

Complaint

IN THE MATTER OF

SIGMA CORPORATIONCONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4347; File No. 101 0080**Complaint, February 27, 2012 – Decision, February 27, 2012*

This consent order addresses Sigma Corporation's business methods, which made it easier to coordinate price levels through an entity known as the Ductile Iron Fittings Research Association. The complaint alleges that Sigma violated Section 5 of the Federal Trade Commission Act by inviting McWane and Star to collude with Sigma to increase DIPF prices in early 2009. The consent order prohibits Sigma from participating in or maintaining any combination or conspiracy between any competitors to fix, raise or stabilize the prices at which DIPF are sold in the United States, or to allocate or divide markets, customers, or business opportunities.

Participants

For the *Commission*: Christopher G. Renner.

For the *Respondent*: Douglas Jasinski, White & Case LLP.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("Commission"), having reason to believe that Respondent Sigma Corporation ("Sigma") has violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint stating its charges as follows:

NATURE OF THE CASE

1. This action concerns Sigma's unfair methods of competition relating to the marketing and sale of ductile iron pipe fittings ("DIPF").

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2. Beginning in January 2008 and continuing through January 2009, Sigma, along with its competitors McWane, Inc. (“McWane”) and Star Pipe Products, Ltd. (“Star”), conspired to raise and stabilize the prices at which DIPF are sold in the United States. Sigma, McWane and Star (collectively, the “Sellers”) exchanged sales data in order to facilitate this price coordination.

3. The passage of the American Recovery and Reinvestment Act (“ARRA”) in February 2009 significantly altered the competitive dynamics of the DIPF industry, and upset the terms of coordination among the Sellers. In the ARRA, the United States Congress allocated more than 6 billion dollars to water infrastructure projects, conditioned on the use of domestically produced materials, including DIPF, in those projects (the “Buy American” requirement).

4. At the time the ARRA was passed, McWane was the sole supplier of a full line of domestically produced DIPF in the most commonly used size ranges. Federal stimulus of the domestic DIPF market potentially left McWane in a position to reap a monopoly profit.

5. In response to the passage of the ARRA and its Buy American provision, Sigma, Star and others attempted to enter the domestic DIPF market in competition with McWane.

6. Instead of competing with one another in the domestic DIPF market, Sigma and McWane conspired to monopolize that market by (i) entering into a distribution agreement that eliminated Sigma as an actual potential entrant into the domestic DIPF market, and (ii) excluding actual and potential competitors, including Star, through the adoption and enforcement of exclusive dealing policies.

7. Sigma’s conduct has restrained competition and led to higher prices for both imported and domestically produced DIPF.

THE RESPONDENT

8. Respondent Sigma is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal place of business located at 700

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Goldman Drive, Cream Ridge, New Jersey 08154. Sigma imports, markets and sells products for the waterworks industry, including DIPF.

9. At all times relevant herein, Sigma has been, and is now, a corporation as “corporation” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

10. Sigma’s acts and practices, including the acts and practices alleged herein, are in or affect commerce in the United States, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

THE DIPF INDUSTRY

11. DIPF are a component of pipeline systems transporting drinking and waste water under pressurized conditions in municipal distribution systems and treatment plants. DIPF are used to join pipes, valves and hydrants in straight lines, and to change, divide or direct the flow of water. The end users of DIPF are typically municipal and regional water authorities.

12. Independent wholesale distributors, known as “waterworks distributors,” are the primary channel of distribution of DIPF to end users. Waterworks distributors specialize in distributing products for water infrastructure projects, and generally handle the full spectrum of waterworks products, including pipes, DIPF, valves and hydrants. Waterworks distributors employ sales personnel dedicated to servicing the needs of end users, and are generally able to satisfy the needs of end users for rapid service by stocking inventory in relatively close proximity to project sites.

13. Direct sales of DIPF to end users, or to the utility contractors that often serve as the agent of the end user in purchasing and installing DIPF, are uncommon. End users and DIPF suppliers alike prefer to work through waterworks distributors with locations near project sites. As a result, DIPF suppliers need to distribute DIPF through local waterworks distributors in each region of the country in order to compete effectively in that region.

