

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Cutler-Hammer, Inc.; Federal Pacific Electric Company; General Electric Company; I-T-E Circuit Breaker Company; Square D Company and Westinghouse Electric Corporation., U.S. District Court, E.D. Pennsylvania, 1962 Trade Cases ¶70,421, (Jul. 31, 1962)

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United States v. Cutler-Hammer, Inc.; Federal Pacific Electric Company; General Electric Company; I-T-E Circuit Breaker Company; Square D Company and Westinghouse Electric Corporation.

1962 Trade Cases ¶70,421. U.S. District Court, E.D. Pennsylvania. Civil No.28200. July 31, 1962. Case No. 1542 in the Antitrust Division of the Department of Justice.

Sherman Act

Price Fixing—Collusive Bidding—Joint Bids—Low Voltage Distribution Equipment —Consent Judgment.

—Manufacturers of low voltage distribution equipment were prohibited by a consent judgment from entering into any agreement to submit noncompetitive, collusive or rigged bids, or to bid, refrain from bidding, or communicate an intention to bid or refrain from bidding. However, the manufacturers could submit a bona fide joint bid in combination with another person under specified conditions.

Allocation of Markets—Patent and Other Rights—Consent Judgment.—Manufacturers were prohibited by a consent judgment from agreeing to allocate territories, fields, or customers for the manufacture or sale of low voltage distribution equipment; however, the judgment did not prohibit the manufacturers from accepting or granting, without more, otherwise lawful patent, trade secret, or technical information licenses.

Tying Arrangements—Exception to Prohibition—Consent Judgment.—Manufacturers were prohibited from conditioning the sale of low voltage distribution equipment upon the purchase of any other item of electrical equipment; however, the manufacturers could require as a term of sale that the purchaser agree to hold the manufacturer harmless and to give bond to secure such agreement, where the manufacturer reasonably believes that the use to be made of the equipment will expose it to a substantial risk of liability.

Resale Restrictions—Proprietary Design—Consent Judgment.—Manufacturers were not prohibited from agreeing not to sell to other persons equipment embodying the proprietary design of, or specially designed for, a purchaser.

Consent Judgment—Review of Prices.—Manufacturers of low voltage distribution equipment were required by a consent judgment to independently review and determine book prices and to announce such prices so determined.

Consent Judgment—Scope—Government Damage Action.—The entry of a consent judgment was without prejudice to the government's filing and prosecuting claims for damages resulting from the activities charged in the complaint.

Consent Judgment—Judgment as to Some Defendants.—A consent judgment entered against some defendants recited that the court has determined pursuant to Rule 54(b) of the Federal Rules of Civil Procedure that there was no just reason for delay in entering the decree as to all of the government's claims against the signatory defendants.

For the plaintiff: Lee Loevinger, Assistant Attorney General, W. D. Kilgore, Jr., Baddia J. Rashid, Donald G. Balthis, John E. Sarbaugh, and Stewart J. Miller, Attorneys, Department of Justice.

For the consenting defendants: John K. MacIver, Michael, Best & Friedrich, for Cutler-Hammer, Inc., and Steven E. Keane, Foley, Sammond & Lardner, for Square D Co.

Final Judgment

[Scope]

Plaintiff, United States of America, having filed its complaint herein on June 23, 1960, and the plaintiff and the undersigned 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, 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 defendants 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 defendants signatory hereto and directs entry of Final judgment as to all of plaintiff's claims herein against those defendants (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 those defendants it is hereby

Ordered, adjudged and decreed as follows:

I

[*Sherman Act*]

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

[*Definitions*]

As used in this Final Judgment:

(A) "Low voltage distribution equipment" means electrical equipment and apparatus designed and used in the distribution of electricity of 600 volts or less for either residential, commercial, institutional or industrial purposes. Examples of equipment and apparatus falling within and excluded from this definition are attached hereto as an Appendix;

(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

[*Applicability*]

The provisions of this Final Judgment applicable to any 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. Each 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 each 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 or require sales of low voltage distribution equipment for use outside the United States except for sales of such equipment by any consenting defendant to or for the use of the plaintiff or any instrumentality or agency thereof.

