

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
GENERAL ELECTRIC COMPANY,
Defendant.

Civil No. 86-1578
Filed: June 6, 1986
File No.
ENTERED: 12/12/86

FINAL JUDGMENT

WHEREAS, plaintiff, United States of America, having filed its Complaint herein on June 6, 1986, and plaintiff and defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

AND WHEREAS, the defendant has agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, prompt and certain divestiture is the essence of this agreement and the defendant has represented to the plaintiff that the divestiture required below can and will be made and that defendant will later raise no claims of hardship or difficulty as

grounds for asking the Court to modify any of the divestiture provisions contained below:

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

ORDERED, ADJUDGED and DECREED as follows:

I.

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against defendant under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II.

As used in this Final Judgment:

A. "GE" means the defendant General Electric Company; each division, subsidiary or affiliate thereof; and each officer, director, employee, attorney, agent, or other person acting for or on behalf of any of them.

B. "RCA" means RCA Corporation; each division, subsidiary, or affiliate thereof; and each officer, director, employee, attorney, agent, or other person acting for or on behalf of any of them.

After the merger of GE and RCA, for purposes of this Final Judgment, RCA shall be defined to include all assets currently used in connection with the vacuum tube businesses of the New Products Division of the former RCA Corporation as well as each person acting for or on behalf of any of those businesses.

C. "Person" means any natural person, corporation, association, firm, partnership, or other business or legal entity.

D. "Vidicon tubes" means silicon and antimony trisulfide target imaging tubes sold for United States military applications.

E. "Vidicon tube business" means all tangible and intangible assets (including, but not limited to, exclusive rights to all proprietary technology and other proprietary business information) solely dedicated to GE's existing business operation of researching, developing, engineering, testing, qualifying, manufacturing, and selling vidicon tubes, which is based at GE's Microwave Products Department.

F. "Microwave Products Department" means GE's Microwave Products Department located in Owensboro, Kentucky, which is part of GE's Aerospace Business Group.

III.

A. The provisions of the Final Judgment shall apply to GE, its successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Except for Section IV.D. of this Final Judgment, nothing herein contained shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party and nothing herein shall be construed to provide any rights to any third party.

C. GE shall require, as a condition of the sale or other disposition of all or substantially all of its assets or stock, that the acquiring party agree to be bound by the provisions of this Final Judgment.

IV.

A. GE having committed itself to merge with RCA pursuant to an Agreement of Merger dated December 11, 1985, GE is hereby ordered and directed, no later than November 30, 1986, to divest to a purchaser all of its direct and indirect ownership and control of its vidicon tube business. The obligation to divest shall be satisfied if, by November 30, 1986, GE enters into a binding contract for sale of its vidicon tube business to a purchaser and according to terms approved by plaintiff that is contingent only upon compliance with the terms of this Final Judgment and that specifies a prompt and reasonable closing date no later than January 1, 1987, and if sale is completed pursuant to the contract.

B. Divestiture of GE's vidicon tube business shall be accomplished in such a way as to satisfy plaintiff that GE's vidicon tube business can and will be operated by the purchaser as a viable, ongoing business, engaged in the production and sale of vidicon tubes. Divestiture shall be made to a purchaser for whom it is demonstrated to plaintiff's satisfaction that (1) the purchase is for the purpose of competing effectively in the production and sale of vidicon tubes and (2) the purchaser has the

managerial, operational, and financial capability to compete effectively in the manufacture and sale of vidicon tubes.

C. Divestiture shall not be made without plaintiff's permission to a producer or a firm that has been qualified to become a producer of silicon or antimony trisulfide target vidicons for military applications.

D. In accomplishing the divestiture of its vidicon tube business ordered by this Final Judgment, GE shall make known in the United States, by usual and customary means, the availability of its vidicon tube business for sale. GE shall notify any person making an inquiry regarding the possible purchase of its vidicon tube business that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. GE also shall furnish, to all bona fide prospective purchasers who so request, and subject to customary confidentiality assurances, all pertinent information regarding its vidicon tube business, including separate lists of (1) all assets solely dedicated to, and (2) all assets used by GE but not solely dedicated to, GE's existing business of researching, developing, engineering, testing, qualifying, manufacturing, or selling vidicon tubes. GE shall provide such information to the plaintiff at the time it furnishes such information to any other person, but no later than September 30, 1986. GE also shall permit all bona fide prospective purchasers to have access to personnel at GE's Microwave Products Department who have

responsibilities for GE's vidicon tube business and to make such inspection of physical facilities and any and all financial, operational, or other documents and information as may be relevant to the sale of its vidicon tube business.

E. In carrying out its obligations to divest its vidicon tube business as required by this Final Judgment, GE may divest its vidicon tube business alone, or as part of a divestiture that includes other vacuum tube product lines, or as part of a divestiture of all the vacuum tube product lines produced by GE's Microwave Products Department.

V.

A. If GE has not accomplished by November 30, 1986 the divestiture required by Section IV of this Final Judgment, the Court shall, upon application of plaintiff, appoint a trustee to effect the divestiture. Such appointment shall become effective on November 30, 1986 or as soon thereafter as the Court appoints the trustee. After the trustee's appointment becomes effective, only the trustee, and not GE, shall have the right to sell GE's vidicon tube business. The trustee shall be a nationally recognized member of the investment banking community with experience and expertise in acquisitions and divestitures. The trustee shall have the power and authority to accomplish the divestiture at such price and on such terms as are then obtainable upon a reasonable effort by the trustee, subject to the provisions of Paragraph VI of this Final Judgment, and shall have such other

powers as the Court deems appropriate. GE shall use all reasonable efforts to assist the trustee in accomplishing the required divestiture. GE shall not object to a sale by the trustee on any grounds other than malfeasance. Any such objection by GE must be conveyed in writing to the plaintiff and the trustee within fifteen (15) days after the trustee has notified GE of the proposed sale.

B. If the trustee has not accomplished the required divestiture within ninety (90) days from the date of the trustee's appointment, the trustee shall have the power and authority to accomplish the divestiture by divesting the vidicon tube business alone, or as part of a divestiture that includes any or all other product lines or assets located at the Owensboro operations of GE's Microwave Products Department.

C. If GE has not divested its ownership interest in its vidicon tube business by September 30, 1986, GE shall notify plaintiff of that fact. If GE still has not divested all of its ownership interest in its vidicon tube business within ten (10) days thereafter, the plaintiff shall provide GE with written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. GE will notify plaintiff within ten (10) days thereafter whether either or both of such nominees are acceptable. If either or both of such nominees are acceptable to GE, plaintiff shall notify the Court of the person or persons upon

whom the parties have agreed and the Court shall appoint one of the nominees as the trustee. If neither of such nominees is acceptable to GE, it shall furnish to the plaintiff, within ten (10) days after the plaintiff provides the names of its nominees, written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. Plaintiff shall furnish the Court the names and qualifications of its proposed nominees and the names and qualifications of the nominees proposed by GE. The Court may hear the parties as to the qualifications of the nominees and shall appoint one of the nominees as the trustee.

D. The trustee shall serve at the cost and expense of GE, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from a sale of GE's vidicon tube business and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services, all remaining monies shall be paid to GE and the trust shall be terminated. The compensation of such trustee shall be based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

E. - The trustee shall have full and complete access to the personnel, books, records and facilities of GE's Microwave Products Department, and GE shall develop such financial or other information relevant to the business or assets to be divested as

the trustee may request. GE shall take no action to interfere with or impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish divestiture as contemplated under this Final Judgment. If the trustee has not accomplished such divestiture within six (6) months after the trustee's appointment, the trustee shall thereupon promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which shall, if necessary, include extending the term of the trust and the term of the trustee's appointment.

VI.

At least thirty (30) days prior to the scheduled closing date of the proposed divestiture pursuant to Section IV or V of this Final Judgment, GE or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the plaintiff of the proposed divestiture. If a trustee is responsible, it shall similarly notify GE. The notice shall set

forth the details of the proposed transaction and for each person not previously identified who offered or expressed an interest or desire to acquire any ownership interest in GE's vidicon tube business, the name, address, and telephone number of that person together with full details of that person's interest or desire to acquire such ownership interest. Within fifteen (15) days after receipt of notice of the proposed divestiture, the plaintiff may request from GE and the proposed purchaser additional information concerning the proposed divestiture. GE shall furnish the additional information requested from it within twenty (20) days of the receipt of the request, unless plaintiff shall agree to extend the time. Until plaintiff certifies in writing that it is satisfied that the proposed purchaser has provided the additional information requested from it, the divestiture shall not be consummated. Within thirty (30) days after receipt of the notice or within fifteen (15) days after receipt of the additional information from GE and the proposed purchaser, whichever is later, unless GE shall agree to extend the time, plaintiff shall notify in writing GE and the trustee, if there is one, if it objects to the proposed divestiture. If plaintiff fails to object within the period specified, or if plaintiff notifies in writing GE and the trustee, if there is one, that it does not object, the divestiture may be consummated, subject only to GE's right to object to the sale under the proviso in Section V.A. Upon objection by the plaintiff, a divestiture proposed under

Section IV shall not be consummated. Upon objection by the plaintiff, a divestiture proposed under Section V shall not be consummated unless approved by the Court. Upon objection by GE under Section V.A., the proposed divestiture shall not be consummated unless approved by the Court.

