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

COMMISSIONERS: Jon Leibowitz, MOiOM

**Edith Ramirez
Julie Brill**

In the Matter of

**McWANE, INC.,
a corporation, and**

**STAR PIPE PRODUCTS, LTD.,
a limited partnership.**

domestically produced materials, including DIPF, in those projects (the “Buy American” requirement).

4. At the time the ARRA was passed, McWane was the sole supplier of a full line of domestically produced DIPF in the most commonly used size ranges. Federal stimulus of the domestic DIPF market potentially left McWane in a position to reap a monopoly profit.

5. In response to the passage of the ARRA and its Buy American provision, Sigma, Star, and other companies entered the domestic DIPF market in competition with McWane.

6. McWane maintained its monopoly in the domestic DIPF market through exclusionary conduct, including (i) entering into a distribution agreement with Sigma that eliminated Sigma as an actual potential entrant into the domestic DIPF market, and (ii) excluding actual and potential competitors, including Star, through the adoption and enforcement of exclusive dealing policies.

7. Respondents’ conduct has restrained competition and led to higher prices for both imported and domestically produced DIPF.

THE RESPONDENTS

8. Respondent McWane is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan.

THE DIPF INDUSTRY

14. DIPF are a component of pipeline systems transporting drinking and waste water under pressurized conditions in municipal distribution systems and treatment plants. DIPF are used to join pipes, valves and hydrants in straight lines, and to change, divide or direct the flow of water. The end users of DIPF are typically municipal and regional water authorities.

15. DIPF are produced in a broad product line of more than 2000 unique configurations of size, shape and coating. The industry differentiates between “A Items,” or commonly used fittings used routinely and on almost every job, and “oddball” fittings that are either of unusual configuration or size, or both. Although approximately 80 percent of market demand may be serviced with a product line of 100 fittings, DIPF suppliers must be able to supply more than 1900 additional fittings to serve the remaining 20 percent of demand.

16. Independent wholesale distributors, known as “waterworks distributors,” are the primary channel of distribution of DIPF to end users. Waterworks distributors specialize in distributing products for water infrastructure projects, and generally handle the full spectrum of waterworks products, including pipes, DIPF, valves and hydrants. Waterworks distributors employ sales personnel dedicated to servicing the needs of end users, and are generally able to satisfy the needs of end users for rapid service by stocking inventory in relatively close proximity to project sites.

17. Direct sales of DIPF to end users, or to the utility contractors that often serve as the agent of the end user in purchasing and installing DIPF, are uncommon. End users and DIPF suppliers alike prefer to work through waterworks distributors with locations near project sites. As a result, DIPF suppliers need to distribute DIPF through local waterworks distributors in each region of the country in order to compete effectively in that region.

18. Both imported and domestically produced DIPF are commercially available. All of the Sellers sell imported DIPF. Before Star’s entry into domestic production in 2009, McWane was the sole domestic producer of a full line of small and medium-sized DIPF.

19. The end user of DIPF specifies whether, on a particular project, it will accept both imported and domestically produced DIPF, or only domestically produced DIPF. This specification is often mandated by municipal code, or by state or federal law.

20. Domestically produced DIPF sold for use in projects specified as domestic only are sold at higher prices than imported or domestically produced DIPF sold for use in projects not specified as domestic only.

THE RELEVANT MARKETS

21. The relevant product market in which to evaluate Respondents' conduct is the marketing and sale of DIPF, and narrower relevant markets as contained therein (collectively, the "relevant DIPF markets"), including:

- a. DIPF for projects ~~DIPF projects~~ as domestic

a. DIPF are commodity products produced to industry-wide standards. Product homogeneity enhances the Sellers' ability to collude on prices and to detect deviations from those collusive prices.

b. The relevant DIPF markets are highly concentrated. In 2008, the Sellers collectively made more than 90 percent of sales in the relevant DIPF markets. A highly concentrated market enhances the Sellers' ability and incentive to collude on prices.

c. Effective *de novo* entry into the relevant DIPF markets takes several years.

