

Syllabus

IN THE MATTER OF
GENERAL ELECTRIC COMPANY ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 2941. Complaint, Nov. 13, 1936¹—Decision, Apr. 2, 1937

Where four corporations engaged in manufacture and sale of turbine-generators, largest consumers of which included public utilities, whether public or privately owned, and municipal, State and Federal Governments, and in connection with which not only initial cost, but efficiency and performance guarantees, with their decided effect upon cost of operation, are vital factors and become inseparable from the prices to be paid therefor to prospective purchasers thereof, and constituting a group so large and influential in the manufacture of such products that they were able to influence and control the flow of trade thereof between and among various States and in the District of Columbia, and, but for the below set forth practices, and prior thereto, in competition with one another as to prices in the sale thereof; for the purpose of eliminating price competition among themselves—

Entered into and carried out an agreement, combination and understanding among themselves to fix and maintain, and by which they did fix and maintain, uniform delivered prices to be exacted from the purchasers of turbine-generators, and thus to fix delivered prices of such products entering into commerce among and between the various States and in the aforesaid District, and, pursuant thereto—

- (1) Fixed and maintained, by agreement among themselves, uniform delivered prices for such products, and adopted as their own, and adhered to, the delivered price sheets compiled by one of their number, notwithstanding the fact the same were unrelated to their respective individual costs;
- (2) Fixed and maintained, by agreement among themselves, uniform performance guarantees for such turbine-generators, and adopted as their own confidential performance data compiled by one of their number, notwithstanding the fact the same were unrelated to the actual or true theoretical performance of their said respective products; and
- (3) Conferred, compared and discussed, before submitting delivered prices in competitive bidding for turbine-generators, with each other, the delivered prices to be charged therefor, and agreed, as a result thereof, to submit identical bids, not only for such products, but for the numerous "extras" necessary for the proposed installation thereof;

With result that business of dealing in and distributing said products was monopolized in themselves, competition in industry in question was unreasonably lessened, eliminated, restrained, stifled, and hampered, and competition therein suppressed, and purchasing and consuming public was deprived of advantages in price, service and other considerations which they would receive and enjoy under conditions of normal and unobstructed or free and fair competition in said trade and industry, and said agreement, etc., and acts and practices otherwise operated as a restraint upon and a detriment to the freedom of fair and legitimate competition therein, and

¹ Amended complaint.

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obstructed the natural flow of trade in the channels of commerce, and with capacity and tendency so to monopolize, etc., as herein above set forth:
Held, That such acts and practices were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. James I. Rooney for the Commission.

Wright, Gordon, Zachry & Parlin, of New York City, for General Electric Co.

Cravath, deGersdorff, Swaine & Wood and *Mr. Harold Smith*, of New York City, for Westinghouse Electric & Manufacturing Co.

Chadbourn, Wallace, Parke & Whiteside, of New York City, for Allis-Chambers Manufacturing Co.

Alter, Wright & Barron, of Pittsburgh, Pa., for Elliott Co.

Mr. Charles Neal Barney, of New York City, for Worthington Pump & Machinery Corp.

Mr. Chester A. Ade and *Mr. Charles Kingsley*, of New York City, for Ingersoll-Rand Co.

Fraser, Speir, Meyer & Kidder, of New York City, for Foster-Wheeler Corp.

Adams, Childs, McKaig & Lukens, of Philadelphia, Pa., for C. H. Wheeler Manufacturing Co.

Mr. Gilbert H. Montague, of New York City, for Ross Heater & Manufacturing Co.

Rounds, Dillingham, Mead & Neagle, of New York City, for The Heat Exchange Institute.

AMENDED COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that General Electric Company, Westinghouse Electric & Manufacturing Co., Allis-Chalmers Manufacturing Co., Elliott Company, Worthington Pump & Machinery Corp., Ingersoll-Rand Company, Foster-Wheeler Corp., C. H. Wheeler Manufacturing Co., Ross Heater & Manufacturing Company, and The Heat Exchange Institute, hereinafter referred to as "respondents," have been and are using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, General Electric Company, is a corporation organized, existing, and doing business under and by virtue

of the laws of the State of New York, with its principal office and place of business in Schenectady, in said State.

Respondent, Westinghouse Electric & Manufacturing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business at East Pittsburgh, in said State.

Respondent, Allis-Chalmers Manufacturing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business in Milwaukee, in the State of Wisconsin.

Respondent, Elliott Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business in Jeanette, in said State.

Respondent, Worthington Pump & Machinery Corp., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Virginia, with its principal place of business at Harrison, in the State of New Jersey.