VII.

GE shall not finance without plaintiff's permission:

A. All or any part of the purchase of its vidicon tube business pursuant to the divestiture required by Section IV or V of this Final Judgment.

B. All or any part of the purchase of any product line, or assets related thereto, permitted to be part of the divestiture by Section IV.E. of this Final Judgment, when such purchase is made in connection with the divestiture required by Section IV or V of the Final Judgment.

VIII.

GE shall abide by the following hold-separate provisions:

A. GE shall take all steps necessary to assure that none of its proprietary technology and other proprietary business information specific to its vidicon tubes business is transferred, or otherwise becomes known or available, to RCA, or used by GE or RCA to compete with the business to be divested. Notwithstanding the foregoing, GE may designate up to five (5) senior GE executives to provide management assistance and professional guidance to GE's vidicon tube business until the divestiture

ordered in this Final Judgment occurs, and only these persons can receive such technology and other information as is reasonably necessary to carry out those functions, but they may not disclose any of it to any person other than those persons directly involved in GE's vidicon tube business, except as provided in Section IV.D. and V.A. of this Final Judgment. Nothing in this paragraph shall prohibit GE from acquiring technology or other business information from the successor to GE's vidicon tube business as a result of arm's-length bargaining conducted after the divestiture required by this Final Judgment has been accomplished.

B. GE shall:

- (1) Take all steps necessary to assure that GE's vidicon tube business will be maintained as a separate entity with its assets and operations separate, distinct, and apart from those of GE or RCA;
- (2) Take no steps with respect to the operation of GE's vidicon tube business, except in the ordinary course of business, that negatively would impact its ability to maximize its profits, regardless of any actual or possible negative impact on GE's or RCA's profits;
- (3) Refrain from terminating or reducing one or more current employment, salary, or benefit agreements for one or more management,

engineering, or other technical personnel of GE's vidicon tube business, except in the ordinary course of business, without prior approval of plaintiff;

(4) Maintain normal repair and maintenance schedules at GE's vidicon tube business and at least preserve such schedules as they currently exist;

(5) Preserve GE's vidicon tube business as an active competitor against RCA in the market for vidicon tubes;

(6) Refrain from altering or selling any assets of GE's vidicon tube business, except in the ordinary course of business, or from taking any action that would have the effect of reducing the scope of GE's vidicon tubes manufacturing or sales operations or reducing the scope or restricting the rate of development of its product line from that existing at the time of the filing of the Complaint in this civil action, without the prior approval of the plaintiff;

(7) Refrain from taking any action that would jeopardize the sale of GE's vidicon tube business as a viable competitor in any market in which it participated at the time of the filing of the Complaint in this civil action;

- (8) Refrain from reducing any funding of GE's vidicon tube business existing at the time of the filing of the Complaint in this civil action, without prior approval of the plaintiff; and
- (9) Grant any reasonable request from GE's vidicon tube business for additional funding and provide written notice to plaintiff within five (5) days of the denial of any such request for additional funding, including a statement of the request and GE's reasons for its denial.

IX.

Forty-five (45) days from the date of filing of the Complaint in this civil action and every forty-five (45) days thereafter until the divestiture required by Section IV or V has been completed, GE shall submit in writing to the plaintiff a verified written report setting forth in detail the fact and manner of compliance with Section IV or V, as the case may be, and Section VIII of this Final Judgment. Each such report of compliance with Section IV shall include, for each person who, during the preceding forty-five (45) days, made an offer to acquire, expressed an interest or desire to acquire, entered into negotiations to acquire, or made an inquiry about acquiring any ownership interest in GE's vidicon tube business, the name, address, and telephone number of that person and a detailed

description of each contact with that person during that period. GE shall maintain full records of all efforts made to divest the vidicon tube business. With respect to Section VIII, such report of compliance shall also describe the status of GE's efforts during the preceding forty-five (45) days to qualify vidicon tubes for use by the military, to bid upon, submit unsolicited proposals or quotations for, or otherwise obtain contracts to supply vidicon tubes. GE shall maintain full records for all such efforts.

X.

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to GE made to its principal office, be permitted:

- (1) Access during office hours of GE to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of GE, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of GE and without restraint or interference from it, to interview officers, employees and agents of GE, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to GE's principal office, GE shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section X shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by GE to plaintiff, GE represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and GE marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice

shall be given by plaintiff to GE prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI.

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII.

This Final Judgment will expire on the third anniversary of the completion of the divestiture required herein.

XIII.

Entry of this Final Judgment is in the public interest.


UNITED STATES DISTRICT JUDGE

Dated: 12 December 1986