

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Civil No. 28198
)
 ALLEN-BRADLEY COMPANY; THE CLARK)
 CONTROLLER COMPANY; CUTLER-HAMMER)
 INC.; GENERAL ELECTRIC COMPANY;)
 SQUARE D COMPANY; and WESTINGHOUSE)
 ELECTRIC CORPORATION,)
)
 Defendants.)

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on June 22, 1960, and the plaintiff and the undersigned defendant, Westinghouse Electric Corporation, 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, without this Final Judgment constituting evidence or an admission by any party signatory hereto with respect to any such issue, and this Court having determined pursuant to Rule 54(b) of the Federal Rules of Civil Procedure that there is no just reason for delay in entering a Final Judgment as to all of plaintiff's claims asserted in said complaint against the defendant signatory hereto,

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 signatory hereto as aforesaid, the Court hereby determines that the proceeding herein is terminated as to the defendant signatory hereto and directs entry of Final Judgment as to all of plaintiff's claims herein against that defendant (provided that the making and entry of this Final Judgment shall be without prejudice to plaintiff filing

and prosecuting claims for damages, if any, resulting from activities alleged in the complaint herein) and as to that defendant it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

The Court has jurisdiction of the subject matter of this action and of the defendant signatory hereto. The complaint states claims upon which relief may be granted against that defendant 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) "Industrial control equipment" means any and all devices which individually or grouped are used in industrial applications for the control of motors or other power utilization apparatus rated not more than 750 volts d-c or 5,000 volts a-c. The scope specifically includes but is not limited to devices used for the following purposes:

(1) To start, stop, protect, accelerate, decelerate, reverse, and/or control the speed of electric motors;

(2) To start, stop, and/or control the operations of resistance welding machines;

(3) To provide some mechanical movement through the action of magnets or solenoids.

Examples of devices falling within and devices excluded from this scope are attached hereto as an Appendix. The term "industrial control equipment" shall not include any power switchgear assembly, low voltage power circuit breaker or navy and marine switchgear or any component thereof subject to the applicable provisions of any of the Final Judgments in Civil Nos. 27716, 27718 or 28090 entered by this Court on _____, 1962;

(B) "Person" means any individual, partnership, firm, corporation, association, trustee or any other business or legal entity; and

(C) "Manufacturer" means a person who manufactures or assembles, or proposes in good faith to manufacture or assemble, within the United States in its own plant regularly maintained for that purpose.

III

The provisions of this Final Judgment applicable to the consenting defendant shall apply also to each of its subsidiaries, successors and assignees, and to their respective officers, directors, agents, servants and employees, and to all other persons in active concert or participation with such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise. Such defendant is ordered and directed to take such steps as are reasonably appropriate to procure compliance by its subsidiaries, officers, directors, agents, servants and employees with the terms of this Final Judgment. For the purpose of this Final Judgment such consenting defendant and its subsidiaries, officers, directors, agents, servants and employees, or any of them, shall be deemed to be one person. This Final Judgment shall not apply to sales of industrial control equipment for use outside the United States except for sales of such equipment by the consenting defendant to or for the use of the plaintiff or any instrumentality or agency thereof.

IV

The consenting defendant is enjoined and restrained from directly or indirectly entering into, adhering to or claiming or maintaining any right under any contract, agreement, arrangement, understanding, plan or program with any other manufacturer or seller of industrial control equipment in the United States to:

(A) Eliminate or suppress unreasonably competition in the manufacture, distribution or sale of industrial control equipment;

(B) Allocate or divide territories, markets, fields or customers for the manufacture or sale of industrial control equipment; provided, however, that this subsection (B) shall not prohibit the consenting defendant from accepting or granting, without more, otherwise lawful patent, trade secret or technical information licenses;

(C) Fix or maintain prices, pricing methods, or any terms or conditions for the sale of any industrial control equipment to any third person;

(D) Exchange information concerning prices, pricing methods or other terms and conditions of sale (other than information released to the trade generally) at or upon which any industrial control equipment is to be sold to any third person;