32. This January 2008 price increase was the result of a combination and conspiracy among the Sellers.

a. Before announcing the January 2008 price increase, McWane planned to trade its support for higher prices in exchange for specific changes to the business methods of Sigma and Star that would reduce the risk that local sales personnel for these competitors would sell DIPF at prices lower than published levels.

b. McWane communicated the terms of its plan to Sigma and Star. McWane acted with the intent of conspiring with Sigma and Star to restrain price competition.

c. Sigma and Star manifested their understanding and acceptance of McWane's offer by publicly taking steps to limit their discounting from published price levels in order to induce McWane to support higher price levels.

d. On or about March 10, 2008, McWane and Sigma executives discussed by telephone their efforts to implement the January 2008 price increase.

33. On June 17, 2008, McWane publicly announced its second DIPF price increase of 2008. Sigma and Star followed this price increase.

34. The June 2008 price increase was the result of a combination and conspiracy among the Sellers.

a. Before announcing the June 2008 price increase, McWane planned to trade its support for higher prices in exchange for information from Sigma and Star documenting the volume of their monthly sales of DIPF. This exchange of information was to be achieved under the auspices of an entity styled as the Ductile Iron Fittings Research Association ("DIFRA").

b. McWane communicated the terms of its plan to Sigma and Star, at least in part through a public letter sent by McWane to waterworks distributors, the common customers of the Sellers. A section of that letter was meaningless to distributors, but was intended to inform Sigma and Star of the terms of McWane's offer. McWane acted with the intent of conspiring with Sigma and Star to restrain price competition.

c. Sigma and Star manifested their understanding and acceptance of McWane's offer by initiating their participation in the DIFRA information exchange in order to induce McWane to support higher price levels.

d. McWane then led a price increase, and Sigma and Star followed.

e. On or about August 22, 2008, executives of McWane and Sigma discussed by telephone their efforts to implement the June 2008 price increase.

d. Sigma would resell McWane's domestic DIPF to waterworks distributors only on the condition that the distributor agreed to purchase domestic DIPF exclusively from McWane or Sigma.

50. An unwritten term of the MDA was that McWane would also sell its domestic DIPF at or very near its published prices.

51. In the absence of a sufficiently profitable arrangement with McWane, Sigma would likely have entered the relevant domestic DIPF market in competition with McWane.

52. Under the MDA, McWane controlled the price at which Sigma could sell domestic DIPF and the customers to whom Sigma could sell domestic DI

b. As part of its MDA with McWane, Sigma agreed to implement a similar distribution policy, as alleged in Paragraph 49, above.

c. McWane threatened some waterworks distributors with the loss of rebates in other product categories, such as ductile iron pipe, waterworks valves, and hydrants, if those distributors purchased domestic DIPF from Star.

d. Beginning in 2011, McWane changed its rebate structure for domestic DIPF to require waterworks distributors to make certain minimum, and high, shares of their total domestic DIPF purchases from McWane in order to qualify for these rebates.

58. The purpose and effect of McWane's exclusive dealing policies has been and is to compel the majority of waterworks distributors to deal with McWane and Sigma on an exclusive or nearly exclusive basis for their domestic DIPF business.

a. Due to Star's perceived or actual status as an untested supplier of domestic DIPF with a shorter product line and smaller inventory than McWane, many distributors interested in purchasing domestic DIPF from Star were unwilling to switch all of their domestic DIPF business to Star.

b. Instead, many distributors wished to purchase domestic DIPF from both McWane/Sigma and Star, and thereby to garner the benefits of price and service competition.

c. McWane's exclusive dealing policies increased the risk of purchasing domestic DIPF from Star.

d. Distributors otherwise interested in purchasing domestic DIPF from Star were and are unwilling to do so under the terms of McWane's exclusive dealing policies, and have remained exclusive or nearly exclusive with McWane and Sigma, contrary to their preference.

