

Complaint

IN THE MATTER OF

**EMERSON ELECTRIC CO.
AND
PENTAIR PLC**CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT

*Docket No. C-4615; File No. 161 0221
Complaint, April 27, 2017 – Decision, June 12, 2017*

This consent order addresses the \$3.15 billion acquisition by Emerson Electric Co. of certain assets of Pentair plc. The complaint alleges that the Acquisition, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act by substantially lessening competition in the United States market for switchboxes. The consent order requires Emerson to divest Pentair's switchbox manufacturer subsidiary, Westlock Controls Corporation, to Crane Co. no later than ten days after the Acquisition is consummated.

Participants

For the *Commission*: Ryan F. Harsch and Jonathan W. Platt.

For the *Respondents*: Ronan Harty and Michael N. Sohn,
Davis Polk; Greg Neppl and Alan Rutenberg, Foley Lardner.

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act ("FTC Act"), and its authority thereunder, the Federal Trade Commission ("Commission"), having reason to believe that Respondent Emerson Electric Co. ("Emerson"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire the equity interests of certain subsidiaries from Respondent Pentair plc ("Pentair"); that such acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, 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:

Complaint

I. RESPONDENTS

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 offices and principal place of business 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. Its United States address for service of process is: Pentair plc, c/o Flow Control US Holding Corporation, 5500 Wayzata Blvd., Suite 800, Golden Valley, Minnesota 55416-1251.

3. Each Respondent is, and at all times relevant herein has been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a company whose business is in or affects commerce, as “commerce” is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

II. THE PROPOSED ACQUISITION

4. Pursuant to a Share Purchase Agreement, dated as of August 18, 2016, Emerson proposed to acquire the equity interests of certain subsidiaries of Pentair that are engaged in the valves and controls business in exchange for cash considerations of approximately \$3.15 billion (the “Acquisition”). The Acquisition is subject to Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

III. THE RELEVANT MARKETS

5. For the purposes of this Complaint, the relevant line of commerce in which to analyze the effects of the Acquisition is the development, manufacturing, marketing, distribution, and sale of switchboxes. Switchboxes monitor and control isolation valves, which control the flow of liquids or gases through pipes in numerous industrial applications, including the oil and gas, chemical, petrochemical, and power industries. A switchbox is an integral component of an “automated” isolation valve, enabling

Complaint

the valve to open and close automatically without manual intervention. Switchboxes detect the position of a valve, that is, whether the valve is open or closed, and communicate the valve position via a visual display and/or digital signals. Switchboxes perform a unique and essential function to the efficient and safe operation of industrial plants and facilities for which there are no practical alternatives.

6. For the purposes of this Complaint, the United States is the relevant geographic market in which to assess the competitive effects of the Acquisition in the relevant line of commerce.

IV. STRUCTURE OF THE MARKET

7. Emerson and Pentair are the two largest manufacturers of switchboxes, with a combined market share of approximately 60% in the United States. Other manufacturers of switchboxes have significantly lower market shares than Emerson or Pentair, and most have very small market shares. The Acquisition would substantially increase concentration in the already concentrated U.S. switchbox market.

V. EFFECTS OF THE ACQUISITION

8. The Acquisition, if consummated, may substantially lessen competition in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, 15 U.S.C. § 45.

9. Emerson and Pentair are each other's closest competitor in the design, development, manufacture, marketing, distribution, and sale of switchboxes. Emerson and Pentair sell the most widely used brands of switchboxes in the United States, TopWorx, and Westlock, respectively. Because switchboxes perform a critical safety function, brand reputation and product reliability are important to purchasers of switchboxes. TopWorx and Westlock are the two most highly regarded brands of switchboxes in the United States, and, for many customers, the only acceptable brands of switchboxes. The Acquisition would eliminate direct competition between Emerson and Pentair in the market for switchboxes, likely increasing prices and reducing innovation.

Order to Maintain Assets

VI. ENTRY CONDITIONS

10. Entry into the market for switchboxes would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the Acquisition. Among other reasons, the substantial time and investment required to develop switchboxes with the requisite brand acceptance and reputation for reliability demanded by customers, which face significant costs and potential risks associated with switching suppliers, would limit or delay effective entry.

VII. VIOLATIONS CHARGED

11. The Share Purchase Agreement described in Paragraph 4 constitutes a violation of Section 5 of the FTC Act, 15 U.S.C. § 45.

12. The Acquisition described in Paragraph 4, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-seventh day of April, 2017, issues its Complaint against said Respondents.

By the Commission.

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Emerson Electric Co. (“Emerson”) of the equity interests of certain subsidiaries (defined herein as “Pentair Valves & Controls Subsidiaries”) and related assets from their ultimate parent entity Pentair plc (“Pentair”) (Emerson and Pentair hereinafter collectively referred to as “Respondents”), and

Order to Maintain Assets

Respondents having been furnished thereafter with a copy of a draft of the 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 Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of the 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 to accept the executed Consent Agreement and to place 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 issues its Complaint, makes the following jurisdictional findings, and issues this Order to Maintain Assets:

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,

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 this Order to Maintain Assets, the following definitions and the definitions used in the Consent Agreement and the proposed Decision and Order (and when made final and effective, the Decision and Order), which are incorporated herein by reference and made a part hereof, 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.

Order to Maintain Assets

- E. “Decision and Order” means the:
1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance of a final and effective Decision and Order by the Commission; and
 2. Final Decision and Order following its issuance and service by the Commission in this matter.
- F. “Monitor” means any monitor appointed pursuant to Paragraph III of this Order to Maintain Assets or Paragraph III of the Decision and Order.
- G. “Orders” means the Decision and Order and this Order to Maintain Assets.
- H. “Westlock Business(es)” means the Business of Westlock and the Business associated with each of the Westlock Products to the extent such Businesses are owned by, controlled by, managed by, or licensed to, the Respondents.

II.

IT IS FURTHER ORDERED that from the date this Order to Maintain Assets becomes final and effective:

- A. Until Respondents fully transfer and deliver each of the respective Westlock Assets to an Acquirer, Respondents shall take such actions as are necessary to maintain the full economic viability, marketability, and competitiveness of the Westlock Business, to minimize any risk of loss of competitive potential for the Westlock Business, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Westlock Assets except for ordinary wear and tear. Respondents shall not sell, transfer, encumber, or otherwise impair the Westlock Assets (other than in the manner prescribed in the Decision and Order), nor take any action that lessens the full economic viability,

Order to Maintain Assets

marketability, or competitiveness of the Westlock Business.

- B. Until Respondents fully transfer and deliver each of the respective Westlock Assets to an Acquirer, Respondents shall maintain the operations of the Westlock Business in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance of the assets of such business) and/or as may be necessary to preserve the full economic viability, marketability, and competitiveness of the Westlock Business and shall use their best efforts to preserve the existing relationships with the following: suppliers; vendors and distributors; High Volume Accounts; end-use customers; Agencies; Standards and Certification Organizations; employees; and others having business relations with the Westlock Business. Respondents' responsibilities shall include, but are not limited to, the following:
- a. providing the Business related to each Westlock Product with sufficient working capital to operate at least at current rates of operation, to meet all capital calls with respect to such business, and to carry on, at least at their scheduled pace, all capital projects, business plans, and promotional activities for that Business;
 - b. continuing, at least at their scheduled pace, any additional expenditures for each of the Businesses related to each Westlock Product authorized prior to the date the Consent Agreement was signed by the Respondents, including, but not limited to, all research, Development, manufacturing, distribution, marketing, and sales expenditures;
 - c. providing such resources as may be necessary to respond to competition against each of the Westlock Products and/or to prevent any diminution in sales of each of the Westlock Products during and after the Acquisition process

Order to Maintain Assets

and prior to the complete transfer and delivery of the Westlock Assets to an Acquirer;

- d. providing such resources as may be necessary to maintain the competitive strength and positioning of each of the Westlock Products that were marketed or sold by Respondents prior to the date the Respondents entered the Acquisition Agreement, at the related High Volume Accounts;
 - e. making available for use by the Westlock Business funds sufficient to perform all routine maintenance and all other maintenance as may be necessary to, and all replacements of, the Westlock Assets; and
 - f. providing such support services (*e.g.*, handling of accounts receivable, accounts payable, internal and external auditing functions, tax, legal, treasury, payroll, benefits administration, information technology systems and support, and human resources management) to the Westlock Business as were being provided to such Westlock Business by Respondents as of the date the Consent Agreement was signed by Respondents.
- C. Until the Closing Date, Respondents shall maintain a work force that is (i) at least as large in size (as measured in full time equivalents) as, and (ii) comparable in training, and expertise to, what has been associated with the Westlock Business's last fiscal year.
- D. Until the Closing Date, Respondents shall not transfer any Westlock Core Employee out of the Westlock Business, reduce the responsibilities related to the Westlock Business of any Westlock Core Employee, or terminate the employment of any Westlock Core Employee other than for cause.
- E. Until the Closing Date, provide all Westlock Core Employees with reasonable financial incentives to continue in their positions and to research, Develop,

Order to Maintain Assets

manufacture and/or market the Westlock Product(s) consistent with past practices and/or as may be necessary to preserve the marketability, viability, and competitiveness of the Business related to each Westlock Product(s) and to ensure successful execution of the pre-Acquisition plans for that Westlock Product(s). Such incentives shall include a continuation of all employee compensation and benefits offered by a Respondent until the Closing Date(s) has occurred, including regularly scheduled raises, bonuses, and vesting of pension benefits (as permitted by Law); and

1. for a period of one (1) year from 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 Employee”) to terminate his or her employment relationship with the Acquirer; or (ii) hire any Westlock 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 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;

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 Employees; or (ii) hire a Westlock Employee who contacts a Respondent on his or her own initiative without any direct or

Order to Maintain Assets

indirect solicitation or encouragement from that Respondent.

