

[Trade Regulation Reporter - Trade Cases \(1932 - 1992\), United States v. General Electric Co., U.S. District Court, E.D. Pennsylvania, 1977-2 Trade Cases ¶61,660, \(Sept. 19, 1977\)](#)

Federal Antitrust Cases

28228

Trade Regulation Reporter - Trade Cases (1932 - 1992) ¶61,660

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United States v. General Electric Co.

1977-2 Trade Cases ¶61,660. U.S. District Court, E.D. Pennsylvania, Civil No. 28228, Entered September 19, 1977, (Competitive impact statement and other matters filed with settlement: 42 *Federal Register* 17004).

Case No. 1549, Antitrust Division, Department of Justice.

Sherman Act

Headnote

Price Fixing: Exchange of Price Information: Electrical Equipment Industry: Modification of 1962 Consent Decree.—

A manufacturer of heavy electrical equipment was enjoined, under a modification of a consent decree, from publishing or distributing any "price-signalling" information, offering a price protection policy, using any price book, price list or compilation of prices other than its own, and from using or retaining those prepared by another manufacturer. The manufacturer also was enjoined from revealing to any person not employed by it a price book or price list and from communicating to such person about prices, price changes, bids or quotations, and policies regarding negotiations, performance or pricing systems for turbine-generators. The manufacturer was not prohibited from conveying information in compliance with judicial or administrative proceedings, in connection with legal proceedings or to any person retained by it for a legitimate purpose, provided the information was not published or re-used. It could change price or terms of sale consistently with the decree and comply with previous contractual commitments. The manufacturer was ordered to retain records of calculations and determinations of prices, price books and lists; to give notice on its price books or lists that distribution to persons not employed by it would be a violation of the modification; and to keep a log indicating to whom a price book or list was distributed and the date of such distribution.

Modifying consent decrees, [1962 Trade Cases ¶70,488](#) and 70,503.

For attorneys, see ¶61,659.

Modification By Consent of Final Judgment as to General Electric Co. Entered October 1, 1962

McGlynn, D. J.: The Court having retained jurisdiction of this matter pursuant to the Final Judgment dated October 1, 1962, [[1962 Trade Cases ¶70,488](#)] and plaintiff and defendant General Electric Company having consented to the making and entry of a Modification thereof; and the Court having been fully advised with respect to the matter and having determined that entry of this Modification By Consent is in the public interest;

Now, Therefore, based upon the Court's finding that entry of this Modification By Consent is appropriate in this case, without trial or adjudication of any issue of fact or law herein, and without this Modification constituting any evidence against or admission by any party with respect to any issue of fact or law in any action or proceeding;

Now, Therefore, before any testimony has been taken, the Court being advised and having considered the matter it is hereby Ordered, Adjudged and Decreed that the Final Judgment entered herein on October 1, 1962, is hereby modified as follows:

[“Large Turbine-Generator”]

1. “Large turbine-generator” means an assembly of a turbine and a generator with an electrical rating of 100,000 kw or more used for the production or generation of electricity on land by the use of steam, but it does not include marine turbines or marine turbine-generators, gas turbines or gas turbine-generators, hydro-electric turbine-generators or hydraulic turbines

[Pricing Information]

2. That the defendant, its successors, assignees, transferees, and respective officers, agents, and employees, be enjoined and restrained from:

(a) publishing or distributing any information intended to communicate directly or indirectly an invitation to agree, or willingness to agree, with any manufacturer of large turbine-generators (i) to raise, fix, maintain, stabilize, or otherwise affect the price or other terms and conditions for the sale of large turbine-generators, or (ii) to reduce or eliminate competition in the guaranteed or actual performance of large turbine-generators;

(b) hereafter offering a price protection policy or entering into any agreement whereby the price of a large turbine-generator to any customer would be retroactively reduced or the defendant would be subject to any penalty or disadvantage as the direct result of offering or providing a lower price or more favorable terms and conditions of sale to any subsequent customer or potential customer;

(c) beginning three months from the effective date of this modification, using any price book, price list, or compilation of prices for the sale of large turbine-generators other than a price book, price list, or compilation of prices

(i) compiled by the defendant after the effective date of this modification;

(ii) based on the defendant's own individually determined criteria and costs; and

(iii) not based on the prices in any price book, price list, or compilation of prices in effect during the period beginning May 20, 1963 and extending up to and including the effective date of this modification;

provided, however, that this subsection 2(c) shall not be construed to prohibit the defendant from selling a large turbine-generator to a specific customer at any price it sees fit consistent with the provisions of this modification; and provided further, that defendant shall be allowed to use its price books issued prior to the date this provision takes effect solely for the purpose of calculating prices for turbine-generators ordered before that date;

(d) preparing or using any price book or price list for large turbine-generators after the effective date of this modification that is related to any previous price book or price list by a uniform multiplier or percentage, or computing the price of a large turbine-generator by applying a uniform multiplier or percentage to any previous price book or price list, except where necessary to compute the price of a turbine-generator ordered prior to the effective date of this modification;

(e) distributing or revealing to any person not employed by the defendant a price book or price list relating to large turbine-generators;

(f) communicating to any person not employed by the defendant

(i) a policy regarding negotiation or bargaining involving the price or terms and conditions of sale for large turbine-generators;

(ii) a policy regarding performance guarantees for large turbine-generators;

(iii) a policy regarding negotiation or bargaining involving the price of spare parts for large turbine-generators;

