

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v General Railway Signal, Company, Westinghouse Air Brake Company, and Western Railroad Supply Company., U.S. District Court, W.D. New York, 1955 Trade Cases ¶67,992, (Mar. 15, 1955)

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United States v General Railway Signal, Company, Westinghouse Air Brake Company, and Western Railroad Supply Company.

1955 Trade Cases ¶67,992. U.S. District Court, W.D. New York. Civil Action No 5237. Filed March 15, 1955. Case No 1125 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies—Monopolies—Consent Decree—Practices Enjoined— Acquisition of Assets or Stock, Control of Business Policies, Interlocking Directors, and Organization of New Concern —Railroad-Highway Grade Crossing Protective Devices.—In a consent decree entered against three manufacturers of railroad-highway grade crossing protective devices, two of the manufacturers were prohibited from acquiring or holding any stock or other financial interest in the third manufacturer and from acquiring or holding the ownership, physical assets, or good will of the third manufacturer. Each of the manufacturers was enjoined from dominating, controlling, or exercising any power or authority with respect to the business, financial, or promotional policies' of any other defendant and from having officers, directors, or employees in common with any other defendant. The manufacturers also were prohibited from agreeing to organize any concern to engage in the manufacture, distribution, or sale of highway crossing gates or gate activating mechanisms.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Bidding Practices.

—Manufacturers of railroad-highway grade crossing protective devices were enjoined by a consent decree from entering into any understanding with any other person engaged in the manufacture of highway, crossing gates or gate activating mechanisms to refuse to submit a bid for the sale of such products, or to make a bid higher than or identical with the bid of any other person, or to submit collusively a bid.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Purchase and Sale

Restrictions.—Manufacturers of railroad-highway grade crossing protective devices were prohibited by a consent decree from entering into any understanding with any other defendant which obligates such other defendant (1) to refrain from purchasing or ordering highway crossing gates or gate activating mechanisms from a defendant or any other person, or (2) to refrain from selling or otherwise disposing of highway crossing gates or gate activating mechanisms to a defendant or any other person. The manufacturers also were enjoined from entering into any understanding with any other defendant or any other person engaged in the manufacture of highway crossing gates or gate activating mechanisms to (1) refrain from the manufacture, distribution, or sale or solicitation for sale of highway crossing gates or gate activating mechanisms, or (2) allocate or divide manufacturing or sales territories, customers, distribution channels or markets in the manufacture, distribution, or sale of highway crossing gates or gate activating mechanisms.

Department of Justice Enforcement and Procedure—Consent Decrees—Specific Relief—Licensing of

Patents—Contingent Provision.—Three manufacturers of railroad-highway grade crossing protective devices were ordered by a consent decree to grant patent licenses to any applicant. A reasonable and nondiscriminatory royalty could be charged. However, the manufacturers were only required to grant licenses (1) if either of two of the manufacturers granted a license to the third manufacturer, or (2) if the third manufacturer granted a license to either or both of the other two manufacturers, under (a); patents owned or controlled by each manufacturer on the date of the entry of the decree and (b) patents which are issued to, acquired by, or applied for, by each of the manufacturers within five years from the date of the entry of the decree, except patents, which are based on inventions of a manufacturer's officers or employees made while affiliated with the manufacturer, which patents are not dominated by one or more patents owned or controlled by the manufacturer at the date of the decree.

For the plaintiff: Stanley; N Barnes, Assistant Attorney General, and Worth Rowley, Charles F. B. McAleer, W. D. Kilgore, Jr., W. Wallace Kirkpatrick; William F. Rogers, and John O. Henderson.

For the defendants: Cummings and Lockwood, by Walter B. Lockwood, for General Railway Signal Company. Raichle, Tucker and Moore, by Frank G. Raichle; and Brown, Fox, Blumberg and Markheim, by Jacob Logan Fox, for Western Railroad Supply Company. Kenefick, Bass, Letchworth, Baldy and Phillips, by Robert M Hitchcock; and Cravath Swaine and Moore, by Benjamin R. Shute, for Westinghouse Air Brake Company.

For a prior decision of the U. S. District Court, Western District of New York, see [1952-1953 Trade Cases ¶ 67,376](#).