- F. Prior to the Closing Date, for the purposes of ensuring an orderly marketing and distribution transition, Respondents shall:
1. develop and implement a detailed transition plan to ensure that the commencement of the marketing, distribution, and sale of such Westlock Products by the Acquirer is not delayed or impaired by the Respondents;
 2. designate employees of Respondents knowledgeable about the marketing, distribution, and sale 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 purposes of assisting in the transfer of the Westlock Business;
 3. maintain and manage inventory levels of the Westlock Products in consideration of the marketing and distribution transition to the Acquirer;
 4. continue to manufacture, market, distribute, and sell the Westlock Products;
 5. allow the Acquirer access at reasonable business hours to all Confidential Business Information related to the Westlock Products and employees who possess or are able to locate such information for the purposes of identifying the books, records, and files directly related to the Divestiture Products that contain such Confidential Business Information pending the completed delivery of such Confidential Business Information to the Acquirer;
 6. to the extent known or available to the specified Respondent, provide the Acquirer with a list of the

Order to Maintain Assets

inventory levels (weeks of supply) in the possession of each customer (*i.e.*, retailer, wholesaler, or distributor) by model or series on a regular basis and in a timely manner;

7. to the extent known by the specified Respondent, provide the Acquirer with anticipated reorder dates for each customer by model or series on a regular basis and in a timely manner; and
8. establish projected time lines for accomplishing all tasks necessary to effect the marketing and distribution transition to the Acquirer in an efficient and timely manner.

G. Pending divestiture of the Westlock Assets, Respondents shall:

1. not use, directly or indirectly, any Confidential Business Information related to the Westlock Business 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;
2. not disclose or convey any such Confidential Business Information, directly or indirectly, to any Person except (i) the Acquirer, (ii) other Persons specifically authorized by the Acquirer or staff of the Commission to receive such information, (iii) the Commission, or (iv) the Monitor (if any has been appointed); and
3. institute procedures and requirements to ensure that Respondents' employees:

Order to Maintain Assets

- a. do not provide, disclose, or otherwise make available, directly or indirectly, any Confidential Business Information in contravention of this Order to Maintain Assets; and
 - b. do not solicit, access or use any Confidential Business Information that they are prohibited from receiving for any reason or purpose.
- H. Not later than thirty (30) days from the earlier of (i) the Closing Date or (ii) the date this Order to Maintain Assets is issued by the Commission, each Respondent shall provide written notification of the restrictions on the use and disclosure of the Confidential Business Information related to the Divestiture Products by that Respondent's personnel to all of its employees who (i) may be in possession of such Confidential Business Information or (ii) may have access to such Confidential Business Information.
- I. Each Respondent shall give the above-described notification by e-mail with return receipt requested or similar transmission, and keep a file of those receipts for one (1) year after the Closing Date. Each Respondent shall provide a copy of the notification to the Acquirer. Each Respondent shall maintain complete records of all such notifications at that Respondent's registered office within the United States and shall provide an officer's certification to the Commission affirming the implementation of, and compliance with, the acknowledgment program. Each Respondent shall provide the Acquirer with copies of all certifications, notifications, and reminders sent to that Respondent's personnel.
- J. Each Respondent shall monitor the implementation by its employees and other personnel of all applicable restrictions with respect to Confidential Business Information, and take corrective actions for the failure of such employees and personnel to comply with such restrictions or to furnish the written agreements and

Order to Maintain Assets

acknowledgments required by this Order to Maintain Assets.

- K. The purpose of this Order to Maintain Assets is to maintain the full economic viability, marketability and competitiveness of the Westlock Business through their full transfer and delivery to an Acquirer; to minimize any risk of loss of competitive potential for the Westlock Business; and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Westlock Assets except for ordinary wear and tear.

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

- A. At any time after Respondents sign the Consent Agreement in this matter, the Commission may appoint a monitor ("Monitor") to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by the Orders and the Remedial Agreements.
- B. The Commission shall select the Monitor, subject to the consent of Respondent Emerson, which consent shall not be unreasonably withheld. If Respondent Emerson has not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after notice by the staff of the Commission to Respondent Emerson of the identity of any proposed Monitor, Respondents shall be deemed to have consented to the selection of the proposed Monitor.
- C. Not later than ten (10) days after the appointment of the Monitor, Respondent Emerson shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor each Respondent's compliance with the relevant

Order to Maintain Assets

requirements of the Orders in a manner consistent with the purposes of the Orders.

- D. If a Monitor is appointed, each Respondent shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
1. The Monitor shall have the power and authority to monitor each Respondent's compliance with the divestiture and asset maintenance obligations and related requirements of the Orders, 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 Orders and in consultation with the Commission.
 2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.
 3. The Monitor shall serve until the latter of:
 - a. the date of completion by Respondents of all Westlock Assets and the transfer of the Manufacturing Technology, Product Intellectual Property and Product Licensed Intellectual Property in a manner that fully satisfies the requirements of this Order;
 - b. the Acquirer has obtained all the Product Approvals and Certifications, with respect to each Westlock Switch Box Product;
 - c. the Acquirer is able to perform all of the accounts receivable, accounts payable, internal and external auditing functions, tax, legal, treasury, payroll, benefits administration, information technologies, and human resources management of Westlock that had, prior to the Closing Date, been performed by entities within Respondent Pentair or Respondent

Order to Maintain Assets

Emerson outside of Westlock Controls Corporation

provided, however, that, with respect to each Divestiture Product, the Monitor's service shall not extend more than four (4) years after the Order Date unless the Commission decides to extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders.

- E. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to each Respondent's personnel, books, documents, records kept in the ordinary course of business, facilities, and technical information, and such other relevant information as the Monitor may reasonably request, related to that Respondent's compliance with its obligations under the Orders, including, but not limited to, its obligations related to the relevant assets. Each Respondent shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor that Respondent's compliance with the Orders.
- F. The Monitor shall serve, without bond or other security, at the expense of Respondent Emerson, on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of Respondent Emerson, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities.
- G. Each Respondent shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether

Order to Maintain Assets

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 Monitor.

- H. Each Respondent shall report to the Monitor in accordance with the requirements of the Orders and as otherwise provided in any agreement approved by the Commission. The Monitor shall evaluate the reports submitted to the Monitor by a Respondent, and any reports submitted by each Acquirer with respect to the performance of a Respondent's obligations under the Orders or the Remedial Agreement(s). Within thirty (30) days from the date the Monitor receives these reports, the Monitor shall report in writing to the Commission concerning performance by each Respondent of its obligations under the Orders.
- I. Respondents may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Monitor from providing any information to the Commission.
- J. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.
- K. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor in the same manner as provided in this Paragraph.
- L. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders.

Order to Maintain Assets

- M. The Monitor appointed pursuant to this Order to Maintain Assets may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of the Decision and Order.

IV.

IT IS FURTHER ORDERED that within thirty (30) days after the date this Order to Maintain Assets is issued by the Commission, and every (30) days thereafter until Respondents have fully complied with this Order to Maintain Assets, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with the Orders. Each Respondent shall submit at the same time a copy of its report concerning compliance with the Orders to the Monitor, if any Monitor has been appointed. Each Respondent shall include in its reports, among other things that are required from time to time, a detailed description of its efforts to comply with the relevant paragraphs of the Orders, including:

- A. a detailed description of all substantive contacts, negotiations, or recommendations related to (i) the divestiture and transfer of all of the Westlock Assets and Westlock Business, (ii) the maintenance of the Westlock Business, and (iii) transitional services being provided by the relevant Respondent to the Acquirer; and
- B. a detailed description of the timing for the completion of such obligations.

provided, however, that, after the Decision and Order in this matter becomes final and effective, the reports due under this Order to Maintain Assets may be consolidated with, and submitted to the Commission on the same timing as, the reports required to be submitted by Respondents pursuant the Decision and Order.

Order to Maintain Assets

V.

IT IS FURTHER ORDERED that each Respondent shall notify the Commission at least thirty (30) days prior to:

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

VI.

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 any Respondent made to its principal United States offices, registered office of its United States subsidiary, or its headquarters address, that each Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. access, during business office hours of that Respondent 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 that Respondent related to compliance with this Order, which copying services shall be provided by that Respondent at the request of the authorized representative(s) of the Commission and at the expense of that Respondent; and
- B. to interview officers, directors, or employees of that Respondent, who may have counsel present, regarding such matters.

Order to Maintain Assets

VII.

