written notice to the Commission prior to leasing or selling the Latrobe facility or selling substantially all of its interest in the Saint-Gobain alumina wear tile business. The order also requires Saint-Gobain to provide the Commission with advance written notice prior to closing the Latrobe facility, or ceasing production of alumina wear tiles at the facility.

Participants

For the *Commission: Melanie Hallas, Victoria Luxardo
Jeffries, Victoria Lippincott, Angelike Andrinopoulos Mina, David
Morris, Eric M. Sprague, and Arthur Strong.*

For the *Respondents: Robert Schlossberg and Bruce
McCulloch, Freshfields Bruckhaus Deringer LLP; and Patricia
Zeigler and Garret Rasmussen, Orrick, Herrington & Sutcliffe
LLP.*

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COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act, and its authority thereunder, the Federal Trade Commission (“Commission”), having reason to believe that Respondent Keystone Holdings, LLC (“Keystone”), a limited liability company subject to the jurisdiction of the Commission, has made an offer to acquire the Advanced Ceramics Business assets of Respondent Compagnie de Saint-Gobain (“Saint-Gobain”), a corporation subject to the jurisdiction of the Commission, 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, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENTS

1. Respondent Keystone is a limited liability 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 16000 Table Mountain Parkway, Golden, Colorado.

2. Respondent Saint-Gobain is a corporation organized, existing, and doing business under, and by virtue of, the laws of France, with its office and principal place of business located at Courbevoie, France, Les Miroirs, 18 Avenue d’Alsace, 92096 La Defense Codex, France.

3. Respondents Keystone and Saint-Gobain are engaged in, among other things, the research, development, manufacture, marketing and sale of alumina wear tiles.

II. JURISDICTION

4. Respondents Keystone and Saint-Gobain are, and at all times relevant herein have been, engaged in commerce, as “commerce” is

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defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and are companies whose businesses are in or affect commerce as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

III. THE PROPOSED ACQUISITION

5. On June 28, 2010, Keystone and Saint-Gobain announced the acquisition by Keystone of Saint-Gobain’s Advanced Ceramics Business, including facilities in Europe, North America, South America, and Asia, for a purchase price of \$245 million. The business acquired includes igniters, semiconductor components, precision balls, molten-metal filters, boron nitride, and ceramic specialties (hereinafter, “Notified Transaction”).

6. As part of the Notified Transaction, Keystone proposes to acquire Saint-Gobain’s assets and business in Latrobe, Pennsylvania, relating to the research, development, manufacture, marketing and sale of pre-engineered alumina wear tile and standard alumina wear tile in North America. Keystone also proposes to acquire a plant in Vinhedo, Brazil that furnishes standard alumina wear tiles to Latrobe that are marketed and sold worldwide by Saint-Gobain’s Latrobe business.

IV. THE RELEVANT MARKETS

7. For the purposes of this Complaint, the relevant lines of commerce in which to analyze the effects of the Notified Transaction are the research, development, manufacture, marketing and sale of: (a) pre-engineered alumina wear tile; and (b) standard alumina wear tile; or (c) alternatively, all alumina wear tile.

8. For the purposes of this Complaint, the relevant geographic area in which to analyze the effects of the Notified Transaction is North America.

V. THE STRUCTURE OF THE MARKETS

9. Respondents Keystone and Saint-Gobain are significant participants in the relevant markets, and the relevant markets are highly concentrated, as measured by the Herfindahl-Hirschman Index (“HHI”). The Notified Transaction would further increase concentration levels, resulting in Keystone becoming the largest supplier of alumina wear tile in the relevant geographic area. Keystone and Saint-Gobain are two of only three significant suppliers of pre-engineered alumina wear tile, and two of only four significant suppliers of standard alumina wear tile in the relevant geographic area.

VI. ENTRY CONDITIONS

10. Entry into the relevant markets would not be timely, likely, or sufficient to prevent or defeat the anticompetitive effects of the Notified Transaction.

11. Entry into the relevant markets is costly, difficult, and unlikely because of, among other things, the time and cost required to construct an alumina wear tile manufacturing facility, develop and manufacture quality alumina wear tile products, and achieve customer acceptance. Because the size of the investment necessary to enter is substantial in relation to the size of the overall markets, and of the uncertainty that an entrant could secure the distribution necessary to make the investment profitable, it is unlikely a company could successfully enter the relevant markets.

