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FTC Issues Opinion and Final Order Finding McWane, Inc. Unlawfully Maintained Its Monopoly in Domestic Pipe Fittings by Excluding Competitors

Final Order Bars Future Anticompetitive Conduct; Other Complaint Allegations Dismissed

FOR RELEASE

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The Federal Trade Commission today issued its [Opinion](#) and [Final Order](#) against McWane, Inc., the largest U.S. supplier of ductile iron pipe fittings used in municipal and regional water distribution systems. In its Opinion, by Chairwoman Edith Ramirez, the Commission affirmed, in part, a [May 2013 Initial Decision](#) by Chief Administrative Law Judge D. Michael Chappell, finding that McWane unlawfully maintained its monopoly in the domestic fittings market.

The Commission dismissed the remaining counts in the [seven-count administrative complaint issued by the Commission in January 2012](#). The Commission dismissed Counts One and Two in the public interest, because no majority position was reached with respect to these counts. While Chairwoman Ramirez and Commissioner Brill found that McWane engaged in a price-fixing conspiracy, Commissioners Ohlhausen and Wright disagreed. Count Three, which the ALJ dismissed, was not appealed by complaint counsel. The Commission reversed the ALJ's finding of liability on Count Four, and dismissed Counts Five and Seven after determining it was not necessary to address the merits, based on its other findings.

Fittings are used in water distribution systems for the installation of valves, water meters, and hydrants and to change the flow of water. According to the FTC's complaint, McWane and its two main competitors, Sigma Corporation and Star Pipe Products Ltd., account for the overwhelming majority of fittings sales in the United States.

The administrative complaint charged that McWane illegally conspired with Sigma and Star to raise and stabilize prices in the fittings market. It also charged that McWane violated the antitrust laws by excluding competitors from a separate market limited to domestic fittings. Domestic fittings are a distinct market because

certain projects require domestic fittings because of federal, state, or local laws, and, as a consequence, imported fittings are not substitutes.

In its Opinion, the Commission found liability under Count Six of the administrative complaint, which alleged that McWane willfully engaged in anticompetitive conduct that allowed it to maintain its monopoly in the domestic fittings market after Star entered the market in 2009.

The Commission found that while about 80 percent of demand for domestic fittings can be met with 100 or fewer commonly used sizes and configurations of fittings, distributors need access to a full line of domestic fittings to meet all of their customers' demands. As a new entrant, Star did not sell a full line of domestic fittings. Knowing this, the Opinion states, McWane implemented a "Full Support Program," which was, in reality, an exclusive dealing policy. Under the program, "McWane made sure distributors received the message that they would no longer be able to buy domestic fittings from McWane if they purchased domestic fittings from Star."

"As McWane intended," the Opinion states, "most distributors interpreted the policy as a threat that McWane would terminate their ability to purchase any of McWane's domestic fittings if they purchased any domestic fittings from Star." Following implementation of the Full Support Program, numerous distributors withdrew millions of dollars of requests for quotes, cancelled orders, or decided not to purchase domestic fittings from Star.

The Commission found that McWane's Full Support Program "foreclosed Star and other potential entrants from accessing a substantial share of distributors," and "created a strong economic incentive for distributors to reject Star's products, artificially diminishing Star's competitive prospects in the domestic fittings market." As a result, Star was unable to achieve the sales necessary to compete effectively and threaten McWane's monopoly.

Based on its conclusion that "McWane sought to maintain its monopoly power in the domestic fittings market through an unlawful exclusive dealing policy," the Commission's Final Order "prohibits McWane from requiring exclusivity from its customers" for domestic fittings.

The Final Order also states that McWane is not prohibited from providing discounts, rebates, or other price or non-price incentives to encourage customers to purchase its domestic fittings, either before or after the Order is entered. It requires McWane to distribute the Order within 60 days of becoming final to its officers, directors, and managers; and to file compliance reports with the Commission for 10 years.

In an [Initial Decision announced on May 19, 2013](#), Judge Chappell found that the evidence did not support complaint counsel's charges that McWane illegally conspired with Sigma and Star to raise and stabilize fittings prices. Based on these findings, he dismissed the first three counts in the seven-count FTC complaint. But Judge Chappell ruled that the evidence did support the other counts in the administrative complaint, and the Order attached to his Initial Decision would have required McWane to stop engaging in the anticompetitive conduct outlined in those counts.

Both McWane and complaint counsel subsequently appealed the ALJ's decision, requesting that the case be heard by the full Commission. The Commission heard oral argument in the case on August 23, 2013, and issued its Opinion and Final Order on January 30, 2014.

[Sigma](#) and [Star](#) both previously settled related FTC charges.

The Commission vote approving the Opinion and Final Order was 4-0, with Commissioner Wright joining the FTC's Opinion with respect to Counts 1-2 and 4-5, but issuing a [separate dissenting statement](#) regarding the Commission's decision to hold McWane liable for unlawful monopolization in Count 6. In his view, evidence in the record showed only that the Full Support Program harmed McWane's rival Star, and that complaint counsel failed to prove that the Program harmed the competitive process.

Because mere harm to a rival is insufficient to establish a violation of the antitrust laws, Commissioner Wright determined that complaint counsel failed to establish a necessary element of its case. Key to his decision was his view that there was an absence of evidence demonstrating that the Full Support Program had an impact on price or output in the domestic fittings industry.

McWane can file a petition for review with any U.S. Court of Appeals within 60 days of service of the Final Order.

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[McWane, Inc., and Star Pipe Products, Ltd., In the Matter of](#)

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