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14. Both imported and domestically produced DIPF are commercially available. All of the Sellers sell imported DIPF. Before Star's entry into domestic production in 2009, McWane was the sole domestic producer of a full line of small and medium-sized DIPF.

15. The end user of DIPF specifies whether on a particular project it will accept both imported and domestically produced DIPF, or only domestically produced DIPF. This specification is often mandated by municipal code, or by state or federal law.

16. Domestically produced DIPF sold for use in projects specified as domestic only are sold at higher prices than imported or domestically produced DIPF sold for use in projects not specified as domestic only.

THE RELEVANT MARKETS

17. The relevant product market in which to evaluate Sigma's conduct is the marketing and sale of DIPF, and narrower relevant markets as contained therein (collectively, the "relevant DIPF markets"), including:

- a. DIPF for projects not specified as domestic only;
- b. DIPF for projects specified as domestic only; and
- c. DIPF of certain size ranges (*e.g.*, 24" in diameter and smaller).

18. In particular, the marketing and sale of domestically produced small and medium-sized (3-24" in diameter) DIPF for use in projects specified as domestic only constitutes a separate relevant product market (the "relevant domestic DIPF market").

19. There are no widely used substitutes for DIPF, and no other product significantly constrains the prices of DIPF.

20. Before and after the passage of the ARRA, some end users purchasing DIPF for use in projects specified as domestic only were unable to substitute imported DIPF, or any other product, for domestically produced DIPF. The passage of the ARRA and its

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Buy American requirement temporarily expanded the relevant domestic DIPF market.

21. The relevant geographic market is the United States. To compete effectively within the United States, DIPF suppliers need distribution assets and relationships within the United States. DIPF suppliers located outside the United States that lack such assets and relationships are unable to constrain the prices of DIPF suppliers that have such assets and relationships.

22. The relevant DIPF markets have several features that facilitate price coordination among DIPF suppliers. The relevant DIPF markets are highly concentrated. In 2008, the Sellers collectively made more than 90 percent of sales within the relevant DIPF markets. Other features of the relevant DIPF markets that facilitate price coordination include product homogeneity, barriers to timely entry of new DIPF suppliers, inelastic demand at competitive prices, and uniform published prices.

**THE SELLERS RESTRAINED PRICE COMPETITION IN
THE RELEVANT DIPF MARKETS**

23. Beginning in January 2008 and continuing through January 2009, the Sellers conspired to raise and stabilize the prices at which DIPF were sold in the United States.

24. Due to rising input costs, all of the Sellers desired price increases in 2008. However, McWane was concerned that Sigma and Star would not adhere to announced price increases, which would result in lost sales for McWane.

25. In January 2008, McWane formulated a plan to trade its support for higher prices in exchange for specific changes to the business methods of Sigma and Star that would reduce the risk that local sales personnel for these competitors would sell DIPF at prices lower than published levels.

26. McWane communicated the terms of its plan to Sigma and Star. Sigma and Star manifested their understanding and acceptance of McWane's offer by publicly taking steps to limit

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their discounting from published price levels in order to induce McWane to support higher price levels.

27. McWane then led a price increase, and Sigma and Star followed.

28. In June 2008, McWane formulated a plan to trade its support for higher prices in exchange for information from Sigma and Star documenting the volume of their monthly sales of DIPF. This exchange of information was to be achieved under the auspices of an entity styled as the Ductile Iron Fittings Research Association (“DIFRA”).

29. McWane communicated the terms of its plan to Sigma and Star through a public letter sent by McWane to waterworks distributors, the common customers of the Sellers. A section of that letter was meaningless to distributors, but was intended to inform Sigma and Star of the terms of McWane’s offer.

30. Sigma and Star manifested their understanding and acceptance of McWane’s offer by initiating their participation in the DIFRA information exchange in order to induce McWane to support higher price levels.

31. McWane then led a price increase, and Sigma and Star followed.

**DIFRA FACILITATED PRICE COORDINATION AMONG
THE SELLERS**

32. The DIFRA information exchange operated as follows. The Sellers submitted a report of their previous month’s sales to an accounting firm. Shipments were reported in tons shipped, subdivided by diameter size range (*e.g.*, 2-12”) and by joint type. Data submissions were aggregated and distributed to the Sellers. Data submitted to the accounting firm was typically no older than 45 days, and the summary reports returned to the Sellers contained data typically no more than 2 months old.