VII. EFFECTS OF THE NOTIFIED TRANSACTION

12. The effects of the Notified Transaction, if consummated, may be to substantially lessen competition and to tend to create a monopoly in the relevant markets 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, in the following ways, among others:

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- a. by eliminating actual, direct, and substantial competition between Respondents Keystone and Saint-Gobain;
- b. by increasing the likelihood that Respondent Keystone would unilaterally exercise market power in the relevant markets; and
- c. by enhancing the likelihood of collusion or coordinated interaction between or among the remaining firms in the relevant markets.

VIII. MODIFICATION OF THE NOTIFIED TRANSACTION

13. On or about December 2, 2010, Keystone and Saint-Gobain executed an amended purchase and sale agreement that, *inter alia*, removed from the Notified Transaction the assets and businesses of Saint-Gobain in Latrobe, Pennsylvania, relating to the research, development, manufacture, marketing and sale of standard alumina wear tile and pre-engineered alumina wear tile in North America. Pursuant to the amended purchase agreement, Keystone and Saint-Gobain also have contracted for the sale by Keystone to Saint-Gobain of standard alumina wear tile manufactured in Vinhedo, Brazil.

IX. VIOLATIONS CHARGED

14. The allegations contained in paragraphs 1-13 are repeated and re-alleged as though fully set forth here.

15. The Notified Transaction described in paragraph 5 would constitute a 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.

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WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this seventh day of February, 2011, issues its Complaint against said Respondents.

By the Commission.

DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Respondent Keystone Holdings, LLC, of the Advanced Ceramics Business of Respondent Compagnie de Saint-Gobain, and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having accepted the executed

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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 Keystone Holdings, LLC, is a limited liability company organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal executive offices located at 16000 Table Mountain Parkway, Golden, Colorado.
2. Respondent Compagnie de Saint-Gobain is a corporation organized, existing, and doing business under and by virtue of the laws of France, with its offices and principal place of business located at Courbevoie, France, Les Miroirs, 18 Avenue d’Alsace, 92096 La Defense Cedex, France.
3. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of 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:

DEFINITIONS OF PERSONS

- A. “Commission” means the Federal Trade Commission.
- B. “Saint-Gobain” or “Respondent Saint-Gobain” means Compagnie de Saint-Gobain, its directors, officers, employees, agents, representatives, predecessors,

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successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Compagnie de Saint-Gobain, and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each.

- C. “Governmental Entity” means any federal, provincial, state, county, local, or other political subdivision of the United States or any other country, or any department or agency thereof.
- D. “Keystone” or “Respondent Keystone” means Keystone Holdings, LLC, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; and its joint ventures, subsidiaries (including, but not limited to, CoorsTek, Inc.), divisions, groups and affiliates controlled by Keystone Holdings, LLC, and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each.
- E. “Person” means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, joint venture, or other business or Governmental Entity, and any subsidiaries, divisions, groups or affiliates thereof.

GENERAL DEFINITIONS

- F. “Acquisition” means the proposed acquisition of the Advanced Ceramics Business by Keystone from Saint-Gobain pursuant to the Purchase Agreement (June 25, 2010) by and between CoorsTek, Inc., on the one hand, and Saint-Gobain Performance Plastics Europe, S.A., Saint-Gobain Abrasives, Inc., Saint-Gobain do Brasil Produtos Industriais e para Construcões Ltda., and Société Européenne des Produits Réfractaires, S.A., on the other hand, as amended by as amended by the

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Supplement and Amendment No. 1 to the Purchase Agreement (December 2, 2010).