Respondent, Foster-Wheeler Corp., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal place of business in New York City, in said State.

Respondent, C. H. Wheeler Manufacturing Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business at Philadelphia, in said State.

Respondent, Ingersoll-Rand Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business at Jersey City, in said State.

Respondent, Ross Heater & Manufacturing Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at Buffalo, in said State.

The Heat Exchange Institute, is an unincorporated trade association organized on or about June 1, 1933, with its principal place of business at New York City, in the State of New York. Its officers now are James E. Watson, president, Russell C. Jones, vice-president, and Charles H. Rohrbach, secretary and treasurer.

PAR. 2. Respondents General Electric Company, Westinghouse Electric & Manufacturing Co., Elliott Company, and Allis-Chalmers Manufacturing Co., are now, and since their organization have been

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engaged in the manufacture, at their respective places of business, of "turbine-generators" and in the sale thereof throughout the various States of the United States, and in the District of Columbia. Respondents Westinghouse Electric & Manufacturing Co., Elliott Company, Allis-Chalmers Manufacturing Co., Worthington Pump & Machinery Corp., Foster-Wheeler Corp., C. H. Wheeler Manufacturing Co., Ingersoll-Rand Company and Ross Heater & Manufacturing Company, are now, and since their organization, have been engaged in the manufacture at their respective places of business of "condensers" and in the sale thereof throughout the various States of the United States and in the District of Columbia.

In the course and conduct of their respective businesses said respondents for more than five years last past have caused and still cause their products, when sold by them, to be transported from the State of origin of the shipment to the purchasers thereof located at points in various States of the United States other than the State from which said shipment was made and in the District of Columbia.

Among the largest consumers of turbine-generators and condensers are public utilities, either publicly or privately owned, municipal, State, and Federal Government.

PAR. 3. Respondents constitute a group so large and influential in the manufacture of turbine-generators and condensers that they are able to influence and control the flow of trade in commerce of such products between and among the various States of the United States, and in the District of Columbia. The said respondents were, prior to 1933, in competition as to price with one another in the sale of turbine-generators and condensers in commerce as hereinabove set out, and but for the combination, agreement, understanding, and conspiracy hereinafter described said respondents would have been at all times since 1933, and would now be, in such competition with one another.

To prospective purchasers of these products, not only the initial cost but also the efficiency and performance guarantees, which have a decided effect in the cost of operation, are vital factors and become inseparable from the prices to be paid for these products. Thus, of several generators or condensers all selling for one delivered price, yet with varying performance guarantees, those with the more favorable performance guarantees would be selected by the prospective purchasers.

PAR. 4. During the year 1933 respondents referred to in paragraph 2 hereof for the purpose of eliminating price competition among themselves entered into and have since carried out and are still carrying out an agreement, combination, understanding, and conspiracy among themselves to fix and to maintain, and by which they have fixed and

maintained, uniform delivered prices to be exacted by them from the purchasers of turbine-generators and condensers, and thus to fix the delivered price of turbine-generators and condensers entering into commerce between and among the various States of the United States and in the District of Columbia. Pursuant to and for the purpose of carrying out said agreement, combination, understanding, and conspiracy the said respondents have among other things done the following:

(a) By agreement among themselves have fixed and maintained and still fix and maintain uniform delivered prices for turbine-generators and condensers.

(b) By agreement among themselves have fixed and maintained and still fix and maintain uniform performance guarantees for said turbine-generators and condensers.

(c) Adopted as their own and adhered to the delivered pricing sheets compiled by one of the respondents although the same is unrelated to the individual costs of the respective respondents.

(d) Adopted as their own the confidential performance data compiled by one of the said respondents although the same is unrelated to the actual or true theoretical performance of the turbine-generators and condensers of the respective respondents.

(e) Conferred, compared, and discussed before submitting delivered prices in competitive bidding for turbine-generator sets and condensers with each other the delivered prices to be charged for said products and agreed, as a result thereof, to submit identical delivered bids, not only for said turbine-generators and condensers, but for the numerous "extras" necessary for the proposed installation of said generators and condensers, and to submit identical performance guarantees for said generators and condensers.

(f) Took disciplinary action against any of said respondents who fail to abide by the delivered prices in accordance with said agreement, understanding, and conspiracy.

PAR. 5. Respondent, The Heat Exchange Institute, of which those respondents engaged in the manufacture of condensers are a separate branch, was organized for the purpose of more effectively aiding said respondents to carry out the agreement, combination, understanding, and conspiracy set forth in paragraph 4 hercof, in so far as the same applies to the sale and distribution of condensers, and to the subjection of said respondents to penalties for failure to adhere to the agreed delivered prices.