33. During its operation between June 2008 and January 2009, the DIFRA information exchange enabled each of the Sellers to determine and to monitor its own market share and, indirectly, the

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output levels of its rivals. In this way, the DIFRA information exchange facilitated price coordination among the Sellers on the pricing of DIPF.

**SIGMA INVITED McWANE AND STAR TO COLLUDE
WITH SIGMA**

34. Sigma and Star stopped participating in the DIFRA information exchange in January 2009.

35. In April 2009, McWane announced a new price list for DIPF. McWane's new published prices for medium and large diameter DIPF, the size ranges dominated by Sigma and Star, were lower than prevailing prices.

36. Sigma perceived McWane's new price list as a punishment of Sigma and Star for failing to adhere to published price levels and for withdrawing from the DIFRA information exchange.

37. Sigma initially resisted McWane's new price list, and proposed, in public and private communications with McWane and Star, an alternative arrangement to alleviate McWane's concerns about secret discounting. One term of Sigma's proposal was an offer to resume participation in the DIFRA information exchange. Another term of Sigma's proposal was that McWane would rescind its announced price list and continue the use of the old price list in exchange for the commitment of Sigma and Star to adhere to published price levels for DIPF.

38. McWane and Star rejected Sigma's invitation to collude.

**McWANE AND SIGMA CONSPIRED TO MONOPOLIZE
THE RELEVANT DOMESTIC DIPF MARKET**

39. At the time of the enactment of the ARRA in February 2009 and thereafter, McWane possessed monopoly power in the relevant domestic DIPF market.

40. At the time of the enactment of the ARRA, McWane was the only manufacturer of a full line of DIPF in the relevant domestic DIPF market and controlled nearly 100 percent of the

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relevant domestic DIPF market. Despite Star's entry into the relevant domestic DIPF market in late 2009, McWane continues to make more than 90 percent of sales in the relevant domestic DIPF market.

41. McWane's monopoly power in the relevant domestic DIPF market is protected by substantial barriers to effective entry and expansion, including the unfair methods of competition of McWane and Sigma, as alleged in Paragraphs 44 through 60 below.

42. For suppliers of the relevant DIPF that have existing relationships and goodwill with waterworks distributors and established reputations for quality and service in the provision of the relevant DIPF, McWane's unfair and exclusionary methods of competition are the primary barriers to effective entry and expansion in the relevant domestic DIPF market.

43. Federal stimulus of the relevant domestic DIPF market gave Sigma, Star and other suppliers of imported DIPF an incentive to enter the relevant domestic DIPF market.

McWane Eliminated Sigma as an Actual Potential Entrant

44. After the enactment of the ARRA, Sigma took steps to evaluate entry into domestic production of DIPF, including but not limited to (i) formulating a complete or nearly complete operational plan, (ii) arranging for an infusion of equity capital to fund domestic production, (iii) obtaining the approval of its Board of Directors for its entry plans, and (iv) casting prototype product.

45. McWane perceived that Sigma was preparing to enter the relevant domestic DIPF market. McWane sought to eliminate the risk of competition from Sigma by inducing Sigma to become a distributor of McWane's domestic DIPF rather than a competitor in the relevant domestic DIPF market.

46. McWane and Sigma executed a Master Distribution Agreement dated September 17, 2009 ("MDA"). The principal terms of the MDA were as follows:

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- a. McWane would sell domestic DIPF to Sigma at a 20 percent discount off of McWane's published prices;
- b. McWane would be Sigma's exclusive source for the relevant domestic DIPF;
- c. Sigma would resell McWane's domestic DIPF at or very near McWane's published prices for domestic DIPF; and
- d. Sigma would resell McWane's domestic DIPF to waterworks distributors only on the condition that the distributor agreed to purchase domestic DIPF exclusively from McWane or Sigma.

47. An unwritten term of the MDA was that McWane would also sell its domestic DIPF at or very near its published prices.

48. In the absence of a sufficiently profitable arrangement with McWane, Sigma would likely have entered the relevant domestic DIPF market in competition with McWane.