- G. “Advanced Ceramics Business” means the assets and business of Saint-Gobain that Respondent Keystone proposes to acquire pursuant to the Purchase Agreement (June 25, 2010) and the Amended Purchase Agreement.
- H. “Alumina Wear Tiles” or “AW Tiles” means sintered dense high-grade alumina ceramic tile that is used primarily, but not necessary solely, to line material-handling equipment to protect against abrasion and premature wear caused by the materials that pass through the equipment. AW Tile is comprised of tiles including, but not limited to, pre-engineered tile linings, iso-pressed monolithic shapes, and standard rectangular, pipe, tongue & groove and hex tiles.
- I. “Amended Purchase Agreement” means the Supplement and Amendment No. 1 to the Purchase Agreement (December 2, 2010) between CoorsTek, Inc., and Saint-Gobain (as defined in the Purchase Agreement).
- J. “Saint-Gobain AW Tile Business” means all of Respondent Saint-Gobain’s right, title, and interest prior to the Acquisition in all tangible and intangible property of any kind relating to the research, development, marketing and sale anywhere in the world, of AW Tiles produced or manufactured in North America, including, but not limited to, the:
 - 1. Latrobe Facility;
 - 2. Saint-Gobain AW Tile Business Books and Records;
 - 3. Saint-Gobain AW Tile Business Intellectual Property;

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4. Saint-Gobain AW Tile Business Contracts;
5. Saint-Gobain AW Tile Business Inventories; and,
6. Complementary AW Tile Assets;

Provided, however, the Saint-Gobain AW Tile Business does not include:

1. The CoorsTek AW Tile Business; and,
 2. The Advanced Ceramics Business.
- K. “Saint-Gobain AW Tile Business Agreements” mean the Complementary AW Tile Intellectual Property License, the Complementary AW Tile Products Supply Agreement, and the Technical Services Agreement.
- L. “Saint-Gobain AW Tile Business Books and Records” means all Books and Records relating to the research, development, marketing and sale anywhere in the world, of AW Tiles produced or manufactured in North America.
- M. “Saint-Gobain AW Tile Business Contracts” means all contracts relating to the research, development, marketing and sale anywhere in the world, of AW Tiles produced or manufactured in North America.
- N. “Saint-Gobain AW Tile Business Inventories” means:
1. All supplies and inventory of finished AW Tiles, and,
 2. All supplies and inventory of AW Tiles in production, raw materials, and supplies held for use in the research, development, marketing and sale anywhere in the world, of AW Tiles produced or

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manufactured in North America.

- O. “Complementary AW Tile Products” means the “Products” as defined and addressed in the Complementary AW Tile Products Supply Agreement.
- P. “Complementary AW Tile Assets” means:
 - 1. A Complementary AW Tile Intellectual Property License; and,
 - 2. A copy of all Books and Records relating to the research, development, marketing and sale anywhere in the world, of Complementary AW Tile Products;

provided, however, that Complementary AW Tile Assets do not include Books and Records relating to the marketing and sale of Complementary AW Tile Products to any Person who has not purchased any Complimentary AW Tile Products or AW Tiles from an employee of or agent for the Saint-Gobain AW Tile Business since January 1, 2008.
- Q. “Complementary AW Tile Intellectual Property License” means Section 7.17 of the Purchase Agreement as amended by the Amended Purchase Agreement.
- R. “Complementary AW Tile Products Supply Agreement” means Exhibit N to the Purchase Agreement as amended by the Amended Purchase Agreement.
- S. “CoorsTek AW Tile Business” means the assets and business of Keystone relating to the research, development, production, manufacture, marketing, sale, and use of AW Tiles and related products anywhere in the world prior to the acquisition of Advanced Ceramics Business.

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- T. “Facility Assets” means:
1. All real property interests, including rights, title, and interests in and to owned or leased property, together with all easements, rights of way, buildings, improvements, and appurtenances;
 2. All applicable federal, state, and local regulatory agency registrations, permits, and applications, and all documents related thereto, necessary for the operations of, and conduct of business at, such applicable facility, to the extent held by Respondent Saint-Gobain and with respect to which the transfer thereof is permitted by law; and
 3. All fixtures, equipment, machinery, tools, vehicles, personal property, or tangible property of any kind located at such applicable facility that is owned or leased by Respondent Saint-Gobain, or that Respondent Saint-Gobain has the legal right to use, or to have the custody or control of, that is related to:
 - a. The research, development, production, manufacture, marketing, and sale of AW Tiles; and
 - b. Compliance by the Saint-Gobain AW Tile Business with any statute, ordinance, regulation, rule, or other legal requirement (including, but not limited to, environmental laws) of any Governmental Entity.
- U. “Intellectual Property” means Patents, Know-how, and trade marks.
- V. “Know-how” means know-how, trade secrets, techniques, data, inventions, practices, methods, and other confidential or proprietary technical, business, research, development and other similar information.

