

Interlocutory Orders, Etc.

IN THE MATTER OF

**MCWANE, INC.,
AND
STAR PIPE PRODUCTS, LTD.**

Docket No. 9351. Order, April 1, 2016

Order enhancing the Star Pipe Order's reporting and notification provisions.

ORDER TO SHOW CAUSE AND ORDER MODIFYING ORDER

On May 8, 2012, the Federal Trade Commission ("Commission") issued a Decision and Order ("Star Pipe Order") in Docket No. 9351, resolving claims as to Respondent Star Pipe Products, Ltd. ("Star Pipe") contained in the Complaint that the Commission had issued against Star Pipe and McWane, Inc. ("McWane"), on January 4, 2012. The Complaint alleged that McWane and Star Pipe, along with their competitor Sigma Corporation ("Sigma"), conspired to raise and stabilize the prices at which Ductile Iron Pipe Fittings ("DIPF") are sold in the United States.¹ The Complaint alleged that McWane, Sigma, and Star Pipe (collectively, the "Sellers") exchanged sales data in order to facilitate this price coordination, in violation of Section 5 of the Federal Trade Commission Act, as amended 15 U.S.C. §45. Star Pipe denied these allegations but agreed to settle the matter through entry of the Order shortly after the Complaint was issued, but before any testimony was taken.

Since entry of the Star Pipe Order, the Commission has investigated whether Star Pipe engaged in conduct that violated that order. Star Pipe, while not admitting any violation, has agreed to certain modifications and enhancements of the Star Pipe Order, to resolve the matter. It has waived any further procedures and has

¹ McWane declined to settle this matter, and the Commission pursued the litigation as to it. See In the Matter of McWane, Inc., and Star Pipe Products, Ltd., Docket 9351, *aff'd*, McWane, Inc. v. FTC, 783 F.3d 814 (11th Cir. 2015), *cert. denied* (U.S. Mar. 21, 2016) (No. 15-706). Sigma had agreed to entry of an order prior to issuance of the Commission's Complaint against Star and McWane. See In the Matter of Sigma Corporation, Docket C-4347.

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agreed to issuance of this Order to Show Cause and Order Modifying Order.

Paragraph II.C. of the Star Pipe Order requires Star Pipe, among other things, to cease and desist from 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.² The Order defines “Competitor” to mean Star Pipe “and any Person that . . . (1) manufactures DIPF; (2) causes DIPF to be manufactured; or (3) imports DIPF.” Paragraph II.E. requires Star to cease and desist from attempting to engage in any of the prohibited activities in Paragraph II.C.³

In August 2012, Star Pipe began to receive Competitively Sensitive Information regarding DIPF from an independent Sigma sales agent. The information Star Pipe received was precisely the type of information Star Pipe was prohibited from communicating to or agreeing to receive from a Competitor. In violation of the Star Pipe Order’s proscriptions, however, Star Pipe continued to receive and encourage the delivery of this information until early July 2013.

Sigma apparently was unaware of its agent’s behavior, but at least one of Star Pipe’s senior executives knew that Star Pipe was receiving Competitively Sensitive Information. On May 13, 2013, Star Pipe filed its first annual report of compliance, required by Paragraph V. Although Star Pipe had been receiving Sigma’s Competitively Sensitive Information since at least August 17, 2012, it failed to disclose this activity in its report. The

2 Competitively Sensitive Information is defined at Order Paragraph I.D. to mean, with certain exceptions, any information regarding the cost, price, output, or customers of or for DIPF marketed by Respondent or any other Competitor, regardless of whether the information is prospective, current or historical, or aggregated or disaggregated. Among exclusions from this definition is information received from a customer regarding a price quoted to that customer by a Competitor.

3 Sigma is under an identically written prohibition in Paragraph II of its order.

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Commission learned of this activity when alerted by counsel for Sigma.

Star Pipe has denied that it violated the Star Pipe Order. It has asserted that it never solicited the information received from the Sigma independent sales agent; that the independent sales agent is not a Competitor; that the independent sales agent's job did not include selling DIPF; that the independent sales agent ignored Star Pipe's request to stop sending the information; and that early in July 2013, Star Pipe, through its counsel, notified Sigma's counsel of Star Pipe's receipt of Sigma information. The Commission considered these assertions, but finds reason to believe that Star Pipe violated the Star Pipe Order's prohibitions against attempting to agree to receive a competitor's Competitively Sensitive Information.

Although DIPF was not a product sold by the independent Sigma agent, as a member of the Sigma sales force he received the same daily and weekly confidential sales and pricing information that the employed sales force for DIPF received. Each email forwarded by the independent sales agent to Star Pipe was an email he received as one of the addressees identified as "SST-All@Sigmaco.com." Moreover, Star Pipe was aware that the information it was receiving contained Sigma's confidential sales data. There is evidence that the information may have been useful to Star Pipe and that Star Pipe encouraged its continued receipt. Finally, Star Pipe has produced no documentary evidence in support of its assertion that it asked the agent to stop communicating the Competitively Sensitive Information.