(iv) a policy regarding the use of a formula or system for pricing large turbine-generators;

(v) a formula or system for pricing large turbine-generators, provided that nothing in this subsection 2(f)(v) shall be construed to prohibit the defendant from using price escalation clauses to adjust prices to reflect changes in costs or other economic indices between the date of order and the date of delivery or from selling large turbine-generators under a cost-reimbursement contract; and

(vi) any change in the price of large turbine-generators, provided that the defendant shall not be prohibited from communicating to a specific customer, potential customer, or his agent, a change in a price previously furnished to such customer or agent for a particular large turbine-generator;

(g) distributing or revealing to any person not employed by the defendant (i) prices and terms and conditions for the sale of large turbine-generators; (ii) the exhaust end load limits for large turbine-generators; and (iii) performance guarantees, including but not limited to heat rates for large turbine-generators.

Nothing in section 2(g) shall be construed to prohibit the defendant (1) from conveying to a specific customer or potential customer, or his agent, the information necessary to respond, in good faith, to a request from such customer or agent for the defendant to bid on, or to engage in negotiations regarding the purchase of, one or more large turbine-generators, or (2) from conveying information necessary to respond in good faith to a request from a customer or his agent for information in connection with discussions regarding the purchase of one or more large turbine-generators by that customer;

(h) (i) expressing to any person not employed by the defendant the price of a large turbine-generator in terms of a multiple or percentage of a book or list price or a separately stated price or (ii) expressing to any person not employed by the defendant a relation of the price of a large turbine generator to a separately stated price or to a price furnished to a different customer;

(i) publishing, or communicating directly or indirectly to any person not employed by the defendant, any compilation of (a) outstanding bids or quotations for the sale of large turbine-generators for a period of five years from the date such bids or quotations are made; or (b) prices and terms and conditions of sale quoted on transactions involving the sale of large turbine-generators for a period of thirty months from the date of such quotations;

(j) (i) using or retaining a price book, price list, or compilation of list or book prices or standard terms and conditions, for the sale of large turbine-generators, prepared by Westinghouse after May 1, 1963, or a copy thereof;

(ii) using or retaining a price book, price list, or compilation of list or book prices or standard terms and conditions, for the sale of large turbine-generators prepared after the effective date of this modification by a manufacturer other than Westinghouse, or a copy thereof;

(k) receiving or examining any part of any document, prepared or distributed by Westinghouse, or copy thereof, and including prices, terms and conditions of sale, or performance guarantees regarding the sale of a large turbine-generator; provided, however, that a representative of the defendant may be permitted to view a bid prepared by Westinghouse, at the option of the customer and prior to the award of the order, solely for the purpose of verifying, in good faith, representations made by the customer or its agent concerning the content of such Westinghouse bid; and provided further that independent counsel, acting on behalf of General Electric, may be employed to verify that an award of a public sealed bid is legal; such lawyer may employ independent technical advisers, so long as neither the lawyer nor technical advisers communicate to any General Electric employee the contents of such Westinghouse bid.

[Permissible Information]

3. Nothing contained herein shall be construed to prohibit the defendant (a) from conveying information in compliance with any order, or in connection with participation in any proceeding, of a court, legislative body, or administrative agency; (b) from conveying information to any person retained by the defendant for a legitimate purpose, provided that, with regard to any such information that refers or relates to price, terms and conditions of sale, exhaust end load limits, and performance guarantees, the defendant shall secure from such person a

legally binding commitment not to publish or re-use said information; (c) from using or conveying information in connection with the rendering of legal advice or participating in a legal proceeding; (d) from responding to competition by changing price or terms and conditions of sale furnished to a customer in a manner otherwise consistent with the provisions of this decree; or (e) from complying with contractual commitments to any customer undertaken prior to the effective date of this modification by:

(i) expressing the price of a large turbine-generator in terms of (a) a price book or price list issued prior to the effective date of this modification or (b) a multiplier or percentage established prior to the effective date of this modification applied to any such price book or price list;

(ii) expressing the price or any performance guarantee for a large turbine-generator in terms of a formula included or incorporated by reference in a contract entered into prior to the effective date of this modification.

[Price Calculations]

4. The defendant is ordered to retain in its files records of calculations and determinations involved in the computation of a price for any large turbine-generator, or in the preparation of any price book or price list for such machines, for a period of five years after such computation or preparation.

[Notice]

5. The defendant, its successors, assignees and transferees, and its officers, agents and employees are ordered:

(a) to print conspicuously on each of its price books or price lists for the sale of large turbine-generators prepared after the effective date of this modification a notice that distribution of the price book or price list to persons not employed by the defendant will constitute a violation of this modification and that said violation may be punishable as contempt of court; and

(b) to number each of its price books or price lists for the sale of large turbine-generators prepared after the effective date of this modification, and maintain a log which shall indicate: (i) the name and position of every person to whom a price book or price list is distributed and (ii) the date of such distribution.

[Termination of Provisions]

6. The provisions of this modification shall terminate fifteen years from its effective date, except that section 2(a) shall terminate twenty-five years from said date and section 2(k) ten years from said date.

[Superseded Provisions]

7. Sections IV (D), V (A), and any other provision of the Final Judgment entered on October 1, 1962, which is inconsistent with the provisions contained herein, are henceforth of no force and effect insofar as they pertain to large turbine-generators as defined herein.