(E) Submit noncompetitive, collusive or rigged bids or quotations for supplying any industrial control equipment to any third person;

(F) Bid or quote, refrain from bidding or quoting or communicate an intention to bid or quote or to refrain from bidding or quoting, on any industrial control equipment to be sold to any third person;

(G) Hinder, restrict, limit or prevent any person from purchasing any industrial control equipment from any third person (except as may result from any bona fide purchase or sale agreement, without more);

(H) Hinder, restrict, limit or prevent any person from selling any industrial control equipment to any third person (except as may result from any bona fide purchase or sale agreement, without more); or

(I) Fix, set or determine any date for the marketing of new items of industrial control equipment.

V

The consenting defendant is enjoined and restrained from directly or indirectly:

(A) Communicating to or exchanging with any manufacturer or seller of any industrial control equipment any prices applicable to any industrial control equipment except with or after the release of such prices to the trade generally, or except in connection with bona fide purchase or sale negotiations;

(B) Continuing to be a member of or participating in the activities of any association or other organization with knowledge that any of the activities of such association or other organization are being carried on in a manner which, if the association or other organization were a consenting defendant herein, would violate the provisions of this Final Judgment.

(C) Conditioning the sale to any person of any industrial control equipment, as ordinarily sold (except for repair or replacement purposes) by such defendant to other persons in the same commercial class, upon the purchase from such defendant of any other item of electrical equipment; provided, however, in any instance in which such defendant reasonably believes that the use intended to be made of the equipment will expose such defendant to a substantial risk of liability, nothing in this subsection shall be deemed to prohibit such defendant from requiring as a term of sale that the purchaser agree in writing to hold such defendant harmless and to give a reasonably adequate bond (or, at the purchaser's option, to maintain reasonably adequate insurance) to secure such agreement insofar as it relates to claims by third persons.

VI

The consenting defendant is ordered and directed, not later than one year following the effective date of this Section VI, individually and independently (1) to review and determine its book prices for industrial control equipment based upon lawful considerations, and (2) to announce such prices determined under (1) above; provided, however, that the price review, determination and announcement referred to above shall not be required with respect to any industrial control equipment as to which such defendant, within one year following the

effective date of this Section VI, files with this Court, with a copy sent to the Assistant Attorney General in charge of the Antitrust Division, an affidavit stating that such defendant, prior to the effective date of this Section VI and subsequent to June 22, 1960, reviewed, determined and announced the price of the product in accordance with the requirement of this Section VI; and provided, further, that nothing contained in this Section VI shall prevent such defendant from deviating from, modifying, or otherwise changing the prices announced in accordance with this Section VI.

VII

Nothing contained in this Final Judgment shall be deemed to prohibit the consenting defendant,

(A) Where in order to sell or offer to sell electrical equipment which includes any industrial control equipment any person must have an item or items of electrical equipment (i) which it does not itself manufacture or assemble to combine with items of such equipment which it does itself manufacture, assemble or purchase from others, (ii) or if it does manufacture or assemble such an item, the item is of such a type or quality that it cannot competitively sell or offer to sell its own item, (iii) or where such person could not singly perform the contract contemplated by any such sale or offer to sell:

(1) from formulating or submitting, in combination with any person, a bona fide joint bid or quotation, where such joint bid or quotation is denominated as such or known to the purchaser to be such; or

(2) from conducting bona fide negotiations for or entering into any lawful agreement with any person for a bona fide purchase from or sale to each other, provided, that each party to the transaction is free to sell or offer to sell on terms independently determined by it;

(B) Where required directly or indirectly by a governmental agency, from formulating or submitting in combination with any person a bona fide joint bid or quotation which is denominated as such or known to the purchaser to be such;

(C) From entering into, creating, carrying out or implementing by lawful conduct any otherwise lawful contract, agreement, arrangement, understanding, plan or program with any reseller relating to the sale of any industrial control equipment purchased from the defendant; or

(D) From lawfully contracting with any person for the supply to or by such person of any industrial control equipment embodying the proprietary design of, or specially designed for, the purchaser upon terms prohibiting the supplier from selling equipment embodying such design to all others (except that the purchaser may authorize sales for repair or replacement purposes).