Final Judgment

KNIGHT, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on April 9, 1952, and a stipulation herein on March 15, 1955; the defendants herein having appeared and filed their several answers to the original complaint denying any violations of law; and the plaintiff and defendants by their respective attorneys herein having severally consented to the entry of this Final Judgment and without trial or adjudication of any issue of fact or law herein and without admission in respect of any such issue,

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

Ordered, Adjudged and Decreed as follows:

I

[*Sherman Act*]

The Court has jurisdiction of the subject matter herein and of all the parties, hereto. The complaint states a cause of action against the defendants under Sections 1 and 2 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) "General" shall mean defendant General Railway Signal Company, a corporation organized and existing under the laws of the State of New York;

(B) "Westinghouse" shall mean defendant Westinghouse Air Brake Company, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania.

(C) "Western" shall mean defendant Western Railroad Supply Company, a corporation organized and existing under the laws of the State of Delaware;

(D) "Grade Crossing Device" shall mean any signal, gate or combination thereof, capable, when installed at a railroad-highway grade crossing and automatically controlled by other equipment responsive to the approach of a train to the crossing, of indicating to pedestrians or vehicular traffic over the crossing that a train is approaching;

(E) "Highway crossing gates" shall mean any grade crossing device having an arm operable between a lowered position in which it obstructs non-railroad traffic approaching the crossing, and a raised position in which the arm clears or does not obstruct such traffic;

(F) "Gate activating mechanism" shall mean the portion of a highway crossing gate that operates the arm, together With parts of such mechanism specifically designed and marketable as components thereof, including,

but not limited to, the gate operating mechanism covered by Part 194 of the specifications and requisites of the Signal Section of the Association of American Railroads, last officially approved in March, 1951;

(G) "Person" shall mean any individual, firm, partnership, corporation, association, trustee or any other business or legal entity;

(H) "Subsidiary" shall mean in respect of any defendant, a corporation a majority of whose outstanding voting stock is owned, or directly or indirectly controlled, by such defendant;

(I) "Patent" means Letters Patent of the United States of America, and all reissues and extensions thereof, relating to the manufacture, use or sale of highway crossing gates or gate activating mechanisms, or both (exclusive of "other equipment" referred to in (D) above).

III

[Applicability of Judgment]

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, its subsidiaries, successors and assigns and to each of their officers, directors, agents and employees, and to all other persons acting under, through or for such defendant but shall not apply to (a) transactions or operations solely between such defendant and a subsidiary or subsidiaries thereof or (b) transactions or operations outside the United States which do not affect the foreign or domestic commerce of the United States. Each defendant is hereby ordered and directed to take such steps as are necessary to secure compliance by its officials, subsidiaries and such other persons, described above, with the terms of this Final Judgment.

IV

[Acquisitions of Assets or Stock]

(A) Defendant Westinghouse is enjoined and restrained, from acquiring or holding, directly, or indirectly, legal title to or any beneficial interest in any shares of capital stock of, or any bonds, debentures or other evidence of indebtedness (except those evidences issued to cover credit purchases in or incident to the ordinary course of business) issued by, defendant Western;

(B) Defendant General is enjoined and restrained from acquiring or holding, directly or indirectly, legal title to or any beneficial interest in any shares, of capital stock of, or any bonds, debentures, or other evidence of indebtedness (except those evidences issued to cover credit purchases in or incident to the ordinary course of business) issued by, defendant Western;

(C) Each of the defendants Westinghouse and General is enjoined and restrained from acquiring, directly or indirectly, by purchase, merger, consolidation or otherwise, and from holding or exercising after such acquisition, ownership or control of the business, physical assets (except goods or products bought in or incident to the ordinary course of business) or good will, or any; part thereof, of defendant Western.