49. Under the MDA, McWane controlled the price at which Sigma could sell domestic DIPF and the customers to whom Sigma could sell domestic DIPF. Sigma's participation in the relevant domestic DIPF market under the MDA was not equivalent to, and for consumers not a substitute for, Sigma's competitive entry into the relevant domestic DIPF market.

50. Sigma's independent, competitive entry into the relevant domestic DIPF market would likely have benefitted consumers by constraining McWane's prices for the relevant domestic DIPF.

51. Through the MDA, McWane transferred a share of its sales and monopoly profits in the domestic DIPF market to Sigma in exchange for Sigma's commitment to abandon its plans to enter the relevant domestic DIPF market as an independent competitor.

52. Both McWane and Sigma entered into the MDA with the specific intent to maintain and share in McWane's monopoly profits in the relevant domestic DIPF market by eliminating competition among themselves and excluding their rivals.

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McWane Excluded Star Through Exclusive Dealing

53. Star announced its entry into the relevant domestic DIPF market in June 2009. McWane knew that, initially, Star would have a shorter product line and a smaller inventory than McWane. Star would therefore have difficulty convincing a waterworks distributor to purchase all of its domestic DIPF from Star.

54. McWane responded to Star's entry into the relevant domestic DIPF market by adopting restrictive and exclusive distribution policies (collectively, "McWane's exclusive dealing policies").

- a. McWane threatened waterworks distributors with delayed or diminished access to McWane's domestic DIPF, and the loss of accrued rebates on the purchase of McWane's domestic DIPF, if those distributors purchased domestic DIPF from Star.
- b. As part of its MDA with McWane, Sigma agreed to implement a similar distribution policy, as alleged in Paragraph 46, above.
- c. McWane threatened some waterworks distributors with the loss of rebates in other product categories, such as ductile iron pipe, waterworks valves, and hydrants, if those distributors purchased domestic DIPF from Star.
- d. Beginning in 2011, McWane changed its rebate structure for domestic DIPF to require waterworks distributors to make certain minimum, and high, shares of their total domestic DIPF purchases from McWane in order to qualify for these rebates.

55. The purpose and effect of McWane's exclusive dealing policies has been and is to compel the majority of waterworks distributors to deal with McWane and Sigma on an exclusive or nearly exclusive basis for their domestic DIPF business.

- a. Due to Star's perceived or actual status as an untested supplier of domestic DIPF with a shorter product line

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and smaller inventory than McWane, many distributors interested in purchasing domestic DIPF from Star were unwilling to switch all of their domestic DIPF business to Star.

- b. Instead, many distributors wished to purchase domestic DIPF from both McWane/Sigma and Star, and thereby to garner the benefits of price and service competition.
- c. McWane's exclusive dealing policies increased the risk of purchasing domestic DIPF from Star.
- d. Distributors otherwise interested in purchasing domestic DIPF from Star were and are unwilling to do so under the terms of McWane's exclusive dealing policies, and have remained exclusive or nearly exclusive with McWane and Sigma, contrary to their preference.

56. McWane's exclusive dealing policies have foreclosed Star from a substantial volume of sales opportunities with waterworks distributors.

57. By foreclosing Star from a substantial volume of sales opportunities with waterworks distributors, McWane's exclusive dealing policies tend to minimize and delay Star's ability to benefit consumers by constraining the prices of domestically produced DIPF charged by McWane and Sigma.

58. McWane's exclusive dealing policies have also raised barriers to entry into the relevant domestic DIPF market by other potential entrants. This conduct has contributed to McWane's monopolization of the relevant domestic DIPF market.

COMPETITIVE EFFECTS

59. The acts and practices of Sigma, as alleged herein, have the purpose, capacity, tendency, and effect of (i) maintaining and stabilizing prices of DIPF in the relevant DIPF markets, (ii) eliminating potential competition from Sigma in the relevant domestic DIPF market, (iii) impairing the competitive

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effectiveness of Star in the relevant domestic DIPF market, and (iv) raising barriers to entry for potential rivals in the relevant domestic DIPF market. The conduct of Sigma is reasonably capable of making a significant contribution to the enhancement or maintenance of McWane's monopoly power in the relevant domestic DIPF market.

