

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

WESTINGHOUSE ELECTRIC CORPORATION;
CHALLENGER ELECTRICAL EQUIPMENT
CORPORATION; AND AMERICAN
PROPERTIES CORPORATION,

Defendants.

Civil No. 87-3528

Filed: 12/30/87

Antitrust

Judge Oberborfer

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16(b)-(h)), the United States of America files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry with the consent of Westinghouse Electric Corporation, Challenger Electrical Equipment Corporation, and American Properties Corporation in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

This civil proceeding began on December 30, 1987 when the United States filed a complaint alleging that the proposed acquisition by Westinghouse Electric Corporation (hereinafter "Westinghouse") of Challenger Electrical Equipment Corporation (hereinafter "Challenger"), including certain of its residential circuit breaker production facilities, would

violate Section 7 of the Clayton Act (15 U.S.C. § 18). The complaint alleges that the effect of the acquisition by Westinghouse of the Challenger facilities pursuant to their acquisition agreement may be substantially to lessen competition in the production and sale in the United States of residential circuit breakers. A circuit breaker acts as an overcurrent protection device by interrupting the flow of electric current in the event of a power overload. Residential circuit breakers, which carry ratings from 15 to about 100 amperes, are designed to be clipped into load centers, which are metal boxes that hold the circuit breakers, and are used in residential dwellings and small commercial buildings. The complaint requests that Challenger's residential circuit breaker plant located at Albemarle, North Carolina be divested to a purchaser able promptly to become a viable independent competitor in the production and sale in the United States of residential circuit breakers.

The United States, Westinghouse, Challenger, and American Properties Corporation (hereinafter "American") have agreed that the proposed Final Judgment may be entered after compliance with the Antitrust Procedures and Penalties Act. Entry of the proposed Judgment will terminate the action, except that the Court will retain jurisdiction to construe, modify, and enforce the Judgment, and to punish violations of the Judgment.

II. EVENTS GIVING RISE TO THE ALLEGED VIOLATION

Westinghouse and Challenger entered into an agreement on October 1, 1987, pursuant to which Westinghouse would acquire Challenger, including all of its plants that produce residential circuit breakers, except for a plant located in Albemarle, North Carolina at which Challenger produces its Stab-Lok line of residential circuit breakers. Under the agreement, Westinghouse also would preclude the Challenger shareholders who would own the Albemarle plant, which they plan to sell after the acquisition, from producing a compatible line of load centers for the Stab-Lok breakers. The purchase price to be paid by Westinghouse is \$195 million.

Westinghouse and Challenger both produce a broad line of electrical equipment for residential and commercial construction markets. Westinghouse reported total 1986 sales of about \$11 billion, and Challenger reported total 1986 sales of about \$260 million. Both firms currently manufacture residential circuit breakers. Westinghouse produces residential circuit breakers at facilities located in Aguas Buenas and San Lorenzo, Puerto Rico and in the Dominican Republic. Westinghouse's 1986 sales of residential circuit breakers totaled about \$35 million. Challenger produces residential circuit breakers at facilities located in Caquas, Comerio, and Canovana in Puerto Rico, as well as at the Albemarle facility. Its 1986 residential circuit breaker sales totaled about \$56 million.

The complaint alleges that the production and sale of residential circuit breakers is a relevant product market for antitrust purposes. Circuit breakers are installed in virtually all new residential construction. Fuses, the only functional substitutes for circuit breakers, are considerably less convenient and less durable than circuit breakers. Industrial circuit breakers, which are designed to handle high voltage and amperage ratings, cannot be substituted for residential circuit breakers. Electrical contractors do not view fuses or industrial circuit breakers as substitutes for residential circuit breakers, and a small but non-transitory increase in the price of residential circuit breakers would not cause purchasers to switch from residential circuit breakers.

Residential circuit breakers are sold individually for use in a compatible load center. Some residential circuit breakers are discrete in design and will fit only in a particular load center, while others are interchangeable and will fit in load centers produced by several manufacturers.

