

Complaint

IN THE MATTER OF

**CHARLOTTE PIPE AND FOUNDRY COMPANY
AND
RANDOLPH HOLDING COMPANY LLC****CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 7 OF THE CLAYTON ACT AND SECTION 5 OF THE FEDERAL
TRADE COMMISSION ACT**

*Docket No. C-4403; File No. 111 0034
Complaint, May 9, 2013 – Decision, May 9, 2013*

This consent order addresses allegations that the 2010 purchase by Charlotte Pipe and Foundry Company of Star Pipe Products, Inc.'s cast iron soil pipe ("CISP") business was anticompetitive. CISP products are used throughout domestic pipeline systems to transport wastewater from buildings to municipal sewage systems, to vent plumbing systems, and to transport rainwater to storm drains. According to the complaint, Charlotte Pipe is one of the largest producers and sellers of CISP products in the United States. The complaint alleges that the acquisition eliminated Star Pipe as the "maverick" firm and enabled Charlotte Pipe to raise prices for CISP products to its consumers. The consent order requires Charlotte Pipe to provide the Commission with prior notification of any acquisitions of any entity engaged in the manufacture or sale of CISP products in the United States. The consent order further prohibits Charlotte Pipe from enforcing a confidentiality and non-compete agreement with Star Pipe and requires Charlotte Pipe to disclose publicly its prior acquisitions of other CISP importers.

Participants

For the *Commission*: William L. Lanning and Tejasvi Srimushnam.

For the *Respondents*: Mark W. Merritt, Robinson Bradshaw & Hinson, P.A.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested by said Acts, the Federal Trade Commission (the "Commission"), having reason to believe that respondents Charlotte Pipe and Foundry Company (hereinafter "CP&F"), and its wholly-owned subsidiary, Randolph Holding Company, L.L.C. (hereinafter

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“Randolph”) (hereinafter jointly referred to as “Charlotte Pipe” or “Respondents”), entered into a transaction with Star Pipe Products, Ltd. (hereinafter “Star Pipe”), in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. NATURE OF THE CASE

1. This action concerns Charlotte Pipe’s acquisition of the cast iron soil pipe products business of Star Pipe in a transaction that was not required to be reported to the Commission under the Hart-Scott-Rodino Act, as amended, 15 U.S.C. § 18a. At the time of the transaction, Star Pipe was one of Charlotte Pipe’s chief rivals in the cast iron soil pipe products industry in the United States.

II. RESPONDENTS CHARLOTTE PIPE AND FOUNDRY COMPANY AND RANDOLPH HOLDING COMPANY

2. Charlotte Pipe and Foundry Company is a privately-held corporation organized, existing, and doing business under and by virtue of the laws of the State of North Carolina with its principal place of business located at 2109 Randolph Road, Charlotte, NC 28207. Charlotte Pipe is one of the largest producers and sellers of cast iron soil pipe products in the United States.

3. Randolph Holding Company is a wholly-owned subsidiary of CP&F, and is a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its principal place of business located at 2109 Randolph Road, Charlotte, NC 28207. Randolph Holding Company, acting on behalf of its corporate parent, executed the Asset Purchase Agreement described herein as the “Buyer” of certain assets of Star Pipe’s cast iron soil pipe products business. Randolph Holding Company also executed the “Confidentiality and Non-Competition Agreement” described herein.

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4. Prior to acquiring the assets of Star Pipe's cast iron soil pipe products business, Charlotte Pipe acquired the cast iron soil pipe product assets of several other competitors in non-reportable transactions, including Matco- Norca in 2009, DWV Casting Company in 2004, and Richmond Foundry, Inc., in 2002.

III. THE ACQUIRED COMPANY

5. Star Pipe Products, Ltd. is a privately-held corporation organized, existing and doing business under and by virtue of the laws of the State of Texas with its principal place of business located at 4018 Westhollow Parkway, Houston, Texas 77082. Star Pipe imports, markets, and sells in the United States, among other things, ductile iron pipe fittings. Prior to the acquisition, Star Pipe imported, manufactured, and sold cast iron soil pipe products in direct competition with Charlotte Pipe. Star Pipe entered the domestic cast iron soil pipe products market in 2007. Between 2007 and 2010, Star Pipe expanded its sales throughout the United States.

