

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. The Commercial Electric Company; Frank Rogers Furniture City, Inc.; S & K Appliances, Inc.; The Gross Electric Fixture Company; Woodville Appliances, Inc.; Lusk Furniture and Appliances, Inc.; Phillips Appliance and Air Conditioning; Superior Refrigeration Sales & Service; Edgar I., Bauerfeld, and Alban C. Clark., U.S. District Court, N.D. Ohio, 1959 Trade Cases ¶69,505, (Oct. 23, 1959)

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United States v. The Commercial Electric Company; Frank Rogers Furniture City, Inc.; S & K Appliances, Inc.; The Gross Electric Fixture Company; Woodville Appliances, Inc.; Lusk Furniture and Appliances, Inc.; Phillips Appliance and Air Conditioning; Superior Refrigeration Sales & Service; Edgar I., Bauerfeld, and Alban C. Clark. 1959 Trade Cases ¶69,505. U.S. District Court, N.D. Ohio, Western Division. Civil No. 8107. Dated October 23, 1959. Case No. 1420 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies—Consent Decree—Practices Prohibited—Price Fixing—Appliances.—

A wholesale distributor of a manufacturer's major appliances and several retailers were prohibited by a consent decree from entering into any contract or program having the purpose or effect of (a) fixing or stabilizing prices, profit margins, pricing systems, markups, discounts, or other terms and conditions of sale for the sale of such appliances or (b) collecting or disseminating prices or price lists among themselves for such appliances.

Combinations and Conspiracies—Consent Decree—Practices Prohibited—Boycotts.—A wholesale distributor of a manufacturer's major appliances and several retailers were prohibited by a consent decree from entering into any contract or program having the purpose or effect of (a) boycotting or refusing to deal with any dealer or other person in connection with the sale or distribution of such appliances or (b) hindering or preventing any dealer or other person from purchasing or selling such appliances.

Resale Price Fixing—Consent Decree—Practices Prohibited—Permissive Provisions—Fair Trade—

Selection of Customers.—Although a consent decree permitted a wholesale distributor of a manufacturer's major appliances to exercise its right to choose and select its dealers and to offer suggested resale prices for such appliances, regardless of whether such prices were determined by the manufacturer or the distributor, and to terminate the franchises of such dealers, it prohibited the distributor from terminating the franchise of any dealer or refusing to deal with any dealer who did not observe or agree to observe the prices suggested by the distributor or any other person and from exercising any form of coercion on any of its franchised dealers through the threat of loss of franchise for failure to adhere to the distributor's suggested prices. The decree did not prevent the distributor or defendant retailers from exercising any rights they may have under the Miller-Tydings Act or the McGuire Act, or from unilaterally exercising their rights to select distributors, dealers, consumers, or other persons with whom they will deal.

For the plaintiff: Robert A. Bicks, Acting Assistant Attorney General; Russell E. Ake, U. S. Attorney; Richard M. Colasurd, Assistant U. S. Attorney; and Baddia J. Rashid, W. D. Kilgore, Jr., Max Freeman, Robert B. Hummel, Frank B. Moore, and Dwight B. Moore, Attorneys, Department of Justice.

For the defendants: Gerald P. Openlander for Commercial Electric Co. and Phillips Appliance and Air Conditioning; Smith, Klein & Blumberg, by William P. Klein, for Gross Electric Fixture Co.; Theodore Markwood for Lusk Furniture and Appliance, Inc.; C. F. Wasserman for Frank Roger Furniture City, Inc.; Jas. Slater Gibson and William M. Thomas for Superior Refrigeration Sales & Service; Marshall, Melhorn, Bloch & Belt, by John B. Spitzer, for S & K Appliances, Inc.; John W. Potter for Woodville Appliances, Inc.; Joseph A. Siegal for Edgar L. Bauerfeld; and Winchester & Winchester, by Bruce Winchester, for Alban C. Clark.

