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Administrative Law Judge Dismisses Illegal Price-Setting Charges Against McWane, But Finds That It Illegally Excluded Competitors

FOR RELEASE

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In an [Initial Decision announced today](#), Chief Administrative Law Judge D. Michael Chappell dismissed charges in a Federal Trade Commission complaint that McWane Inc. -- one of the largest U.S. suppliers of ductile iron pipe fittings (DIPF) used in municipal and regional water distribution systems -- illegally conspired with its competitors to raise and stabilize DIPF prices. But the Judge found that McWane violated the antitrust laws when it excluded competitors from the market for U.S. made DIPF (domestic DIPF).

Judge Chappell found that the preponderance of the evidence did not support FTC complaint charges that McWane illegally conspired with two of its competitors, Sigma Corporation and Star Pipe Products Ltd., to raise and stabilize DIPF prices. But the judge ruled that the preponderance of the evidence did show that McWane reached an anticompetitive agreement that led Sigma to abandon its efforts to enter the market for domestic DIPF, and that McWane illegally pressured distributors to exclude Star Pipe from the domestic DIPF market.

Ductile iron pipe 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, Sigma and Star Pipe account for the overwhelming majority of ductile iron pipe fittings sales in the United States.

Judge Chappell found that there is a separate product market for domestic DIPF because in some waterworks projects, state or federal law requires that only domestically manufactured fittings be used. In addition, in February 2009, Congress passed the American Recovery and Reinvestment Act of 2009, which allocated more than \$6 billion to water infrastructure projects. Waterworks projects funded by ARRA were required by federal law to use domestic fittings.

[Issued in January 2012, the FTC complaint](#) alleged that the three companies entered into an agreement, beginning in 2008, to raise and stabilize the prices for imported DIPF. The complaint also alleged that

McWane possessed a monopoly in the market for domestic DIPF. The FTC complaint alleged that McWane illegally sought to maintain its monopoly after Sigma and Star tried to enter the market in 2009.

McWane denied the allegations. [Sigma](#) and [Star Pipe](#) both previously settled FTC charges.

In the Initial Decision announced today, Judge Chappell dismissed the first three counts in the seven-count FTC complaint, finding that the evidence presented by FTC staff failed to support allegations that McWane:

conspired with competitors to raise and stabilize prices in the market for imported DIPF.

conspired with competitors to exchange competitively sensitive sales information.

issued an “invitation to collude,” to restrain price competition, to competitors in the market for imported DIPF.

“Accepting Complaint Counsel’s conspiracy theory depends on accepting numerous assertions, assumptions, and inferences that are not sufficiently grounded in evidence,” the Initial Decision states. “In addition, the preponderance of the economic evidence is not consistent with the alleged conspiracy.”

However, in upholding the last four counts of the complaint, Judge Chappell concluded that the evidence did show that:

There is a separate relevant product market for U.S. made DIPF, and that McWane possesses monopoly power in the market for domestic DIPF, as established both by the company’s high market share and the high barriers to entry facing any potential competitors, and by the company’s ability to control prices or exclude competitors.

McWane announced and implemented an exclusive dealing policy to forestall Star’s entry into the domestic DIPF market, with the specific intent of preventing Star from entering and lowering prices in the domestic DIPF market.

McWane entered into a distribution agreement with Sigma that unreasonably restrained trade in the domestic DIPF market, and further excluded Star from the market.

“Counts Four, Five, Six, and Seven – that respondent engaged in monopolistic practices, attempted to monopolize, engaged in a conspiracy to monopolize, and engaged in an unreasonable restraint of trade with Sigma in the Domestic Fittings market – have been proven by a preponderance of the evidence. The appropriate remedy is to bring an end to this conduct, rectify past violations, and prevent reoccurrence,” the Initial Decision states.

The Order Judge Chappell included with the Initial Decision would require McWane to cease and desist from, among other things:

allocating or dividing domestic DIPF markets, customers, contracts, transactions, business opportunities, lines of commerce, or territories.

agreeing with competitors not to compete for each other’s customers, contracts, transactions, or business opportunities in the domestic DIPF market.

inviting, entering into or enforcing certain customer exclusivity agreements in the domestic DIPF market.

inviting, entering into or enforcing certain retroactive customer sales incentives in the domestic DIPF market.

discriminating against, penalizing, or otherwise retaliating against any customer that distributes, purchases or sells a competitor's domestic DIPF.

The Appeals Process. The Judge's Initial Decision is subject to review by the full Federal Trade Commission on its own motion, or at the request of any party. The Initial Decision will become the decision of the Commission 30 days after it is served upon the parties, unless a party files a timely notice of appeal – and thereafter files a timely appeal brief – or the Commission places the case on its own docket for review or stays the effective date of the decision.

Copies of the public version of the Initial Decision and Order by the Administrative Law Judge are available from the FTC's website and also from the FTC's Consumer Response Center, Room 130, 600 Pennsylvania Avenue, N.W., Washington, DC 20580.

CONTACT INFORMATION

MEDIA CONTACT:

Peter Kaplan
Office of Public Affairs
202-326-2334



Related Cases

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

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FEDERAL TRADE COMMISSION

Headquarters:

600 Pennsylvania Avenue, NW

Washington, DC 20580

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