

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

REF " CIV W/P
MAY 9 1989
JUDGE SWEET'S CHAMBERS

UNITED STATES OF AMERICA,

Plaintiff,

v.

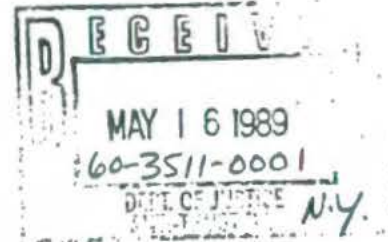
WESTINGHOUSE ELECTRIC CORPORATION,
ABB ASEA BROWN BOVERI LTD., and
ASEA BROWN BOVERI INC.,

Defendants.

89 CIV. 103 a (RW)
Civil No.

Filed:

Entered: May 9, 1989



FINAL JUDGMENT

WHEREAS, plaintiff, United States of America, has filed its Complaint herein on February 14, 1989, and the plaintiff and defendants, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

AND WHEREAS, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, defendants' prompt and certain divestiture and disposition of assets and other interests are, among other things, essential to this agreement, and defendants have represented to the plaintiff that the divestiture and disposition required below can and will be made and that defendants will later raise no claim of hardship or

difficulty as grounds for asking the Court to modify any of the divestiture or disposition requirements set forth below;

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 hereto, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

I

JURISDICTION

This court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. §18).

II

DEFINITIONS

As used in this Final Judgment:

A. "Westinghouse" means defendant Westinghouse Electric Corporation; each division, subsidiary, or other person controlled by it; and each officer, director, employee, agent, or other person acting for or on behalf of any of them.

B. "ABB" means defendants ABB Asea Brown Boveri Ltd. and Asea Brown Boveri Inc.; each division, subsidiary, or other person controlled by it; and each officer, director, employee, agent, or other person acting for or on behalf of any of them.

C. "Person" means any individual, corporation, association, firm, partnership, or other business or legal entity.

D. "Transformer" means a static device used to transfer electrical energy from one circuit to another by induction.

E. "Power Transformer" means a transformer with a minimum OA nameplate power rating of 40 megavolt-amperes ("MVA") or higher.

F. "Converter transformer" means a specialized transformer that is a component of a converter unit, which converts alternating electrical current to direct current or vice versa, for use primarily as a component of high voltage direct current systems.

G. "Smoothing reactor" means a device used to introduce reactance into a circuit for the purpose of reducing the alternating current component in a direct current power system.

H. "Steam turbine generator equipment" means steam turbines, 65 megawatts or higher, and/or electric generators, 65 megawatts or higher, used to convert the energy of high temperature pressurized steam to electrical energy.

I. "Steam turbine generator service" means the repair, retrofitting, or modernization of steam turbine generator equipment.

J. "Westinghouse converter transformer and smoothing reactor technology" means all patents, patent applications, trade secrets, confidential technical information, manufacturing instructions, and other intellectual property and property rights owned by, or licensed to, Westinghouse prior to the consummation of the electric transmission and distribution equipment joint venture with ABB and used principally in the design or manufacture of converter transformers or smoothing reactors. The term Westinghouse converter transformer and smoothing reactor technology shall also include existing manufacturing drawings employed exclusively in the design or manufacture of converter transformers or smoothing reactors. A grantee of rights pursuant to Section VI of this Final Judgment may request within one (1) year of the grant a copy of the existing manufacturing drawings, subject to the requirement that the grantee shall fully reimburse Westinghouse for any reasonable costs associated with the duplication of such drawings.

III

APPLICATION

A. The provisions of the Final Judgment shall apply to Westinghouse and ABB, each of their 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.

B. The provisions of Sections V through XI of this Final Judgment shall be applicable only upon the consummation of the proposed joint venture between Westinghouse and ABB relating to electrical transmission and distribution equipment.

C. Nothing contained in this Final Judgment shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party, and nothing herein shall be construed to provide any rights to any third party.

D. Westinghouse and ABB shall require, as a condition of the sale or other disposition of all or substantially all of their assets or stock, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment.

IV

INJUNCTION

Westinghouse and ABB are enjoined and restrained for a period of ten (10) years from the entry of this Final Judgment from any merger, consolidation, acquisition of stock or assets or other combination, or any joint venture, partnership or other agreement between them, the purpose or effect of which would be to integrate or otherwise combine any of their respective businesses of the manufacture or sale of steam turbine generator equipment or steam turbine

generator service in the United States, without the prior written approval of the Assistant Attorney General in charge of the Antitrust Division or his designee.

V

ASSETS TO BE DIVESTED BY ABB

A. ABB is hereby ordered and directed to divest, to an eligible purchaser, any and all interest that it has or shall acquire in all transformer businesses of ABB Electric, Inc. located in Waukesha, Wisconsin, including any and all interest in any plants or other real or personal property relating to such businesses, the right to use any relevant technology or know-how, and the right to enter into all relevant licenses.

B. Unless the plaintiff otherwise consents, divestiture under Section V.A., or by the trustee appointed pursuant to Section VII, shall be accomplished in such a way as to satisfy the plaintiff, in its sole determination, that the business and assets to be divested can and will be operated by the purchaser as a viable, ongoing business, engaged in the manufacture and sale of power transformers in the United States. Divestiture under Section V.A., or by the trustee, shall be made to a purchaser for whom it is demonstrated to the plaintiff's sole satisfaction that (1) the purchase is for the purpose of competing effectively in the manufacture and sale of power transformers in the United States and (2)

the purchaser has the managerial, operational, and financial capability to compete effectively in the manufacture and sale of power transformers in the United States.

C. ABB shall take all reasonable steps to accomplish quickly the divestiture of the power transformer business and assets of ABB Electric, Inc. contemplated by this Final Judgment.

VI

ASSETS TO BE DISPOSED OF BY WESTINGHOUSE

Westinghouse is hereby ordered and directed: (1) to sell to an eligible person the Westinghouse converter transformer and smoothing reactor technology; or (2) to grant to an eligible person the right to use and to license said technology. The sale or grant shall be subject to pre-existing rights held by any third party with respect to the relevant technology. The grant shall be subject to the continuing right of defendant Westinghouse or its successors and assigns to use and to license said technology. The sale or grant shall be made to a person for whom it is demonstrated to plaintiff's sole satisfaction that (a) the sale or grant is for the purpose of enabling the purchaser or grantee to compete effectively in the sale of converter transformers in the United States; and (b) the purchaser or grantee has the managerial, operational and financial capability to compete effectively in the sale of converter

transformers in the United States. Westinghouse shall hold separate and not disclose to ABB the Westinghouse converter transformer and smoothing reactor technology until such time as a disposition required under this section is completed.

VII

APPOINTMENT OF TRUSTEE

A. In the event that defendants have not divested or disposed of all of their interests as required by Sections V.A. and VI within 180 days of the entry of this Final Judgment, the Court shall, on application of the plaintiff, appoint a trustee to effect the required divestiture or disposition, provided, however, that plaintiff may, at its sole discretion, extend the time period for an additional period of time not to exceed ninety (90) days if defendants request such an extension and demonstrate to plaintiff's satisfaction that ongoing negotiations are likely to result in the required divestiture or disposition but that the divestiture or disposition cannot be completed within the initially specified period. After the appointment of a trustee becomes effective, only the trustee shall have the right to effect the divestiture or disposition required pursuant to Section V.A. and VI. The trustee shall have the power and authority to accomplish the divestiture or disposition at the best prices then obtainable upon a reasonable effort by the trustee, subject to the provisions

of Section VIII of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Defendants shall not object to a divestiture or disposition by the trustee on any grounds other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the plaintiff and the trustee within 15 days after the trustee has provided the notice required under Section VIII.

B. If defendants have not divested or disposed of all of their interests as required by Section V.A. and VI within 150 days of entry of this Final Judgment, the plaintiff and defendants shall immediately notify each other in writing of the names and qualifications of not more than two (2) nominees for the position of the trustee who shall effect the required divestiture or disposition. The parties shall attempt to agree upon one of the nominees to serve as the trustee. If the parties are able to agree on a trustee within 30 days of the exchange of names, the plaintiff shall notify the Court of the person upon whom the parties agreed, and the Court shall appoint such person as the trustee. If the parties are unable to agree within that time period, the plaintiff shall furnish the Court the names of each party's nominees. The Court may hear the parties as to the qualifications of the nominees and shall appoint one of the nominees as the trustee.

C. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services, all remaining monies shall be paid to ABB or Westinghouse, as may be appropriate, and the trust shall then be terminated. The compensation of such trustee shall be based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture or disposition and the speed with which it is accomplished.

D. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture or disposition. Upon reasonable notice to defendants, the trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to personnel, books, records, and facilities as reasonably necessary to accomplish the divestiture or disposition, and defendants shall develop such relevant financial or other information as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. ~~Defendants shall take no action to interfere~~ with or impede the trustee's accomplishment of the divestiture or disposition.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture or disposition ordered under this Final Judgment. If the trustee has not accomplished such divestiture or disposition within 180 days after its appointment, the trustee shall thereupon promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture or disposition, (2) the reasons, in the trustee's judgment, why the required divestiture or disposition has not been accomplished, and (3) the trustee's recommendations. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may, if necessary, include extending the trust and the term of the trustee's appointment.

VIII

NOTIFICATION

A. Defendants or the trustee, whichever is then responsible for effecting the divestiture or disposition required herein, shall notify the plaintiff of any proposed divestiture or disposition required by Section V.A. or VI of this Final Judgment. If the trustee is responsible, it

shall similarly notify defendants. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest or desire to acquire any of the assets or interests to be divested or disposed, together with full details of the same. Within 15 days after receipt of the notice, the plaintiff may request additional information concerning the proposed divestiture or disposition, the proposed purchaser or grantee, and any other potential purchaser or grantee. Defendants or the trustee shall furnish the additional information within 15 days of the receipt of the request unless plaintiff agrees to extend the time. Within 30 days after receipt of the notice or within 30 days after receipt of the additional information, whichever is later, the plaintiff shall notify in writing defendants and the trustee, if there is one, if it objects to the proposed divestiture or disposition. If the plaintiff fails to object within the period specified, or if the plaintiff notifies in writing defendants and the trustee, if there is one, that it does not object, then the divestiture or disposition may be consummated, subject only to defendants' limited right to object to the sale under Section VII.A. Upon objection by defendants under Section VII.A., the proposed divestiture or disposition shall not be accomplished unless approved by the Court.

B. Thirty (30) days from the date of entry of this Final Judgment and 30 days thereafter until the divestiture and disposition have been completed, defendants shall deliver to the plaintiff a written report as to the fact and manner of compliance with Sections V and VI of this Final Judgment. Each such report shall include, for each person who during the preceding 30 days made an offer, expressed an interest or desire to acquire, entered into negotiations to acquire, or made an inquiry about acquiring any of the assets or interests to be divested or disposed, the name, address, and telephone number of that person and a detailed description of each contact with that person during that period. Defendants shall maintain full records of all efforts made to accomplish the divestiture or disposition.

IX

FINANCING

Defendants shall not finance all or any part of any purchase made pursuant to Sections V or VI of this Final Judgment without the prior consent of the plaintiff.

X

PRESERVATION OF ASSETS TO BE DIVESTED BY ABB

A. ABB shall preserve, hold, and continue to operate as a going business the assets to be divested pursuant to Section V, with its assets, management, and operations separate, distinct, and apart from those of defendants,

unless the plaintiff otherwise consents. ABB shall use all reasonable efforts to maintain the assets to be divested as a viable and active competitor in the market for power transformers.

B. ABB shall not sell, lease, assign, transfer, or otherwise dispose of, or pledge as collateral for loans (except such loans as are currently outstanding or replacements or substitutes therefore), the assets to be divested, except that any such asset that is replaced in the ordinary course of business with a newly purchased asset may be sold or otherwise disposed of, provided the newly purchased asset is so identified as a replacement for an asset to be divested.

C. The provisions of Sections X.A. and X.B. include but are not limited to: preserving all plants and equipment used for the manufacture or sale of power transformers; preserving all air pollution and operating permits (including proceeding with such application or operation as is necessary to renew such permits or make permanent any temporary permits); and preserving all administrative and support facilities. These provisions do not preclude the sale in the ordinary course of business of the power transformers as may be produced by the assets to be divested.

D. ABB shall provide and maintain sufficient working capital to maintain the assets to be divested as a viable, ongoing business.

E. ABB shall provide and maintain sufficient lines and sources of credit to maintain the assets to be divested as a viable, ongoing business.

F. ABB shall preserve the assets to be divested in a state of repair equal to their state of repair as of the date of defendants' joint venture agreement.

G. ABB shall identify separately all major assets or replacements for or proceeds therefrom that were used in the manufacture or sale of power transformers by ABB Electric, Inc. prior to the date on which defendants consummate their joint venture relating to electric transmission and distribution equipment.

H. ABB shall maintain on behalf of the assets to be divested, in accordance with sound accounting practice, separate, true and complete financial ledgers, books and records reporting the profit and loss and liabilities of the assets to be divested on a monthly and quarterly basis.

I. ABB shall refrain from terminating or reducing any current employment, salary, or benefit agreements for any management, engineering, or other technical personnel employed in connection with the assets to be divested, except in the ordinary course of business, without the prior approval of plaintiff.

J. Defendants shall refrain from taking any action that would have the effect of reducing the scope or level of competition between the assets to be divested and other

manufacturers or sellers of power transformers, without the prior approval of the plaintiff.

K. Defendants shall refrain from taking any action that would jeopardize the sale of the assets to be divested as a viable going concern.

XI

AMENDMENT TO GENERAL ELECTRIC COMPANY AND WESTINGHOUSE ASSET PURCHASE AGREEMENT

Westinghouse, having agreed on February 9, 1989 with General Electric Company to amend their November 18, 1986 asset purchase agreement relating to power transformers, which amendment would allow General Electric Company, to the extent provided therein, to resume the manufacture and sale of power transformers and to use intellectual property relating to power transformers, it is hereby ordered and directed to take all reasonable steps to consummate and otherwise give full force and effect to the February 9, 1989 amendment.

XII

COMPLIANCE INSPECTION

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice, including consultants and other persons retained by the Department, shall, upon the written request of the Attorney

General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to their principal offices, be permitted:

1. access during office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, which may have counsel present, relating to any matters contained in this Final Judgment; and
2. subject to the reasonable convenience of defendants and without restraint or interference from them, to interview their officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to defendants at their principal offices, defendants shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section XII 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 the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to plaintiff, defendants represent and identify in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then plaintiff shall give ten (10) days notice to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendants are not a party.

XIII

RETENTION OF JURISDICTION

Jurisdiction is retained by this Court for the purpose of enabling any 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, implementation, or modification of any of the provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

This Final Judgment will expire on the tenth anniversary of the date of its entry.

XV

PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

Dated: _____

5-9-89

Court approval subject to
procedures of Antitrust Procedures
and Penalties Act, 15 U.S.C. §16


United States District Judge