60. There are no legitimate procompetitive efficiencies that justify the conduct of Sigma as alleged herein, or that outweigh its anticompetitive effects.

FIRST VIOLATION
ALLEGED RESTRAINT OF TRADE

61. As alleged herein, Sigma conspired with its competitors to restrain price competition. These concerted actions unreasonably restrain trade and constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Such acts and practices, or the effects thereof, will continue or recur in the absence of appropriate relief.

SECOND VIOLATION
ALLEGED RESTRAINT OF TRADE

62. As alleged herein, Sigma conspired with its competitors to exchange competitively sensitive sales information. These concerted actions unreasonably restrain trade and constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Such acts and practices, or the effects thereof, will continue or recur in the absence of appropriate relief.

THIRD VIOLATION
ALLEGED INVITATION TO COLLUDE

63. As alleged herein, Sigma invited competitors to collude with Sigma. These actions constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Such acts and practices, or the effects thereof, will continue or recur in the absence of appropriate relief.

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**FOURTH VIOLATION
ALLEGED RESTRAINT OF TRADE**

64. As alleged herein, McWane and Sigma entered into the MDA. The agreement unreasonably restrains trade and constitutes an unfair method of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Such acts and practices, or the effects thereof, will continue or recur in the absence of appropriate relief.

**FIFTH VIOLATION
ALLEGED CONSPIRACY TO MONOPOLIZE**

65. As alleged herein, McWane and Sigma entered into the MDA with the specific intent to monopolize the relevant domestic DIPF market, and took overt acts to exclude their rivals in furtherance of their conspiracy, constituting an unfair method of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Such acts and practices, or the effects thereof, will continue or recur in the absence of appropriate relief.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-seventh day of February, 2012, issues its complaint against Sigma.

By the Commission.

DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of certain acts and practices of Sigma Corporation (“Sigma”), hereinafter sometimes referred to as “Respondent,” and Respondent having been furnished thereafter with a copy of a draft Complaint that counsel for the Commission proposed to present to the Commission for its consideration and

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which, if issued, would charge Respondent with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent 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 Respondent has violated 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, and having duly considered the comment filed thereafter by an interested person pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings and issues the following Order:

1. Respondent Sigma Corporation is a corporation organized and existing under the laws of the State of New Jersey, with its principal address at 700 Goldman Drive, Cream Ridge, New Jersey 08550.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent, and the proceeding is in the public interest.

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ORDER**I.**

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

- A. “Commission” means the Federal Trade Commission.
- B. “Respondent” means Sigma Corporation, its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by it, and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.
- C. “Communicate” means to transfer or disseminate any information, regardless of the means by which it is accomplished, including without limitation orally, by letter, e-mail, notice, or memorandum. This definition applies to all tenses and forms of the word “communicate,” including, but not limited to, “communicating,” “communicated” and “communication.”
- D. “Competitively Sensitive Information” means any information regarding the cost, price, output, or customers of or for DIPF marketed by Respondent or any Competitor, regardless of whether the information is prospective, current or historical, or aggregated or disaggregated.

Provided, however, that “Competitively Sensitive Information” shall not include:

1. information that is a list of prices or other pricing terms that has been widely Communicated by Respondent to its customers through a letter, electronic mailing, sales catalog, Web site, or other widely accessible method of posting;

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2. information that relates to the terms on which Respondent will buy DIPF from, or sell DIPF to, the Person to whom the Competitively Sensitive Information is Communicated;
 3. information that relates to transactions that occurred at least three (3) years prior to the date of the Communication of such information; or
 4. information that must be disclosed pursuant to the Federal Securities Laws.
- E. “Competitor” means any Person that, for the purpose of sale or resale within the United States: (1) manufactures DIPF; (2) causes DIPF to be manufactured; or (3) imports DIPF.
- F. “Designated Manager” means a Regional Manager or the OEM Manager for sales of DIPF in and into the United States, and any employee performing any job function of a Regional Manager or the OEM Manager with responsibility for sales of DIPF in or into the United States.
- G. “Ductile Iron Pipe Fittings” or “DIPF” means any iron casting produced in conformity with the C153/A21 or C110/A21 standards promulgated by the American Water Works Association, including all revisions and amendments to those standards and any successor standards incorporating the C153/A21 or C110/A21 standards by reference.
- H. “Federal Securities Laws” means the securities laws as that term is defined in § 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(47), and any regulation or order of the Securities and Exchange Commission issued under such laws.
- I. “Industry Statistics” means statistics derived from Input Data and Communicated by the Third Party Manager.

