

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

In the Matter of

McWane, Inc.,
a corporation, and

Star Pipe Products, Ltd.,
a limited partnership.

Docket No. 9351

DECISION AND ORDER

The Federal Trade Commission ("Commission") having heretofore issued its complaint charging, inter alia, the Respondent Star Pipe Products, Ltd. with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45 ("First and Second Violations"), and the Respondent having been served with a copy of such complaint, together with a notice of contemplated relief and having filed its answer denying such charges; and

The Respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by Respondent of all the jurisdictional facts solely as those facts relate to the First and Second Violations set forth in the complaint, a statement that the signing of such agreement is for settlement purposes only and does not constitute an admission by Respondent that law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts related to the First and Second Violations of the complaint, are true and waivers and other provisions as required by the Commission's Rules; and

The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with § 3.25(c) of its Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, and having duly considered the comments filed thereafter by interested persons pursuant to § 3.25(f) of its Rules, now in further conformity with the procedure prescribed in §

3.25(f) of its Rules, the Commission hereby ma

- (5) information obtained from or provided, in the ordinary course of Respondent's business, to: (a) a recognized credit rating agency that relates to the credit history or creditworthiness of a customer(s); (b) another Competitor in relation to the verification of the salary currently being paid by that Competitor to an individual who is seeking or considering employment with Respondent.
- E. "Competitor" means Respondent and any Person, for the purpose of sale or resale within the United States: (1) manufactures DIPF; (2) causes DIPF to be manufactured; or (3) imports DIPF.
- F. "Designated Manager" means a Regional Manager or the OEM Manager for sales of DIPF in and into the United States, and any employee performing any job function of a Regional Manager or the OEM Manager with responsibility for sales of DIPF in or into the United States.
- G. "Ductile Iron Pipe Fittings" or "DIPF" means any iron casting produced in conformity with the C153/A21 or C110/A21 standards promulgated by the American Water Works Association, including all revisions and amendments to those standards and any successor standards incorporating the C153/A21 or C110/A21 standards by reference.
- H. "Federal Securities Laws" means the securities laws that term is defined in § 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(47), and any regulation or order of the Securities and Exchange Commission issued under such laws.
- I. "Industry Statistics" means statistics derived from Input Data and Communicated by the Third Party Manager.
- J. "Input Data" means the Competitively Sensitive Information Communicated by Competitors to the Third Party Manager.
- K. "Information Exchange" means the entity Managed by A Third Party Manager that: (1) Communicates Industry Statistics and (2) includes Respondent and at least one other Competitor.
- L. "Insider" means a consultant, officer, director, employee, agent, or attorney of Respondent. Provided, however, that no other Competitor shall be considered to be an "Insider."
- M. "Managed by A Third Party Manager" means that a Third Party Manager is solely and exclusively responsible for all activities relating to Communicating, organizing, compiling, aggregating, processing, and analyzing any Competitively Sensitive Information.
- N. "McWane, Inc." means McWane, Inc., its officers, directors, employees, agents,

O. "Participate" means to be a partner, shareholder, owner, member, or employee of such entity or arrangement, or (2) to

- C. Entering into, adhering to, Participating 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 any other Competitor.
- E. Attempting to engage in any of the activities prohibited by Paragraphs II.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 II.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, or 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) To any Person reasonably believed to be an actual or prospective purchaser of DIPF that Respondent is ready and willing to accept 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 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 units sold, no individual Competitor's Input Data to any Industry Statistic represents more than twenty-five (25) percent of the total reported sales (whether measured on a dollar or unit basis) of the DIPF product from which the Industry Statistic is derived;

7. Relating to price, output, or total units, the sum of no three Competitors' Input Data to any Industry Statistic represents not more than sixty (60) percent of the total reported sales (whether measured on a dollar unit basis) of the DIPF product from which the Industry Statistic is derived;
8. Any Industry Statistic is sufficiently aggregated or anonymous such that no Competitor that receives that Industry Statistic, 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 any authorized representative of the Commission upon reasonable notice, a copy of all Input Data Communicated to the Third Party Manager and all Industry Statistics Communicated by the Third Party Manager to Respondent; and
11. All Industry Statistics are, at the same time they are Communicated to any Competitor, made publicly available.

III.

IT IS FURTHER ORDERED countn ents m) occece 6dmmise puna001 Tciii9006 Tw [(tic ca

- B. For five (5) years from the date this Order becomes final, distributed by first-class mail, return receipt requested, by electronic mail with return confirmation, a copy of this Order with the Complaint, within sixty (60) days, to each Person who becomes its officer, director, or Designated Manager and who did not previously receive a copy of this Order and Complaint.
- C. Require each Person to whom a copy of 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) reports that the undersigned has read and understands the Order; and (2) acknowledges the undersigned has been advised and understands that non-compliance with the Order may subject Respondent to penalties for violation of the Order.

B.