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February 6, 2012

**VIA ONLINE FORM AT**

**<https://ftcpublishcommentworks.com/ftc/sigmaconsent/>**

Federal Trade Commission  
Office of the Secretary  
Room H-135  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Re: *In the Matter of Sigma Corporation*, File No. 101 0080

Honorable Commissioners of the United States Federal Trade Commission:

On behalf of Electrosteel USA, LLC (“EUSA”), which competes with Sigma Corporation (“Sigma”) in the ductile iron pipe fittings industry (the “Industry”), undersigned counsel for EUSA respectfully submits these comments regarding the Federal Trade Commission’s proposed consent order with Sigma. EUSA submits these comments in the spirit of restoring and promoting competition, not to serve its individual interests.

EUSA welcomes the Commission’s efforts to address the collusive and exclusionary behavior that has served to stifle competition in the Industry. However, despite the Commission’s laudable enforcement efforts, EUSA maintains concerns that the proposed remedial measures may fall short of reestablishing legitimate competition among all market participants.

In light of the identical price increases on domestic and imported fittings announced by both Sigma and Star Pipe Products Ltd. (“Star,” alleged to be a coconspirator in the Commission’s complaint) on January 20, 2012 – a mere two weeks from the date of the entry of the Sigma consent order – we must ask whether the alleged wrongdoers either continue to engage in improper communications regarding prices or their historic exchanges of proprietary information and market data continue to taint the pricing process.

EUSA respectfully proposes that the Commission consider implementing the following remedial measures – in addition to those set forth in the proposed consent order

– in order to preclude Sigma and its coconspirators from continuing to benefit from their improper activities.

Having routinely shared their own proprietary and sensitive market data, the alleged coconspirators continue to operate at an advantage relative to the non-conspiring competitors with no access to that improperly acquired knowledge. Restrictions on the alleged coconspirators' ability to share such information in the future do not address the fact that, once the information is learned, even the Commission cannot order the conspirators to forget it; once rung, the bell cannot be unrung. The longstanding equitable maxim that a wrongdoer should not benefit (and in this case continue to benefit) from its wrongdoing applies in this circumstance. Accordingly, EUSA respectfully proposes that the Commission impose a further remedial measure of requiring immediate public disclosure of all historical data that is six months old or older that was improperly shared among Sigma, Star, and McWane (through the Ductile Iron Fittings Research Association ("DIFRA") or otherwise), including data pertaining to annual sales and geographic demand. Further, the same rationale applies to sensitive data pertaining to the scope and size of rebates offered to distributors. To the extent that any such information was improperly exchanged among the alleged coconspirators through DIFRA or otherwise, EUSA requests that it, too, be disclosed publicly.

These remedial measures would serve as an initial step in restoring a competitive market by leveling the playing field for those firms that did not participate in the unlawful exchanges of information and prices. By providing access to the improperly-shared information that previously enabled the wrongdoers an unfair advantage in the marketplace, the innocent companies would be better equipped to compete.

Finally, the improper activities of the alleged coconspirators could have a lasting effect on the end users of ductile iron pipe fittings ("DIPF"): the 59,000 public utilities in the United States that rely on DIPF. In EUSA's experience, many utilities that let a project for bid maintain the mistaken belief that their receipt of bids from two or three competitors for a particular input (in this instance, DIPF) is somehow indicative of the existence of a competitive market. That is, utilities, satisfied with the receipt of, *e.g.*, two or three separate prices, do not inquire further as to the inherent fairness or competitiveness of those prices. Thus, many utilities draft specifications listing, *e.g.*, only the materials of three approved suppliers of ductile iron pipe fittings. Often, these specifications remain in place for considerable periods of time, and many utilities often neglect to conduct regular reexaminations of their material specifications. Thus, a number of utilities in the United States are likely unaware that the prices they paid for DIPF between 2009 and 2011 may have been artificially inflated and that the receipt of three separate prices for DIPF – especially when those three prices came from Sigma, Star, and McWane, Inc. – did not necessarily reflect true competition. In light of the varying degrees of sophistication and market awareness among the 59,000 public utilities

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in the United States, EUSA proposes that the Commission issue a public notice describing the potential impact on utilities of the alleged coconspirators' improper behavior and encouraging, or at least suggesting, that the utilities reexamine their material specifications.

Thank you.

Sincerely,

Charles C. Murphy, Jr.  
Vaughan & Murphy  
Attorney for EUSA