

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Maureen K. Ohlhausen
Terrell McSweeney

_____)
)
In the Matter of)
)
Fortiline, LLC)
a North Carolina Limited Liability)
Company.)
_____)

DOCKET NO. C-4592

DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of certain acts and practices of Fortiline, LLC, a North Carolina limited liability company (“Fortiline”), and Fortiline having been furnished thereafter with a copy of the draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Fortiline with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Fortiline, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Fortiline of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said consent agreement is for settlement purposes only and does not constitute an admission by Fortiline that the law has been violated as alleged in such complaint or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Fortiline has violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Order:

1. Fortiline, LLC, is a limited liability company organized, existing, and doing business under and by virtue of the laws of North Carolina, with its principal place of business in Concord, North Carolina.
2. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of Fortiline, and this proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Respondent” means Fortiline, LLC, its directors, officers, employees, agents, representatives, successors, and assigns; and any joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates in each case controlled by Fortiline, LLC, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Commission” means the Federal Trade Commission.
- C. “Competitor” means any Person engaged in the business of selling or distributing ductile iron pipe, and any such Person’s employees, agents, and representatives. The term “Competitor” does not include any Contractor.
- D. “Contractor” means any Person who constructs and installs waterworks infrastructure that uses ductile iron pipe according to stated requirements or specifications, at a mutually agreed upon price and within a specified timeframe, for another Person who shall be the ultimate owner of the infrastructure and its component ductile iron pipe.
- E. “Designated Employee” means any employee of Respondent with responsibility for the purchase, sale, or pricing of ductile iron pipe.
- F. “Manufacturer” means any Person engaged in the business of manufacturing or fabricating ductile iron pipe, and any such Person’s employees, agents, and representatives.
- G. “Person” includes Respondent and means both natural persons and artificial persons, including, but not limited to, corporations, partnerships, unincorporated entities, or governments. For the purpose of this Order, any corporation includes the subsidiaries, divisions, groups, and affiliates controlled by it.

II.

IT IS FURTHER ORDERED that in connection with the sale or distribution of any ductile iron pipe, in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15, U.S.C. §44, Respondent shall cease and desist from, either directly or indirectly, or through any corporate or other device:

Entering into, attempting to enter into, adhering to, participating in, maintaining, organizing, implementing, enforcing, inviting, encouraging, offering or soliciting any agreement or understanding, express or implied, between or among Respondent and any Competitor:

- A. To raise, fix, maintain, or stabilize prices or price levels, rates or rate levels, or payment terms, or to engage in any other pricing action; or
- B. To allocate or divide markets, customers, contracts, transactions, business opportunities, lines of commerce, or territories.

Provided, however, that it shall not, of itself, constitute a violation of Paragraph II. of this Order for Respondent to engage in any conduct that is (1) reasonably related to a lawful manufacturer-distributor relationship, lawful joint venture agreement, or lawful merger, acquisition or sale agreement; and (2) reasonably necessary to achieve the procompetitive benefits of such manufacturer-distributor relationship or of such agreement. For the avoidance of doubt, it shall not constitute a violation of Paragraph II of this Order for Respondent: (i) to communicate with a Manufacturer regarding Respondent’s desire to receive prices or rates (including rebates and discounts) at least as favorable as those granted by that Manufacturer to a Competitor or Contractor; (ii) to request, negotiate, or enter into an agreement with a Manufacturer under which Respondent shall be that Manufacturer’s exclusive or quasi-exclusive distributor; or (iii) to request or enter into an agreement with a Manufacturer under which Respondent distributes that Manufacturer’s ductile iron pipe to a Contractor previously or potentially served by that Manufacturer.

Provided, further, however, that it shall not, of itself, constitute a violation of Paragraph II. of this Order for Respondent to negotiate with a Competitor regarding the terms of an agreement, or to enter into an agreement, if that negotiation or agreement relates exclusively to the terms under which Respondent either will buy ductile iron pipe from that Competitor, or will sell ductile iron pipe to that Competitor.

III.

IT IS FURTHER ORDERED that Respondent shall:

- A. Within thirty (30) days after the date on which this Order is issued, provide to each of Respondent's officers, directors and Designated Employees a copy of this Order and the Complaint.
- B. For a period of three (3) years from the date this Order is issued, provide a copy of this Order and the Complaint to any Person who becomes a director, officer, or Designated Employee of Respondent, and provide such copies within thirty (30) days of the commencement of such Person's employment or term as an officer, director, or Designated Employee.
- C. Require each Person to whom a copy of this Order is furnished, pursuant to Paragraph III.A. and III.B. above, to sign and submit to Respondent within thirty (30) days of the receipt thereof a statement that (1) represents that the undersigned has read and understands the Order, and (2) acknowledges that the undersigned has been advised and understands that non-compliance with the Order may subject Respondent to penalties for violation of the Order.
- D. Retain documents and records sufficient to record Respondent's compliance with its obligations under Paragraph III of this Order.

IV.

IT IS FURTHER ORDERED that Respondent shall file a verified written report within sixty (60) days from the date this Order is issued, annually thereafter for three (3) years on the anniversary of the date this Order is issued, and at such other times as the Commission may by written notice require. Each report shall include, among other information that may be necessary:

- A. A copy of the acknowledgement(s) required by III.C. of the Order; and
- B. A detailed description of the manner and form in which Respondent has complied and is complying with this Order.

V.

IT IS FURTHER ORDERED that Respondent shall notify the Commission:

- A. Of any change in its principal address or place of business within twenty (20) days of such change in address; and
- B. At least thirty (30) days prior to:
 - 1. Any proposed dissolution of Respondent;
 - 2. Any proposed acquisition, merger, or consolidation of Respondent; or
 - 3. Any other change in Respondent including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

VI.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this order, upon written request and upon five (5) days notice, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to all facilities and access to inspect and obtain copies of relevant books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondent relating to compliance with this Order, which copying services shall be provided at the request of the authorized representative(s) of the Commission and at the expense of Respondent; and
- B. The opportunity to interview officers, directors, or employees of Respondent, who may have counsel present, related to compliance with this Order.

VII.

IT IS FURTHER ORDERED that this Order shall terminate on September 23, 2036.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED: September 23, 2016