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- W. “Latrobe Facility” means all of Respondent Saint-Gobain’s right, title, and interest in the Facility Assets:
1. Located at the real property in Latrobe, Pennsylvania, legally described in Exhibit A to this Decision and Order; and
 2. Related to the research, development, marketing and sale anywhere in the world, of AW Tiles produced or manufactured in North America.
- X. “Material Confidential Information” means any material non-public information relating to the Saint-Gobain AW Tile Business either prior to or after the Acquisition Date of Divestiture, including, but not limited to, all customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets, and:
1. Obtained by Respondent Keystone prior to the Acquisition Date; or,
 2. Obtained by Respondent Keystone after the Acquisition Date, in the course of performing Respondent Keystone’s obligations under any Saint-Gobain AW Tile Business Agreement;

Provided, however, that Material Confidential Information shall not include:

1. Information that is in the public domain when received by Respondent Keystone;
2. Information that is not in the public domain when received by Respondent Keystone and thereafter becomes public through no act or failure to act by Respondent Keystone;

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3. Information that Respondent Keystone develops or obtains independently, without violating any applicable law or this Order; and
 4. Information that becomes known to Respondent Keystone from a third party not in breach of applicable law or a confidentiality obligation with respect to the information.
- Y. “Patents” means patents and/or all related patent applications, if any, and wherever located, and includes all reissues, divisions, continuations, continuations-in-part, substitutions, reexaminations, restorations, and/or patent term extensions thereof, all inventions disclosed therein, and all rights therein provided by international treaties and conventions.
- Z. “Purchase Agreement” means the Purchase Agreement (June 25, 2010) by and between CoorsTek, Inc., on the one hand, and Saint-Gobain Performance Plastics Europe, S.A., Saint-Gobain Abrasives, Inc., Saint-Gobain do Brasil Produtos Industriais e para Construcões Ltda., and Societe Europeenes des Produits Refractaires, S.E., on the other hand.
- AA. “Technical Services Agreement” means Section 7.16 of the Purchase Agreement as amended by the Amended Purchase Agreement.

II.**IT IS FURTHER ORDERED** that:

- A. Respondent Keystone shall not acquire, directly or indirectly, without the prior approval of the Commission:
1. Any interest in the Saint-Gobain AW Tile Business;

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2. Any interest in tangible or intangible assets owned or controlled by Respondent Saint-Gobain at the time of the Acquisition relating to the research, development, marketing and sale anywhere in the world, of AW Tiles produced or manufactured in North America;

provided, however Respondent Keystone and Respondent Saint-Gobain may in the ordinary course of business engage in the purchase and sale of AW Tiles from and to one another.

- B. Respondent Keystone shall comply with all terms of all of the Saint-Gobain AW Tile Business Agreements, which agreements are incorporated into and made a part of this Order. Any breach by Respondent Keystone of any term of any of the Saint-Gobain AW Tile Business Agreements shall constitute a violation of this Order. Any modification of the Saint-Gobain AW Tile Business Agreements without the prior approval of the Commission shall constitute a failure to comply with this Order.
- C. The purpose of the remedy provided by this Order and by the Saint-Gobain AW Tile Business Agreements is to preserve Respondent Saint-Gobain as an independent, viable and effective competitor in the relevant market in which the Saint-Gobain AW Tile Business was engaged at the time of the announcement of the Acquisition, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

III.**IT IS FURTHER ORDERED THAT:**

- A. For a period of five (5) years from the date this Order becomes final, Respondent Saint-Gobain shall not,

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directly or indirectly, through subsidiaries, partnerships, or otherwise, without providing advance written notification to the Commission:

1. Lease or sell the Latrobe Facility, or sell, assign, or otherwise convey substantially all of its right, title, and interest in the Saint-Gobain AW Tile Business, to any Person other than a subsidiary or an affiliate of Respondent Saint-Gobain; or,
 2. Close the Latrobe Facility, or cease operations or production of AW Tiles at the Latrobe Facility.
- B. Respondent shall provide the Notification to the Commission at least thirty (30) days prior to consummating the transaction (the “Waiting Period”). The Notification required by Paragraph III.A.1. to the Commission shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, as amended (hereinafter referred to as “the Notification”), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the Department of Justice, and notification is required only of Respondent Saint-Gobain and not of any other party to the transaction. Early termination of the Waiting Period in this Paragraph III.B. may be requested and, where appropriate, may be granted by letter from the Bureau of Competition.

