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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Edith Ramirez, Chairwoman**
Maureen K. Ohlhausen
Terrell McSweeny

In the Matter of **Fortiline, LLC** **a North Carolina Limited Liability Company.**	)	**DOCKET NO.**

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 ("Commission"), having reason to believe that Fortiline, LLC (hereinafter sometimes referred to as "Fortiline" or "Respondent"), has violated the provisions of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint stating its charges as follows:

Nature of the Case

1. Fortiline, a distributor of ductile iron pipe ("DIP"), invited a rival to raise and fix prices in North Carolina and Virginia. By inviting collusion, Fortiline endangered competition and violated Section 5 of the FTC Act.

Respondent

2. Fortiline is a limited liability company organized, existing, and doing business under and by virtue of the laws of North Carolina, with its principal place of business located in Concord, North Carolina.

3. Fortiline distributes waterworks infrastructure products, such as pipe (including DIP), tubing, valves, fittings, and piping accessories.

4. Fortiline is the third largest distributor of waterworks infrastructure products in the United States, operating approximately 37 branches in 12 states throughout the Southeast, the Mid-Atlantic, the Midwest, and Texas.

Jurisdiction

5. At all times relevant herein, Fortiline has been, and is now, a corporation as "corporation" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

6. The business practices of Fortiline, including the acts and practices alleged herein, are in commerce or affect commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

DIP Industry

7. DIP is a commodity product used in underground waterworks distribution systems and water treatment plants. End users of DIP are primarily municipalities and water utilities. For a typical project, the end user seeks bids from multiple contractors.

8. Contractors, in turn, solicit DIP bids from waterworks infrastructure distributors (such as Fortiline) and/or directly from DIP manufacturers. Contractors that buy direct from DIP manufacturers often pay a lower price, but forgo value-added services that distributors provide.

9. At all times relevant herein, each of the major DIP manufacturers in the United States periodically published to its distributors a nationwide "price list" or "pricing schedule." Sometimes, instead of publishing a new price list, a DIP manufacturer announced a price adjustment stated in terms of a "multiplier," a decimal number by which the published price was multiplied to arrive at the new price. A higher multiplier translated to a higher price for DIP.

The Manufacturer A – Fortiline Relationship

10. From its founding in 1997 until late 2009, most Fortiline branches distributed only DIP manufactured by Manufacturer A.

11. On or about December 14, 2009, Fortiline terminated Manufacturer A as its DIP supplier in North Carolina and in most of Virginia. After December 14, 2009, Fortiline branches in this region bid on new waterworks projects with DIP manufactured by Manufacturer B, a rival of Manufacturer A.

12. After December 14, 2009, some Fortiline branches outside of North Carolina and most of Virginia continued to distribute Manufacturer A's DIP. In addition, even though Fortiline terminated Manufacturer A in North Carolina, Fortiline continued to supply

Manufacturer A's DIP to North Carolina contractors as needed to complete projects where Fortiline had, prior to December 14, 2009, submitted to the contractor a bid specifying Manufacturer A's DIP.

13. Fortiline's termination of Manufacturer A in North Carolina and most of Virginia left Manufacturer A without a major distributor in that region. In response, Manufacturer A began to market and sell DIP direct to contractors in North Carolina and most of Virginia, in competition with North Carolina/Virginia distributors and their DIP suppliers, including Fortiline and its new supplier Manufacturer B.

14. Manufacturer A did not offer North Carolina and Virginia contractors the value-added services provided by distributors. In order to entice contractors to forgo those services and to buy directly from Manufacturer A, Manufacturer A offered lower prices to contractors.

15. Fortiline and other distributors (in conjunction with their DIP suppliers) reduced their prices in order to compete with Manufacturer A's lower prices.

Invitations to Collude

16. On two occasions in 2010, when Fortiline and Manufacturer A were competing against one another to sell DIP in North Carolina and most of Virginia, Fortiline communicated to Manufacturer A an invitation to collude on DIP pricing in that region.

17. On February 12, 2010, the chief executive officer and the vice president of sales for Fortiline met with Manufacturer A's vice president of sales. Among other things, they discussed Manufacturer A's practice of selling direct in North Carolina and most of Virginia at low prices.

18. During the evening of February 12, 2010, Fortiline's vice president of sales forwarded to Manufacturer A's vice president of sales an email reporting on market conditions in North Carolina. The email detailed Manufacturer A's practice of undercutting its rivals' prices. In contrast, the email stated, other major DIP manufacturers "have been trying to keep their numbers up thus far." The Fortiline email included the following commentary: "This is the type of irrational behavior [by Manufacturer A] that we were discussing earlier today. With this approach we will be at a .22 [multiplier] soon instead of a needed .42."

19. In substance, the February 12, 2010, email communicated Fortiline's dissatisfaction with Manufacturer A's low pricing in North Carolina, and its preference that both Fortiline and Manufacturer A bid to contractors using the higher .42 multiplier.

20. Eight months later, on October 26, 2010, executives from Fortiline and Manufacturer A met again, this time at a trade association meeting. At the meeting, Fortiline complained that Manufacturer A had sold direct to a Virginia customer (that had previously purchased from Fortiline) at a 0.31 multiplier, and that this price was "20% below market."

21. In substance, this conversation communicated Fortiline's dissatisfaction with Manufacturer A's low pricing in Virginia, and its preference that both Fortiline and Manufacturer A bid to contractors using a substantially higher multiplier in that region.

Violation Charged

22. As set forth in Paragraphs 16 through 21 above, Fortiline invited a competitor to raise and fix prices for DIP in North Carolina and Virginia, in violation of Section 5 of the Federal Trade Commission Act, as amended. The acts and practices of Fortiline, as alleged herein, constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended. Such acts and practices of Fortiline may continue or recur in the absence of appropriate relief.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this day of , 2016, issues its complaint against Respondent.

By the Commission.

Donald S. Clark
Secretary

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