

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

Civil Action No. 86-1578

Filed: 6/6/86

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 General Electric Company in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

This civil action began on June 6, 1986, when the United States filed a complaint alleging that the proposed merger of General Electric Company (hereinafter "GE") and RCA Corporation (hereinafter "RCA") violated Section 7 of the Clayton Act (15 U.S.C. § 18). The complaint alleges that the effect of the merger of GE and RCA may be substantially to

lessen competition in the United States in the production and sale for military applications of two types of vidicon tubes, those with component targets made of silicon and those with component targets made of antimony trisulfide. These tubes are used in television cameras to convert an optical image into an electrical signal. The complaint requests that GE be required to divest its vidicon tube business and to continue until divestiture occurs to operate that business as an active competitor in the production and sale of vidicon tubes for military applications.

The United States and GE have stipulated 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

GE and RCA entered into a merger agreement dated December 11, 1985, providing for GE to acquire for approximately \$6.28 billion all of the common shares of RCA. GE also was to acquire for approximately \$145 million two classes of RCA preferred stock. Pursuant to the agreement, holders of RCA stock would receive cash.

The merger would be carried out by merging Gesub, Inc. (Gesub), a wholly-owned subsidiary of GE, into RCA with RCA as the surviving company. Each outstanding share of Gesub would be converted into one share of RCA common stock. As the surviving entity, RCA would then become a wholly owned subsidiary of GE. All RCA authorized and issued common and preferred stock would cease to exist upon effectuation of the merger.

GE and RCA both are large, diversified companies. GE reported total 1984 sales of about \$30 billion and RCA reported total 1984 sales of about \$10 billion. Both firms currently manufacture and sell silicon and antimony trisulfide target vidicon tubes. GE produces vidicon tubes, along with other electron tubes, through its Microwave Products Department of its Defense Systems Division, at its plant in Owensboro, Kentucky. GE's military vidicon tube sales in 1984 totalled approximately \$5 million. RCA produces vidicon tubes through its New Products Division at a plant in Lancaster, Pennsylvania. RCA's military vidicon tube sales in 1984 totalled approximately \$2 million.

The complaint alleges that GE and RCA together account for about 99 percent of sales of silicon target vidicon tubes for United States military applications and about 90 percent of sales of antimony trisulfide target vidicon tubes for United States military applications.

Although some other firms purchase silicon targets and assemble the vidicon tubes using these targets, GE and RCA are the only two domestic producers of silicon targets, and two of five domestic producers of antimony trisulfide target vidicon tubes. The total amount of commerce impacted is currently about \$7 million, \$2 million for the silicon target vidicon tubes and \$5 million for the antimony trisulfide target vidicon tubes. By 1990, the amount is projected to quadruple to about \$29 million, split nearly evenly between the two types of vidicon tubes.

The complaint alleges that the production and sale of silicon target vidicon tubes for United States military applications is a relevant product market for antitrust purposes, as is the production and sale of antimony trisulfide target vidicon tubes for such applications, and that the combination of the vidicon tube businesses of GE and RCA pursuant to the proposed merger may substantially lessen competition in the United States in these markets in violation of Section 7 of the Clayton Act.

Vidicon tubes are used in television cameras to convert an optical image into an electrical signal, which the camera's circuits then amplify and process into a video signal. Commercial television broadcasting, closed-circuit monitor services, medical applications, industrial processes, and

military applications all use vidicon tubes. Their simplicity and compact design have made vidicons the most widely used type of image tube.

Vidicon tubes for military applications are purchased primarily by the military and firms that supply optical sensing equipment to the military. The manufacturer of the camera system in which the vidicons will be used tests them to determine whether they meet the military's specifications. Although they may differ depending upon the system, military specifications generally include standards for blemishes, resolution, picture distortion, sensitivity, and ruggedizing.

Vidicon tubes with silicon targets are highly sensitive and have a broad spectral range, which extends into the near infrared. Because of their near infrared sensitivity, silicon target vidicon tubes are particularly desirable for use in low-light-level cameras at dusk or dawn. Military systems use silicon target vidicon tubes for gunfire control, navigation, and target identification.

Only a few large electronic companies produce silicon targets. The production process requires not just equipment and expertise employed in the electron tube industry but also equipment and expertise employed in the semiconductor industry. Silicon target production is a highly sophisticated, difficult, and demanding process.

Vidicon tubes with antimony trisulfide targets have resolution comparable to silicon target vidicon tubes, but have lower sensitivity. Their military uses are in daylight sensors for gunfire control, missile guidance, navigation, and target identification.

Antimony trisulfide targets are produced by depositing 2-5 micron thick layers of antimony trisulfide uniformly over a transparent conductive film. Processes for applying the layers differ slightly among producers, and they are considered proprietary. A chemical evaporator is the principal equipment used to apply the antimony trisulfide.

In military applications, a small but nontransitory price increase would not cause substitution for silicon or antimony trisulfide target vidicon tubes. These markets are relatively insensitive to such price increases.

The complaint alleges that the production and sale of both types of vidicon tubes is highly concentrated. In 1985, GE accounted for approximately 87 percent of the market for silicon target vidicon tubes for military applications, and RCA accounted for approximately 12 percent. For antimony trisulfide target vidicon tubes in 1985, GE accounted for approximately 50 percent of the market for these tubes for military applications while RCA accounted for approximately 40 percent. The Herfindahl-Hirschman Index ("HHI"), a measure of

market concentration, in the market for silicon target vidicon tubes for the United States military is about 7740. The merger of GE and RCA would increase the HHI by about 2116 to 9856. The HHI in the market for antimony trisulfide target vidicon tubes for the United States military is about 4166 and would increase after the merger by about 3977 to 8143.