VIII

For the purpose of determining or securing compliance with this Final Judgment, 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 the consenting 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, 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.

The consenting defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and upon reasonable notice made to its principal office, shall submit such written reports, under oath if it is requested, with respect to any of the matters contained in this Final Judgment as from time to time may be necessary and requested for the enforcement of this Final Judgment. No information obtained by the means provided in this Section shall be divulged by any representative of the Department of Justice to any person except a duly authorized representative of the Executive Branch of the United States 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. If any such information is divulged to a duly authorized representative of the Executive Branch, outside the Department of Justice, such information shall be given after notice to the defendant and on the condition that it will not be revealed to any person outside of such representative's Department or Agency except where required by regulation or statute or pursuant to court process.

IX

Jurisdiction is retained for the purpose of enabling any of the parties consenting to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction of or carrying out of this Final Judgment, or for the modification of any of the provisions thereof, and for the purpose of enabling the plaintiff to apply to this Court for the enforcement of compliance therewith and the punishment of violations thereof.

X

Except as herein provided, the provisions of this Final Judgment shall become effective upon entry hereof. Section VI of this Final Judgment shall not become effective until entry of a Final Judgment, not subject

to further appeal, against the last remaining defendant in this action; provided, however, that upon motion of any party consenting hereto, on thirty (30) days' notice to the other party, and for good cause shown, this Court may enter an order making any or all of such Section effective as to the consenting defendant at any earlier or later date the Court may deem appropriate.

Dated: October 1, 1962.

/s/ J. Cullen Ganey
United States Circuit Judge,
Specially Designated to Sit in the
District Court

We hereby consent to the making and entry of the foregoing Final Judgment.

For the Plaintiff:

/s/ Lee Loevinger
Assistant Attorney General

/s/ Donald G. Balthis

/s/ William D. Kilgore, Jr.

/s/ John E. Sarbaugh

/s/ Baddia J. Rashid

Attorneys, Department of Justice

For the Consenting Defendants:

CRAVATH, SWAINE & MOORE

By:

/s/ George B. Turner
Attorneys for Westinghouse
Electric Corporation

A P P E N D I X

Industrial Control Equipment

Examples of devices falling within the definition of such equipment and devices excluded from this scope are:

(INCLUDED)

1. Manual and magnetic starters and controllers.
2. Relays and contactors.
3. Drum switches.
4. Overload devices intended primarily for the starting and running protection of electric motors, including inherent overload protective devices.
5. Rheostats and resistors.
6. Autotransformers and reactors of the type principally used in reduced voltage starters.
7. Control circuit and/or pilot devices including, but not limited to, timers, push buttons, indicating and pilot lights, limit switches, pressure, vacuum, temperature and/or liquid-level switches, plugging switches, speed switches, solenoids, solenoid valves, photoelectric relays, terminal blocks.
8. A-c and d-c brakes, clutches, and electrical operators therefor.
9. Resistance welding controls.
10. Electronic and static devices and controllers, including magnetic amplifiers and solid-state devices.
11. Regulators for controlling power utilization apparatus.
12. Resistance dimmers, autotransformer dimmers, reactor dimmers, and electronic dimmer systems.
13. Precision snap-acting switches.

(EXCLUDED)

1. Automatic electric controls (including inherent overload devices) of the types principally used in domestic air-conditioning, refrigeration and comfort heating, which are capable of handling a current not in excess of 30 amperes or handling directly any motor having a rating not higher than 1-1/2 horsepower single-phase, or 2 horsepower polyphase.
2. Motors, generators, and motor-generators which function as control when constituting part of adjustable speed drives.
3. Controls of the type used specifically for railway and railroad locomotion.
4. Renewal parts.