V

[Control of Business Policy— Interlocking Directors]

(A) Each of the defendants is enjoined and restrained from dominating, controlling or exercising any power or authority with respect to, or attempting to dominate, control or exercise any power or authority with respect to, the business, financial or promotional policies, practices, operations, management, expansion or other business policy or act of any other defendant, provided, however, that nothing contained in this subsection (A) shall be construed to prohibit or restrain transactions between the defendants in the ordinary course of business;

(B) Each of the defendants is enjoined and restrained from causing, authorizing or knowingly permitting any of its officers, directors or employees to serve as an officer, director or employee of any other defendant, provided, however that this subsection (B) shall not prevent Western from utilizing the services of a sales agent who is also a sales agent of one but not both of the other defendants.

VI

[Agreements Terminated— Patent Licensing Permitted]

The following agreements, and any agreements or arrangements amendatory thereof or supplemental thereto, having been terminated:

- (1) Agreement between Western and General, dated June 22, 1932,
- (2) Agreement between Western and Union Switch & Signal Company (now Westinghouse), dated June 22, 1932; defendants are jointly and severally enjoined and restrained from entering into or adhering to, directly or indirectly or claiming any rights under, any contract, agreement or understanding, that has as its purpose or effect the continuing or renewing of any of the agreements, contracts or understandings above listed, provided, however, that nothing contained in this Section VI shall prevent a defendant from granting licenses under any of its patents to any other defendant.

VII

[Purchasing and Selling]

Each of the defendants is enjoined and restrained from combining or conspiring or, directly or indirectly, entering into, adhering to or claiming any rights under any contract, agreement or understanding with any other defendant which obligates or commits such other defendant (a) to refrain from purchasing; or ordering highway crossing gates or gate activating mechanisms from a defendant or any other person, or (b) to refrain from selling or otherwise disposing of highway crossing gates or gate activating mechanisms to a defendant of any other person, provided, however, that this Section VII shall not apply to highway crossing gates or gate activating mechanisms (1) of special design which another defendant has developed or prepared to manufacture for Western, or (2) covered by patents or patent rights owned or controlled by Western and not acquired from any other defendant.

VIII

[Bidding, Manufacturing, and distribution Practices]

(A) Defendants are jointly and severally enjoined and restrained from combining or conspiring, or from entering into or adhering to, directly or indirectly, any contract, agreement or understanding with any other defendant or any other person engaged in the manufacture of highway crossing gates or gate activating mechanisms in the United States of America, its territories or possessions to:

- (1) Refuse to submit a bid for the sale of highway crossing gates or gate activating mechanisms, or to make a bid therefor higher than, or identical with the bid of any other person, or to submit collusively a bid therefor;
- (2) Grant, allocate, designate or divide manufacturing or sales territories, customers, distribution channels or markets in the manufacture, distribution or sale of highway crossing gates or gate activating mechanisms;
- (3) Refrain from the manufacture, distribution or sale or solicitation for sale of highway crossing gates or gate activating mechanisms; provided, however, that nothing contained in these subsections (1), (2) and (3).shall prohibit arrangements by defendant Western with any such other persons other than another defendant, whereby such other persons shall be the sole representatives of the defendant in a specified territory or territories for the sale of such of defendant's products as are not manufactured or otherwise sold by such other person, and provided further that subsections (1), (2) and (3) of this Section VIII shall not apply to contracts, agreements or understandings expressly excepted from the provisions of Section VII hereof.

(B) Each defendant is enjoined and restrained from entering into any contract, agreement or understanding with any other defendant to form or organize, or assist in the formation or organization of, directly or indirectly, any third person to engage in the manufacture, distribution or sale of highway crossing gates or gate activating mechanisms.

IX

[*Licensing of Patents— Contingent Provision*]

(A) The provisions of this Section IX shall be applicable to (a) Westinghouse if it Should grant a license to Western, (b) General if it should grant a license to Western and (c) Western if it should grant a license to Westinghouse and/or General, under (1) any, some or all patents owned or controlled by it on the date of entry of this Final Judgment; and (2) any, some or all patents which are issued to, acquired by or applied for by it within five (5) years from the date of entry of this Final Judgment, except patents which are based on inventions or discoveries of its officers or employees made while affiliated with or employed by it, which patents are not dominated by one or more patents owned or controlled by it at the date of this Final Judgment;

(B) Each defendant to which the provisions of this Section are applicable as aforesaid is ordered and directed, in respect of any of its patents as to which it has granted a license falling under the provisions of subsection (A) hereof, to grant a license to any applicant making written request therefor;