IV

[Price Fixing]

Each of the consenting defendants 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 low voltage distribution equipment in the United States to:

- (A) Eliminate or suppress unreasonable competition in the manufacture, distribution or sale of low voltage distribution equipment;
- (B) Allocate or divide territories, markets, fields or customers for the manufacture or sale of low voltage distribution equipment; provided, however, that this subsection (B) shall not prohibit a 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 low voltage distribution 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 low voltage distribution equipment is to be sold to any third person;
- (E) Submit noncompetitive, collusive or rigged bids or quotations for supplying any low voltage distribution 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 low voltage distribution equipment to be sold to any third person;
- (G) Hinder, restrict, limit or prevent any person from purchasing any low voltage distribution equipment from any third person (except as may result from any bona fide purchase or sale agreement, without more); or
- (H) Hinder, restrict, limit or prevent any person from selling any low voltage distribution equipment to any third person (except as may result from any bona fide purchase or sale agreement, without more).

V

[Tying Arrangements]

Each of the consenting defendants is enjoined and restrained from directly or indirectly:

- (A) Communicating to or exchanging with any manufacturer or seller of any low voltage distribution equipment any prices applicable to any low voltage distribution 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 low voltage distribution 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 (C) 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

[Review of Prices]

Each of the consenting defendants 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 low voltage distribution 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 low voltage distribution 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 23, 1960, reviewed, determined and announced the price of the product in accordance with the requirements of this Section VI; and provided, further, that nothing contained in this Section VI shall prevent any such defendant from deviating from, modifying, or otherwise changing the prices announced in accordance with this Section VI.

VII

[Exceptions]

Nothing contained in this Final Judgment shall be deemed to prohibit any of the consenting defendants:

(A) Where in order to sell or offer to sell electrical equipment which includes any low voltage distribution 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 or assemble or purchase from others, (ii) or if it does manufacture 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 low voltage distribution equipment purchased from the defendant; or

(D) From lawfully contracting with any person for the supply to or by such person of any low Voltage distribution 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

[Inspection and Compliance]

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 any 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.

A 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 Retained*]

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

[*Effective Date*]

The provisions of this Final Judgment shall become effective upon entry hereof.

APPENDIX

Low Voltage Distribution Equipment

Examples of equipment and apparatus falling within and excluded from the definition of such equipment are:

(Included)

(1) Molded case circuit breakers, up to 800 amperes, single-pole and multi-pole, with or without accessories or attachments;

(2) Prefabricated busway system rated at 50 amperes or more, and associated fittings, classified as follows:

(a) Feeder busways: Enclosed busways of the type generally used for conducting electric power from source of supply to centers of distribution.

(b) Plug-in busways: Enclosed busways of the type generally used for conducting and distributing electric power, and which provide at spaced intervals means for attaching accessories.

(c) Accessories:

(1) All power take-off devices applicable to busways.

(2) Protective, and indicating devices applicable to such plug-in busways;

(3) Manually operable fusible or non-fusible air break switches, both open type and enclosed type, excepting switches commonly known as snap switches, and also excepting switch devices having features provided primarily for the starting and running protection of electric motors.

(4) Individually-enclosed molded case circuit breakers.

(5) Panel boards (including loadcenters) for assembly in the form of a single panel; including buses, and with or without switches or automatic overcurrent protective devices, or both, for the control of light, heat or power circuits of small individual as well as aggregate capacity, designed to be placed in a cabinet or cutout box placed in or against a wall or partition and accessible only from the front.

(6) Switchboards (distribution boards) on which are mounted, on the face or back or both, switches, or overcurrent protective devices, or both, and buses, designed for floor mounting and accessible from the rear or from the front, or both, and not intended to be installed in cabinets. Specifically excluded are those sections of a distribution switchboard which use large air circuit breakers other than molded case circuit breakers, and switchboards intended for the direct control of motors or of manufacturing processes.

Excluded from the definition of "low voltage distribution equipment" are renewal parts, cable, wire, wire ways, bituminous and metallic conduit or conduit fittings, fuses, plastic and metallic outlet and switch boxes, steel underfloor and header raceway systems including ducts and fittings therefor, and all types of wiring devices and their accessories including:

1. Attachment plugs.
2. Attachment plug receptacles.
3. Cord connectors.
4. Appliance attaching plugs.
5. Current taps of attachment plug and screw shell types.
6. Connecting outlet devices.
7. Lamp holders.
8. Rosettes.
9. Flush and surface mounted tumbler, push-button and rotary switches
10. Ceiling pull, pendant pull, pendant push-through snap switches of tumbler or push-through types, and
11. Flush-device plates.