IT IS FURTHER ORDERED that Respondent Pentair's obligations under this Order to Maintain Assets shall terminate on the date on which all of the following have occurred:

- A. Respondent Emerson has acquired over fifty (50) percent of the voting securities or equity interests of each of the Pentair Valves & Controls Subsidiaries;
- B. the Westlock Assets are completely owned and controlled either by Respondent Emerson or an Acquirer;
- C. with respect to any Westlock Product or related Product Intellectual Property or Manufacturing Technology, that is owned or controlled by Respondent Pentair prior to the Acquisition, Respondent Pentair has:
 - 1. transferred all rights and assets that were owned or controlled by Respondent Pentair prior to the Acquisition and necessary to effect the related divestitures to either Respondent Emerson or the Acquirer;
 - 2. transferred or otherwise provided all rights, assets or other resources that were owned or controlled by Respondent Pentair prior to the Acquisition and necessary for Respondent Emerson to provide the services and assistance to the Acquirer described in Paragraph II.F. of the Decision and Order to Respondent Emerson; and
 - 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

Order to Maintain Assets

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.

VIII.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate as to Respondent Emerson on the later of:

- A. three (3) days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. the day after the Closing Date; or
- C. the day after the all of the Product Intellectual Property has been provided to the Acquirer and the Manufacturing Technology related to each Westlock Product has been provided to the Acquirer in a manner consistent with the Technology Transfer Standards and the Monitor (if one has been appointed), in consultation with Commission staff and the Acquirer, notifies the Commission that all assignments, conveyances, deliveries, grants, licenses, transactions, transfers, and other transitions related to the provision of the Product Intellectual Property and Manufacturing Technology are complete; or
- D. the day the Commission otherwise directs that this Order to Maintain Assets is terminated.

By the Commission.

Decision and Order

DECISION AND ORDER
[Public Record Version]

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Emerson Electric Co. (“Emerson”) of the equity interests of certain subsidiaries (defined herein as “Pentair Valves & Controls Subsidiaries”) and related assets from their ultimate parent entity Pentair plc (“Pentair”) (Emerson and Pentair hereinafter collectively referred to as “Respondents”), and Respondents having been furnished thereafter with a copy of a draft of the 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 Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of the 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 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”):

Decision and 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

Decision and Order

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

Decision and Order

which Respondent Emerson acquires any of the assets related to such subsidiaries.

- I. “Agency(ies)” means any government regulatory authority or authorities in the world responsible for granting approval(s), clearance(s), qualification(s), license(s), or permit(s) for any aspect of the research, Development, manufacture, marketing, distribution, or sale of a Westlock Product.
- J. “Business” means the research, Development, manufacture, commercialization, distribution, marketing, importation, advertisement, and sale of a product.
- K. “Closing Date” means the date on which a Respondent (or a Divestiture Trustee) consummates a transaction to assign, grant, license, divest, transfer, deliver, or otherwise convey the Westlock Assets to an Acquirer pursuant to this Order.
- L. “Confidential Business Information” means all information owned by, or in the possession or control of, a Respondent that is not in the public domain and that is directly related to the conduct of the Business related to a Westlock Product(s). The term “Confidential Business Information” *excludes* the following:
 - 1. information relating to a Respondent’s general business strategies or practices that does not discuss with particularity the Westlock Products;
 - 2. information that is contained in documents, records, or books of a Respondent that is provided to an Acquirer by a Respondent that is unrelated to the Westlock Products or that is exclusively related to Retained Product(s); and
 - 3. information that is protected by the attorney work product, attorney-client, joint defense, or other privilege prepared in connection with the

Decision and Order

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

Decision and Order

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

Decision and Order

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, (iv) assuring that during routine manufacturing the process remains in a state of control, (v) collecting and evaluating data for the purposes of providing scientific evidence that the manufacturing process is capable of consistently delivering quality products, (vi) managing the operation of the manufacturing process, or (vii) 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

Decision and Order

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;
9. labeling and product manuals;
10. manuals and technical information provided to employees, customers, distributors, suppliers, agents, licensees, including, without limitation, manufacturing, equipment and engineering manuals and drawings;
11. repair and performance records related to the Manufacturing Equipment for the two (2) year period immediately preceding the Closing Date;
12. records related to the protective workplace safety standards related to the Manufacturing Equipment for the two (2) year period immediately preceding the Closing Date;
13. audits of manufacturing methods for the Westlock Products conducted by any Agency, end-use customer, or any Standards and Certification Organization; and
14. all other information related to the manufacturing process.

Decision and Order

- Y. “Marketing Materials” means all marketing materials used specifically in the marketing or sale of each Westlock Product in the United States of America as of the Closing Date, including, without limitation, all advertising materials, training materials, product data, mailing lists, sales materials (*e.g.*, vendor/distributor lists, sales data), marketing information (*e.g.*, competitor information, research data, market intelligence reports, statistical programs (if any) used for marketing and sales research), customer information (including customer net purchase information to be provided on the basis of either dollars and/or units for each month, quarter or year), sales forecasting models, educational materials, and advertising and display materials, speaker lists, promotional and marketing materials to be provided to distributors and/or end-use customer (*e.g.* specification sheets, installation instructions, and technical specifications), Website content and advertising and display materials, artwork for the production of packaging components, television masters, and other similar materials related to each Westlock Product.
- Z. “Monitor” means any monitor appointed pursuant to Paragraph III of this Order or Paragraph III of the related Order to Maintain Assets.
- AA. “Order Date” means the date on which the final Decision and Order in this matter is issued by the Commission.
- BB. “Order to Maintain Assets” means the Order to Maintain Assets incorporated into and made a part of the Agreement Containing Consent Orders.
- CC. “Orders” means this Decision and Order and the related Order to Maintain Assets.
- DD. “Patent(s)” means all patents and patent applications, including provisional patent applications, invention disclosures, certificates of invention and applications for certificates of invention, and statutory invention

Decision and Order

registrations, in each case filed, or in existence, on or before the Closing Date (*except* where this Order specifies a different time), and includes all reissues, additions, divisions, continuations, continuations-in-part, supplementary protection certificates, extensions and reexaminations thereof, all inventions disclosed therein, and all rights therein provided by international treaties and conventions.

- EE. “Pentair Valves & Controls Subsidiaries” means the following entities (listed with the respective country location of their principal executive offices), individually and collectively: Flow Control Holding GmbH & Co. KG (Germany); Flow Control Holding Verwaltungs GmbH (Germany); Flow Control US Holding Corporation (United States - Minnesota), a subsidiary of which is Westlock Controls Corporation; Flow Control Technologies SA (French Republic); Generale de Robinetterie Industrielle et de Systemes de Surete (GRISS) S.A. (French Republic); Pentair Brazil Holding S.a.r.l. (Luxembourg); Pentair Flow Control AG (Swiss Confederation); Pentair Flow Control Holdings Ltd. (Isle of Man); Pentair Flow Control International Holdings C, LLC (United States – Minnesota); Pentair Flow Control Pacific Pty. Limited (Australia); Pentair Holding III (Denmark) ApS (Denmark); Pentair Middle East Holdings, LLC (United States - Minnesota); Pentair Sales Ireland Ltd. (Ireland); Pentair SSC Australia Pty Limited (Australia); Pentair Valves & Controls Africa (PTY) LTD (South Africa); Pentair Valves & Controls Argentina S.A. (Argentina); Pentair Valves & Controls Brasil Ltda. (Brazil); Pentair Valves & Controls Canada, Inc. (Canada); Pentair Valves & Controls Czech s.r.o. (Czech Republic); Pentair Valves & Controls Hungary Ltd. (Hungary); Pentair Valves & Controls Japan Co., Ltd. (Japan); Pentair Valves & Controls Netherlands B.V. (Netherlands); Pentair Valves & Controls Peru S.A. (Peru); Pentair Valves & Controls Polska Sp.z.o.o. (Poland); Pentair Valves & Controls Singapore Pte Ltd. (Singapore); Pentair Valves & Controls South Africa (Proprietary) Limited

Decision and Order

(South Africa); Pentair Valves & Controls (Thailand) Ltd. (Thailand); PT Pentair Indonesia (Indonesia); Sempell GmbH (Germany); Taiwan Valve Co., Ltd. (Taiwan); and Westlock Equipamentos de Controle Ltda. (Brazil).

- FF. “Person” means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, or other business or Government Entity, and any subsidiaries, divisions, groups, or affiliates thereof.
- GG. “Product Approval(s) and Certification(s)” means any approvals, specifications, certifications, registrations, permits, licenses, consents, authorizations, and other approvals, and pending applications and requests therefor, required by applicable Agencies or Standards and Certification Organizations related to the research, Development, manufacture, distribution, finishing, packaging, marketing, sale, storage, or transport of a product within the United States of America that have been adopted or required as of the Closing Date by any of the following:
1. applicable Agencies (*e.g.*, the ATEX directives of the European Union);
 2. applicable Standards and Certification Organizations;
 3. direct purchasers of the Westlock Products;
 4. end-users of the Westlock Products, including, without limitation, any Governmental Entity of the United States of America; and
 5. engineering and procurement firms and valve automation centers.
- HH. “Product Contracts” means all contracts or agreements between a Respondent and a Third party:

Decision and Order

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;

Decision and Order

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, that where any such contract or agreement also relates to a Retained Product(s), a Respondent shall, at the Acquirer's option, assign or otherwise make available to the Acquirer all such rights under the contract or agreement as are related to the Westlock Product, but concurrently may retain similar rights for the purposes of the Retained Product(s).