IV. THE CAST IRON SOIL PIPE PRODUCTS INDUSTRY

6. Cast iron soil pipe products are a component of pipeline systems used in buildings to transport wastewater to the sewer system, to vent the plumbing system, and to transport rainwater to storm drains.

7. Cast iron soil pipe products are primarily used in the construction of commercial, industrial, and multi-story residential buildings where local or state building codes require its use.

8. Manufacturers and importers of cast iron soil pipe products sell to independent wholesale distributors for re-sale to end users. The end users of cast iron soil pipe products are typically construction firms, mechanical engineering firms, plumbers, and developers.

V. JURISDICTION

9. Respondent CP&F, Respondent Randolph, and Star Pipe are, and at all times relevant herein have been, engaged in

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commerce as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and are corporations whose businesses are in or affect commerce as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

VI. THE TRANSACTION

10. In July 2010, Charlotte Pipe executed an Asset Purchase Agreement with Star Pipe to acquire the assets of Star Pipe’s cast iron soil pipe products business for approximately \$19 million. Pursuant to the agreement, Charlotte Pipe purchased, among other things, Star Pipe’s inventory, its production equipment located in China, its business records, and its customer list. After the acquisition, Charlotte Pipe destroyed the cast iron soil pipe production equipment that it acquired from Star Pipe.

11. The parties to the transaction also executed a “Confidentiality and Non-Competition Agreement” that prohibited Star Pipe and certain Star Pipe employees from competing with Charlotte Pipe in the manufacture and sale of cast iron soil pipe products in the United States, Mexico, and Canada for a period of six years. Star Pipe also agreed to keep the transaction confidential and to send to its customers a letter indicating that it had decided to exit the cast iron soil pipe products business.

VII. THE RELEVANT PRODUCT MARKET

12. For purposes of this Complaint, the relevant line of commerce within which to analyze the effects of the transaction is the market for the sale of cast iron soil pipe products for use in commercial, industrial, and multi-story residential buildings in the United States. Plastic pipe is not a viable substitute for cast iron soil pipe products because many state and local building codes in the United States require the use of cast iron soil pipe products in commercial, industrial, and multi-story residential buildings.

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VIII. THE RELEVANT GEOGRAPHIC MARKET

13. For purposes of this Complaint, the relevant geographic market within which to analyze the effects of the transaction is no broader than the United States, and may contain smaller geographic markets consisting of states, multi-state regions, or metropolitan areas.

IX. MARKET STRUCTURE

14. The relevant markets are highly concentrated. At the time of the transaction, two firms, Charlotte Pipe and McWane Inc., sold in excess of ninety percent of the cast iron soil pipe products in the United States. Companies that sell imported cast iron soil pipe products accounted for the remaining sales. Star Pipe was the largest of the importers, acting as a disruptive force in contested markets, competing on price and service to the benefit of customers.

X. CONDITIONS OF ENTRY

15. Entry into the relevant markets has not been, and would not be, timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the acquisition.

XI. EFFECTS OF THE AGREEMENT

16. The effect of the agreement has been a substantial lessening of competition in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45. Specifically, the agreement has:

- a. eliminated actual, direct, and substantial competition between Charlotte Pipe and Star Pipe in the relevant markets;
- b. substantially increased the level of concentration in the relevant markets;

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- c. eliminated a maverick firm;
- d. increased the ability of Charlotte Pipe unilaterally to exercise market power; and
- e. prevented Star Pipe and certain Star Pipe employees from re-entering the cast iron soil pipe products market for a period of six years.

XII. VIOLATIONS CHARGED

17. The allegations contained in Paragraphs 1 through 16 above are hereby incorporated by reference as though fully set forth here.

18. The transaction described in Paragraphs 10 and 11 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this ninth day of May, 2013, issues its Complaint against said Respondents.

By the Commission.