Final Judgment

FRANK L. KLOEB, District, Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on October 20, 1958, and the defendants having appeared and filed their respective answers to such complaint denying the substantive allegations thereof, and all parties hereto by their attorneys herein 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 any party in respect of any such issue;

Now, Therefore, before any testimony has been taken and without adjudication of any issue of fact or law herein, and upon consent of all parties hereto, it is hereby:

Ordered, Adjudged and Decreed, as follows:

I

[*Jurisdiction*]

This Court has jurisdiction of the subject matter herein and the parties hereto, and the complaint states a claim upon which relief may be granted against the defendants and each of them under Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce, against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

II

[*Definitions*]

As used in this Final Judgment:

- (A) "Person" shall mean an individual, partnership, corporation or other legal entity;
- (B) "GE major appliances" shall mean refrigerators, freezers, ranges and ovens, water heaters, dishwashers, disposals, washers, dryers, combination washer-dryers, air conditioners, and television receivers manufactured by the General Electric Company (herein referred to as GE);
- (C) "Commercial" shall mean the defendant The Commercial Electric Company.

III

[*Applicability*]

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, its subsidiaries, officers, agents, directors, servants, employees, successors and assigns, and to those persons in active concert or participation with any defendant who shall receive actual notice of this Final Judgment by personal service or otherwise.

IV

[*Price Fixing—Boycotts*]

Defendants are jointly and severally enjoined and restrained from entering into, adhering to, maintaining or furthering, or claiming any rights under, any contract, combination, conspiracy, agreement, understanding, plan or program with any other person having the purpose or effect of:

- (A) Fixing, determining, establishing, maintaining or stabilizing prices, profit margins, pricing systems, markups, discounts or other terms and conditions of sale for the sale of GE major appliances to any third person;
- (B) Collecting, preparing, publishing, distributing or disseminating prices or price lists among themselves for GE major appliances;
- (C) Boycotting or threatening to boycott, or otherwise refusing or threatening to refuse to deal with any dealer or other person in connection with the sale or distribution of GE major appliances;

(D) Hindering, restricting, limiting or preventing any dealer or other person from purchasing or selling GE major appliances.

V

[*Permissive Provisions—Selection of Customers*]

(A) Subject to the provisions of Section IV, Commercial may exercise its right to choose and select its dealers and to offer suggested resale prices for GE major appliances to its dealers, regardless of whether such prices are originally determined by General Electric or Commercial, and to terminate the franchise of such dealers, and such choosing, selecting, or termination, standing alone, shall not be considered a violation of Section IV. Provided, however, that Commercial is enjoined and restrained from terminating the franchise of any dealer or refusing to sell GE major appliances to any dealer or other person who does not observe or agree to observe or adhere to or who has failed to adhere to prices suggested by Commercial or by any other person for the sale of GE major appliances, and Commercial is further enjoined and restrained from exercising any form of coercion of any of its franchise dealers through the threat, expressed or implied, of loss of franchise for failure to adhere to or abide by prices suggested by Commercial.

(B) Nothing in this Final Judgment shall be construed:

(1) To prevent any defendant from exercising any rights it may have pursuant to the Act of Congress of August 17, 1937, commonly called the Miller-Tydings Act, or the Act of Congress of July 14, 1952, commonly called the McGuire Act;

(2) To prevent any defendant dealer from unilaterally exercising his or its right to select distributors, dealers, consumers, or other persons with whom he or it will deal.

VI

[*Enforcement and Compliance*]

For the purpose of securing compliance with this Final Judgment duly authorized representatives of the Department of Justice, shall, on written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant, made to its principal office, be permitted, subject to any legally recognized privilege, (A) reasonable access, during the office hours of such defendant, to all books, ledgers, accounts, minutes, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, relating to any matters contained in this Final Judgment, and (B), subject to the reasonable convenience of such defendant, and without restraint or interference from it, to interview officers and employees of such defendant, who may have counsel present, regarding any such matters. Upon such written request the defendant shall submit such reports in writing with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the purpose of enforcement of this Final Judgment. No information obtained by the means provided in this Section 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 in which the United States is a party, for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VII

[*Jurisdiction Retained*]

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