Responses to Petitions to Quash

STAR PIPE PRODUCTS LTD

FTC File No. 131 0214 – Decision, May 27, 2014

RESPONSE TO STAR PIPE PRODUCTS LTD.'S PETITION TO LIMIT SUBPOENA *DUCES TECUM* DATED APRIL 4, 2014

By WRIGHT, Commissioner:

Star Pipe Products Ltd. ("Star Pipe") has filed a Petition to limit the subpoena *duces tecum* ("Subpoena") issued by the Commission on April 4, 2014. For the reasons stated below, the Petition is denied as moot.

On July 17, 2013, the Commission commenced an investigation to determine whether Star Pipe is violating or has violated the terms of a Consent Order approved by the Commission on May 8, 2012 ("the May 8, 2012 Order"). The May 8, 2012 Order resolved the Commission's allegations that Star Pipe had engaged in collusive conduct in the market for ductile iron pipe fittings, brought through an Administrative Complaint under Part 3 of the Commission's Rules of Practice.[1] The Complaint alleged that beginning in January 2008, Star Pipe and its two main competitors, McWane, Inc. and Sigma Corporation, conspired to raise and stabilize prices for ductile iron pipe fittings by exchanging information regarding pricing and output for these products.[2]

The May 8, 2012 Order settled the Commission's allegations against Star Pipe and provided for various types of injunctive relief. Among them, Star Pipe agreed to cease and desist from

[1] *See* Complaint, *In re McWane, Inc. and Star Pipe Products Ltd.*, Docket No. 9351 (Jan. 4, 2012) [hereinafter "Complaint"]. Ductile iron pipe fittings are a component of systems for transporting drinking and waste water under pressurized conditions in municipal distribution systems and treatment plants. These fittings are typically used by municipal and regional water authorities to join pipes, valves and hydrants in straight lines, and to change, divide, or direct the flow of water. *See* Complaint, ¶14.

[2] Complaint, ¶¶ 28-38.

entering into "any combination, conspiracy, agreement, or understanding between or among" the competitors in the ductile iron pipe fittings market.[3] Star Pipe further agreed to cease and desist from communicating with competitors regarding cost, pricing, output, and customers for these products.[4]

Subsequently, FTC staff received information to suggest that Star Pipe might be violating the terms of the May 8, 2012 Order by communicating with representatives of its competitors about competitively sensitive topics. Accordingly, on September 20, 2013, the Commission issued a compulsory process resolution "[t]o determine whether Star Pipe Products Ltd. is violating or has violated the May 8, 2012, Decision and Order[,]" and, on April 4, 2014, the Commission issued the Subpoena to Star Pipe pursuant to Section 9 of the Federal Trade Commission Act, 15 U.S.C. § 49. The Subpoena contains nine specifications that request documents and information on various topics including: (1) Star Pipe's compliance with the requirement that it distribute the May 8, 2012 Order to relevant personnel; (2) Star Pipe's communications with its competitors, including Sigma; (3) Star Pipe's pricing; and (4) Star Pipe's document retention policies. The Subpoena provides a return date of May 5, 2014. The deadline for Star Pipe to file a petition to limit or quash the Subpoena was April 29, 2014.

FTC staff and counsel for Star Pipe engaged in a meet-and-confer process, but because they were unable to resolve the company's objections sufficiently in advance of the April 29 deadline to file a petition to limit or quash the Subpoena, Star Pipe filed the instant Petition on April 24, 2014.

Following Star Pipe's filing of its Petition, however, FTC staff and counsel for Star Pipe continued to confer and, on May 14, 2014, FTC staff formally modified the Subpoena to respond to Star Pipe's objections, based on information proffered by Star Pipe. FTC staff informed the Commission of the agreed-upon modification and a comparison of the modified Subpoena to Star

[3] May 8, 2012 Order, ¶¶ II.A., II.C.

[4] May 8, 2012 Order, ¶¶ I.D., II.B., II.D.

Pipe's Petition shows that the claims raised by the Petition have been resolved. As a result, Star Pipe's Petition is now moot.

We note that Star Pipe did not avail itself of the opportunity to withdraw its Petition despite FTC staff's modification of the Subpoena. In fact, rather than withdraw its Petition, Star Pipe filed an untimely supplement to its Petition on May 22.[5] We are under no obligation to consider untimely motions and merely observe that the issues raised in Star Pipe's supplemental petition have been resolved. We urge Star Pipe to comply with relevant Commission deadlines and to avoid unnecessary Commission review and action when disagreements with FTC staff have been resolved.

For all the foregoing reasons, **IT IS HEREBY ORDERED THAT** the Petition of Star Pipe Products Ltd. to Limit the Subpoena Duces Tecum be, and it hereby is, **DENIED** as moot;

IT IS FURTHER ORDERED THAT the Supplement to Petition of Star Pipe Products Ltd. to Limit the Subpoena Duces Tecum be, and it hereby is, **DENIED** as untimely and moot; and

IT IS FURTHER ORDERED THAT Star Pipe Products Ltd. comply in full with the Commission's Subpoena consistent with FTC staff's May 14, 2014, modification, or as otherwise amended pursuant to Rule 2.7(l) of the Commission's Rules of Practice, 16 C.F.R. § 2.7(l).

By the Commission.

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[5] *See* Supplement to Petition of Star Pipe Products Ltd. to Limit Subpoena Duces Tecum (May 22, 2014). The Commission's Rules of Practice require that, with respect to a Subpoena such as this one, a petition setting forth "*all* assertions of protected status or other factual or legal objections" shall be filed within 20 days after service of process, which in this case was April 29, 2014. 16 C.F.R. § 2.10(a) (emphasis added).