- II. "Product Employee Information" means the following, for each Westlock Core Employee, as and to the extent permitted by Law:
 1. a complete and accurate list containing the name of each Westlock Core Employee (including former employees who were employed by a Respondent within ninety (90) days of the execution date of any Remedial Agreement); and
 2. with respect to each such employee, the following information:
 - a. direct contact information for the employee, including telephone number;

Decision and Order

- b. the date of hire and effective service date;
 - c. job title or position held;
 - d. a specific description of the employee's responsibilities related to the relevant Westlock Product; *provided, however*, in lieu of this description, a Respondent may provide the employee's most recent performance appraisal;
 - e. the base salary or current wages;
 - f. the most recent bonus paid, aggregate annual compensation for the relevant Respondent's last fiscal year, and current target or guaranteed bonus, if any;
 - g. employment status (*i.e.*, active or on leave or disability; full-time or part-time);
 - h. all other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and
3. at the Acquirer's option or the Proposed Acquirer's option (as applicable), copies of all employee benefit plans and summary plan descriptions (if any) applicable to the relevant employees.
- JJ. "Product Intellectual Property" means all of the following intellectual property related to any Westlock Product (other than Product Licensed Intellectual Property) that is owned, licensed, held, or controlled by a Respondent (including, without limitation, all such intellectual property held by Pentair Flow Control AG) as of the Closing Date:
1. Patents;
 2. Copyrights;

Decision and Order

3. Software;
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 general registered images or symbols by which Emerson or Pentair can be identified or defined (other than those solely related to Westlock).

KK. “Product Licensed Intellectual Property” means all of the following intellectual property related to a Westlock Product that is owned, licensed, held, or controlled by a Respondent as of the Closing Date, as follows:

1. Patents that are related to a Westlock Product that a Respondent can demonstrate have been used, prior to the Acquisition Date, for any Retained Product; and

Decision and Order

2. trade secrets, know-how, techniques, data, inventions, practices, methods, and other confidential or proprietary technical, business, research, Development, and other information, and all rights in the United States of America to limit the use or disclosure thereof, that are related to a Westlock Product and that a Respondent can demonstrate have been used, prior to the Acquisition Date, for any Retained Product.

LL. “Proposed Acquirer” means a Person proposed by a Respondent (or a Divestiture Trustee) to the Commission and submitted for the approval of the Commission as the acquirer for particular assets or rights required to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed pursuant to this Order.

MM. “Quality and Safety Reports” means:

1. adverse event reports, adverse experience information, and descriptions of material events and matters concerning safety or lack of efficacy related to a Westlock Product;
2. summary of product complaints from distributors related to a Westlock Product;
3. summary of product complaints from end-use customers related to a Westlock Product;
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

Decision and Order

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.

NN. “Remedial Agreement(s)” means the following:

1. any agreement between a Respondent and an Acquirer that is specifically referenced and attached to this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets or rights to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, including, without limitation, any agreement to supply specified products or components thereof, and that has been approved by the Commission to accomplish the requirements of the Order in connection with the Commission’s determination to make this Order final and effective;
2. 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 is specifically referenced and attached to this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, that has been approved by the Commission to accomplish the requirements of the Order in connection with the Commission’s determination to make this Order final and effective;

Decision and Order

3. any agreement between a Respondent and an Acquirer (or between a Divestiture Trustee and 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, related to the relevant assets or rights to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, including, without limitation, any agreement by that Respondent to supply specified products or components thereof, and that has been approved by the Commission to accomplish the requirements of this Order; and/or
 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:

Decision and Order

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 Organizations relating to applications for Product Approvals and Certifications submitted by Westlock;
3. all correspondence from Westlock to Agencies and Standards and Certification Organizations relating to applications for Product Approvals and Certifications submitted by Westlock;
4. annual and periodic reports related to the above-described Product Approvals and Certifications;
5. product labeling or documents to be provided to end-use customers that are approved by Agencies or Standards and Certification Organizations; and
6. product usage, installation instructions, and technical specifications.

QQ. “Retained Product(s)” means any product(s) other than a Westlock Product.

RR. “Sales and Marketing 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 who directly have participated in the sales or marketing of the Westlock Products directly to distributors or end-use customers, including, without limitation, the regional sales managers.

SS. “Software” means computer programs related to the Business of Westlock, including all software implementations of algorithms, models, and

Decision and Order

methodologies whether in source code or object code form, databases and compilations, including any and all data and collections of data, all documentation, including user manuals and training materials, 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

Decision and Order

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 Westlock Product that are acceptable to the Acquirer to the extent that any such technology is not maintained and fully available at the Westlock Production Facility;
3. preparing and implementing a detailed technological transfer plan that contains, *inter alia*, the transfer of all relevant information, all appropriate documentation, all other materials, and projected time lines for the delivery of all such Manufacturing Technology (including all related intellectual property) to the Acquirer to the extent that any such technology and information is not maintained and fully available at the Westlock Production Facility; and
4. to the extent the Persons with the relevant knowledge remain employees of a Respondent (*e.g.*, are not hired by the Acquirer), providing, in a timely manner, assistance and advice to enable the Acquirer to:
 - a. manufacture the specified Westlock Product in the quality and quantities achieved by a Respondent;
 - b. obtain any Product Approvals and Certifications necessary for the Acquirer to manufacture, distribute, market, and sell each Westlock Product in commercial quantities and to meet the requirements of all Product

Decision and Order

Approvals and Certifications for such Westlock Product; and

- c. receive, integrate, and use all such Manufacturing Technology and all such intellectual property related to each Westlock Product.

WW. “Third Party(ies)” means any non-governmental Person other than the following: a Respondent; or an Acquirer of particular assets or rights pursuant to this Order.

XX. “Trade Dress” means the current trade dress of a Westlock Product, including but not limited to, packaging and the lettering of the product trade name or brand name.

YY. “Trademark(s)” means all proprietary names or designations, trademarks, service marks, trade names, and brand names, including registrations and applications for registration therefor (and all renewals, modifications, and extensions thereof), and all common law rights, and the goodwill symbolized thereby and associated therewith, for a product.

ZZ. “United States of America” means the United States of America, and its territories, districts, commonwealths and possessions.

AAA. “Website” means the content of the Website(s) located at the Domain Names, the Domain Names, and all copyrights in such Website(s), to the extent owned by a Respondent; *provided, however*, “Website” shall not include the following: (1) content owned by Third Parties and other Product Intellectual Property not owned by a Respondent that are incorporated in such Website(s), such as stock photographs used in the Website(s), *except* to the extent that a Respondent can convey its rights, if any, therein; or (2) content unrelated to any of the Westlock Products.

Decision and Order

BBB. “Westlock” means Westlock Controls Corporation (which, prior to the Acquisition, was a subsidiary of Respondent Pentair).

CCC. “Westlock Assets” means all rights, title and interest in and to all assets throughout the world related to Business of the Westlock Products, to the extent legally transferable, including the research, Development, manufacture, distribution, marketing and sale of each Westlock Product, including, without limitation:

1. all outstanding capital stock, voting securities and equity ownership interests in Westlock;
2. the Westlock Production Facility;
3. all Product Intellectual Property that is not Product Licensed Intellectual Property;
4. all Product Approvals and Certifications;
5. all Manufacturing Technology;
6. all Marketing Materials;
7. all Quality and Safety Reports;
8. all Research and Development Reports;
9. all Website(s), including, without limitation, www.westlockcontrols.com;
10. the content related exclusively to a Westlock Product that is displayed on any Website that is not dedicated exclusively to the Westlock Product or Westlock’s Business;
11. at the option of the Acquirer, all Product Contracts;

Decision and Order

12. for each Westlock Product:

- a. a list of all customers for each Westlock Product and a listing of the net sales (in either units or dollars) of that Westlock Product to such customers during the one (1) year period immediately prior to the Closing Date, stated on either an annual, quarterly, or monthly basis, including, but not limited to, a separate list specifying the above-described information for the High Volume Accounts and including the name of the employee(s) for each High Volume Account that is or has been responsible for the purchase of the Product on behalf of the High Volume Account and his or her business contact information;
- b. a list either by model/series number containing the following: (i) the net price per model/series of the Closing Date, *i.e.*, the final price per unit charged by the Respondent net of all customer-level discounts, rebates, or promotions; (ii) the net price per unit charged by the Respondent at the end of each quarter during the one (1) year immediately prior to the Closing Date; and (iii) any supply outages by unit during the one (1) year period immediately prior to the Closing Date the result of which caused the Respondent to make a financial payment to the customer or to incur a penalty for a failure to supply; and
- c. backorders as of the Closing Date;

13. for each Westlock Product, a list of all suppliers;

14. to the extent available, a list of each Westlock Product that has had any finished product determined to be out-of-specification during the three (3) year period immediately preceding the Closing Date, and, for each such Westlock Product: (i) a description of the deficiencies; (ii) the corrective actions taken to remediate the