Residential circuit breaker manufacturers distribute most of their products through electrical distributors to electrical contractors. The contractors install the circuit breakers in load centers in newly constructed homes and small buildings. In addition, a small number of residential circuit breakers are sold as replacements in or additions to already-installed load centers.

Entry into the production and sale of residential circuit breakers requires at least two years. Among the reasons that entry is time consuming are the need for a new entrant to design a full line of residential circuit breakers of all amperages customarily used in residential dwellings, the need to obtain Underwriters Laboratories Incorporated ("UL") approval for the new residential circuit breakers, and the need to offer a circuit breaker that is compatible with a load center suitable for use in newly constructed houses.

UL approval is an important factor in the sale of residential circuit breakers in the United States. UL tests residential circuit breakers for endurance and interrupting capability. UL requires that the tested circuit breakers be samples made on actual production lines rather than prototypes individually constructed.

The complaint alleges that the production and sale in the United States of residential circuit breakers is highly concentrated. In 1986, Challenger, the third largest producer of residential circuit breakers in the United States, accounted for about 13 percent of the market, and Westinghouse, the fifth largest producer, accounted for about 10 percent. Of the remaining eight firms that compete in the United States, only five accounted for more than 5 percent of sales in 1986. Imports of residential circuit breakers accounted for only about 3 percent of total United States sales in 1986. By acquiring Challenger's residential circuit breaker plants

located in Puerto Rico, Westinghouse would become the second largest producer of residential circuit breakers for sale in the United States with a market share of about 20 percent. By requiring that the shareholders of Challenger, the only firm that had produced a load center compatible with the residential circuit breakers it produces at its Albemarle facility, not produce such a load center, Westinghouse would eliminate that facility as a competitor in the production and sale in the United States of residential circuit breakers for use in load centers installed in newly constructed housing. Such an acquisition would increase the Herfindahl-Hirschman Index by about 208 to 1866.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT
AND ITS ANTICIPATED EFFECTS ON COMPETITION

The United States brought this action because the effect of an acquisition by Westinghouse of Challenger's Puerto Rican residential circuit breaker production facilities pursuant to their acquisition agreement may be substantially to lessen competition in violation of Section 7 of the Clayton Act in the production and sale of residential circuit breakers in the United States. The risk to competition posed by this acquisition substantially would be eliminated through the sale of Challenger's Albemarle, North Carolina plant to a purchaser that would operate the plant as an active and independent competitor in the residential circuit breaker business.

To this end, Section IV of the proposed Final Judgment would require that Westinghouse release the shareholders of American from the covenant not to compete with the residential circuit breaker plant located at Albemarle, North Carolina, that Challenger transfer the Albemarle residential circuit breaker plant to American, a corporation owned by those Challenger shareholders, and that American be sold to a purchaser that has the intent and capability to compete promptly and effectively in the production and sale of residential circuit breakers. Until the sale is completed, American must not take any action that would jeopardize its sale as a viable producer of residential circuit breakers and shall preserve itself as a viable producer of such circuit breakers.

Under this section, the Court would appoint a trustee to sell American. Only the trustee would have the right to sell the company. Westinghouse would be required to pay all of the trustee's expenses in selling American.

Section VI of the proposed Final Judgment would provide the United States an opportunity to review any proposed sale before it occurs. Under Section VI, if the United States were to request information from American to assess a proposed sale, the sale could not be consummated until 15 days after American supplied the information. If the United States were to request information from the proposed purchaser, the sale could not be consummated until the United States certified in writing that

it was satisfied that the proposed purchaser has provided the additional information. If the United States were to object to a sale of American, the sale could not be completed.

