

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman
J. Thomas Rosch
Edith Ramirez
Julie Brill

In the Matter of

SIGMA CORPORATION,
a corporation.

Docket No. C-

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("Commission"), having reason to believe that Respondent Sigma Corporation ("Sigma") has violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and it appears to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint stating its charges as follows:

NATURE OF THE CASE

1. This action concerns Sigma's unfair methods of competition relating to the marketing and sale of ductile iron pipe fittings ("DIPF").
2. Beginning in January 2008 and continuing through January 2009, Sigma, along with its competitors McWane, Inc. ("McWane") and Star Pipe Products Ltd. ("Star"), conspired to raise and stabilize the prices at which DIPF are sold in the United States. Sigma, McWane and Star (collectively, the "Selles") exchanged sales data in order to facilitate this price coordination.
3. The passage of the American Recovery and Reinvestment Act ("ARRA") in February 2009 significantly

4. At the time the ARRA was passed, McWane was the sole supplier of 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,

13. Direct sales of DIPF to end user 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.

14. 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.

15. 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, by state or federal law.

16. 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

17. The relevant product market in which to evaluate Sigma's 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 not specified as domestic only;
- b. DIPF for projects specified as domestic only; and
- c. DIPF of certain size ranges (e.g., 24" in diameter and smaller).

18. In particular, the market for DIPF sold for use in projects specified as domestic only, as of 2009, is the market for DIPF sold for use in projects specified as domestic only.

relationships are unable to constrain the prices of DPF suppliers that have such assets and relationships.

22. The relevant DPF markets have several features that facilitate price coordination among DPF suppliers. The relevant DPF markets are highly concentrated. In 2008, the Sellers collectively made more than 90 percent of sales within the relevant DPF markets. Other features of the relevant DPF markets that facilitate price coordination include product homogeneity, barriers to timely entry of new DPF suppliers, inelastic demand at competitive prices, and uniform published prices.

**THE SELLERS RESTRAINED
PRICE COMPETITION BY \$100,000 TD(M)Tj11.2800 IT**

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

31. McWane then led a price increase and Sigma and Star followed.

DFRA FACILITATED PRICE COORDINATION AMONG THE SELLERS

32. The DFRA information exchange operated as follows. The Sellers submitted a report of their previous month's sales to an accounting firm. Shipments were reported in tons shipped, subdivided by diameter size range (e.g., 2-12") and by joint type. Data submissions were aggregated and distributed to the Sellers. Data submitted to the accounting firm was typically no older than 45 days, and the summary reports returned to the Sellers contained data

**McWANE AND SIGMA CONSPIRED TO MONOPOLIZE
THE RELEVANT DOMESTIC DPF MARKET**

39. At the time of the enactment of the ARRA in February 2009 and thereafter, McWane possessed monopoly power in the relevant domestic DPF market.

40. At the time of the enactment of the ARRA, McWane was the only manufacturer of a full line of DPF in the relevant domestic DPF market and controlled nearly 100 percent of the relevant domestic DPF market. Despite Star's entry into the relevant domestic DPF market in late 2009, McWane continues to make more than 90 percent of sales in the relevant domestic DPF market.

41. McWane's monopoly power in the relevant domestic DPF market is protected by substantial barriers to effective entry and expansion, including the unfair methods of competition of McWane and Sigma, as alleged in Paragraphs 44 through 60 below.

42. For suppliers of the relevant DPF that have existing relationships and goodwill with waterworks distributors and established reputations for quality and service in the provision of the relevant DPF, McWane's unfair and exclusionary methods of competition are the primary barriers to effective entry and expansion in the relevant domestic DPF market.

43. Federal stimulus of the relevant domestic DPF market gave Sigma Star and other suppliers of imported DPF an incentive to enter the relevant domestic DPF market.

McWane Eliminated Sigma as an Actual Potential Entrant

44. After the enactment of the ARRA, Sigma took steps to evaluate entry into domestic production of DPF, including but not limited to (i) formulating a complete or nearly complete operational plan, (ii) arranging for 46.2000 0 Tj 5.280Tj 50.5200 0.0000 0.00 0.1 .0000e0c9r00

a. McWane threatened waterworks distributors with delayed or diminished access to McWane's domestic DIPF, and the loss of earned rebates on the purchase of McWane's domestic DIPF, if those distributors purchased domestic DIPF from Star.

b. As part of its MDA with McWane, Sigma agreed to implement a similar distribution policy, as alleged in Paragraph 46, 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 a certain minimum, and high, share of their total domestic DIPF purchases from McWane in order to qualify for these rebates.

55. 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 gain 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.

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

57. By foreclosing Star from a substantial volume of sales opportunities with waterworks distributors, McWane's exclusive dealing policies tend to minimize and delay Star's ability to benefit consumers by constraining the prices of domestically produced DIPF charged by McWane and Sigma.

58. McWane's exclusive dealing policies have also raised barriers to entry into the relevant domestic DIPF market by other potential entrants. This conduct has contributed to McWane's monopolization of the relevant domestic DIPF market.

COMPETITIVE EFFECTS

59. The acts and practices of Sigma, as alleged herein, have the purpose, capacity, tendency, and effect of (i) maintaining and stabilizing prices of DIPF in the relevant DIPF markets, (ii) eliminating potential competition from Sigma.

**FOURTH VIOLATION ALLEGED
RESTRAINT OF TRADE**

64. 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**

and Sigma i

65. As alleged herein, McWane and Sigma entered into the MDA with the specific intent to monopolize the relevant domestic DIPF market, and took overt acts to exclude their