59. McWane's exclusive dealing policies have foreclosed Star from a substantial volume of sales opportunities with waterworks distributors.

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**FOURTH VIOLATION ALLEGED
RESTRAINT OF TRADE**

67. As alleged herein, McWane and Sigma entered into the MDA. The agreement unreasonably restrains trade and constitutes an unfair method of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Such acts and practices, or the effects thereof, will continue or recur in the absence of appropriate relief.

**FIFTH VIOLATION ALLEGED
CONSPIRACY TO MONOPOLIZE**

68. As alleged herein, McWane and Sigma entered into t

NOTICE

Notice is hereby given to Respondents that the fourth day of September, 2012, at 10:00 a.m., is hereby fixed as the time and Federal Trade Commission offices, 600 Pennsylvania Avenue, NW, Washington D.C. 20580, as the place when and where a hearing will be had before an Administrative Law Judge of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under the Federal Trade Commission Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in the complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the fourteenth (14th) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted.

If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material allegations to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint and, together

NOTICE OF CONTEMPLATED RELIEF

Should the Commission conclude from the record developed in any adjudicative proceedings in this matter that Respondents have violated or are violating Section 5 of the FTC Act, as amended, as alleged in the Complaint, the Commission may order such relief against Respondents as is supported by the record and is necessary and appropriate, including, but not limited to:

1. Ordering Respondents to cease and desist from the conduct alleged in the Complaint to violate Section 5 of the FTC Act, and to take all such measures as are appropriate to correct or remedy, or to prevent the recurrence of, the anticompetitive practices engaged in by Respondents.

2. Prohibiting Respondents from agreeing with any competitor to fix prices or to allocate markets, or from soliciting any competitor to enter into such an agreement.

3. Prohibiting Respondents from agreeing with any competitor to exchange competitively sensitive information unless that information exchange meets sufficient criteria to assure that the information exchange will not facilitate collusion among Respondents and their competitors, such conditions to be determined by the Commission, or soliciting any competitor to enter into such an agreement.

4. Prohibiting Respondents from communicating competitively sensitive information to any competitor, except where such communications are the unavoidable result of announcing the terms on which Respondents propose to sell their products to their customers, or where the information communicated by Respondents relates solely to the terms on which Respondents propose to sell any product to, or purchase any product from, the person to whom the information is communicated by Respondents.

5. Requiring, for a period of time, that Respondents document all communications with any competitor, including by identifying the persons involved, the nature of the communication, and its duration, and that Respondents submit such documentation to the Commission.

6. Requiring that Respondents, upon request, provide the Commission with notification of any public price change relating to DIPF, including copies of pricing letters.

7. Prohibiting McWane from conditioning the sale, or any term of sale (including invoice price, delivery terms, credit allowances, rebates, or discounts), of any product on a customer's dealing, refusal to deal, or terms of dealing with any other supplier of domestically produced DIPF.

8. Prohibiting McWane, for a period of time, from providing any discounts or other incentives that retroactively reduce the price of previously purchased units of McWane's domestically produced DIPF because of the purchase or sale of an additional unit of that product.

Provided, however, that McWane shall be permitted to offer discounts or lower prices based solely on volume, provided that these discounts or lower prices are otherwise in accordance with the law.

9. Prohibiting McWane, for a period of time, from offering bundled rebates involving domestically produced DIPF.

10. Requiring that Respondents' compliance with the order shall be monitored at its expense by an independent monitor, for a term to be determined by the Commission.

11. Requiring that Respondents file periodic compliance reports with the Commission.

12. Any other relief appropriate to correct or remedy the anticompetitive effects in their incipency of any or all of the conduct alleged in the complaint.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this fourth day of January, 2012, issues its complaint against Respondents.

By the Commission.

Donald S. Clark
Secretary

SEAL: