

# Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Westinghouse Electric Corp., U.S. District Court, W.D. Pennsylvania, 1972 Trade Cases ¶74,053, (Aug. 1, 1972)

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United States v. Westinghouse Electric Corp.

1972 Trade Cases ¶74,053. U.S. District Court, W.D. Pennsylvania. Civil Action No. 72-507. Entered August 1, 1972. Case No. 2254, Antitrust Division, Department of Justice.

## Sherman Act

**Reciprocity—Purchasing—Statistical Compilations—Trade Relations Personnel.**—A reciprocity consent decree prohibited: purchasing products or services from, or selling products or services to, any customer or supplier upon the understanding that the defendant's purchases will be conditioned upon its sales to such customer or supplier; communicating to any customer, supplier or contractor that defendant's sales to any such person are a factor in its purchasing decisions"; discussing with any supplier or contractor the relationship of purchases and sales between them or comparing statistical data to further such a relationship; maintaining statistical compilations that compare sales to and purchases from suppliers; and establishing or maintaining any office or position whose activities are to promote trade relations involving reciprocal purchasing arrangements.

**Reciprocity—Statistical Data—Finances of Customers and Suppliers—Acquisitions.**—The terms of a reciprocity decree prohibited defendant from compiling or using statistical data in discussions with any customer, supplier or contractor of defendant in order to protect it against loss from bad debts due to actual or anticipated bankruptcy, insolvency or delinquency in payment of such firms, or in order to determine whether any acquisition violates the antitrust laws.

**Reciprocity—Exchange of Goods and Services—International Trade—Fiscal and Monetary Factors.**—The terms of a reciprocity decree prohibited defendant from accepting or furnishing goods or services in payment for other goods or services, where such transactions are entered into in international trade and because of governmental fiscal policies or any currency restrictions, currency valuation or other factors affecting payment.

**For plaintiff:** Walker B. Comegys, Acting Asst. Atty. Gen., Baddia J. Rashid, Charles D. Mahaffie, Jr., Charles F. B. McAleer, Donald H. Mullins and William G. Kelly, Dept. of Justice. **For defendant:** Ray W. Brown, Asst. Gen. Counsel, Westinghouse Electric Corp.

## Final Judgment

DUMBAULD, D. J.: The complaint having been filed herein on June 23, 1972, and plaintiff and defendant, by their respective attorneys, having 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 admission by any party with respect to any issue of fact or law herein:

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

[ *Jurisdiction* ]

This Court has jurisdiction of the subject matter herein and of the parties consenting hereto. The complaint states claims upon which relief may be granted against the 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," as amended, commonly known as the Sherman Act.

## II

### [ *Definitions*]

For purposes of this Judgment:

(A) Defendant shall mean Westinghouse Electric Corporation and any domestic company which it in fact controls, irrespective of the degree of stock ownership, except any company which holds broadcast licenses from the Federal Communications Commission and which is engaged principally in broadcast or broadcast-related activities;

(B) Job placements shall mean awards made to a contractor or supplier for work to be done or materials to be supplied after bids have been obtained in response to bid inquiries issued by defendant for particular projects;

(C) Capital expenditures shall mean contract purchases that add to defendant's fixed assets or that have the effect of increasing the capacity, efficiency, life span or economy of operation of defendant's existing fixed assets.

## III

### [ *Applicability*]

The provisions of this Final Judgment shall apply to defendant, and its officers, directors, agents, employees, successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

## IV

### [ *Reciprocal Purchasing*]

Defendant is enjoined and restrained from:

(A) Purchasing products, goods or services from, or entering into or adhering to any contract, agreement or understanding with, any actual or potential supplier on the condition or understanding that purchases by defendant from such supplier will be based or conditioned upon defendant's sales to such supplier;

(B) Selling products, goods or services to, or entering into or adhering to any contract, agreement or understanding with, any actual or potential customer on the condition or understanding that defendant's purchases of products, goods or services from such customer will be based or conditioned upon defendant's sales to such customer;

(C) Communicating to defendant's actual or potential suppliers or contractors that:

(1) in purchasing products, goods or services preference will be given to any such supplier or contractor based or conditioned upon defendant's sales to such supplier or contractor;

(2) in compiling bidder lists and in awarding job placements for capital expenditures preference will be given to any such contractor or supplier based or conditioned upon defendant's sales to such contractor or supplier;

(3) defendant is entitled to participate in the purchase by any such supplier or contractor of products or goods sold or services provided by defendant based or conditioned upon defendant's purchases from such supplier or contractor;

(D) Communicating to prime contractors or subcontractors that in awarding subcontracts or purchasing material from material suppliers preference is to be given to any such subcontractor or material supplier based or conditioned upon defendant's sales to such subcontractor or material supplier;

(E) Comparing or exchanging statistical data with any supplier or contractor to facilitate, further or ascertain any relationship between purchases by defendant from such supplier or contractor and sales by defendant to such supplier or contractor;

(F) Engaging in the practice of discussing with any supplier, contractor or customer the relationship between purchases by defendant from such supplier, contractor or customer and sales by defendant to such supplier, contractor or customer of the defendant;

(G) Communicating in its dealings with any of its customers or suppliers that purchases by any business entity in which defendant has an ownership interest have been or will be made to promote sales to such customers or suppliers by defendant;

(H) Directing, recommending or suggesting that any business entity in which defendant has an ownership interest (but not constituting control as described in 11(A)) purchase from any of the defendant's customers or potential customers, in order to reciprocate for purchases made by, or promote reciprocal sales by defendant to such customers or potential customers;

(I) Communicating to particular suppliers the fact of purchases from such suppliers by one of defendant's subsidiaries or divisions to promote reciprocal sales to such suppliers by other subsidiaries or divisions of the defendant.

## V

[ *Supplier Lists*]

Defendant is enjoined and restrained from:

(A) Preparing or maintaining statistical compilations for any supplier or any class or grouping of suppliers which compare purchases from suppliers who supply products, goods or services to defendant with sales by defendant to such suppliers;

(B) Engaging in the practice of issuing to personnel with primary purchasing responsibilities any lists, notices or other modes of specification which directly or indirectly (i) identify suppliers or contractors as customers and (ii) either disclose their purchases from defendant, or specify or recommend that purchases be made from such customers;

(C) Engaging in the practice of issuing to personnel with primary sales responsibilities any lists, notices or other modes of specification which directly or indirectly (i) identify customers as suppliers or contractors and (ii) either disclose their sales to defendant, or specify or recommend that purchases from defendant be solicited from such customers;

(D) Referring lists of bids received on capital expenditures to any personnel having primary sales responsibilities for recommendations for job placements.

## VI

[ *Personnel*]

Defendant is ordered and directed to:

(A) Abolish any office or position having duties which relate to activities, programs or objectives to promote reciprocal purchasing arrangements and refrain from subsequently establishing or maintaining any similar office or position;

(B) Withdraw from all personnel with primary sales or purchasing responsibilities any lists or compilations described in Section V above as currently may be in their possession;

(C) Refrain from being a member of, and prohibit its officers and employees from belonging to or participating in the activities of, or contributing anything of value to, any association whose activities, programs or objectives are to promote trade relations involving reciprocal purchasing arrangements of the types covered by this Final Judgment;

(D) Issue within sixty (60) days to each of its officers and employees having primary sales or purchasing responsibilities a policy directive stating that:

(1) all officers and employees are prohibited from purchasing products, goods or services from, or entering into or adhering to any contract, agreement or understanding with, any actual or potential supplier on the condition or understanding that purchases by defendant from such supplier will be based or conditioned upon defendant's sales to such supplier;

(2) all officers and employees are prohibited from selling products, goods or services to, or entering into or adhering to any contract, agreement or understanding with, any actual or potential customer on the condition or understanding that purchases by defendant of products, goods or services from such customer will be based or conditioned upon defendant's sales to such customer;

(3) all officers and employees are prohibited from soliciting bids for any capital expenditures from, or awarding job placements to, or entering into or adhering to any contract, agreement or understanding for the solicitation of bids from or award of job placements to, any contractor or supplier, upon the condition or understanding that solicitations or awards by defendant will be based or conditioned upon defendant's sales to such contractor or supplier;

(4) violation of this policy directive may subject any offending officer or employee to punishment by the Court for violation of this Final Judgment;

(5) any officer or employee who receives an inquiry from any customer or supplier concerning the relationship between purchases by defendant from such customer or supplier and sales by defendant to such customer or supplier shall refrain from referring such customer or supplier to any officer or employee having primary sales responsibilities.

(E) Furnish, within sixty (60) days after the entry hereof, a copy of this Final Judgment to, and, by written notice satisfactory to the plaintiff, advise each supplier from whom defendant has purchased or customer to whom it has sold more than \$100,000 of products, goods and services during the year 1970 (as identified in records currently maintained at defendant's corporate headquarters) that:

(1) defendant has abolished all offices and positions having duties which relate to activities, programs or objectives to promote reciprocal purchasing arrangements, and will refrain from subsequently establishing any similar offices or positions;

(2) all officers and employees are prohibited from purchasing products, goods or services from, or entering into or adhering to any contract, agreement or understanding with, any actual or potential supplier on the condition or understanding that purchases by defendant from such supplier will be based or conditioned upon defendant's sales to such supplier;

(3) all officers and employees are prohibited from selling products, goods or services to, or entering into or adhering to any contract, agreement or understanding with, any actual or potential customer on the condition or understanding that purchases by defendant of products, goods or services from such customer will be based or conditioned upon defendant's sales to such customer;

(4) all officers and employees are prohibited from soliciting bids for any capital expenditures from, or awarding job placements to, or entering into or adhering to any contract, agreement or understanding for the solicitation of bids from or award of job placements to, any contractor or supplier, upon the condition or understanding that solicitations or awards by defendant will be based or conditioned upon defendant's sales to such contractor or supplier;

(5) all officers and employees are prohibited from referring to any officer or employee having primary sales responsibilities any customer or supplier who inquires concerning the relationship between purchases by defendant from such customer or supplier and sales by defendant to such customer or supplier.

## VII

[ Reports]

The defendant is ordered to file with the plaintiff, on each anniversary date of this Final Judgment, a report setting forth the steps which it has taken during the prior year to advise the defendant's appropriate officers, directors and employees of its and their obligations under this Final Judgment.

## VIII

### [ *Inspection and Compliance* ]

For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose:

(A) Any duly authorized representative or representatives of the Department of Justice, upon written request by the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant, made to its principal office, in Pittsburgh, Pennsylvania, subject to any legally recognized privilege and to the reasonable convenience of defendant and without restraint or interference from it, shall be permitted:

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

(2) to interview officers or employees of defendant, who may have counsel present, regarding any such matters.

(B) Upon such written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment as from time to time may be requested.

No information obtained by the means provided for in this Section VIII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States except in the course of legal proceedings to which plaintiff is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

## IX

### [ *Unprohibited Practices* ]

Nothing contained in this Final Judgment shall:

(A) Prohibit defendant from entering into arrangements for the conversion of its products or goods into other forms thereof for its own use or resale or from converting products or goods for others;

(B) Prohibit defendants from contracting for construction, repair or maintenance work or for the manufacture and installation of equipment and facilities for its own use on the condition that defendant's products, goods or services are to be used in the performance of such contracts;

(C) Prohibit defendant from compiling or using statistical data in discussions with any customer, supplier or contractor of defendant (i) in order to protect defendant against loss from bad debt due to actual or reasonably anticipated bankruptcy, insolvency or delinquency in payment of such customer, supplier or contractor; or (ii) in order to determine whether any acquisition or proposed acquisition violates the antitrust laws;

(D) Prohibit defendant from accepting or furnishing goods or services in payment for other goods or services, where such transactions are entered into in international trade and because of governmental fiscal policies or any currency restrictions, currency valuation or other factors affecting payment.

## X

### [ *Jurisdiction Retained* ]

Jurisdiction is retained for the purpose of enabling either 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, for the modification of any of the provisions contained herein, for the

enforcement of compliance therewith, and the punishment of the violation of any of the provisions contained herein.

**XI**

[ *Termination*]

This Final Judgment shall terminate and cease to be effective ten (10) years from the date of the entry of this Final Judgment.