

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,)
)
) Plaintiff,)
)
) v.) CIVIL ACTION
)
) FOSTER-WHEELER CORPORATION,) NO. 28,229
) ALLIS-CHALMERS MANUFACTURING COMPANY,)
) CARRIER CORPORATION, INGERSOLL-RAND)
) COMPANY, WESTINGHOUSE ELECTRIC)
) CORPORATION, C. H. WHEELER MANUFACTURING)
) COMPANY, and WORTHINGTON CORPORATION,) FILED May 22, 1961
)
) Defendants.)

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on June 29, 1960, and the plaintiff and the defendant C. H. Wheeler Manufacturing Company 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 signatory hereto with respect to 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 consent of the parties signatory 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 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) "C. H. Wheeler" shall mean defendant C. H. Wheeler Manufacturing Company, with its principal place of business at Philadelphia, Pennsylvania;

(B) "Condensers" means steam surface condensers and the auxiliaries and accessory equipment used therewith, including air ejectors, circulating pumps, condensate pumps, hot wells, water boxes and tube supports;

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

(D) "Manufacturer" means a person who manufactures or assembles, or proposes in good faith to manufacture or assemble, within the United States.

III

The provisions of this Final Judgment applicable to defendant C. H. Wheeler 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. Defendant C. H. Wheeler 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 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 or require sales of condensers for use outside the United States except for sales by defendant to or for the use of the plaintiff or any instrumentality or agency thereof.

IV

Defendant C. H. Wheeler 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 condensers in the United States to:

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

(B) Allocate or divide territories, markets, fields or customers for the manufacture or sale of condensers, provided, however, that this subsection (B) shall not prohibit such defendant from accepting or granting, without more, otherwise lawful patent licenses;

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

(D) Exchange information concerning prices, pricing methods or other terms and conditions of sale (other than information previously released to the trade generally)

at or upon which any condensers are to be sold to any third person;

(E) Submit non-competitive, collusive or rigged bids or quotations for supplying any condensers to any third person;

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

(G) Hinder, restrict, limit or prevent any person from purchasing any condensers from any third person; or

(H) Hinder, restrict, limit or prevent any person from selling any condensers to any third person.

V

Defendant C. H. Wheeler is enjoined and restrained from, directly or indirectly:

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

(B) Disclosing or communicating to any other seller of any condensers, with respect to any bid on or quotation for, or prospective bid on or quotation for, any condenser in advance of the official opening of such bid, or due date of such quotation, or date of contract of sale, whichever shall be earlier, the prices, terms or conditions to be bid or quoted;

(C) 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 defendant herein, would violate the provisions of this Final Judgment;

(D) (1) Refusing to sell any auxiliary and accessory equipment used with condensers to any manufacturer of condensers for incorporation in and general resale to others as a part of a condenser so long as such equipment is being sold or offered for sale by such defendant to any other such manufacturer for such purpose; provided that any such prospective purchaser is financially able to purchase such equipment and such defendant is able in accordance with its unusual and customary production and delivery scheduling procedures to supply such equipment to the purchaser at or about the time requested by the purchaser;

(2) Discriminating in any such sales by selling any such equipment in quantities, or at prices, terms and conditions of sale for the same quantities, not at the same time available to other such manufacturers; in any suit or proceeding hereafter instituted by the plaintiff against defendant charging defendant with a violation of this subsection (2), such defendant may rebut a prima facie case made by the plaintiff showing that its lower price to a purchaser or purchasers was made in good faith to meet an equally

low price of a competitor, or did not have the effect of substantially lessening competition;

(E) Conditioning the sale to any person of any condenser as ordinarily sold (except for repair or replacement purposes) by the defendant to other persons in the same commercial class, upon the purchase from the defendant of any other item of electrical equipment;

(F) Selling condensers at unreasonably low prices with the purpose or intent, or where the effect is, or where there is a reasonable probability that the effect will be, substantially to injure, suppress or stifle competition or tend to create a monopoly; provided, however, that in any proceeding for civil contempt based upon an alleged violation of this subsection (F) in which the plaintiff shall have sustained its burden of proving that the defendant in such proceeding has made sales which would violate this subsection (F) if such sales were at unreasonably low prices, the burden of proof shall be upon such defendant to establish that it did not sell such condensers at unreasonably low prices.

VI

(A) Defendant C. H. Wheeler is ordered and directed, not later than one year following the entry of this Final Judgment, individually and independently (1) to review and determine its book prices and other terms and conditions of sale for any condensers based upon lawful considerations, and (2) to announce such prices determined under (1) above.

(B) Defendant C. H. Wheeler is ordered and directed to send a copy of this Final Judgment not later than

one hundred eighty (180) days following the entry of this Final Judgment to each of the Federal, State and local agencies and any other governmental awarding authorities to whom sales pursuant to bids for any condensers were made by such defendant between January 1, 1956 and June 29, 1960.

(C) Defendant C. H. Wheeler is ordered and directed for a period of ten (10) years from the date of entry of this Final Judgment to notify each Federal, State and local governmental agency to which such defendant has within the preceding year submitted a sealed bid for any condensers that the defendant has been ordered, and such defendant is hereby so ordered, to submit upon request of the agency a statement in the form set forth in Appendix A attached hereto with each sealed bid for a condenser submitted to such agency.

(D) Defendant C. H. Wheeler is ordered and directed, for a period of ten (10) years from the date of entry of this Final Judgment, when submitting a bid or quotation for the sale of any condenser (for which a price is included by the defendant in the calculation of its bid or quotation) combined with other major items of electrical equipment to set forth and itemize separately the amount included in such bid or quotation for the condenser.

VII

Nothing contained in this Final Judgment shall be deemed to prohibit defendant C. H. Wheeler:

(A) Where in order to bid or quote on a job which includes a condenser, any manufacturer or assembler of electrical equipment must have an item, or items, of electrical equipment (1) which it does not itself manufacture or assemble

to combine with items of such equipment which it does itself manufacture or assemble (2) or if it does manufacture such an item, it is of such a type or quality that it cannot competitively bid its own item; or where such manufacturer or assembler could not singly perform the contract contemplated by such bid or quotation:

(a) 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;

(b) From conducting bona fide negotiations for or entering into any lawful agreement with any manufacturer for a bona fide purchase from or sale to each other, provided, that each party to the transaction is free to submit its own bid or quotation on terms independently determined by it;

(B) Where required directly or indirectly by a government 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 any otherwise lawful contract, agreement, arrangement, understanding, plan or program with any distributor relating to the sale of condensers purchased from the defendant.

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 defendant C. H. Wheeler 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.

Defendant C. H. Wheeler, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, 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 for determining compliance or 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 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 signatory 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 violation thereof.

Dated: May 22, 1961

/s/ J. Cullen Ganey
Chief Judge, United States
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/ WM. D. KILGORE, JR.

/s/ JOHN H. HUGHES

/s/ BADDIA J. RASHID

/s/ WHAREY M. FREEZE

Attorneys, Department of Justice

For the Defendant:

C. H. WHEELER MANUFACTURING COMPANY

/s/ JOHN R. BULLOCK
Taft, Stettinius & Hollister

/s/ CHARLES I. THOMPSON, JR.
Ballard, Spahr, Andrews &
Ingersoll