Decision and Order

deficiencies in the Westlock Product; and (iii) to the extent known by Respondent Pentair, the employees (whether current or former) responsible for taking such corrective actions;

15. at the option of the Acquirer, all inventory in existence as of the Closing Date including, but not limited to, raw materials, packaging materials, work-in-process, and finished goods related to the Westlock Products, *except* inventory in existence and owned by Pentair Flow Control AG as of the Closing Date;
16. the quantity and delivery terms in all unfilled customer purchase orders for each Westlock Product as of the Closing Date, to be provided to the Acquirer not later than five (5) days after the Closing Date, *except* any unfilled customer purchase orders (i) relating to inventory in existence and owned by Pentair Flow Control AG as of the Closing Date or (ii) which will be filled on behalf of the Acquirer pursuant to the Transition Services Agreement;
17. at the option of the Acquirer, the right to fill any or all unfilled customer purchase orders for each Westlock Product as of the Closing Date *except* any unfilled customer purchase orders (i) relating to inventory in existence and owned by Pentair Flow Control AG as of the Closing Date or (ii) which will be filled on behalf of the Acquirer pursuant to the Transition Services Agreement; and
18. all of a Respondent's books, records, and files directly related to the foregoing;

provided, however, that "Westlock Assets" shall not include: (i) documents relating to a Respondent's general business strategies or practices relating to the conduct of its Business outside of the Westlock Products, where such documents do not discuss with particularity a Westlock Product; (ii) information that

Decision and Order

is exclusively related to the Retained Products; and
(iii) all Product Licensed Intellectual Property;

provided further, however, that in cases in which documents or other materials included in the Westlock Assets contain information: (i) that relates both to a Westlock Product and to Retained Products or Businesses of Respondent Pentair and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the Westlock Product; or (ii) for which any Respondent has a legal obligation to retain the original copies, that Respondent shall be required to provide only copies or relevant excerpts of the documents and materials containing this information. In instances where such copies are provided to the Acquirer, the Respondents shall provide the Acquirer access to original documents under circumstances where copies of documents are insufficient for evidentiary or regulatory purposes. The purpose of this provision is to ensure that the Respondents provide the Acquirer with the above-described information without requiring a Respondent completely to divest itself of information that, in content, also relates to Retained Product(s).

DDD. “Westlock Core Employees” means the Sales and Marketing Employees, the Research and Development Employees, and the Manufacturing Employees related to each Westlock Product.

EEE. “Westlock Divestiture Agreement(s)” means the following:

1. *Amended and Restated Asset and Share Purchase Agreement* by and between Emerson Electric Co. and Crane Co. dated as of April 12, 2017;
2. *Transition Services Agreement* by between Emerson Electric Co. and Crane Co. in the form attached as Exhibit C to the *Asset and Share Purchase Agreement* to be executed on or before

Decision and Order

the Closing Date (“Transition Services Agreement”);

3. *Intellectual Property Assignment Agreement* by and between Pentair Flow control AG (“Assignor”) and Crane Co. (“Assignee”) in the form attached as Exhibit D to the *Asset and Share Purchase Agreement* to be executed on or before the Closing Date;
4. all amendments, exhibits, attachments, and schedules attached to and submitted to the Commission with the foregoing listed agreements.

The Westlock Divestiture Agreements are contained in Non-Public Appendix II.A. The Westlock Divestiture Agreements that have 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 are Remedial Agreements.

FFF. “Westlock Product(s)” means all product lines and products researched, Developed, in Development, marketed or sold within the five (5) year period immediately preceding the Closing Date by Westlock, including, without limitation, all of the following:

1. Switch Boxes, including the following:
 - a. Position Monitors: AccuTrak™ product line models/series: 1040, 2004, 1145, 9358, and 9044 (for rotary valve types, weatherproof classification, NEMA and IEC standards);
 - b. Position Monitors: AccuTrak™ product line models/series: 1100, 3200, 3500, and 8500 (for rotary valve types, weatherproof classification, IEC standards);
 - c. Position Monitors: AccuTrak™ product line models/series: 2007, 5050, 9479, 360, and 366

Decision and Order

(for rotary valve types, explosion proof classification, National Electrical Code (“NEC”) standards);

- d. Position Monitors: AccuTrak™ product line models/series: 2200 and 2600 (for rotary valves, explosion proof classification, ATEX/IEC standards);
- e. Position Monitor: AccuTrak™ product line model/series 2800 MOD3 (for linear valves, explosion proof classification, ATEX/IEC standards);
- f. Position Monitor: AccuTrak™ product line models/series: 3000, 3300, and 8300 (for rotary valves, intrinsically safe classification, ATEX/IEC standards);
- 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

Decision and Order

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, general purpose classification);
3. valve control monitors, including the following: Beacon Visual Position Indicator (AccuTrak product line); and all valve control monitors in the Quantum product line (including the following models/series: 2200, 2600, 2800 MOD3, 3200, 3800, 8800, 3600, 8600; 3700; 8700; 711; 722; 811; 764; 784; 864; 765; 789; 865; 777; 877; 360; and 366);
4. valve network solutions, including, the following in the Intellis product line: Intellis Network Control Monitors-ATEX/IEC (for rotary valve types, explosion proof/intrinsically safe/weatherproof classifications, ATEX/IEC standards) and Intellis Network Control Monitors-NEC; (for rotary valve types, explosion proof/intrinsically safe/weatherproof classifications, NEC standards);
5. position transmitters, including the following: Westlock product line CS Position Transmitter; and all position transmitters in the Digital EPIC product line;
6. positioners, including all positioners in the Westlock and ICoT product lines;

Decision and Order

7. SIL (Safety Integrity Levels) products and solutions;
8. wireless solutions, including, but not limited to, the Wireless Valve Monitoring System in the AccuTrak product line;
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

Decision and Order

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.

JJJ. “Westlock Switch Box Product” means any Westlock Product Developed, in Development, marketed or sold within the five (5) year period immediately preceding the Closing Date that is a Switch Box Product.

Decision and Order

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

- A. Not later than ten (10) days after the Acquisition Date, Respondents shall divest the Westlock Assets and grant the Westlock Product License, absolutely and in good faith, to Crane pursuant to, and in accordance with, the Westlock Divestiture Agreements (which agreements shall not limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that this Order shall not be construed to reduce any rights or benefits of Crane or to reduce any obligations of Respondents under such agreements), and each such agreement, if it becomes a Remedial Agreement related to the Westlock Assets is incorporated by reference into this Order and made a part hereof;

provided, however, that if Respondents have divested the Westlock Assets to Crane prior to the Order Date, and if, at the time the Commission determines to make this Order final and effective, the Commission notifies Respondents that Crane is not an acceptable purchaser of any of the Westlock Assets, then Respondents shall immediately rescind the transaction with Crane, in whole or in part, as directed by the Commission, and shall divest the Westlock Assets within one hundred eighty (180) days after the Order Date, absolutely and in good faith, at no minimum price, to an Acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission;

provided further, however, that if Respondents have divested the Westlock Assets to Crane prior to the Order Date, and if, at the time the Commission determines to make this Order final and effective, the Commission notifies Respondents that the manner in which the divestiture was accomplished is not acceptable, the Commission may direct Respondents, or appoint a Divestiture Trustee, to effect such

Decision and Order

modifications to the manner of divestiture of the Westlock Assets to Crane (including, but not limited to, entering into additional agreements or arrangements) as the Commission may determine are necessary to satisfy the requirements of this Order.

- B. Prior to the Closing Date, Respondents shall provide the Acquirer with the opportunity to review all contracts or agreements that are Product Contracts for the purposes of the Acquirer's determination whether to assume such contracts or agreements.
- C. Prior to the Closing Date, Respondents shall secure all consents and waivers from all Third Parties that are necessary to permit Respondents to divest the Westlock Assets to the Acquirer, and to permit the Acquirer to continue Westlock's Business;

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

Decision and Order

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
6. after the delivery of the Confidential Business Information to the Acquirer and upon the request of the Acquirer, destroy any copies of Confidential Business Information (other than electronic copies of Confidential Business Information created as a result of automatic back-up procedures) within thirty (30) days of such request *except* as otherwise agreed to between the Respondent(s) and the Acquirer or to the extent necessary to comply with applicable Law.

Decision and Order

- E. Respondents shall provide, or cause to be provided, to the Acquirer in a manner consistent with the Technology Transfer Standards the following:
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

Decision and Order

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 and each employee that has responsibilities related to the marketing or sales of those Retained Products that perform the same or similar functions as the Westlock Products, in each case who have or may have had access to Confidential Business Information, and the direct supervisor(s) of any such employee sign a confidentiality agreement pursuant to which that employee shall be required to maintain all Confidential Business Information related to the Westlock Products as strictly confidential, including the nondisclosure of that information to all other employees, executives, or other personnel of the Respondents (other than as necessary to comply with the requirements of this Order).
- H. Not later than thirty (30) days after the Closing Date, each Respondent shall provide written notification of the restrictions on the use and disclosure of the Confidential Business Information related to the Westlock Products by that Respondent's personnel to all of its employees who (i) may be in possession of such Confidential Business Information or (ii) may have access to such Confidential Business Information. Each Respondent shall give the above-described notification by e-mail with return receipt requested or similar transmission, and keep a file of those receipts for one (1) year after the Closing Date. Each Respondent shall provide a copy of the notification to the relevant Acquirer. Each Respondent shall maintain complete records of all such notifications at that Respondent's registered office within the United States and shall provide an officer's certification to the

Decision and Order

Commission affirming the implementation of, and compliance with, the acknowledgement program. Each Respondent shall provide the relevant Acquirer with copies of all certifications, notifications, and reminders sent to that Respondent's personnel.

