

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
 v.) Civil No. 4-62 Civ. 348
)
) Entered: October 7, 1964
 HONEYWELL INC.; JOHNSON SERVICE)
 COMPANY; and THE POWERS REGULATOR)
 COMPANY,)
)
 Defendants.)

FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint herein on November 29, 1962, and the plaintiff and each of the defendants, 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 this Final Judgment constituting evidence or an admission by any party hereto with respect to any such issue;

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

ORDERED, ADJUDGED AND DECREED as follows:

I

The Court has jurisdiction of the subject matter of this action and of the parties hereto. The Complaint states claims upon which relief may be granted against the defendants 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

As used in this Final Judgment:

(A) "Person" shall mean an individual, partnership, firm, association, corporation or other legal or business entity;

(B) "Automatic temperature control system" shall mean a system installed by or under the supervision of the manufacturer thereof, usually incorporating a thermostat, to control the heating, ventilating or air conditioning equipment in a building or structure in which such system is installed, and which system is generally of the pneumatic, electric or electronic type.

III

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant and to each of its subsidiaries, successors and assigns and their respective officers, agents, servants and employees, and to all persons in active concert or participation with any defendant who receive actual notice of this Final Judgment by personal service or otherwise. For the purpose of this Final Judgment each defendant and its subsidiaries, officers, agents, servants and employees shall be deemed to be one person. This Final Judgment shall not apply to sales of automatic temperature control systems outside the United States, its territories and possessions, except for sales of such systems by any defendant to, or for use in any building or structure of, the plaintiff or any instrumentality or agency thereof.

IV

Each of the defendants is enjoined and restrained from directly or indirectly entering into or adhering to any contract, agreement, arrangement or understanding with any other manufacturer or seller of automatic temperature control systems to:

(A) Fix, maintain, adopt or adhere to prices or other terms or conditions for the sale of any automatic temperature control system to any third person;

(B) Submit collusive or rigged bids or quotations for the sale of any automatic temperature control system to any third person;

(C) Allocate or divide customers, territories or markets for the sale of automatic temperature control systems; or

(D) Communicate or exchange information concerning (i) an intention to bid or quote or not to bid or quote on the sale of any automatic temperature control system to any third person, (ii) cost estimates on which any such bid or quotation would be based, (iii) the bid position of any person or persons making any such bid or quotation or (iv) the price or other financial or credit terms and conditions at or upon which any automatic temperature control system is to be sold to any third person.

V

Each of the defendants is enjoined and restrained from communicating in any manner with any other defendant for the purpose or with the effect of transmitting to or securing from such other defendant information regarding (i) the amount of any bid or quotation intended to be submitted by any defendant for the sale of automatic temperature control system to any third person, (ii) the intention of any defendant to bid or quote or not to bid on any such sale, (iii) any cost estimates on which any bid or quotation by any defendant on any such sale would be based or (iv) a desire by any defendant to meet or discuss with any other defendant for the purpose of attempting to arrive at any agreement with respect to a proposed sale of any automatic temperature control system to any third person or with respect to the amount of any bid or quotation therefor or the specifications therefor.

VI

Each of the defendants is ordered and directed, for a period of five years from the date of entry of this Final Judgment, in connection with any sealed bid submitted by it to any Federal, State or local

government for the sale of any automatic temperature control system for use in any building or structure of any such government, to submit with such bid a written statement relating to such sealed bid in substantially the form set forth in the Appendix hereto or containing the substance thereof.

VII

Nothing contained in this Final Judgment shall be deemed to prohibit any of the defendants, where requested in writing by the purchaser, from formulating, submitting, contracting for or performing, in combination with any other manufacturer or seller of automatic temperature control systems, a bona fide joint bid or contract which is denominated as such relating to the sale of an automatic temperature control system to, or for use in any building or structure of, the plaintiff or any instrumentality or agency thereof.

VIII

Each of the defendants is ordered and directed, within 60 days from the date of entry of this Final Judgment, to furnish a copy of this Final Judgment to each of its officers and to each of its area, regional and branch managers and assistant managers of sales of automatic temperature control systems in the United States, its territories and possessions and to retain in its files for a period of five years from the date of entry of this Final Judgment a written statement signed within said 60 days by each such employee setting forth the date he received a copy of this Final Judgment, his title, his place of employment and the name of his immediate superior.

IX

For the purpose of determining or 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) Access, during office hours of such defendant, to all books, ledgers, accounts, 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 or employees of such defendant, who may have counsel present, regarding any such matters.

Upon such written request, such defendant shall submit such reports in writing with respect to any of the matters contained in this Final Judgment as may from time to time be necessary and requested for the enforcement of this Final Judgment.

No information obtained by the means provided in this Section IX shall be divulged by any representative of the Department of Justice to anyone 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 purpose of securing compliance with this Final Judgment or as otherwise required by law.

X

Neither the making nor the entry of this Final Judgment shall preclude the Department of Justice, in any legal proceedings to which the United States is a party for the prosecution of any defendant for a violation of the antitrust laws (as defined in Section 1 of the Act of Congress dated October 15, 1914, commonly known as the Clayton Act, as amended) alleged to have occurred after the entry of this Final Judgment, from adducing evidence as to activities of the defendants which occurred prior to such entry, to the extent that such evidence is material, relevant and otherwise admissible in such proceedings. Nothing contained

in this Final Judgment shall preclude the Department of Justice, in any legal proceedings to which the United States is a party against any defendant under Sections 3490 and 5438 of the Revised Statutes (31 U.S. Code Sec. 231-235), from adducing evidence as to activities of the defendants alleged in the Complaint herein, to the extent that such evidence is material, relevant and otherwise admissible in such proceedings. This Final Judgment shall not constitute res judicata nor collateral estoppel to any extent in any such 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 or carrying out of this Final Judgment, for the modification or termination of any of the provisions hereof, for the enforcement of compliance herewith and for the punishment of violations hereof.

Dated: October 7, 1964

BY THE COURT:

/s/ Gunnar H. Nordbye
United States District Judge

APPENDIX

The undersigned hereby certifies that, to his best knowledge and belief, the annexed bid is not the result of any agreement, arrangement or understanding between the bidder and any other manufacturer or seller of automatic temperature control systems and that the prices, terms or conditions thereof have not been communicated by or on behalf of the bidder to any such person and will not be communicated to any such person prior to the official opening of said bid.

Dated: _____

[Signature of person preparing the bid]