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- J. “Input Data” means the Competitively Sensitive Information Communicated by Competitors to the Third Party Manager.
- K. “Information Exchange” means the entity Managed by A Third Party Manager that: (1) Communicates Industry Statistics and (2) includes Respondent and at least one other Competitor.
- L. “Insider” means a consultant, officer, director, employee, agent, or attorney of Respondent. *Provided, however*, that no other Competitor shall be considered to be an “Insider.”
- M. “Managed by A Third Party Manager” means that a Third Party Manager is solely and exclusively responsible for all activities relating to Communicating, organizing, compiling, aggregating, processing, and analyzing any Competitively Sensitive Information.
- N. “Participate” in an entity or an arrangement means (1) to be a partner, joint venturer, shareholder, owner, member, or employee of such entity or arrangement, or (2) to provide services, agree to provide services, or offer to provide services through such entity or arrangement. This definition applies to all tenses and forms of the word “participate,” including, but not limited to, “participating,” “participated,” and “participation.”
- O. “Person” means any natural person or artificial person, including, but not limited to, any corporation, unincorporated entity, or government. For the purpose of this Order, any corporation includes the subsidiaries, divisions, groups, and affiliates controlled by it.
- P. “Third Party Manager” means a Person that (1) is not a Competitor, and (2) is responsible for all activities relating to Communicating, organizing, compiling, aggregating, processing, and analyzing any

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Competitively Sensitive Information Communicated or to be Communicated between or among Respondent and any other Competitor.

II.

IT IS FURTHER ORDERED that in connection with the business of manufacturing, marketing or selling DIPF 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:

- A. Entering into, adhering to, Participating in, maintaining, organizing, implementing, enforcing, or otherwise facilitating any combination, conspiracy, agreement, or understanding between or among any Competitors:
 - 1. To raise, fix, maintain, or stabilize prices or price levels, or engage in any other pricing action; or
 - 2. To allocate or divide markets, customers, contracts, transactions, business opportunities, lines of commerce, or territories.

Provided, however, that nothing in Paragraph II.A of this Order prohibits Respondent from entering into an agreement with another Competitor regarding the price of DIPF, if and only if that agreement relates exclusively to the terms under which Respondent will buy DIPF from, or sell DIPF to, that other Competitor.

- B. Communicating to any Person who is not an Insider, that Respondent is ready or willing:
 - 1. To raise, fix, maintain, or stabilize price or price levels conditional upon any other Competitor also raising, fixing, maintaining, or stabilizing price or price levels; or

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2. To forbear from competing for any customer, contract, transaction, or business opportunity conditional upon any other Competitor also forbearing from competing for any customer, contract, transaction, or business opportunity.
- C. Entering into, adhering to, Participating in, maintaining, organizing, implementing, enforcing, or otherwise facilitating any combination, conspiracy, agreement, or understanding between or among any Competitors to Communicate or exchange Competitively Sensitive Information.
- D. Communicating Competitively Sensitive Information to any other Competitor.
- E. Attempting to engage in any of the activities prohibited by Paragraphs II.A, II.B, II.C, or II.D.

Provided, however, that it shall not of itself constitute a violation of Paragraph II.B, II.C, OR II.D of this Order for Respondent to Communicate:

1. Competitively Sensitive Information to a Competitor where such Communication is reasonably related to a lawful joint venture, license, or potential acquisition, and is reasonably necessary to achieve the procompetitive benefits of such a relationship;
2. To any Person reasonably believed to be an actual or prospective purchaser of DIPF, the price and terms of a sale of DIPF; or
3. That Respondent is ready and willing to adjust the terms of a sale of DIPF in response to a Competitor's offer.