Provided, however, that prior notification shall not be required by this Paragraph III.B. 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.

- C. The prior notification required by Paragraph III.A.2.

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shall be addressed to the Secretary of the Commission, shall affirmatively state that Respondent Saint-Gobain has provided the notice pursuant to this Paragraph III.A., and shall include:

1. The name, telephone number, email address, and street address of an officer of or agent for Respondent for Commission staff to contact to discuss the notified action; and,
2. A description in reasonable detail of the circumstances relevant to the contemplated closure of, or the cessation of operations or production of AW Tiles at, the Latrobe Facility.

Provided, however, that prior notification shall not be required by this Paragraph III.C. if Respondent Saint-Gobain in good faith closes the Latrobe Facility, or ceases operations or production of AW Tiles at the Latrobe Facility, for any period of six (6) months or less in furtherance or implementation of plans for maintenance, construction, capital projects, or expansion of capacity at the Latrobe Facility; and,

Provided further that Respondent may provide less than thirty (30) days prior notice, or no prior notice, if Respondent Saint-Gobain in good faith closes (or determines to close) the Latrobe Facility, or ceases (or determines to cease) operations or production of AW Tiles at the Latrobe Facility, due to a force majeure event, for reasons related to health and safety, in compliance with environmental regulations or laws, in response to a request by a Government Entity, related to a labor strike, or like causes, but in such circumstance Respondent Saint-Gobain shall provide the written notice described in this Paragraph III.C. as soon as practicable following its closure of (or determination to close), or cessation of (or determination to cease) operations or production at, the Latrobe Facility.

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IV.**IT IS FURTHER ORDERED THAT:**

- A. Either before or after the Acquisition Date, Respondent Keystone shall:
 - 1. Not provide, disclose, or otherwise make available any Material Confidential Information to any Person except as required or permitted by this Order; and
 - 2. Not use any Material Confidential Information for any reason or purpose other than as required or permitted by this Order.
- B. Respondent Keystone shall devise and implement measures to protect against the storage, distribution, and use of Material Confidential Information that is not permitted by this Order. These measures shall include, but not be limited to, restrictions placed on access by Persons to information available or stored on any of Respondent Keystone's computers or computer networks.
- C. Notwithstanding Paragraph IV.A. of this Order, Respondent Keystone may use Material Confidential Information:
 - 1. For the purpose of performing Respondent Keystone's obligations under this Order and the Saint-Gobain AW Tile Business Agreements;
 - 2. For uses or applications in Respondent Keystone's businesses that do not compete with the Saint-Gobain AW Tile Business, if such use or application by Respondent Keystone is not competitively significant to the Saint-Gobain AW Tile Business, *provided, however*, that Respondent Saint-Gobain must consent to any use of competitively sensitive

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information regarding the Saint-Gobain AW Tile Business;

3. To ensure compliance with legal and regulatory requirements;
4. To perform required auditing functions;
5. To provide accounting, information technology, and credit-underwriting services;
6. To provide legal services associated with actual or potential litigation and transactions;
7. To monitor and ensure compliance with financial, tax reporting, governmental environmental, health, and safety requirements; or,
8. As otherwise provided by this Order.

V.

IT IS FURTHER ORDERED THAT sixty (60) days from the date this Order becomes final, on the first anniversary of the date this Order becomes final, and thereafter annually on the anniversary of the date this Order becomes final until the earlier of the expiration of the last to expire of the AW Tile Business Agreements or the termination of this Order, Respondent Keystone shall file verified written reports with the Commission setting forth in detail the manner and form in which it has complied and is complying with this Order. Each report shall describe in reasonable detail the provision of all products and services under any AW Tile Business Agreement, and identify and describe any claims or disputes between Respondent Keystone and Respondent Saint-Gobain about whether either of them has complied fully with its obligations under any such agreement.

