

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **William E. Kovacic, Chairman**
 Pamela Jones Harbour
 Jon Leibowitz
 J. Thomas Rosch

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In the Matter of)	
)	
Flow International Corp.,)	Docket No. C-4231
)	
a corporation)	
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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and of the Clayton Act, and by virtue of the authority vested by said Acts, the Federal Trade Commission (the “Commission”), having reason to believe that respondent Flow International Corporation (“Flow”), a corporation, and OMAX Corporation (“OMAX”), a corporation, both subject to the jurisdiction of the Commission, have agreed to an acquisition by Flow of OMAX in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENT

1. Respondent Flow is a corporation organized and existing under the laws of the State of Washington, with its principal place of business at 23500 - 64th Avenue South, Kent, Washington 98032. Flow is a global company engaged in the development, manufacture, marketing, and sale of waterjet cutting systems.

II. JURISDICTION

2. Flow 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 corporation whose business is in or affects commerce as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

III. THE PROPOSED TRANSACTION

3. OMAX is a Washington company with its head office in Kent, Washington. OMAX is a global company engaged in the development, manufacture, marketing, and sale of waterjet cutting systems.

4. In December 2007, the parties signed an exclusive option agreement for the acquisition of OMAX. Under the agreement, Flow and OMAX will work to negotiate a definitive agreement for Flow to acquire OMAX. Upon closing, Flow will pay approximately \$109 million in cash and stock with the potential for a contingent earn-out in two years of up to \$26 million.

IV. WATERJET CUTTING SYSTEMS

5. The demand for waterjet cutting systems is growing very rapidly due to the versatility and ease of operation of these systems. Waterjet cutting systems can be used to cut and machine a much wider range of materials than other cutting systems. For most users of waterjet cutting systems, alternative cutting systems would not provide comparable features and therefore would not serve as adequate substitutes. Customers now using or seriously considering adopting waterjet cutting systems would be unlikely to switch to an alternative cutting technology if the prices of all waterjet cutting systems were to be raised by a small but significant non-transitory amount.

6. A waterjet cutting system contains four main parts: (1) pump, (2) cutting head, (3) cutting table, and (4) controller.

- The "pump" rated in pressure at or above 50,000 pounds per square inch creates ultra-high pressure water;
- The cutting head is a two-stage nozzle where the ultra-high pressure water passes through a small-diameter jewel orifice to form a narrow waterjet. In abrasive waterjet cutting systems, the resulting waterjet then passes through a small chamber where a slight vacuum pulls abrasive material into this area through a feed tube. The abrasive particles are accelerated by the narrow waterjet and together they pass into a long, hollow cylindrical ceramic mixing tube. The resulting mix of abrasive and narrow waterjet exits the mixing tube as a coherent

stream and cuts the material;

- The cutting table holds the material to be cut and can utilize either a gantry or cantilever system to move the cutting head; and
- The controller is hardware and software that directs the cutting head. Controllers can be adapted from other cutting tools, such as lasers, that also use cutting tables, or they may be specifically designed to compensate for the unique characteristics of how the waterjet cuts, including taper (the waterjet expands after leaving the nozzle, forming a cone shape) and lag (the faster the cutting head moves, the more the waterjet will trail behind the cut).

7. Waterjet cutting systems are used by a wide variety of industrial machine tool customers. These customers include:

- job shops that produce a wide variety of short-run parts use waterjet cutting systems to complement their traditional Computer Numerical Control milling machines and flame cutters;
- wire Electrical Discharge Machining (“EDM”) shops because waterjet cutting systems are up to ten times faster than wire EDM and can cut both conductive and non-conductive material without creating a heat-affected zone;
- laser shops, which can capitalize on the ability of waterjet cutting systems to cut thicker materials than lasers can, and, unlike lasers, can cut reflective materials;
- aerospace shops because waterjet cutting systems can cut without damaging materials that are affected by heat, such as titanium and aluminum;
- tooling shops because waterjet cutting systems can work with hardened tool steel;
- architectural fabricators, which use waterjet cutting systems to create large signs, decorative tiles, or intricate design work in a wide variety of materials; and
- metal fabricators, which value the enhanced ability of waterjet cutting systems to cut clean edges for plate work.

8. Most waterjet customers derive a gain in productivity, which is a function of cutting speed and set-up time, by using a waterjet cutting system instead of an alternative cutting technology. Cutting speed is affected by pump strength, the number of cutting heads used on the system, and the sophistication of the controller. Controllers are often the least expensive means

of improving cutting speed and have the further virtue of reducing set-up time if they are easily programmable. Controllers can also improve the quality of the cut by, among other things, automatically adjusting the speed of the cut.

V. COMPETITION BETWEEN FLOW AND OMAX

9. Flow is the largest manufacturer of waterjet cutting systems in the United States. OMAX is the second largest.

10. OMAX has received U.S. Patent Nos. 5,508,596 and 5,892,345 relating, among other things, to controllers that may include a personal computer for determining appropriate machining commands to control velocity, acceleration and/or jerk for a cutting head. These commands help compensate for the unique characteristics of how the waterjet cuts, including taper and lag.

11. Both Flow and OMAX produce waterjet cutting systems that feature relatively inexpensive yet sophisticated PC-based controllers. Flow and OMAX are each other's closest competitors because they are the only two competitors that manufacture comparably priced waterjet cutting systems with the most advanced and efficient controllers.

VI. RELEVANT MARKET

12. For the purposes of this Complaint, the relevant line of commerce in which to analyze the effects of the Acquisition is the development, manufacture, marketing, and sale of waterjet cutting systems.

13. For the purposes of this Complaint, the relevant geographic market within which to analyze the effects of the Acquisition is the United States.

VII. CONCENTRATION IN THE RELEVANT MARKET

14. The relevant market would be highly concentrated as a result of the acquisition. Post-acquisition, Respondent would account for more than 55 percent of waterjet cutting system sales in the United States.

VIII. LIKELIHOOD OF ENTRY

15. New entrants and existing competitors are deterred by the risk of violating OMAX patents from developing and producing competitive waterjet cutting systems. Developing an efficient controller that clearly works around the potential reach of OMAX's patents would likely be an expensive and time-consuming process, with no guarantees of success. Therefore, entry into the relevant market would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the acquisition.

IX. EFFECTS OF THE ACQUISITION

16. The effects of the acquisition, if consummated, may be substantially to lessen competition and to tend to create a monopoly in the relevant market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45. Specifically, the acquisition would:

- a. Eliminate actual, direct, and substantial competition between Flow and OMAX in the relevant market by eliminating competition for the development, manufacture, and sale of waterjet cutting systems that utilize PC-based controllers; and
- b. Increase Respondent's ability to exercise market power unilaterally in the relevant market.

X. VIOLATIONS CHARGED

17. The agreement described in Paragraph 4 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

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

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this fifteenth day of August, 2008, issues its Complaint against said Respondent.

By the Commission.

Donald S. Clark
Secretary

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