I. Respondents shall:

1. for a period of twelve (12) months after the Closing Date, provide the Acquirer with the opportunity to enter into employment contracts with the Westlock Core Employees. Each of these periods is hereinafter referred to as the "Westlock Core Employee Access Period(s);"
2. not later than the earlier of the following dates: (i) ten (10) days after notice by staff of the Commission to the relevant Respondent to provide the Product Employee Information; or (ii) ten (10) days after written request by an Acquirer, provide that Acquirer or Proposed Acquirer(s) with the Product Employee Information related to the Westlock Core Employees. Failure by that Respondent to provide the Product Employee Information for any Westlock Core Employee within the time provided herein shall extend the Westlock Core Employee Access Period(s) with respect to that employee in an amount equal to the delay; *provided, however*, that the provision of such information may be conditioned upon the Acquirer's or Proposed Acquirer's written confirmation that it will (i) treat the information as confidential and, more specifically, (ii) use the information solely in connection with considering whether to provide, or providing to Westlock Core Employees the opportunity to enter into employment contracts during the Westlock Core Employee Access Period, and (iii) restrict access to the information to such of the Acquirer's or Proposed Acquirer's employees who need such access in connection with the specified and permitted use;

Decision and Order

3. during the Westlock Core Employee Access Period(s), not interfere with the hiring or employing by that Acquirer of the Westlock Core Employees and remove any impediments within the control of a Respondent that may deter these employees from accepting employment with that Acquirer, including, but not limited to, any noncompete or nondisclosure provision of employment with respect to a Westlock Product or other contracts with a Respondent that would affect the ability or incentive of those individuals to be employed by that Acquirer. In addition, a Respondent shall not make any counteroffer to any Westlock Core Employee who has received a written offer of employment from the Acquirer;

provided, however, that, subject to the conditions of continued employment prescribed in this Order, this Paragraph shall not prohibit a Respondent from continuing to employ any Westlock Core Employee under the terms of that employee's employment with a Respondent prior to the date of the written offer of employment from the Acquirer to that employee;

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);

Decision and Order

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:
 - a. maintain the full economic viability and marketability of the Businesses associated with that Westlock Product;

Decision and Order

- b. minimize any risk of loss of competitive potential for that Business;
 - c. prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets related to that Westlock Product;
 - d. ensure the assets related to each Westlock Product are provided to the Acquirer in a manner without disruption, delay, or impairment of the Product Approval and Certification processes related to the Business associated with each Westlock Product;
 - e. ensure the completeness of the transfer and delivery of the Manufacturing Technology; and
 2. Respondents shall not sell, transfer, encumber, or otherwise impair the Westlock Assets (other than in the manner prescribed in this Order), nor take any action that lessens the full economic viability, marketability, or competitiveness of Westlock's Business.
- K. After the Closing Date, Respondents shall not, in the United States of America:
 1. use any of the Trademarks related to Westlock Products or any mark confusingly similar to the Trademarks as a trademark, tradename, or service mark *except* as may be necessary to sell stocks of Westlock Products in existence as of the Acquisition Date;
 2. attempt to register the Trademarks;
 3. attempt to register any mark confusingly similar to the Trademarks;
 4. challenge or interfere with an Acquirer's use and registration of the Trademarks; or

Decision and Order

5. challenge or interfere with an Acquirer's efforts to enforce its trademark registrations for and trademark rights in the relevant Trademarks against Third Parties.
- L. Respondents shall not join, file, prosecute, or maintain any suit, in law or equity, against an Acquirer or the Westlock Releasee(s):
1. under any Patent owned by or licensed to a Respondent as of the day after the Acquisition Date that claims any of the following:
 - a. a valve position monitor;
 - b. a method or device for making, using, or controlling a valve position monitor; or
 - c. a method or device for monitoring, indicating, or communicating the position of a valve; or
 2. under any Patent that was filed or in existence on or before the Acquisition Date that is acquired by or licensed to a Respondent at any time after the Acquisition Date that claims any of the following:
 - a. a valve position monitor;
 - b. a method or device for making, using, or controlling a valve position monitor;
 - 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) the research, Development, or manufacture anywhere in the world of a Westlock Switch Box Product for the purposes of marketing, sale, or offer for sale within the United States of America of such Westlock Switch Box Product(s); or (ii) the import, export, use, supply, distribution, sale,

Decision and Order

or offer for sale of the Westlock Switch Box Product(s) into, from, or within the United States of America. Respondents shall also covenant to the Acquirer that as a condition of any assignment or license from Respondents to a Third Party of the above-described Patents, the Third Party shall agree to provide a covenant whereby the Third Party covenants not to sue that Acquirer or the related Westlock Releasee(s) under such Patents, if the suit would have the potential directly to limit or interfere with that Acquirer's freedom to practice the following: (i) the research, Development, or manufacture anywhere in the world of the Westlock Switch Box Product(s) for the purposes of marketing, sale, or offer for sale within the United States of America of such Westlock Switch Box Product(s); or (ii) the import, export, use, supply, distribution, sale, or offer for sale of the Westlock Switch Box Product(s) into, from, or within the United States of America. The provisions of this Paragraph do not apply to any Patent owned by, acquired by, or licensed to or from a Respondent that claims inventions conceived by and reduced to practice after the Acquisition Date;

- M. Upon reasonable written notice and request from an Acquirer to Respondents, Respondents shall provide, in a timely manner, at no greater than Direct Cost, assistance of knowledgeable employees of Respondents to assist that Acquirer to defend against, respond to, or otherwise participate in any litigation brought by a Third Party related to the Product Intellectual Property related to any of the Westlock Switch Box Product(s), if such litigation would have the potential to interfere with that Acquirer's freedom to practice the following: (i) the research, Development, or manufacture anywhere in the world of the Westlock Switch Box Product(s) for the purposes of marketing, sale, or offer for sale within the United States of America of such Westlock Switch Box Product(s); or (ii) the import, export, use, supply, distribution, sale, or offer for sale of the Westlock

Decision and Order

Switch Box Product(s) into, from, or within the United States of America.

- N. For any patent infringement suit filed prior to the Closing Date in which a Respondent is alleged to have infringed a Patent of a Third Party or any potential patent infringement suit from a Third Party that a Respondent has prepared or is preparing to defend against as of the Closing Date, and where such a suit would have the potential directly to limit or interfere with the relevant Acquirer's freedom to practice the following: (i) the research, Development, or manufacture anywhere in the world of the Westlock Switch Box Product(s) acquired for the purposes of marketing, sale, or offer for sale within the United States of America of such Westlock Switch Box Product(s); or (ii) the import, export, use, supply, distribution, sale, or offer for sale of the Westlock Switch Box Product(s) into, from, or within the United States of America, that Respondent shall:
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 of interest, if any, to allow that Respondent's outside legal counsel to represent that Acquirer in any ongoing patent litigation related to that Westlock Switch Box Product; and
 3. permit the transfer to that Acquirer of all of the litigation files and any related attorney work product in the possession of that Respondent's outside counsel related to that Westlock Switch Box Product.
- O. The purpose of the divestiture of the Westlock Assets and the related obligations imposed on the Respondents by this Order is:

Decision and Order

1. to ensure the continued use of such assets for the purposes of the Business of Westlock within the United States of America;
2. to create a viable and effective competitor that is independent of Respondent Emerson in the Business of the Switch Box Products within the United States of America; and
3. to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint in a timely and sufficient manner.

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

- A. At any time after the Respondents sign the Consent Agreement in this matter, the Commission may appoint a monitor ("Monitor") to assure that the Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order, the Order to Maintain Assets, and the Remedial Agreements.
- B. The Commission shall select the Monitor, subject to the consent of Respondent Emerson, which consent shall not be unreasonably withheld. If Respondent Emerson has not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after notice by the staff of the Commission to Respondent Emerson of the identity of any proposed Monitor, Respondents shall be deemed to have consented to the selection of the proposed Monitor.
- C. Not later than ten (10) days after the appointment of the Monitor, Respondent Emerson shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor

Decision and Order

each Respondent's compliance with the relevant requirements of the Order in a manner consistent with the purposes of the Order.