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DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of certain acts and practices of Charlotte Pipe and Foundry Company (“Charlotte Pipe”), and its wholly-owned subsidiary, Randolph Holding Company, LLC, (“Randolph”), hereinafter referred to jointly as “Respondents,” including the acquisition of certain assets of Star Pipe Products, Ltd., and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and Section 7 of the Clayton Act, 15 U.S.C. § 18, and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondents 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 Respondents 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 Respondents have violated the said Acts, 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 issues its Complaint, makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Charlotte Pipe and Foundry Company, is a corporation organized, existing, and doing business

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under and by virtue of the laws of the State of North Carolina with its principal place of business located at 2109 Randolph Road, Charlotte, NC 28207.

2. Respondent Randolph Holding Company, LLC is a wholly-owned subsidiary of Charlotte Pipe and is a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its principal place of business located at 2109 Randolph Road, Charlotte, NC 28207.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER**I.**

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

- A. “Charlotte Pipe” means Charlotte Pipe and Foundry Company, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries (including Randolph), divisions, groups and affiliates controlled by Charlotte Pipe and Foundry Company, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Randolph” means Randolph Holding Company, LLC, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Randolph Holding Company, LLC, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Star Pipe” means Star Pipe Products, Ltd., a limited partnership organized and existing under the laws of the State of Texas, with its office and principal place

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of business located at 4018 Westhollow Parkway, Houston, Texas 77082, and includes its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Star Pipe Products, Ltd., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

- D. “Commission” means the Federal Trade Commission.
- E. “Asset Purchase Agreement” means the acquisition agreement between Randolph and Star Pipe executed on or about July 14, 2010.
- F. “Cast Iron Soil Pipe Products” means cast iron soil pipe and cast iron soil pipe fittings, made primarily from recycled scrap iron or pig iron, which are used to transport wastewater to sewer systems, to vent building plumbing systems, and/or to transport rainwater to storm drains.
- G. “Confidentiality and Non-Competition Agreement” means each agreement entered into by Star Pipe and Randolph, by the general partners of Star Pipe and Randolph, and by each employee of Star Pipe and Randolph, as a condition to closing the transaction contemplated by the “Asset Purchase Agreement.”
- H. “Charlotte Pipe Distributor” means any Person to whom Charlotte Pipe has sold Cast Iron Soil Pipe Products having a wholesale value exceeding \$35,000 during calendar year 2012.
- I. “Distribute” means to provide a copy of the specified documents by (1) personal delivery, with a signed receipt of confirmation; (2) first-class mail with delivery confirmation or return receipt requested; (3) facsimile with return confirmation; or (4) electronic mail with electronic return confirmation.

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- J. “Person” means any natural person, partnership, corporation, association, trust, joint venture, government, government agency, or other business or legal entity.

II.

IT IS FURTHER ORDERED that Respondents shall not, without providing advance written notification to the Commission in the manner described in this Paragraph II, directly or indirectly, acquire:

- A. Any stock, share capital, equity, or other interest in any Person, corporate or otherwise, other than Charlotte Pipe, that produces or manufactures Cast Iron Soil Pipe Products that are sold in or into the United States; or
- B. Any assets that are used in, or that were used during the six (6) month period prior to the acquisition in the production or manufacture of Cast Iron Soil Pipe Products that are sold in or into the United States.

Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (herein referred to as “the Notification”), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission and a contemporaneous copy with the Bureau of Competition’s Compliance Division, notification need not be made to the United States Department of Justice, and notification is required only of Respondents and not of any other party to the transaction. Respondents shall provide the Notification to the Commission at least thirty days prior to consummating the transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondents shall not consummate the transaction until thirty days after submitting such additional information or documentary material.

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Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition.

Provided, however, that prior notification shall not be required by this paragraph for a transaction for which Notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

III.**IT IS FURTHER ORDERED** that:

- A. Respondents shall not enforce any provisions of the “Confidentiality and Non- Competition Agreement” against any signatory to that agreement.
- B. Charlotte Pipe shall:
 - 1. Within two (2) days after the date this Order became final, Distribute to each signatory of the “Confidentiality and Non-Competition Agreement,” the letter attached as Appendix A to this Order; and
 - 2. Within seven (7) days from the date this Order becomes final, certify that Charlotte Pipe has Distributed to each signatory of the “Confidentiality and Non- Competition Agreement,” the letter attached as Appendix A to this Order, as required by this Paragraph III.B1.

The purpose of this Paragraph III is to ensure that Star Pipe, and any former or current employee of Star Pipe, can manufacture, import, distribute, or sell Cast Iron Soil Pipe Products in competition with Respondents, and to remedy the lessening of competition alleged in the Commission’s Complaint.

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IV.

IT IS FURTHER ORDERED that Respondents shall:

- A. Within thirty (30) days after the date this Order becomes final, distribute to each member of the Board of Directors of Charlotte Pipe a copy of this Order and the Complaint issued by the Commission, and the letter attached as Exhibit A to this Order;
- B. For a period of five years from the date this Order becomes final:
 - 1. Publish on the official web site of Charlotte Pipe a copy of this Order, the Complaint issued by the Commission, the Commission's press release regarding this Order, and the letter attached as Exhibit B to this Order as a link from Charlotte Pipe's home or menu page, entitled "Federal Trade Commission Order Regarding Star Pipe Acquisition," in the same size and font as other menu items;
 - 2. Assure that the Order can be accessed through common search terms and archives on the web site; and
 - 3. Distribute this Order and the Complaint to each person who becomes an officer or member of the Board of Directors of Charlotte Pipe within (30) days of the date that he or she becomes an officer, director, or member of the Board of Directors.

V.

IT IS FURTHER ORDERED that:

- A. No later than sixty (60) days after the date the Order becomes final, Respondents shall:

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1. Distribute a copy of this Order, the Complaint, and the letter attached as Exhibit B to this Order, to each Charlotte Pipe Distributor.
 2. Submit to the Commission a verified written report setting forth in detail the manner and form in which Respondents have complied, are complying, and will comply with this Order. Such report shall include, but not be limited to:
 - a. The name and business address of each member of the Board of Directors of Charlotte Pipe to whom Respondents sent a copy of this Order and the Complaint, and a copy of the return receipt or return confirmation received from each; and
 - b. The name and business address of each Charlotte Pipe Distributor to whom Respondents sent a copy of this Order, the Complaint, and the letter attached as Exhibit B to this Order, and a copy of the return receipt or return confirmation received from each; and
 - c. A description of any other action taken by Respondents to comply with this Order.
- B. Beginning twelve (12) months after the date this Order becomes final, and annually thereafter on the anniversary of the date this Order becomes final, for the next five (5) years, and at such other times as the Commission requests, Respondents shall submit to the Commission verified written reports setting forth in detail the manner and form in which they are complying and have complied with this Order. For the periods covered by these reports, these reports shall include, but not be limited to:
1. The name and business address of each member of the Board of Directors of Charlotte Pipe to whom Respondents sent a copy of this Order and the

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Complaint, who did not previously receive them, and a copy of the return receipt or return confirmation received from each; and

2. A description and explanation, in reasonable detail, of the actions taken by Respondents with regard to Paragraph IV.B of this Order; and
3. A copy of the return receipt or return confirmation from any Charlotte Pipe Distributor not previously submitted; and
4. A description of any other action taken by Respondents to comply with this Order.

VI.

IT IS FURTHER ORDERED that each Respondent shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of such Respondent;
- B. Any proposed acquisition, merger, or consolidation of such Respondent; or
- C. Any other change in such Respondent, including but not limited to assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

VII.

IT IS FURTHER ORDERED that for the purpose of determining or securing compliance with this order, upon written request, each Respondent shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of such 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

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such Respondent related to compliance with this Order, which copying services shall be provided by such Respondent at the request of the authorized representative(s) of the Commission and at the expense of such Respondent; and

- B. Upon five (5) days' notice to such Respondent and without restraint or interference from such Respondent, to interview officers, directors, or employees of such Respondent, who may have counsel present, regarding such matters.

VIII.

IT IS FURTHER ORDERED that this Order shall terminate on May 9, 2023.

By the Commission.

