

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-

DECISION AND ORDER

The Federal Trade Commission ("Commission") having initiated an investigation of certain acts and practices of Sigma Corporation ("Sigma"), hereinafter sometimes referred to as "Respondent," and Respondent having been furnished thereafter with a copy of a draft Complaint that counsel for the Commission proposed to present to the Commission for its consideration and which, if issued, would charge Respondent with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing an admission by Respondent of the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the laws have been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waives and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had re

1. Respondent Sigma Corporation is a corporation organized and existing under the laws of the State of New Jersey, with its principal address at 700 Goldman Drive Cream Ridge, New Jersey 08550.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. "Commission" means the Federal Trade Commission.
- B. "Respondent" means Sigma Corporation, its officers, directors, employees, agents, attorneys, representatives, successors, and assigns, and the subsidiaries, divisions, groups, and affiliates controlled by it, and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.
- C. "Communicate" means to transfer or disseminate any information, regardless of the means by which it is accomplished, including without limitation orally, by letter, e-mail, notice, or memorandum. This definition applies to all tenses and forms of the word "communicate," including but not limited to, "communicating," "communicated," and "communication."
- D. "Competitively

E. "Competitor" means any Person that, for the purpose of sale or resale within the United States: (1) manufactures DIPF; (2) causes DIPF to be manufactured; or (3) imports DIPF.

O. "Person" means any natural person or artificial per

- C. Entering into, adhering to, Participating in, maintaining, organizing, implementing, enforcing, or otherwise facilitating any combination, conspiracy, agreement, or understanding between or among any Competitors to Communicate or exchange Competitively Sensitive Information.
- D. Communicating Competitively Sensitive Information to another Competitor.
- E. Attempting to engage in any of the activities prohibited by Paragraphs I.A, II.B, II.C, or II.D.

PROVIDED, HOWEVER, that it shall not of itself constitute a violation of Paragraph II.B, II.C, OR I.D of this Order for Respondent to Communicate

- (1) Competitively Sensitive Information to a Competitor where such Communication is reasonably related to a lawful joint venture, license, potential acquisition, and is reasonably necessary to achieve the procompetitive benefits of such a relationship;
- (2) To any Person reasonably believed to be an actual or prospective purchaser of DIPF, the price and terms of a sale of DIPF; or
- (3) That Respondent is ready and willing to adjust the terms of a sale of DIPF in response to a Competitor's offer

PROVIDED FURTHER, that it shall not of itself constitute a violation of Paragraphs II.B, II.C, II.D or II.E of this Order for Respondent to Communicate with or Participate in an Information Exchange that is limited exclusively to the Communication of Input Data or Industry Statistics when:

- 1. Any Input Data relates solely to transactions that are at least six (6) months old;
- 2. Any Industry Statistic relates solely to transactions that are at least six (6) months old;
- 3. Industry Statistics are Communicated no more than one time during any six (6) month period;
- 4. Any Industry Statistic represents an aggregation or average of Input Data for transactions covering a period of at least six (6) months;
- 5. Any Industry Statistic represents an aggregation or average of Input Data received from no fewer than five (5) Competitors;

6. Relating to price, output, or total unit cost, no individual Competitor's Input Data to any IndustryStatistic represents more than twentyfive (25) percent of the total reported sales (whether measured on a dollar or unit basis) of the DPF product from which the Industry Statistic is derived;
7. Relating to price, output, or total unit cost, the sum of no more than ten Competitors' Input Data to any IndustryStatistic represents more than sixty (60) percent of the total reported sales (whether measured on a dollar or unit basis) of the DPF product from which the IndustryStatistic is derived;
8. Any IndustryStatistic is sufficiently aggregated or anonymous such that no Competitor that receives that IndustryStatistic can, directly or indirectly, identify the Input Data submitted by any other particular Competitor;
9. Respondent does not Communicate with any other Competitor relating to the Information Exchange, other than those Communications (i) occurring at official meetings of the Information Exchange, (ii) relating to topics identified on a written agenda prepared in advance of such meetings; and (iii) occurring in the presence of antitrust counsel;
10. Respondent retains, for submission to a duly authorized representative of the Commission upon reasonable notice, a copy of all Input Data Communicated to the Third Party Manager and all IndustryStatistics Communicated by the Third Party Manager to Respondent; and
11. All IndustryStatistics are at the same time they are Communicable

- C. Require each Person to whom a copy of this Order is furnished pursuant to Paragraphs III.A and III.B of this Order to sign and submit to Respondent within sixty (60) days of the receipt thereof a statement that: (1) the undersigned has read and understands the Order; and (2) acknowledges that the undersigned has been advised and understands that non-compliance with the Order may subject Respondent to penalties for violation of the Order.

IV.

IT IS FURTHER ORDERED that Respondent shall file verified written reports within ninety (90) days from the date this Order becomes final, annually thereafter for five (5) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may by written notice require. Each report shall include, among other information that may be necessary:

- A. A description of any Information Exchange, including a description of (i) the identity of any Competitors participating in such exchange; (ii) the Competitively Sensitive Information being exchanged; (iii) the identity of the Third Party Manager and a description of how the Competitively Sensitive Information has been and is expected to be managed by the Third Party Manager; and (iv) the identity of each employee of the Respondent who received information, directly or indirectly, from the Third Party Manager;
- B. Copies of the signed return receipts or electronic mail with return confirmations required by Paragraphs III.A, III.B, and III.C of this Order;
- C. One copy of each Communication during the relevant reporting period that relates to changes in Respondent's published list price or multiplier discounts for sales of DIPF made in or into the United States where that Communication is to two (2) or more customers and those changes are simultaneously applicable to two (2) or more customers; and
- D. A detailed description of the manner and form in which Respondent has complied and is complying with this Order.

V.

IT IS FURTHER ORDERED that Respondent shall notify the Commission:

- A. Of any change in its principal address within twenty (20) days of such change in address; and
- B. At least thirty (30) days prior to any proposed: (1)

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

VI.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, Respondent shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of 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 Respondent relating to compliance with this Order, which copying services shall be provided by Respondent at its expense; and
- B. Upon fifteen (15) days notice, and in the presence of counsel, and without restraint or interference from it, to interview officers, directors, or employees of Respondent.

VII.

IT IS FURTHER ORDERED that this Order shall terminate twenty (20) years from the date it becomes final.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: