

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Diebold, Inc., U.S. District Court, S.D. Ohio, 1963 Trade Cases ¶70,738, (May 10, 1963)

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United States v. Diebold, Inc.

1963 Trade Cases ¶70,738. U.S. District Court, S.D. Ohio, Western Division. Civil Action No. 4485. Entered May 10, 1963. Case No. 1471 in the Antitrust Division of the Department of Justice.

Clayton Act

Acquiring Competitors—Divestiture—Bank Vaults—Consent Judgment.—A manufacturer of bank vaults was required, under the terms of a consent judgment, to divest itself of the assets of a competing bank vault manufacturer which it had acquired. The manufacturer was required to sell the acquired assets within twelve months in such a manner as to permit reactivation of them as an operating business, or, on court approval, to sell them on a piecemeal basis. If at the end of twelve months, divestiture is not possible, then divestiture would not be required.

For the plaintiff: Lee Loevinger, Larry L. Williams, William D. Kilgore, Jr., Donald F. Melchior, Walter T. Nolte, and John M. Toohey, Attorneys, Department of Justice.

For the defendant: Arnold, Fortas & Porter, by William L. McGovern, Milliean, Reister, Fitton & Latimer, by F. A. Reister.

Final Judgment

DRUFFEL, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on August 24, 1959; and the defendant herein having appeared and filed its answer to such complaint denying the substantive allegations thereof; and

Plaintiff and defendant, by their respective attorneys, having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without admission by either party with respect to any such issue of fact or law, and the Court having considered the matter and being duly advised,

NOW, THEREFORE, 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

[Jurisdiction]

This Court has jurisdiction of the subject-matter hereof and of the parties hereto pursuant to Section 15 of the Act of Congress of October 15, 1914, c. 323, 38 Stat. 736, as amended, entitled "An Act to Supplement Existing Laws Against Unlawful Restraints and Monopolies and for Other Purposes," commonly known as the Clayton Act; and the complaint states a claim upon which relief may be granted under Section 7 of said Act.

II

As used in this Final Judgment:

(A) "Diebold" shall mean Diebold, Incorporated, an Ohio corporation, with its principal office in the City of Canton, Ohio;

(B) "Bank and Protection Equipment" shall mean bank vault doors and linings, safe deposit boxes, security and collateral lockers, money chests, night and lobby depositories, drive-up windows and safes, or any of them;

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(C) "Acquired Assets" shall include (1) the drawings, tools, jigs, dies, fixtures, pat terns, and moulds acquired from Herring-Hall-Marvin Safe Company in September 1959 and in the possession of Diebold on the date of the entry of this decree; (2) patents, applications for patents, inventions, trademarks and trade names, copyrights, manufacturing and other licenses or rights, and the exclusive right to use the name "Herring-Hall-Marvin Safe Company" acquired from said Company in September 1959; (3) land, plants, and buildings in Hamilton, Ohio, acquired by Diebold from Herring-Hall-Marvin Safe Company in September 1959; and (4) machinery, office furniture, equipment, and inventories owned by Diebold and now located in the Herring-Hall-Marvin plant in Hamilton, Ohio.

III

The provisions of this Final Judgment, applicable to Diebold, shall be binding upon said defendant, its officers, agents, servants and employees, subsidiaries, successors and assigns, and upon those persons in active concert or participation with said defendant who receive actual notice of this Final Judgment by personal service or otherwise. None of the provisions of this Final Judgment shall be binding upon any person or persons who acquire from Diebold any of the property or assets required to be divested hereby in whole or in part if the acquisition is by a person or persons approved by this Court.

IV

(A)Diebold is ordered and directed to make a bona fide effort to sell said "Acquired Assets" within 12 months from the date of entry of this Final Judgment, on such basis as would permit them, to the extent possible, to be reactivated as an operating business in competition with other firms engaged in the manufacture and sale of "Bank and Protection Equipment."

(B)Within 30 days after the end of the period of 12 months provided in subparagraph (A) of this Paragraph IV, the plaintiff may apply to the Court for entry of such order as the Court deems appropriate including an order requiring Diebold for a further period to undertake to accomplish the required divestiture by selling or otherwise disposing of said acquired assets either as required by subparagraph (A) of this Paragraph IV, or on a piecemeal basis, provided, however, that no such extension shall exceed 6 months from the end of the 12 month period provided for in such subparagraph (A) above.

(C)If at the end of a period of 12 months from the date of the entry of this Final Judgment, or such further period as the Court may allow not to exceed six months under subparagraph (B) of this Paragraph IV, Diebold shall have been unable to sell said "Acquired Assets" in accordance with the provisions of subparagraphs (A) or (B) above, then Diebold shall no longer be required by any provision of this Final Judgment to divest itself of any of said "Acquired Assets."

(D)Diebold shall make known the avail ability of the "Acquired Assets" ordered to be divested by ordinary and usual means for the sale of a business. Diebold shall furnish to bona fide prospective purchasers such information, including business records, regarding the "Acquired Assets," and shall permit them to have such access to, and to make such inspection of, said "Acquired Assets" as are reasonably necessary. Diebold shall render monthly reports to the Assistant Attorney General in charge of the Antitrust Division, concerning its efforts to divest itself of the "Acquired Assets," and the first such report shall be rendered within thirty days after the date of entry of this Final Judgment.

(E)Plaintiff or defendant Diebold may apply to this Court for approval of any offer by any person to purchase the "Acquired Assets" or any part thereof. No sale of any of the "Acquired Assets" or any part thereof shall be made unless approved by this Court after hearing plaintiff and defendant Diebold in regard thereto if requested by either party. Sale of the "Acquired Assets" or any part thereof shall be approved by this Court unless the Court shall find that the effect of such offer, if accepted, may be substantially to lessen competition or to tend to create a monopoly, or unless the Court shall find that the offer is unreasonable or, if made within 12 months after the effective date of this Final Judgment, that such offer is inconsistent with the terms of subparagraph (A) of this

Paragraph IV. Diebold is not required to sell all or any part of said “Acquired Assets” except at a price that is reasonable under all circumstances, taking into account the divestiture requirements of this Final Judgment.

(F)The divestiture ordered and directed by this Final Judgment shall be made in good faith and shall be absolute and unqualified. None of the “Acquired Assets” so ordered to be disposed of shall be directly or indirectly sold or disposed of to any person who, at the time of the entry of this Final Judgment, is an officer, director, agent, or employee of Diebold, or is acting for or under the control of Diebold, or in which Diebold owns any stock or financial interest.

V

Defendant Diebold is enjoined and restrained for a period of five years or, if Diebold has not disposed of the “Acquired Assets” in accordance with Paragraph IV herein, for a period of ten years, from the effective date of this Final Judgment from acquiring (1) any capital stock of any corporation engaged in the manufacture, sale or distribution of “Bank and Protection Equipment” in the United States, or (2) any assets (except products purchased in the normal course of business) of a corporation which are used in the manufacture, sale or distribution of “Bank and Protection Equipment” in the United States. Diebold is not restrained by this Final Judgment from acquiring in good faith the stock or assets of a distributor if such distributor has been unable to pay its indebtedness to Diebold in the ordinary course of business and faces imminent bankruptcy or would not be able to continue in business. If Diebold wishes to make any acquisition otherwise prohibited under this Paragraph V at any time prior to five years from the effective date of this Final Judgment or, if Diebold has not disposed of the “Acquired Assets” in accordance with Paragraph IV herein, at any time prior to ten years, it may submit disclosure of the facts regarding such proposed acquisitions and the reasons therefor to plaintiff. If the plaintiff shall not object to the proposed acquisition within thirty days after receipt of such notice, such acquisition shall be deemed not to be a violation of this Final Judgment. In the event plaintiff shall object, Diebold may apply to this Court for permission to make such acquisition, which may be granted upon a showing by Diebold to the satisfaction of this Court that the acquisition would not substantially lessen competition or tend to create a monopoly.

VI

(A) For the purpose of securing compliance with this Final Judgment and for no other purpose, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant Diebold made to its principal office, be permitted:

1. Access during the office hours of Diebold to those books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Diebold which relate to any of the matters contained in this Final Judgment; and
2. Subject to the reasonable convenience of Diebold and without restraint or interference from it, to interview officers or employees of defendant Diebold, who may have counsel present.

(B)Upon receipt of a written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, Diebold shall submit such reports in writing to the Department of Justice with respect to matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment; provided, however, that no written request need be made for the reports which Diebold is required to make by the terms of Paragraph IV(D) herein.

(C)No information obtained by the means provided in this Paragraph VI 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 Plaintiff except in the course of legal proceedings to which the United States is a party for the purposes of securing compliance with this Final Judgment or as otherwise required by law.

VII

Jurisdiction is retained for the purpose of enabling any party 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 or carrying out of this Final Judgment, for the modification or termination of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.