Analysis to Aid Public Comment

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC
COMMENT**

The Federal Trade Commission (“Commission” or “FTC”) has accepted, subject to final approval, an Agreement Containing Consent Order (“Consent Agreement”) from Charlotte Pipe and Foundry Company (hereinafter “CP&F”) and its wholly-owned subsidiary, Randolph Holding Company, L.L.C. (hereinafter “Randolph”) (hereinafter jointly referred to as “Charlotte Pipe” or “Respondents”). The purpose of the Consent Agreement is to address the anticompetitive effects resulting from Charlotte Pipe’s 2010 acquisition (the “Acquisition”) of the cast iron soil pipe (“CISP”) business of Star Pipe Products, Ltd. (“Star Pipe”). The parties to that transaction also entered a “Confidentiality and Non-Competition Agreement.” The Acquisition was not reportable under the Hart-Scott-Rodino Antitrust Improvement Act of 1976, 15 U.S.C. 18a (“HSR Act”). The administrative complaint (“Complaint”) alleges that the Acquisition violated Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

Under the terms of the proposed Consent Agreement, Charlotte Pipe is: required to provide prior notification to the FTC, for a period of ten years, of an acquisition of any entity engaged in the manufacture and sale of CISP products in or into the United States; prohibited from enforcing the “Confidentiality and Non-Competition Agreement” against Star Pipe; and required to inform its customers and the public of the Acquisition and other transactions involving other CISP competitors.

The proposed Consent Agreement has been placed on the public record for 30 days for receipt of comments from interested members of the public. Comments received during this period will become part of the public record. After 30 days, the Commission will review the Consent Agreement again and the comments received, and will decide whether it should withdraw from the Consent Agreement or make final the accompanying Decision and Order.

The purpose of this Analysis to Aid Public Comment is to invite and facilitate public comment. It is not intended to constitute an official interpretation of the proposed Consent

Analysis to Aid Public Comment

Agreement and the accompanying Decision and Order or in any way to modify their terms.

The Consent Agreement is for settlement purposes only and does not constitute an admission by Charlotte Pipe that the law has been violated as alleged in the Complaint or that the facts alleged in the Complaint, other than jurisdictional facts, are true.

I. The Complaint

The Complaint makes the following allegations.

A. The Respondents

CP&F is a privately-held corporation with its principal place of business located at 2109 Randolph Road, Charlotte, NC 28207. CP&F is one of the largest producers and sellers of CISP products in the United States.

Randolph is a wholly-owned subsidiary of CP&F. Randolph, acting on behalf of CP&F, executed both the Acquisition agreement as the “Buyer” of Star Pipe’s CISP business and the “Confidentiality and Non-Competition Agreement” referenced herein.

B. The Product and Structure of the Market

CISP products are components of pipelines systems used in buildings to transport wastewater to the sewer system, to vent the plumbing system, and to transport rainwater to storm drains. The end-users of CISP products are construction firms, plumbers, or developers.

The relevant line of commerce within which to analyze the effects of the Acquisition is the market for the sale of CISP products for use in commercial, industrial, and multi-story residential buildings in the United States. Plastic products are not a viable substitute for CISP products because state and local building codes in the United States generally require the use of CISP products in commercial, industrial, and multi-story residential buildings.

Analysis to Aid Public Comment

The relevant geographic market within which to analyze the effects of the Acquisition is no broader than the United States, and may contain smaller geographic markets consisting of states, multi-state regions, or metropolitan areas.

The United States CISP products market is highly concentrated. At the time of the Acquisition, two firms, Charlotte Pipe and McWane Inc., sold in excess of ninety percent of the CISP products in the United States. Companies that sell imported CISP products, including Star Pipe, accounted for the remaining sales.

C. Star Pipe and the Acquisition

In 2007, Star Pipe entered the United States CISP products market. Between 2007 and 2010, Star Pipe expanded its sales base throughout the United States. In contested markets, Star Pipe acted as a disruptive force, competing on price and service to the benefit of consumers.

In July 2010, Charlotte Pipe executed an Asset Purchase Agreement with Star Pipe to acquire the assets of Star Pipe's CISP business for approximately \$19 million. Pursuant to the agreement, Charlotte Pipe purchased, among other things, Star Pipe's inventory, its production equipment located in China, and its business records and customer list. The parties to the agreement also executed a "Confidentiality and Non-Competition Agreement" that prohibited Star Pipe and certain Star Pipe employees from competing with Charlotte Pipe in the United States, Mexico, and Canada for a period of six years. In addition, Star Pipe agreed to keep the Acquisition confidential and to send to its customers a letter indicating that it had decided to exit the CISP business. After the Acquisition, Charlotte Pipe destroyed the CISP production equipment that it acquired from Star Pipe.