- D. If a Monitor is appointed, each Respondent shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
1. The Monitor shall have the power and authority to monitor 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 shall act in a fiduciary capacity for the benefit of the Commission.
 3. The Monitor shall serve until the latter of:
 - a. the date of completion by Respondents of all Westlock Assets and the transfer of the Manufacturing Technology, Product Intellectual Property and Product Licensed Intellectual Property in a manner that fully satisfies the requirements of this Order;
 - b. the Acquirer has obtained all the Product Approvals and Certifications, with respect to each Westlock Switch Box Product;
 - c. the Acquirer is able to perform all of the accounts receivable, accounts payable, internal and external auditing functions, tax, legal, treasury, payroll, benefits administration, information technologies, and human resources management of Westlock that had, prior to the Closing Date, been performed by entities within Respondent Pentair or Respondent

Decision and Order

Emerson outside of Westlock Controls Corporation.

provided, however, that the Monitor's service shall not extend more than four (4) years after the Order Date *unless* the Commission decides to extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders.

- E. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to each Respondent's personnel, books, documents, records kept in the ordinary course of business, facilities, and technical information, and such other relevant information as the Monitor may reasonably request, related to that Respondent's compliance with its obligations under the Orders, including, but not limited to, its obligations related to the relevant assets. Each Respondent shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor that Respondent's compliance with the Orders.
- F. The Monitor shall serve, without bond or other security, at the expense of Respondent Emerson, on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of Respondent Emerson, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities.
- G. Each Respondent shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent

Decision and Order

that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Monitor.

- H. Each Respondent shall report to the Monitor in accordance with the requirements of this Order and as otherwise provided in any agreement approved by the Commission. The Monitor shall evaluate the reports submitted to the Monitor by a Respondent, and any reports submitted by each Acquirer with respect to the performance of a Respondent's obligations under the Order or the Remedial Agreement(s). Within thirty (30) days after the date the Monitor receives these reports, the Monitor shall report in writing to the Commission concerning performance by a Respondent of its obligations under the Order;
- I. Each Respondent may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Monitor from providing any information to the Commission.
- J. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.
- K. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor in the same manner as provided in this Paragraph.
- L. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Order.

Decision and Order

- M. The Monitor appointed pursuant to this Order may be the same Person appointed as a Divestiture Trustee pursuant to the relevant provisions of this Order.

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

- A. If the Respondents have not fully complied with the obligations to assign, grant, license, divest, transfer, deliver, or otherwise convey the Westlock Assets as required by this Order, the Commission may appoint a trustee (“Divestiture Trustee”) to assign, grant, license, divest, transfer, deliver, or otherwise convey these assets in a manner that satisfies the requirements of this Order. In the event that the Commission or the Attorney General brings an action pursuant to § 5(*I*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*I*), or any other statute enforced by the Commission, Respondents 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(*I*) 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

Decision and Order

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. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
 - 1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver, or otherwise convey the assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed.
 - 2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan of divestiture or the Commission believes that the divestiture(s) can be achieved within a reasonable time, the divestiture period may be extended by the Commission; *provided, however*, the Commission may extend the divestiture period only two (2) times.
 - 3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets

Decision and Order

that are required to be assigned, granted, licensed, divested, delivered, or otherwise conveyed by this Order and to any other relevant information as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall 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

Decision and Order

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; *provided, however,* that the Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Monitor pursuant to the relevant provisions of this Order or the Order to Maintain Assets in this matter.

Decision and Order

8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
 9. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
- E. The Commission may, among other things, require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.
- F. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph.
- G. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture(s) required by this Order.

V.

IT IS FURTHER ORDERED that, in addition to any other requirements and prohibitions relating to Confidential Business Information in this Order, each Respondent shall assure that its own counsel (including its own in-house counsel under appropriate confidentiality arrangements) shall not retain unredacted copies of documents or other materials provided to an

Decision and Order

Acquirer (other than electronic copies created as a result of automatic back-up procedures) or access original documents provided to an Acquirer, *except* under circumstances where copies of documents are insufficient or otherwise unavailable, and for the following purposes:

- A. to assure such Respondent's compliance with any Remedial Agreement, this Order, any Law (including, without limitation, any requirement to obtain regulatory licenses or approvals, and rules promulgated by the Commission), any data retention requirement of any applicable Government Entity, or any taxation requirements; or
- 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 to original documents shall: (i) require those who view such unredacted documents or other materials to enter into confidentiality agreements with the relevant Acquirer (but shall not be deemed to have violated this requirement if that Acquirer withholds such agreement unreasonably); and (ii) use best efforts to obtain a protective order to protect the confidentiality of such information during any adjudication.

VI.

IT IS FURTHER ORDERED that:

- A. Any Remedial Agreement shall be deemed incorporated into this Order.

Decision and Order

- B. Any failure by a Respondent to comply with any term of such Remedial Agreement shall constitute a failure to comply with this Order.
- C. Respondents shall include in each Remedial Agreement related to each of the Westlock Products a specific reference to this Order, the remedial purposes thereof, and provisions to reflect the full scope and breadth of each Respondent's obligation to the Acquirer pursuant to this Order.
- D. No Respondent shall seek, directly or indirectly, pursuant to any dispute resolution mechanism incorporated in any Remedial Agreement, or in any agreement related to any of the Westlock Products, a decision the result of which would be inconsistent with the terms of this Order or the remedial purposes thereof.
- E. No Respondent shall modify or amend any of the terms of any Remedial Agreement without the prior approval of the Commission, except as otherwise provided in Rule 2.41(f)(5) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(5). Notwithstanding any term of the Remedial Agreement(s), any modification or amendment of any Remedial Agreement made without the prior approval of the Commission, or as otherwise provided in Rule 2.41(f)(5), shall constitute a failure to comply with this Order.

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

- A. Within five (5) days of the Acquisition Date, Respondent Emerson shall submit to the Commission a letter certifying the date on which the Acquisition Date occurred.
- B. Within five (5) days of the Closing Date, Respondent Emerson shall submit to the Commission a letter

Decision and Order

certifying the date on which that particular divestiture occurred.

- C. Within thirty (30) days after the Order Date, and every sixty (60) days thereafter until Respondent Emerson has (i) divested all Westlock Assets, (ii) fully provided the Manufacturing Technology, Product Intellectual Property and Product Licensed Intellectual Property to an Acquirer in a manner that fully satisfies the requirements of this Order, and (iii) completed its obligations to provide services and assistance to the Acquirer with respect to accounts receivable, accounts payable, internal and external auditing functions, tax, legal, treasury, payroll, benefits administration, information technologies, and human resources management of Westlock, Respondent Emerson shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with these requirements of this Order. Respondent Emerson shall submit at the same time a copy of its report concerning compliance with this Order to the Monitor, if any Monitor has been appointed. Respondent Emerson shall include in its reports, among other things that are required from time to time, a full description of the efforts being made to comply with the relevant paragraphs of the Orders, including:
1. a detailed description of all substantive contacts, negotiations, or recommendations related to (i) the divestiture and transfer of all relevant assets and rights and (ii) transitional services being provided by Respondent Emerson to the Acquirer; and
 2. a detailed description of the timing for the completion of such obligations.
- D. One (1) year after the Order Date, annually for the next four (4) years on the anniversary of the Order Date, and at other times as the Commission may require, Respondents shall file a verified written report with the Commission setting forth in detail the manner and

Decision and Order

form in which it has complied and is complying with the Order.

VIII.

IT IS FURTHER ORDERED that each Respondent shall notify the Commission at least thirty (30) days prior to:

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

IX.

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 a Respondent made to its principal United States offices, registered office of its United States subsidiary, or its headquarters address, that each Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. access, during business office hours of that Respondent 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 that Respondent related to compliance with this Order, which copying services shall be provided by that Respondent at the request of the authorized representative(s) of the Commission and at the expense of that Respondent; and

Decision and Order

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

X.

IT IS FURTHER ORDERED that Respondent Pentair's obligations under this Decision and Order, other than (i) the covenant not to sue an Acquirer under certain Patents contained in Paragraph II.L. of this Order and (ii) the provisions regarding employment contained in Paragraph II.I, shall terminate on the date on which all of the following have occurred:

- A. Respondent Emerson has acquired over fifty (50) percent of the voting securities or equity interests of each of the Pentair Valves & Controls Subsidiaries;
- B. the Westlock Assets are completely owned and controlled either by Respondent Emerson or an Acquirer;
- C. with respect to any Westlock Product or related Product Intellectual Property or Manufacturing Technology, that is owned or controlled by Respondent Pentair prior to the Acquisition, Respondent Pentair has:
 - 1. transferred all rights and assets that were owned or controlled by Respondent Pentair prior to the Acquisition and necessary to effect the related divestitures to either Respondent Emerson or the Acquirer;
 - 2. transferred or otherwise provided all rights, assets or other resources that were owned or controlled by Respondent Pentair prior to the Acquisition and necessary for Respondent Emerson to provide the services and assistance to the Acquirer described in Paragraph II.F. to Respondent Emerson; and
 - 3. secured all consents and waivers from all Third Parties that are necessary to divest the Westlock

Decision and Order

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 June 12, 2027.

By the Commission.

NON-PUBLIC APPENDIX I**ACQUISITION AGREEMENT**

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

Analysis to Aid Public Comment

NON-PUBLIC APPENDIX II.A

AGREEMENTS RELATED TO THE DIVESTITURE

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

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

I. INTRODUCTION

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) from Emerson Electric Co. (“Emerson”) and Pentair plc (“Pentair”) (collectively, the “Respondents”) that is designed to remedy the anticompetitive effects that would likely result from Emerson’s proposed acquisition of Pentair’s valves and controls business.

