

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES

ORIGINAL

FEDERAL TRADE COMMISSION

by the court, a party may serve on any other party no more than 25 written

interrogatories, including all discrete subparts.”). Fed. R. Civ. P. 33.

“In determining whether a request is a discrete subpart, courts look to ‘whether one question is subsumed and related to another or whether each question can stand alone and be answered irrespective of the answer to the others.’ . . . Courts have found that a subpart is discrete when it is logically or factually independent of the question posed by the basic interrogatory.” *In re Dynamic Health of Florida*, 2004 FTC LEXIS 254 (Dec. 9, 2004) (citations omitted); accord *In re Polypore Int’l*, 2008 FTC LEXIS 155, at \*3-4 (Nov. 14, 2008). If interrogatory subparts “are logically or factually subsumed within and necessarily related to the primary question,” they are to be counted as one interrogatory. *Safeco of America v. Rawston*, 181 F.R.D. 441, 445 (C.D. Cal. 1998), citing *Kendall v. GES Exposition Services*, 174 F.R.D. 684 (D. Nev. 1997). See also *Kendall v. GES Exposition Serv., Inc.*, 174 F.R.D. 684, 685 (D. Nev. 1997) (“Genuine subparts should not be counted as separate interrogatories.”); *Banks v. Office of the Senate Sergeant-at-Arms*, 222 F.R.D. 7, 10 (D.D.C. 2004) (noting that subparts related to a single topic are considered part of the same interrogatory).<sup>1</sup>

April 16, 2012 Order at 1-2.

### III. Analysis

The only issue presented by the Motion and Opposition is whether the Court should

markets, the likelihood of recurrence of such markets or sub-markets, and all facts

Respondent asserts that, "by definition, the 'Domestics Fittings' product market includes an inextricable geographic component, namely fittings made in the United States, and thus can only be considered a single request." Motion at 3. Respondent further asserts that Interrogatory 2 seeks all facts supporting Complaint Counsel's definition of any market relevant to its claims in this action and thus, to the extent Interrogatory 2 contains any subparts, those subparts are logically and factually subsumed within and necessarily related to Complaint Counsel's definition of the relevant markets. Motion at 4.

Complaint Counsel responds that Interrogatory 2 contains three discrete subparts that seek: "all facts" that support, refute or otherwise relate to Complaint Counsel's contentions pertaining to: 1) a relevant product market for domestically-produced ductile iron fittings; 2) a relevant geographic market; and 3) an ARRA-specific submarket. First, Complaint Counsel asserts that a relevant market is comprised of two distinct elements - a relevant product market and a relevant geographic market; and that defining a relevant geographic market is an inquiry that is factually and legally independent from defining a relevant product market. Opposition at 3-4. Second, Complaint Counsel asserts that, within the product market, submarkets are considered to be separate and distinct markets from any larger market in which they may be contained, and therefore also represent a factually and legally independent inquiry. Opposition at 4.

Defining a relevant product market and defining a relevant geographic market are two separate factual inquiries. *Brown Shoe Co. v. United States*, 370 U.S. 294, 324 (1962). Thus, the subpart on the product market and the subpart on the geographic market each can stand alone and be answered irrespective of the answer to the other.

Defining a submarket within the relevant product market is factually subsumed within and related to defining the relevant product market. *See Brown Shoe*, 370 U.S. at 325. Thus, the

conduct or attempted to do so, and all facts refuting, or otherwise relating to McWane's alleged possession or exercise of market power.

Respondent asserts that the possession and exercise of market power are so inherently intertwined as to be logically or factually subsumed within and necessarily related to each other

Motion at 4. Respondent thus asserts that because Interrogatory 3 contains no subpart logically ~~or factually independent from the main question, it should be counted as one interrogatory.~~

Complaint Counsel responds that Interrogatory 3 contains three discrete subparts that seek "all facts" establishing, refuting, or otherwise relating to Complaint Counsel's contentions that Respondent: 1) possesses market power or monopoly power; 2) unlawfully exercised this power through its exclusive dealing policy; and 3) unlawfully exercised this power by entering into a Master Distribution Agreement ("MDA") with its competitor, Sigma, Inc. First, Complaint Counsel asserts that possession of monopoly power and the exercise of monopoly power are separate elements of a monopolization claim and thus should be counted as two discrete subparts. Second, Complaint Counsel asserts that Complaint Counsel's contention that

instance, (3) any specific consumer(s) allegedly injured, and (4) the likelihood of the alleged anticompetitive or unfair conduct or any resulting harm recurring in the future.

balance of harm and alleged efficiencies related to McWane's Domestic Rebate Policy; (2) the balance of harm and any alleged efficiencies related to McWane's participation in DIFRA; and (3) the balance of harm and any alleged efficiencies related to the Sigma MDA. Complaint Counsel asserts that an interrogatory that seeks the same information across distinct allegations or subjects should be counted as three discrete subparts.

Interrogatory 10 seeks information regarding the balance of consumer harm/benefit as it

relates to three separate alleged activities: (1) the Domestic Rebate Policy; (2) McWane's participation in DIFRA; and (3) McWane's participation in the Sigma MDA. Each of these distinct subjects can stand alone and be answered irrespective of the answer to the others.

Accordingly, Interrogatory 10 presents three interrogatories.

#### **IV. Conclusion**

Respondent's motion to compel is based solely on its proposed calculation of the number of interrogatories it proposed as Complaint Counsel. As discussed above, Respondent's