(C) Each of the defendants is enjoined and restrained from including any restriction or condition whatsoever in any license or sublicense granted by it pursuant to the provisions of subsection (B) of this Section IX except that

(1) The license may be non-transferable;

(2) A reasonable and nondiscriminatory royalty may be charged and collected;

(3) Reasonable provision may be made for periodic inspection of the books and records of the licensee by an independent auditor or any other person acceptable to the licensee who shall report to the licensor only the amount of the royalty due and payable;

(4) The license may require the licensee to affix the statutory patent notices to all devices manufactured thereunder;

(5) Reasonable provision may be made for the licensor to cancel the license upon bankruptcy or insolvency of the licensee, or upon failure of the licensee (a) to pay royalties, (b) to permit the inspection of his books and records, or (c) to affix the statutory patent notices;

(6) The license must provide that the licensee may cancel the license at any time after one (1) year from the initial date thereof by giving 30 days' written notice to the licensor, but any such cancellation shall not abrogate the obligation of the licensee to pay royalties accrued to the date of such cancellation;

(D) Upon receipt of a written request for a license under the provisions of this Section IX, the defendant to whom such request is addressed shall advise the applicant in writing within thirty (30) days of receipt of such request, of the royalty it deems reasonable for the patent or patents to which the application pertains. If the defendant and the applicant are unable to agree upon what constitutes a reasonable royalty, within sixty (60) days from the date such application for the license was received by the defendant, the defendant or the applicant may apply to this Court for a determination of a reasonable royalty, giving notice thereof to the defendant or applicant as may be appropriate and the Attorney General, and the defendant shall make such application forthwith upon request of the applicant. In any such proceeding the burden of proof shall be upon the defendant to whom application is made to establish a reasonable royalty. Pending the completion of any such court proceeding, the applicant shall have the right to make, use and vend under the patent or patents to which its application pertains, without the payment of royalty or other compensation, but subject to the following provisions: Such defendant or the applicant may, with notice to the Attorney General, apply to the Court to fix an interim royalty rate pending final determination of what constitutes a reasonable [reasonable] royalty. If the Court fixes such interim royalty rate, the defendant patent owner shall then issue and the applicant shall accept a license providing for the periodic payment of royalties at such interim rate from the date of the filing of such application to the Court. If the applicant fails to execute a license for the payment of royalties determined by the Court or fails to pay any interim or other royalty or to perform any other condition stipulated by the Court, in accordance therewith, such action shall be ground for the dismissal and denial of his application. Where an interim license or sublicense has been issued pursuant to this subsection or where the applicant has exercised any right under the patent, reasonable

royalty rates, if any, as finally determined by the Court, shall be retroactive for the applicant and for all other licensees under this judgments at the option of such licensees: to the date of the application to the Court to fix such reasonable royalty rate;

(E) Nothing herein contained shall prevent any applicant or licensee from attacking in any manner the validity or scope of any of the aforesaid patents nor shall this Final Judgment be construed as importing any validity or value to any of the said patents;

(F) Each of the defendants is enjoined and restrained from making any sale or other disposition of any of the patents covered by subsection (A) of this Section which deprives the defendant of the power or authority to license such patents unless it sells, transfers or assigns such patents upon the condition that the purchaser, transferee or assignee shall observe the requirements of this Section IX regarding the patents so acquired and the purchaser, transferee or assignee who is not otherwise bound by this Final Judgment shall file with this Court, prior to the consummation of said transaction, an undertaking to be bound by the provisions of this Section IX with respect to the patents so acquired.

X

[Inspection and Compliance]

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

(a) access, during the office hours of the defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendant relating to any matters contained in this Final Judgment; and

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

For the purpose of securing compliance with this Final Judgment, any defendant, upon the written request of, the Attorney General or the Assistant Attorney General in charge of the Anti-trust Division, made to its principal office, shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the enforcement of this Final Judgment.

No information 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 such Department 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.

XI

[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 or for the modification, amendment or cancellation of any of the provisions thereof, the enforcement of compliance therewith and the punishment of violations thereof.