Section IX would provide that the Final Judgment would expire on the third anniversary of the required sale of American.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage actions. Under provision of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), entry of the proposed Final Judgment would have no prima facie effect in any subsequent private lawsuit that may be brought against the defendants.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States, Westinghouse, Challenger, and American have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the Antitrust Procedures and Penalties Act, provided that the United States has not withdrawn its consent. The Act conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The Act provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wants to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to:

P. Terry Lubeck, Chief
Litigation II Section
Antitrust Division
U.S. Department of Justice
555 4th Street, N.W.
Judiciary Center Building, Room 10-437
Washington, D.C. 20001

Under Section VIII of the proposed Final Judgment, the Court would retain jurisdiction over this matter for the purpose of enabling the United States or the defendants to apply to the court for such further orders or directions as may be necessary or appropriate for the construction, implementation, modification, or enforcement of compliance with the Judgment, or for the punishment of any violations of the Judgment.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment would require that Challenger's Stab-Lok residential circuit breaker business be sold through a court appointed trustee to a purchaser that would use the business promptly to become a viable competitor in the newly constructed housing segment of the residential circuit breaker business. Thus, it would assure that Challenger's former Stab-Lok business would remain a viable business separate from Westinghouse and an active competitor to Westinghouse in the United States market for residential circuit breakers.

Compliance with the proposed Final Judgment and the completion of the sale required by the Judgment would resolve the competitive concerns raised by the proposed transaction. The lessening of competition due to the acquisition of these Challenger facilities would be corrected by reestablishing the Stab-Lok business as a viable independent competitor.

The only alternative considered to settling this action pursuant to the proposed Final Judgment was for the United States to file suit and seek a preliminary injunction to enjoin Westinghouse's acquisition of Challenger's Puerto Rican residential circuit breaker plants. The United States rejected this alternative because the sale required under the Final Judgment should establish a viable independent competitor in the United States residential circuit breaker market and prevent the acquisition from having a significant anticompetitive effect in that market. The government believes

that in the hands of an appropriate purchaser, the Albemarle facility quickly could account for a substantial share of the domestic residential circuit breaker market. In 1986, Stab-Lok's residential circuit breaker sales totaled about \$21 million, over 5 percent of the United States residential circuit breaker market. The plant has substantial excess capacity and its products utilize a well-known trademark.

Under the circumstances, the government determined that the public interest in preserving competition in the United States residential circuit breaker market would be served best by obtaining an enforceable consent decree requiring the sale of the Albemarle facility and by filing the decree with the Court prior to the consummation of any part of the proposed acquisition. Although the proposed Final Judgment may not be entered until the criteria established by the Antitrust Procedures and Penalties Act (15 U.S.C. § 15(b)-(h)) have been satisfied, the public will benefit immediately from the safeguards in the proposed Final Judgment because the defendants have stipulated to comply with the terms of the Judgment pending its entry by the Court.

VII. DETERMINATIVE DOCUMENTS

No documents were determinative in the formulation of the proposed Final Judgment. Consequently, the United States has

not attached any such documents to the proposed Final Judgment.

Dated: December 30, 1987

Respectfully submitted,

Willie L. Hudgins, Jr.

Willie L. Hudgins, Jr.

Attorney

U.S. Department of Justice

Antitrust Division

555 4th Street, N.W.

Judiciary Center Building

Washington, D.C. 20001

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

WESTINGHOUSE ELECTRIC CORPORATION;
CHALLENGER ELECTRICAL EQUIPMENT
CORPORATION; AND AMERICAN
PROPERTIES CORPORATION,

Defendants.

Civil No.

Filed:

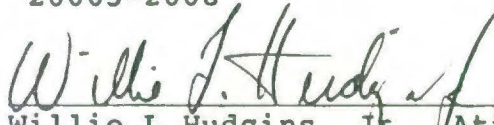
Antitrust

CERTIFICATE OF SERVICE

I, Willie L. Hudgins, Jr., hereby certify that a copy of the attached plaintiff's Competitive Impact Statement has been served this 30th day of December, 1987, by depositing said document in the United States mail with postage prepaid to:

Sidney S. Rosdeitcher
Paul, Weiss, Rifkind, Wharton & Garrison
1285 Avenue of the Americas
New York, NY 10019

Joe Sims
Jones, Day, Reavis & Pogue
Metropolitan Square
1450 G. Street, N.W.
Washington, DC 20005-2008


Willie L. Hudgins, Jr., Attorney
U.S. Department of Justice
Antitrust Division
Rm. 10-437, 555 4th St., N.W.
Washington, DC 20001
202/724-7990