VI.

IT IS FURTHER ORDERED THAT: that Respondents

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Keystone and Saint-Gobain shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of Respondent Keystone or Respondent Saint Gobain;
- B. Any proposed acquisition, merger or consolidation of Respondent Keystone or Respondent Saint-Gobain; or,
- C. Any other change in Respondent Keystone or in Respondent Saint-Gobain, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

VII.

IT IS FURTHER ORDERED THAT for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondent Keystone made to its principal United States offices, registered office of its United States subsidiary, or its headquarters address, Respondent Keystone shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. access, during business office hours of Respondent Keystone and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of such Respondent Keystone related to compliance with this Order, which copying services shall be provided by such Respondent Keystone at the request of the authorized representative(s) of the Commission and at the expense of the Respondent Keystone; and;

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- B. to interview officers, directors, or employees of such Respondent Keystone, who may have counsel present, regarding such matters.

VIII.

IT IS FURTHER ORDERED that this Order shall terminate on February 7, 2021.

By the Commission.

**ANALYSIS OF PROPOSED AGREEMENT CONTAINING
CONSENT ORDER TO AID PUBLIC COMMENT**

Introduction

The Federal Trade Commission (“Commission”) has accepted for public comment, subject to final approval, an Agreement Containing Consent Order (“Consent Agreement”) from Keystone Holdings LLC (“Keystone”) and Compagnie de Saint-Gobain (“Saint-Gobain”). The purpose of the proposed Consent Agreement is to remedy the anticompetitive effects resulting from Keystone’s proposed acquisition of certain Advanced Ceramics Business assets from Saint-Gobain (“proposed acquisition”). As originally structured, Keystone would have acquired Saint-Gobain’s worldwide assets and businesses relating to the manufacture and sale of alumina wear tiles. To resolve the competitive concerns raised by the proposed acquisition, Keystone and Saint-Gobain have re-structured the original transaction to exclude Saint-Gobain’s North American alumina wear tile business operated out of a facility in Latrobe, Pennsylvania.

Under the terms of the proposed Consent Agreement, Keystone is required for ten years to obtain prior approval from the Commission for the direct or indirect acquisition of Saint-Gobain’s

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alumina wear tile business in Latrobe or certain other assets owned or controlled by Saint-Gobain relating to the research, development, marketing, and sale anywhere in the world of alumina wear tile produced or manufactured in North America. The proposed Consent Agreement also requires that Saint-Gobain for five years provide advance written notice to the Commission prior to leasing or selling the Latrobe, Pennsylvania facility or selling, assigning, or otherwise conveying substantially all its interest in the Saint-Gobain alumina wear tile business. In addition, with limited exceptions, Saint-Gobain is obligated to provide advance written notice to the Commission prior to closing the Latrobe, Pennsylvania facility or ceasing operation or production of alumina wear tiles at the facility.

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

On June 28, 2010, Keystone and Saint-Gobain entered into a merger agreement under which Keystone proposed to acquire Saint-Gobain's Advanced Ceramics Business, including facilities in Europe, North America, South America, and Asia for a purchase price of \$245 million. As originally structured, the assets acquired by Keystone would have included the Latrobe facility and other assets relating to the manufacture and sale of alumina wear tiles. On December 2, 2010, however, in an effort to resolve competitive concerns relating to the original transaction, Keystone and Saint-Gobain amended their agreement to exclude from the sale Saint-Gobain's North American alumina wear tile business.

The Commission's complaint alleges that the initial proposed acquisition, if consummated, 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, by lessening competition in the manufacture and sale of standard and pre-

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engineered alumina wear tile in North America. Although Saint-Gobain now proposes to retain its North American alumina wear tile business, a credible risk exists that the parties could re-negotiate the sale of Saint-Gobain's alumina wear tile business in the future, or that Saint-Gobain could sell the business upon terms that would reduce competition in the North American alumina wear tile markets. Therefore, the proposed Consent Agreement requires that Keystone obtain the Commission's prior approval in advance of any acquisition of Saint-Gobain's alumina wear tile business or related assets, and requires that Saint-Gobain provide written notice to the Commission prior to selling or ceasing its alumina wear tile business or selling or leasing its Latrobe, Pennsylvania facility. This remedy preserves competition in the North American markets for the manufacture and sale of alumina wear tile.

