

Analysis of Proposed Consent Order to Aid Public Comment  
In the Matter of Sigma Corporation, File No. 101-0080

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The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed consent order (“Agreement”) from Sigma Corporation (“Sigma”). The issues described in

be resolved by accepting the proposed order, subject to final approval contained in the Agreement. The Agreement has been placed on the public record for 30 days for receipt of comments from interested members of the public. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Agreement and any comments received, and will decide whether it should withdraw from the Agreement or make final the proposed order contained in the Agreement.

The purpose of this Analysis to Aid Public Comment is to invite and facilitate public comment concerning the proposed order. It is not intended to constitute an official interpretation of the Agreement and proposed order in anyway to modify its terms.

The proposed order is for settlement purposes only and does not constitute an admission by Sigma that it violated the law that the facts alleged in the complaint, other than jurisdictional facts, are true.

I. The Complaint

The following allegations are taken from the complaint and publicly available information.

A. Background

DIPF are used in municipal water distribution systems to change pipe diameter or pipeline direction. DIPF is a publicly available Sigma ad

its largest competitors in the DIPF market, McWare, Inc. (“McWare”) and Star Pipe Products Ltd. (“Star”), all sell imported DIPF. McWare was the only domestic producer of a full line of small and medium-sized DIPF until Star’s entry into domestic production in 2009.

There are no widely available substitutes for DIPP. Some projects require that only domestically produced DIPP be used. Domestically produced DIPP sold for use in these projects typically command higher prices than comparable imported DIPP.

DIPP prices are based off of published list prices and discounts, with customers negotiating additional discounts off of those list prices and discounts on a transaction-by-transaction basis. DIPP suppliers also offer volume rebates.

## B. Challenged Conduct

Between January 2008 and January 2009, Sigma allegedly conspired with McWane and Star to increase the prices at which imported DIPP were sold in the United States in furtherance of

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FEDERAL TRADE

## B. Sigma's 2009 Invitation to Collude

The complaint includes allegations of a standalone Section 5 violation, namely that Sigma invited McWane and Star to collude with Sigma to increase DPF prices in early 2009.<sup>4</sup> The term "invitation to collude" describes an improper communication from a firm to an actual or potential competitor that the firm is ready and willing to coordinate on price or output. Such invitations to collude impose a significant risk of anticompetitive harm to consumers and as such, violate Section 5 of the FTC Act absent a legitimate business justification.

## C. Sigma's Involvement in a 2009 Conspiracy with McWane to Eliminate Competition in the Domestic DPF Market

The complaint alleges that, after the passage of the ARRA, Sigma prepared to enter the domestic DPF market in competition with McWane. However, McWane wanted to avoid this competition, so McWane and Sigma agreed that Sigma would participate in the domestic DPF market only as a distributor of McWane's product. Through this arrangement, McWane shared a portion of its monopoly profits in the domestic DPF market with Sigma in exchange for Sigma's commitment to abandon its plans to enter that market in competition with McWane. Such agreements are presumptively unlawful.<sup>5</sup>

## D. McWane and Sigma Conspired to Monopolize the Domestic DPF Market

The elements of a conspiracy to monopolize are: (1) the existence of a combination or conspiracy; (2) an overt act in furtherance of the conspiracy; and (3) a specific intent to monopolize. Here, the complaint alleges that through

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<sup>4</sup> *In re U-Haul International, Inc.*, F.T.C. File No. 081-0157, 2010 FTC LEXIS 61, \*6 (July 14, 2010); *In re Valassis Communications, Inc.*, F.T.C. File No. 051-008, 2006 FTC LEXIS 25, \*4-7 (April 19, 2006); *In re MacDermid, Inc.*, F.T.C. File No. 991-0167, 1999 FTC LEXIS 191, \*10 (Feb. 4, 2000); *In re Stone Container Corp.*, 125 F.T.C. 853 (1998); *In re Precision Moulding Co.*, 122 F.T.C. 104 (1996); *In re YKK (USA) Inc.*, 116 F.T.C. 628 (1993); *In re A.E. Clevite, Inc.*, 116 F.T.C. 389 (1993); *In re Quality Trailer Products Corp.*, 115 F.T.C. 944 (1992). In addition, an invitation to collude may violate Section 2 of the Sherman Act as an act of attempted monopolization, and may also violate federal wire and mail fraud statutes. See *United States v. American Airlines*, 743 F.2d 1114 (5th Cir. 1984); *United States v. Ames Sintering Co.*, 927 F.2d 232 (6th Cir. 1990).

<sup>5</sup> E.g., *Palmer v. BRG of Georgia, Inc.*, 498 U.S. 46, 49-50 (1990); *United States v. Masonite Corp.*, 316 U.S. 265, 281 (1942); *In re SKF Industries, Inc.*, 94 F.T.C. 6, 97-104 (1979).

<sup>6</sup> See *Volvo N. Am. Corp. v. Men's Int'l Prof'l Tennis Council*, 857 F.2d 55, 74 (2d Cir. 1988).

### III. The Proposed Order

The proposed order is designed to remedy the unlawful conduct charged against Sigma in the complaint and to prevent the recurrence of such conduct.

Paragraph I.A of the proposed order prohibits Sigma from participating in or maintaining any combination or conspiracy between any competitors to fix, raise or stabilize the prices at which