Since the markets for silicon target and antimony trisulfide target vidicon tubes are small and a substantial investment of money and time would be necessary to enter, a substantial and nontransitory price increase would be required to induce entry. Entry into the military market is further complicated by the need to develop ruggedizing technology and to conduct testing for certification.

The complaint does not allege commercial markets where performance requirements are much lower than for military applications. Substitutes exist for silicon target and antimony trisulfide target vidicon tubes in commercial applications. In addition, some firms can supply vidicon tubes for commercial applications but not for military ones.

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

The United States brought this action because the effect of the merger between GE and RCA may be substantially to lessen competition in violation of Section 7 of the Clayton Act in the production and sale of silicon target and antimony trisulfide target vidicon tubes for United States military

applications. The only anticompetitive effects associated with the merger would be eliminated if GE's vidicon tube business could be sold to a purchaser that would operate the business as an active and independent competitor.

To this end, Section IV of the proposed Final Judgment would require GE to sell its vidicon tube business to a purchaser that has the intent and capability to compete effectively in the production and sale of such tubes.

If GE is unable to divest its vidicon tube business by November 30, 1986, under Section V of the proposed Final Judgment, the Court would, at the request of the United States, appoint a trustee to sell it. Section V would provide a mechanism that should permit a trustee to be selected and appointed by November 30, 1986. Once a trustee has been appointed, only the trustee, and not GE, would have the right to sell the business. 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 to accomplish the divestiture by divesting GE's vidicon tube business alone, or as part of a divestiture that includes other product lines or assets located at the Owensboro, Kentucky operations of GE's Microwave Products Department. Further, if a trustee is appointed, GE would be required to pay all of the trustee's expenses in selling the business, and

the trustee's commission would be structured to provide an incentive for the trustee to complete the sale promptly.

Section VI of the proposed Final Judgment would provide the United States an opportunity to review any proposed divestiture before it occurs. Under Section VI, if the United States were to request information to assess a proposed divestiture, GE could not consummate the divestiture until 15 days after it supplied the information. If the United States requested information from the proposed purchaser, the divestiture could not be consummated until the United States certified in writing that it is satisfied that the proposed purchaser has provided the additional information. If the United States were to object to a divestiture of GE's vidicon tube business proposed under Section IV of the proposed Final Judgment, the divestiture could not be completed. If the United States were to object to a divestiture of GE's vidicon tube business proposed under Section V, the divestiture could not be completed unless approved by the Court.

Section VII of the proposed Final Judgment would prevent GE from financing without the permission of the United States any part or all of the divestiture required by the Final Judgment. In the event that the purchaser acquires other vacuum tube product lines, or related assets, in connection with the divestiture, GE also could not finance the acquisition without permission of the United States.

Under Section VIII, GE would be required to continue to operate its vidicon tube business as an active competitor, until the divestiture required by the proposed Final Judgment is completed. Moreover, GE would be required to take all steps necessary to assure that proprietary technology and other proprietary business information relating to its vidicon tube business is not transferred to RCA or used by GE or RCA to compete with GE's vidicon tube business.

Section IX of the proposed Final Judgment would require GE to provide the United States with periodic reports concerning the fact and manner of its compliance with the proposed Final Judgment, and Section X would allow the United States to obtain additional information and documents relating to GE's compliance with the proposed Final Judgment.

Finally, Section XII would provide that the Final Judgment would expire on the third anniversary of GE's completion of the required divestiture.

IX. 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 provisions 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 defendant.

X. PROCEDURES AVAILABLE FOR MODIFICATION
OF THE PROPOSED FINAL JUDGMENT

The United States and defendant GE 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 (700 Safeway)
U.S. Department of Justice
Washington, D.C. 20530

Under Section XI of the proposed Final Judgment, the Court would retain jurisdiction over this matter for the purpose of enabling the United States or GE 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.

XI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment would provide all of the relief requested by the United States in its complaint in this civil action. The proposed Final Judgment would require GE to divest its vidicon tube business by November 30, 1986. It also would assure that GE's vidicon tube business would remain a viable business separate from RCA and an active competitor to RCA in the United States market for silicon target and antimony trisulfide target vidicon tubes for military applications.

Compliance by GE with the proposed Final Judgment and the completion of the divestiture required by the Judgment would

resolve fully all of the competitive concerns raised by the proposed merger of GE and RCA. The United States could have obtained no better relief after a full trial on the merits. 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 GE's merger with RCA until GE had completely divested itself of its vidicon tube business. The United States rejected this alternative because substantial risk existed that a court might be reluctant to halt consummation of the entire merger because of a competitive problem posed by a very small part of the entire business operations of the two companies. The court's reluctance to grant a preliminary injunction likely would have been substantially increased because of GE's willingness to divest its vidicon tube business and any other parts of its Owensboro, Kentucky operations of its Microwave Products Department if necessary.

Under the circumstances, while the government believes that sound responses to these arguments exist, it determined that the public interest in preserving competition in the market for these types of vidicon tubes would be served best by obtaining GE's consent to an enforceable decree requiring it to divest its vidicon tube business and by filing the decree with the Court prior to the consummation of any part of

the proposed merger. Although the proposed Final Judgment may not be entered until the criteria established by the Antitrust Procedures and Penalties Act (15 U.S.C. § 16(b)-(h)) have been satisfied, the public will benefit immediately from the safeguards in the proposed Final Judgment because GE has stipulated to comply with the terms of the Judgment pending its entry by the Court. The United States believes that the overriding public interest in having these enforceable safeguards in effect prior to consummation of any part of the proposed merger required that it not attempt to seek a preliminary injunction, and thereby avoid the risk that the merger might be permitted to go forward without any enforceable safeguards in effect.

XII. DETERMINATIVE DOCUMENTS

There were no documents 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: June 6, 1986

Respectfully submitted,

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