Provided further, that it shall not of itself constitute a violation of Paragraphs II.B, II.C, II.D or II.E of this Order for Respondent to Communicate with or Participate in an Information Exchange that is limited

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exclusively to the Communication of Input Data or Industry Statistics when:

1. Any Input Data relates solely to transactions that are at least six (6) months old;
2. Any Industry Statistic relates solely to transactions that are at least six (6) months old;
3. Industry Statistics are Communicated no more than one time during any six (6) month period;
4. Any Industry Statistic represents an aggregation or average of Input Data for transactions covering a period of at least six (6) months;
5. Any Industry Statistic represents an aggregation or average of Input Data received from no fewer than five (5) Competitors;
6. Relating to price, output, or total unit cost, no individual Competitor's Input Data to any Industry Statistic represents more than twenty-five (25) percent of the total reported sales (whether measured on a dollar or unit basis) of the DIPF product from which the Industry Statistic is derived;
7. Relating to price, output, or total unit cost, the sum of no three Competitors' Input Data to any Industry Statistic represents more than sixty (60) percent of the total reported sales (whether measured on a dollar or unit basis) of the DIPF product from which the Industry Statistic is derived;
8. Any Industry Statistic is sufficiently aggregated or anonymous such that no Competitor that receives that Industry Statistic can, directly or indirectly, identify the Input Data submitted by any other particular Competitor;

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9. Respondent does not Communicate with any other Competitor relating to the Information Exchange, other than those Communications (i) occurring at official meetings of the Information Exchange; (ii) relating to topics identified on a written agenda prepared in advance of such meetings; and (iii) occurring in the presence of antitrust counsel;
10. Respondent retains, for submission to a duly authorized representative of the Commission upon reasonable notice, a copy of all Input Data Communicated to the Third Party Manager and all Industry Statistics Communicated by the Third Party Manager to Respondent; and
11. All Industry Statistics are, at the same time they are Communicated to any Competitor, made publicly available.

III.

IT IS FURTHER ORDERED that Respondent shall:

- A. Within sixty (60) days from the date this Order becomes final distribute by first-class mail, return receipt requested, or by electronic mail with return confirmation, a copy of this Order with the Complaint, to each of its officers, directors, and Designated Managers; and
- B. For five (5) years from the date this Order becomes final, distribute by first-class mail, return receipt requested, or by electronic mail with return confirmation, a copy of this Order with the Complaint, within sixty (60) days, to each Person who becomes its officer, director, or Designated Manager and who did not previously receive a copy of this Order and Complaint.
- C. Require each Person to whom a copy of this Order is furnished pursuant to Paragraphs III.A and III.B of this Order to sign and submit to Respondent within sixty

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(60) 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.

IV.

IT IS FURTHER ORDERED that Respondent shall file verified written reports within ninety (90) days from the date this Order becomes final, annually thereafter for five (5) years on the anniversary of the date this Order becomes final, 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 description of any Information Exchange, including a description of (i) the identity of any Competitors participating in such exchange; (ii) the Competitively Sensitive Information being exchanged; (iii) the identity of the Third Party Manager and a description of how the Competitively Sensitive Information has been and is expected to be Managed by the Third Party Manager; and (iv) the identity of each employee of the Respondent who received information, directly or indirectly, from the Third Party Manager;
- B. Copies of the signed return receipts or electronic mail with return confirmations required by Paragraphs III.A, III.B, and III.C of this Order;
- C. One copy of each Communication during the relevant reporting period that relates to changes in Respondent's published list price or multiplier discounts for sales of DIPF made in or into the United States when that Communication is to two (2) or more customers and those changes are simultaneously applicable to two (2) or more customers; and

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- D. 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 within twenty (20) days of such change in address; and
- B. At least thirty (30) days prior to any proposed: (1) dissolution of Respondent; (2) 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, Respondent shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of Respondent, and in the presence of counsel, to all facilities and access to inspect and copy all 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 by Respondent at its expense; and
- B. Upon fifteen (15) days notice, and in the presence of counsel, and without restraint or interference from it, to interview officers, directors, or employees of Respondent.

Concurring and Dissenting Statement

VII.

IT IS FURTHER ORDERED that this Order shall terminate on February 27, 2032.

By the Commission.

**STATEMENT OF COMMISSIONER J. THOMAS
BOSCH, CONCURRING IN PART AND DISSENTING**