Pursuant to a Share Purchase Agreement, dated as of August 18, 2016, Emerson proposes to acquire the equity interests of certain subsidiaries of Pentair in exchange for cash considerations of approximately \$3.15 billion (the “Acquisition”). The proposed Acquisition would combine the two largest suppliers of switchboxes, which are industrial valve control products, in the United States. The Commission’s Complaint alleges that the 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 substantially lessening competition in the United States market for switchboxes.

The proposed Decision and Order (“Order”) requires Emerson to divest Pentair’s switchbox manufacturer subsidiary, Westlock Controls Corporation (“Westlock”), to Crane Co. (“Crane”) no

Analysis to Aid Public Comment

later than ten days after the Acquisition is consummated. The divestiture requires Emerson to transfer to Crane all of the facilities, personnel, confidential information, and intellectual property associated with the design, manufacture, and sale of Westlock's products, which will allow Crane to effectively compete in the switchbox market.

The Commission has placed the Consent Agreement on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Consent Agreement, along with any comments received, and decide whether it should withdraw from the Consent Agreement, modify it, or make the Order final.

II. THE RESPONDENTS

Emerson, headquartered in St. Louis, Missouri, is a diversified global manufacturing company that provides a variety of products and services for the industrial, commercial, and consumer markets. Through its Automated Solutions segment, Emerson is a leading manufacturer of industrial equipment and instrumentation, including valves, actuators, regulators, and switchboxes, which it sells to customers in, among others, the oil and gas, refining, chemical, and power generation industries.

Pentair, headquartered in London, United Kingdom, with a main U.S. office located in Minneapolis, Minnesota, is a global water, fluid, thermal management, and equipment protection company. The Pentair Valves & Controls business manufactures valves, fittings, actuators, and controls, including switchboxes, for a broad array of industrial markets.

III. THE RELEVANT MARKETS

The relevant product market at issue in this transaction is switchboxes. Switchboxes are devices that monitor and control isolation (or "on/off") valves, which control the flow of liquids or gases through pipes in industrial applications, including the oil and gas, chemical, petrochemical, and power generation industries. Switchboxes consist of a hard outer case, which often is made of explosion-proof material, containing switches and

Analysis to Aid Public Comment

other electrical components that detect the position of a valve—that is, whether it is open or closed—and communicate that position via a visual display and/or digital signals to the facility’s workers and control room. Switchboxes are ancillary components that are typically bundled together with a valve, an actuator (a device that physically opens and closes a valve), and other control products into an “automated” isolation valve, which can open and close automatically without manual intervention. Because switchboxes perform a unique and essential role in the efficient and safe operation of industrial plants and facilities, there currently are no practical alternatives to switchboxes.

The United States is the relevant geographic market in which to assess the competitive effects of the Acquisition. The United States operates distinctly compared to international markets. Unlike international markets, the domestic market relies heavily on distributors, so competition takes place at both the distributor and customer level. Moreover, customers in the United States have distinct brand preferences for leading switchbox brands. Because switchboxes are frequently used under hazardous conditions in which safety is critical, brand reputation and product reliability are very important to customers. As a result, U.S. customers are unlikely to turn to brands that are not well established in the United States in response to a small but significant non-transitory increase in price.

Pentair’s “Westlock” and Emerson’s “TopWorx” switchbox businesses are the two largest suppliers of switchboxes in the United States, with a combined market share of approximately 60%. Other than Westlock and TopWorx, there are few suppliers with appreciable market shares. Each of these suppliers has substantially smaller market shares than either Westlock or TopWorx. In addition, there is a fringe of small manufacturers with very small market shares. The switchboxes produced by these smaller suppliers are not widely accepted by customers in the United States. The Acquisition would substantially increase concentration levels in the U.S. switchbox market and would result in a highly concentrated market. Under the *Horizontal Merger Guidelines*, the increase in concentration would presumptively create or enhance market power.

Analysis to Aid Public Comment

IV. EFFECTS OF THE ACQUISITION

Absent a divestiture, the proposed Acquisition would likely harm competition in the U.S. switchbox market. Emerson and Pentair are each other's closest competitors in this market, and customers benefit from that competition through lower prices and increased product innovation. TopWorx and Westlock are the most widely used and highly regarded brands of switchboxes in the United States and, for many customers, are the only acceptable brands of switchboxes. By eliminating competition between Emerson and Pentair, the Acquisition likely would produce unilateral effects in the form of higher prices and reduced innovation.

V. ENTRY

Entry into the U.S. market for switchboxes would not be timely, likely, or sufficient in to deter or counteract the anticompetitive effects of the Acquisition. The competitive strength of TopWorx and Westlock largely reflects their brand reputation for reliability and durability, which could not be quickly replicated by a new entrant. In addition, customers will typically only purchase switchboxes from approved suppliers and are reluctant to consider unproven manufacturers. This is because customers place a premium on safety, and product failure could cause costly and potentially dangerous disruption to critical applications. Any new entrant would need to not only undertake a lengthy and costly process of new product development, but would also need to undergo rigorous vetting, testing, and approval to become viable alternatives for many customers. Given the difficulty in overcoming these obstacles, it is unlikely that a new entrant or existing lower-tier competitor could effectively restore the competition lost through this Acquisition.

VI. THE PROPOSED CONSENT AGREEMENT

The proposed Consent Agreement remedies the competitive concerns raised by the Acquisition by requiring Emerson to divest Pentair's Westlock subsidiary to Crane, a publicly traded manufacturer of highly engineered industrial products, including industrial valves. The proposed divestiture includes everything

Analysis to Aid Public Comment

needed for Crane to compete effectively in the U.S. market for switchboxes.

Crane, headquartered in Stamford, Connecticut, is a 162-year old company with a long history as a significant competitor in the U.S. industrial valves market, providing it with the industry experience and expertise necessary to replace the competition that would be lost due to the Acquisition. Crane's portfolio of valves complements the switchbox and other valve control products that Westlock manufactures, but Crane does not sell any products that compete with Westlock. Crane has a substantial U.S. infrastructure and customer base, including many of the same customers as Westlock, and pre-existing relationships with many of Westlock's distributors. Crane is thus well positioned to acquire and integrate Westlock and maintain the benefits of competition in this market.

Under the terms of the Order, Emerson must divest all of Westlock's businesses and assets to Crane, including Westlock's manufacturing facility located in Saddle Brook, New Jersey, and all of the confidential information and intellectual property related to Westlock's product portfolio. Emerson must also allow Crane to have access to and hire any Westlock employees who were engaged in the research, development, manufacturing, marketing, or sales of Westlock's products. In order to ensure that the divestiture will succeed, the Order requires the Respondents to enter into a one-year transitional services agreement with Crane for certain functions that Pentair performed for Westlock (such as accounts receivable, tax, legal, payroll, benefits, and other related functions). In order to preserve competition with Emerson, the Order requires Emerson to institute procedures that protect sensitive non-public information regarding Westlock's business from the Emerson business people in competing lines of business. It also restricts Emerson from instituting patent infringement suits against Crane for the Westlock switchbox product lines that are currently being marketed or in development.

The Respondents must complete the divestiture no later than ten days after the consummation of the Acquisition. If the Commission determines that Crane is not an acceptable acquirer, the Order requires the Respondents to unwind the sale and accomplish a divestiture of Westlock to another Commission-

Analysis to Aid Public Comment

approved acquirer within 180 days of the date the Order becomes final. Further, the Order allows the Commission to appoint a monitor to ensure that the Respondents expeditiously comply with their obligations under the Order and a Divestiture Trustee to accomplish the divestiture should the Respondents fail to comply with their divestiture obligations.

VII. OPPORTUNITY FOR PUBLIC COMMENT

The purpose of this analysis is to facilitate public comment on the Consent Agreement to aid the Commission in determining whether it should make the Consent Agreement final. This analysis is not intended to constitute an official interpretation of the proposed Consent Agreement and does not modify its terms in any way.

Complaint

IN THE MATTER OF

CHINA NATIONAL CHEMICAL CORPORATIONCONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT

Docket No. C-4610; File No. 161 0093
Complaint, April 4, 2017 – Decision, June 13, 2017

This consent order addresses the \$43 billion acquisition by China National Chemical Corporation of certain assets of Syngenta AG. The complaint alleges that the Acquisition, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act by lessening competition in the markets for formulated crop protection products based on paraquat, abamectin, and chlorothalonil in the United States. The consent order requires ChemChina subsidiary ADAMA to divest its paraquat, abamectin, and chlorothalonil crop protection businesses in the United States to American Vanguard Corporation and its affiliate Amvac Chemical Corporation.

Participants

For the *Commission*: Cem Akleman and David Morris.

For the *Respondent*: Ellen Frye and Peter Guryan, Simpson Thacher & Bartlett LLP.

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 China National Chemical Corporation (“ChemChina”), a corporation subject to the jurisdiction of the Commission, has agreed to acquire Syngenta AG (“Syngenta”), 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: