

FEDERAL TRADE COMMISSION

[File No. 101 0080]

Sigma Corporation; Analysis of Proposed Consent Order To Aid Public Comment**AGENCY:** Federal Trade Commission.**ACTION:** Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before February 6, 2012.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “Sigma, File No. 101 0080” on your comment, and file your comment online at <https://ftcpublic.commentworks.com/ftc/sigmaconsent>, by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Christopher Renner (202) 326-3173), FTC, Bureau of Competition, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 4, 2012), on the World Wide Web, at <http://www.ftc.gov/os/actions.shtm>. A paper copy can be obtained from the FTC Public Reference

Room, Room 130-H, 600 Pennsylvania Avenue NW., Washington, DC 20580, either in person or by calling (202) 326-2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before February 6, 2012. Write “Sigma, File No. 101 0080” on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone’s Social Security number, date of birth, driver’s license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any “[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,” as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, or customer lists.

¹ In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c), 16 CFR 4.9(c).

II.

I also object to the allegations in the Part 3 Administrative Complaint and in the draft Part 2 Complaint that name Star as a co-conspirator in the alleged horizontal price-fixing of DIFP sold in the United States and the related, alleged DIFRA information exchange.⁸ I do not consider naming Star, along with McWane and Sigma, as a co-conspirator to be in the public interest. There are at least three reasons why this is so. First, although there may be reason to believe Star conspired with McWane and Sigma in this oligopolistic industry, Star seems much less culpable than the others. More specifically, I believe that we must be mindful of the consequences of public law enforcement in assessing whether the public interest favors joining Star as a co-conspirator.⁹ Second, I am concerned that a trier of fact may find it hard to believe that Star could be both a victim of McWane's alleged "threats" to deal exclusively with distributors, and at more or less the same time (the "exclusive dealing" program began in September 2009), a co-conspirator with McWane in a price-fixing conspiracy (June 2008 to February 2009). (This concern further explains why I do not have reason to believe that the exclusive dealing theory is a viable one.) Third, I am concerned that Star's alleged participation in the price-fixing

conspiracy and information exchange relies, in part, on treating communications to distributors as actionable signaling on prices or price levels.¹⁰ See, e.g., *Williamson Oil Co., Inc. v. Philip Morris USA*, 346 F.3d 1287, 1305–07 (11th Cir. 2003).

[FR Doc. 2012–267 Filed 1–9–12; 8:45 am]
BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Periodic Reporting

Title: Child Care Development Fund (CCDF)—Reporting Improper Payments—Instructions for States.

OMB No.: 0970–0323.

Description: Section 2 of the Improper Payments Act of 2002 provides for estimates and reports of improper payments by Federal agencies. Subpart K of 45 CFR part 98 will require States to prepare and submit a report of errors occurring in the administration of CCDF grant funds once every three years.

The Office of Child Care (OCC) is completing the second 3-year cycle of

case record reviews to meet the requirements for reporting under IPIA. The OCC has conducted ongoing evaluation of the case record review process to determine if "improper authorizations for payment" remained a suitable proxy for actual "improper payments." It is OCC's determination that in some cases authorizations for payment represented the same figure as actual payments; in other cases authorizations for payment has represented a figure as much as 20% higher than actual payments. Many States reported errors found during the desk audit review process that were due to missing or insufficient documentation or other misapplication of policy, but found that families were determined to be eligible for services and that the actual payment authorized was correct. Other States reported regulatory barriers in State law which prohibits recovery of over-authorization or over-payment as the result of agency error. As such, this information collection will provide a methodology revision that will assess errors in eligibility determinations that will compare the amount authorized for payment with the actual payment.

Respondents: State grantees, the District of Columbia, and Puerto Rico.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Sampling Decisions and Fieldwork Preparation Plan	17	1	106	1802
Record Review Worksheet	17	276	6.33	29,700.36
State Improper Authorizations for Payment Report	17	1	639	10,863
Corrective Action Plan	8	1	156	1248

Estimated Total Annual Burden Hours: 43,613.36.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant

Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: infocollection@acf.hhs.gov. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c)

the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to

⁸ See *McWane/Star Part 3 Administrative Compl.* §§ 29–38, 64–65; *Sigma draft Part 2 Compl.* §§ 23B33.

⁹ See *Credit Suisse Secs. (USA) LLC v. Billing*, 551 U.S. 264, 281–84 (2007) (questioning the social

benefits of private antitrust lawsuits filed in numerous courts when the enforcement-related need is relatively small); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557–60 (2007) (expressing concern with the burdens and costs of antitrust discovery,

and the attendant *in terrorem* effect, associated with private antitrust lawsuits).

¹⁰ *McWane/Star Part 3 Administrative Compl.* § 34b; *Sigma draft Part 2 Compl.* § 29.