D. Conditions of Entry

Entry into the relevant markets would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the Acquisition.

Analysis to Aid Public Comment

E. Effects

The effects of Charlotte Pipe's acquisition of Star Pipe's CISP business have been a substantial lessening of competition in the relevant markets. Specifically, the Acquisition has: eliminated actual, direct, and substantial competition between Charlotte Pipe and Star Pipe in the relevant markets; substantially increased the level of concentration in the relevant markets; eliminated a maverick firm; increased the ability of Charlotte Pipe unilaterally to exercise market power; and prevented Star Pipe and certain Star Pipe employees from re-entering the CISP products market for a period of six years.

II. The Proposed Order

Paragraph II of the Proposed Order requires Charlotte Pipe to provide prior notification to the Commission of an acquisition of any entity engaged in the manufacture and sale of CISP products in or into the United States. This paragraph also requires Charlotte Pipe to comply with premerger notification procedures and waiting periods similar to those found in the HSR Act.

This provision is necessary because Charlotte Pipe has previously acquired several firms in the CISP products market in non-reportable transactions. The Proposed Order affords the Commission an appropriate mechanism to review all proposed acquisitions by Charlotte Pipe in the CISP products market to guard against future anticompetitive transactions.

Paragraph III of Proposed Order prevents Charlotte Pipe from enforcing the Confidentiality and Non-Competition Agreement. This frees Star Pipe, and its current and former employees, to enter and compete against Charlotte Pipe in the United States, Canada, or Mexico.

Paragraphs IV-VII impose reporting and other compliance requirements. In particular, Charlotte Pipe is required to send a letter to its customers and to maintain a link on its website relating to the Acquisition and Charlotte Pipe's other non-reportable transactions, including Matco-Norca in 2009, DWV Casting

Analysis to Aid Public Comment

Company (“DWV”) in 2004, and Richmond Foundry, Inc. (“Richmond Foundry”) in 2002. This provision is appropriate because Charlotte Pipe’s confidential acquisitions are not widely known in the CISP industry and have given rise to a perception among distributors and end-users that importers of CISP products are transient and unreliable operations. The proposed order serves to inform market participants about Charlotte Pipe’s role in the exit of Star Pipe, Matco-Norca, DWV, and Richmond Foundry from the CISP industry.

The Proposed Order will expire in 10 years.

Complaint

IN THE MATTER OF

BOSLEY, INC,
ADERANS AMERICA HOLDINGS, INC.
AND
ADERANS CO., LTD.

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 7 OF THE CLAYTON ACT AND SECTION 5 OF THE FEDERAL
TRADE COMMISSION ACT

Docket No. C-4404; File No. 121 0184
Complaint, May 30, 2013 – Decision, May 30, 2013

This consent order addresses allegations that Bosley, Inc. illegally exchanged competitively sensitive, nonpublic information about its business practices with one of its competitors, HC (USA), Inc. (“Hair Club”), in violation of Section 5 of the Federal Trade Commission Act. According to the complaint, the CEOs of Bosley and Hair Club exchanged information regarding future product offerings, surgical hair transplantation price floors and discounts, plans for business expansion and contraction, and current business operations and performance for at least four years. These communications predated discussions between the respondents regarding the acquisition of Hair Club by Bosley’s parent entity, Aderans Co., Ltd. The consent order bars Bosley from communicating competitively sensitive, nonpublic information directly to any hair transplantation competitor. It also bars Bosley from requesting, encouraging, or facilitating the communication of any such information from any of its competitors. Additionally, the consent order requires Bosley to institute a program to ensure that it complies with federal antitrust laws in the future and to submit periodic compliance reports to the Commission.

Participants

For the *Commission*: *Rebecca P. Dick, Mara M. Grobins, Marc S. Lanoue, Ashley Masters, Justin Stewart-Teitelbaum, and Michelle A. Wyant.*

For the *Respondents*: *Rebecca A.D. Nelson and Daniel Schwartz, Bryan Cave LLP.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. § 41, et seq., and by virtue of the authority vested in it by said Act, the Federal Trade Commission