Parties

Keystone is the holding company of CoorsTek, Inc. ("CoorsTek"), which is a leading technical ceramics manufacturer, supplying ceramics based products for use in defense, medical, automotive, semiconductor, and power generation applications, among others. Keystone is headquartered in Golden, Colorado with facilities in North America, Europe and Asia. Keystone manufactures and sells alumina wear tile for use in high wear applications at its facilities in Golden, Colorado.

Saint-Gobain is a highly diversified, multinational company, headquartered in Courbevoie, France. The Advanced Ceramics Business includes ceramic components such as hot surface igniters, electro-ceramic parts for household appliances, ceramic balls for high-performance bearings, automobile water pump seals, special components for the semiconductor industry, agricultural spray nozzles, and other dense alumina components, such as alumina wear tile. Saint-Gobain manufactures and sells alumina wear tile out of its Latrobe, Pennsylvania facility. In 2009, Saint-Gobain's Advanced Ceramics Business achieved sales of 135 million euros.

The Products and Structure of the Alumina Wear Tile Markets

The Commission's complaint alleges that Keystone's acquisition of Saint-Gobain's North American alumina wear tile assets poses substantial antitrust concerns in both the pre-engineered and standard alumina wear tile markets, or alternatively, an all alumina wear tile market in North America. Alumina wear tile is used to line material-handling equipment to protect against abrasion and premature wear caused by the materials that pass through the equipment, extending the life of the equipment for years. Although other materials could be used as a wear solution these materials are not viable substitutes for alumina wear tile, as they do not have the unique price and wear attributes that are required in applications where alumina wear tile is commonly used.

The Commission's complaint alleges that the relevant markets within which to analyze the transaction are standard and pre-engineered alumina wear tile, or alternatively, all alumina wear tile. Standard alumina wear tile comes in a variety of predetermined sizes and shapes whereas pre-engineered alumina wear tile is custom made-to-order to fit complex shapes that standard tile sizes cannot accommodate.

The Commission's complaint alleges that the relevant geographic market in which to assess the impact of the proposed acquisition is North America. Successful participation in the market requires an established North American presence, most notably North American sales support and facilities from which to inventory and distribute alumina wear tile. Alumina wear tile companies that do not have an established presence in North America do not effectively compete for the business of U.S. alumina wear tile purchasers.

Keystone and Saint-Gobain are two of three significant suppliers of pre-engineered alumina wear tile and two of four significant suppliers of standard alumina wear tile in North America. In an all alumina wear tile market, Keystone and Saint-Gobain are two of four significant suppliers in North America. The acquisition would

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increase concentration levels substantially in markets that already are highly concentrated.

Effects of the Acquisition

The Commission's complaint charges that the proposed acquisition would enhance the likelihood of collusion or coordinated interaction among the remaining firms in the market. Certain market conditions, including product homogeneity and the availability of detailed market information about customers and transactions are conducive to the firms reaching terms of coordination and detecting deviations from those terms.

The Commission's complaint also charges that Keystone's acquisition of Saint-Gobain's North American alumina wear tile assets would eliminate actual, direct, and substantial competition between CoorsTek and Saint-Gobain. By increasing CoorsTek's market share substantially, while at the same time eliminating the most significant competitor in the market, an acquisition of Saint-Gobain's North American alumina tile assets likely would allow CoorsTek to unilaterally charge higher prices for alumina wear tile.

The Commission's complaint alleges that significant impediments to entry, expansion or repositioning in the alumina wear tile markets make entry unlikely, untimely and likely unprofitable. The size of the investment and the time needed to enter the relevant markets relative to the size of the overall market is substantial. Entry is made more difficult due to reputational hurdles, and there is uncertainty that an entrant could secure the sales to make the investment profitable. As a result, new entry, expansion, or repositioning by other firms sufficient to achieve a significant market impact is unlikely to ameliorate the harms posed by the proposed transaction.