In view of the foregoing, the Commission has determined, in its discretion, that it is in the public interest to reopen the proceeding in Docket No. 9351, pursuant to Section 3.72(b) of the Commission's Rules of Practice, 16 CFR § 3.72(b), and to modify the Star Pipe Order by adding provisions intended to enhance the Star Pipe Order's reporting and notification provisions. These provisions are set forth in new subparagraphs IV.D. through IV.G. Paragraph IV.D. specifies additional personnel Star Pipe is obligated to notify of the Star Pipe Order's requirements; Paragraph IV.E. requires Star Pipe to train certain identified personnel regarding compliance with the Order; Paragraph IV.F.

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requires Star Pipe to notify the Commission of the transmission or receipt of any Competitively Sensitive Information to or from Competitors; and Paragraph IV.G. requires Star Pipe to submit annually an affidavit stating that no such Competitively Sensitive Information has been sent or received.

Star Pipe denies that it has violated the terms of the Order, and Star Pipe does not agree with the facts and conclusions as stated herein. In settlement of the Commission's claims regarding violation of the terms of the Order as described, however, Star Pipe has consented to the changes contained in this Modifying Order, and waives any further rights it may have under Section 3.72(b) of the Commission's Rules of Practice, 16 C.F.R. §3.72(b). Accordingly,

IT IS ORDERED that this matter be, and it hereby is, reopened; and

IT IS FURTHER ORDERED that Paragraph IV of the Star Pipe Order in Docket No. 9351 be, and hereby is, modified to add the following sub-paragraphs, which shall read as follows:

ORDER MODIFYING ORDER

IV.

- D. Distribute by first-class mail, return receipt requested, or by electronic mail with return confirmation, a copy of this Order Modifying Order:
1. Within thirty (30) days from the date this Order Modifying Order is issued, to each of its officers, directors, and Designated Managers (including General Sales Managers, Division Managers, any other Person with pricing authority, and National Market Managers); and
 2. For five (5) years from the date this Order Modifying Order is issued, within sixty (60) days to each Person who becomes an officer, director, or Designated Manager (including General Sales Manager, Division Manager, any other Person with

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pricing authority, and National Market Manager) and who did not previously receive a copy of this Order Modifying Order.

- E. For five (5) years from the date this Order Modifying Order is issued, conduct an annual program to train each officer, director, and Designated Manager (including General Sales Manager, Division Manager, any other Person with pricing authority, and National Market Manager) as to the prohibitions and requirements of the Star Pipe Order and the Order Modifying Order.
- F. For ten (10) years from the date this Order Modifying Order is issued, notify the Commission within thirty (30) days after any of the individuals specified at Paragraph IV. becomes aware of either:
 - 1. the transmission by any officer, director, employee, or agent of Respondent of Respondent's Competitively Sensitive Information to a Competitor (including the Competitor's independent sales agent), or
 - 2. the receipt by any officer, director, employee, or agent of Respondent of a Competitor's Competitively Sensitive Information from a Competitor (including the Competitor's independent sales agent);

whether such transmission or receipt is by United States mail, facsimile, email to or from a Respondent email account or to or from a private email account.

- G. For five (5) years from the date this Order Modifying Order is issued, submit annually, on the date when reports required by Paragraph V of the Star Pipe Order are due (until 2021), an affidavit signed by the individual at Respondent responsible for its compliance with the Star Pipe Order and this

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Order Modifying Order that no Competitively Sensitive Information has been sent or received by Respondent to or from a Competitor (including the Competitor's independent sales agent).

By the Commission.

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AttachmentUNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of	)	
	)	
McWane, Inc.,	)	
a corporation, and	)	
	)	
Star Pipe Products, Ltd.	)	Docket No. 9351
a limited partnership.	)	
	)	

**AGREEMENT CONTAINING ORDER TO SHOW CAUSE AND
ORDER MODIFYING ORDER ISSUED AGAINST STAR PIPE PRODUCTS, LTD.**

The Federal Trade Commission ("Commission"), having initiated an investigation of certain conduct of Star Pipe Products, Ltd. ("Star Pipe") related to Star Pipe's compliance with its obligations under the Decision and Order that the Commission issued against Star Pipe in *In the Matter of McWane, Inc., and Star Pipe Products, Ltd.*, Docket No. 9351, on May 8, 2012 ("Star Pipe Order"), and it now appearing that Star Pipe, hereinafter sometimes referred to as "Respondent," is willing to enter into this Agreement Containing Order to Show Cause and Order Modifying Order ("Consent Agreement") agreeing to modifications of the Star Pipe Order as described in the attached Order Modifying Order ("Modifying Order");

IT IS HEREBY AGREED by and between Respondent, its duly authorized officer and attorney, and counsel for the Commission that:

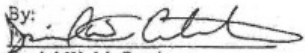
- i. Respondent Star Pipe is a limited partnership organized, existing, and doing business under and by virtue of the laws of the state of Texas, with its office and principal place of business located at 4018 Westhollow Parkway, Houston, Texas 77082.
2. Respondent waives:
 - a. Any further procedural steps;
 - b. Any requirement that the Commission's Modifying Order, attached hereto and made a part hereof, contain a statement of findings of fact and conclusions of law;
 - c. Its rights under the show cause procedures set forth in Section 3.72(b) of the Commission's Rules of Practice, 16 C.F.R. § 3.72(b);
 - d. All rights to seek judicial review or otherwise to challenge or contest the validity of the Modifying Order entered pursuant to this Consent Agreement; and
 - e. Any claim under the Equal Access to Justice Act.

