Analysis to Aid Public Comment
In the Matter of Charlotte Pipe and Foundry, File No. 111-0034

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 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.

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 the 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.

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 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.

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