The Proposed Consent Agreement

The proposed Consent Agreement addresses the competitive risks of a future sale of Saint-Gobain's North American alumina tile business to Keystone or others. By imposing certain prior approval and prior notice conditions on Keystone and Saint-Gobain, the remedy serves to ensure that the assets of Saint-Gobain's North American alumina wear tile business will remain, and continue to compete, in the North American alumina wear tile markets.

Pursuant to the proposed Consent Agreement, for a period of ten years Keystone must obtain Commission approval prior to acquiring, directly or indirectly, Saint-Gobain's alumina wear tile assets. These assets primarily include the Latrobe facility, but also include assets of Saint-Gobain's alumina wear tile business or any interest in assets owned or controlled by Saint-Gobain relating to the research, development, marketing, and sale anywhere in the world of alumina wear tile produced and manufactured in North America.

Pursuant to the proposed Consent Agreement, for a period of five years Saint-Gobain must provide advance written notification to the Commission before selling all or substantially all of its North American alumina wear tile business to any person other than an affiliate. Saint-Gobain also must provide prior notice to the Commission before closing or ceasing operations at the Latrobe facility, subject to certain exceptions for maintenance, construction of improvements, and the like, and for involuntary closures due to force majeure, health and safety emergencies, and other such events.

As part of ensuring the continued viability of Saint-Gobain's alumina wear tile business, Keystone, pursuant to the proposed Consent Agreement, must comply with all terms of alumina wear tile business agreements between Keystone and Saint-Gobain. One of these agreements is a supply agreement for certain types of standard alumina tile produced at the Vinhedo, Brazil facility ("Vinhedo tile") that Keystone will acquire from Saint-Gobain. This supply agreement gives Saint-Gobain access to the alumina wear tile from the Vinhedo facility for a limited interim period, by which time

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Saint-Gobain will be required to find another source for the Vinhedo tile or produce it internally.

Opportunity for Public Comment

The proposed Consent Agreement has been placed on the public record for thirty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will review the comments received, and decide whether to withdraw from the proposed Consent Agreement, modify it, or make it final. By accepting the proposed Consent Agreement 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 inform and invite public comment on the proposed Consent Agreement, including the proposed remedy, and to aid the Commission in its determination of whether to make the proposed Consent Agreement final. This analysis is not intended to constitute an official interpretation of the proposed Consent Agreement, nor to modify the terms of the proposed Consent Agreement in any way.

Opinion of the Commission

**IN THE MATTER OF
GEMTRONICS, INC. AND WILLIAM H. ISELY****OPINION OF THE COMMISSION AND ORDER AFFIRMING THE
INITIAL DECISION AND DENYING RESPONDENTS' APPLICATION
FOR AN AWARD OF ATTORNEY FEES AND OTHER EXPENSES***Docket No. 9330
Decision, February 11, 2011*

In this Opinion, the Commission affirms the Initial Decision denying the application filed by respondents Gemtronics, Inc. and William H. Isely ("respondents") for an award of attorneys' fees. The Administrative Law Judge dismissed the complaint after determining that insufficient evidence existed to support a finding of liability. The respondents subsequently filed a motion for award of attorneys' fees pursuant to the Equal Access to Justice Act (EAJA). The Administrative Law Judge denied respondents' motion and respondents appealed. In affirming the Administrative Law Judge's ruling, the Commission determined that Complaint Counsel had a "reasonable basis in law and fact" for bringing the complaint against respondents and an award pursuant to EAJA was, therefore, unwarranted.

*Participants**For the Commission: Barbara Bolton.**For the Respondents: William H. Isely, pro se.***OPINION OF THE COMMISSION**

By LEIBOWITZ, Chairman, for a Unanimous Commission:

Upon consideration of the record and the briefs submitted in connection with this matter,¹ the Commission denies Respondents' appeal and affirms the Chief Administrative Law Judge's Initial Decision on Respondents' Application for an Award of Attorney Fees and Other Expenses.

¹ In addition to the parties' briefs, an *amicus curiae* brief supporting Respondents was submitted by S.M. Oliva.