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3. This Consent Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Consent Agreement is accepted by the Commission, it may be placed on the public record for a period of thirty (30) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Consent Agreement and so notify Respondent, in which event it will take such action as it may consider appropriate, or issue and serve the Modifying Order, in disposition of the proceeding.
4. This Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that any law or order has been violated.
5. When final, the Modifying Order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Modifying Order shall become final upon service. Delivery of the Modifying Order to Respondent by any means provided in Commission Rule 4.4(a), 16 C.F.R. § 4.4(a) – including, but not limited to, delivery to Respondent's Counsel as identified in the Consent Agreement – shall constitute service. Respondent waives any right it may have to any other manner of service.
6. The Order to Show Cause may be used in construing the terms of the Modifying Order, and no agreement, understanding, representation, or interpretation not contained in the Order to Show Cause or the Modifying Order may be used to vary or contradict the terms of the Modifying Order.
7. By signing the Consent Agreement, Respondent represents and warrants that it can accomplish the full relief contemplated by the attached Modifying Order and that all parents, subsidiaries, affiliates, and successors necessary to effectuate the full relief contemplated by the Consent Agreement are parties to the Consent Agreement and are bound thereby as if they had signed this Consent Agreement and were made parties to this proceeding and to the Modifying Order.
8. Respondent has read the draft of the Order to Show Cause and the Modifying Order. Respondent understands that once the Modifying Order has been issued, Respondent will be required to file one or more compliance reports showing how it has complied, and is complying with the Modifying Order. Respondent agrees to comply with the terms of the proposed Modifying Order from the date it signs this Consent Agreement; provided, however, that Respondent will have no obligation to comply with the terms of the proposed Modifying Order if the Commission withdraws its acceptance of this Consent Agreement. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Modifying Order after it becomes final.

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STAR PIPE PRODUCTS, LTD.

By: 

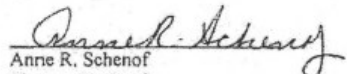
Daniel W. McCutcheon
President
Star Pipe Products, Ltd.

Dated: _____, 2016

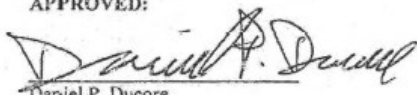
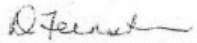
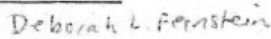

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Counsel for Star Pipe Products, Ltd.

Dated: _____, 2016

FEDERAL TRADE COMMISSION


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IN THE MATTER OF

**PFIZER INC.,
AND
WYETH**

Docket No. C-4267. Order, April 4, 2016

Order granting the Petition of Respondent Pfizer Inc. to Reopen and Modify Decision and Order for the limited purpose of setting aside the Order as to Pfizer, and continuing as to its successor, Zoetis.

ORDER REOPENING AND MODIFYING ORDER

Pfizer Inc. (“Pfizer”) filed a Petition of Respondent Pfizer Inc. to Reopen and Modify Decision and Order (“Petition”) on December 8, 2015. Pfizer is a Respondent to the consent order issued by the Commission in *Pfizer Inc. et al.*, Docket No. C-4267 (“Order”), which required Pfizer to divest certain animal health assets and imposed related remedial obligations. Since the divestiture, Pfizer has transferred its animal health business, and all related assets and liabilities, to Zoetis Inc. (“Zoetis”), and Zoetis has expressly agreed to be bound to the Order. Pfizer now asks that this proceeding be reopened for the limited purpose of setting aside the Order as to Pfizer, and continuing as to its successor, Zoetis. Pfizer’s Petition was available for public comment for thirty days until January 22, 2016 and no public comments were filed. For the reasons stated below, the Commission has determined to grant Pfizer’s Petition and reopen and modify the Order as requested.

BACKGROUND

The Commission issued the Order on January 25, 2010, to resolve concerns regarding the competitive impact of Pfizer’s 2009 acquisition of Wyeth. At the time, Pfizer and Wyeth were both involved in human health and animal health businesses. The proposed combination of Pfizer and Wyeth created competitive concerns in a number of animal health markets, but it did not raise concerns regarding human health markets. To resolve these concerns, the Order required Pfizer to divest a substantial number of animal health products and related assets to Boehringer