The capacity, tendency, and effect of said agreement, combination, understanding, and conspiracy, and the said acts and practices of the respondents set forth in paragraph 4 hercof, are and have been

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to monopolize in said respondents the business of dealing in and distributing turbine-generators and condensers; to unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in said industry, and to deprive the purchasing and consuming public of the advantages in price, service, and other considerations which they would receive and enjoy under conditions of normal and unobstructed, or free and fair competition in said trade and industry; to otherwise operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in said trade and industry and to obstruct the natural flow of trade in the channels of interstate commerce.

PAR. 6. The above alleged acts and things done by respondents as set forth herein are monopolistic practices and to the prejudice and injury of the public and constitute unfair methods of competition in commerce within the intent and meaning, and in violation of Section 5 of said Act approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on the 9th day of October 1936, issued and served its complaint in this proceeding upon the following named respondents: General Electric Company, Westinghouse Electric & Manufacturing Co., Allis-Chalmers Manufacturing Co., and Elliott Company. On the 13th day of November 1936, an amended complaint was issued and served in this proceeding upon the above-named respondents, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On the 9th day of March 1937, said respondents filed their answers, in which answers they stated that it is not their desire or intention to violate Section 5 of the Act commonly called The Federal Trade Commission Act, approved September 26, 1914; that they desire to waive hearing on the charges set forth in said amended complaint, and not to contest the proceedings, and therefore, but solely for the purpose of disposing of this proceeding, they consent that all the material facts alleged in the amended complaint, in so far as the same are connected with the business of selling or offering for sale turbine-generators, may be deemed to be admitted as unfair methods of competition in commerce within the intent and meaning of Section 5 of said Federal Trade

Commission Act, but not within the intent and meaning of any other law of the United States; that said answers do not constitute admission of any conclusion of law or fact by said respondents for any other purpose, nor are they to be used against it in any other proceeding, suit, or action. And for the sole purpose of avoiding trouble and expense incident to the further continuance of this proceeding they waive hearing herein and refrain from contesting this proceeding, and consent that the Commission may, without trial, or without the taking of evidence or any other proceeding make and enter its findings as to the facts and issue and serve upon them an order to cease and desist from any method of competition alleged in the amended complaint in so far as the same is connected with the business of selling or offering for sale turbine-generators which constitute violations of Section 5 of said Federal Trade Commission Act; that any and all admissions given by them herein are given solely upon the conditions, and for the purposes aforesaid, and in so far as they constitute admissions are not made as, nor are they to be taken to be admissions of fact for any other purpose whatsoever.

Thereafter this proceeding regularly came on for final hearing before the Commission on said amended complaint and the answers thereto, and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, General Electric Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business in Schenectady, in said State.

Respondent, Westinghouse Electric & Manufacturing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business at East Pittsburgh, in said State.

Respondent, Allis-Chalmers Manufacturing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business in Milwaukee, in the State of Wisconsin.

Respondent, Elliott Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business in Jeanette, in said State.

PAR. 2. These respondents are now, and since their organization have been engaged in the manufacture of turbine-generators and in the sale thereof throughout the States of the United States, and in the District of Columbia.

Said respondents cause their turbine-generators when sold by them to be transported in commerce throughout the United States, to the purchasers thereof located at points in various States of the United States other than the State in which said shipment was made and in the District of Columbia.

Among the largest consumers of turbine-generators are public utilities, either publicly or privately owned, municipal, State, and Federal Governments.

PAR. 3. These respondents constitute a group so large and influential in the manufacture of turbine-generators that they are able to influence and control the flow of trade in commerce of such products between and among the various States of the United States, and in the District of Columbia. These respondents were, prior to 1933, in competition as to prices with one another in the sale of turbine-generators in commerce as hereinbefore set forth, and but for the combination, agreement, and understanding hereinafter described, these respondents would have been at all times since 1933, and would now be, in such competition with one another.

To prospective purchasers of turbine-generators, not only the initial cost but also the efficiency and performance guarantees, which have a decided effect upon the cost of operation, are vital factors and become inseparable from the prices to be paid for said turbine-generators.

PAR. 4. During the year 1933, these respondents, for the purpose of eliminating price competition among themselves, entered into, and have since carried out, at the date of the amended complaint herein were still carrying out an agreement, combination and understanding among themselves to fix and maintain, and by which they have fixed and maintained, uniform delivered prices to be exacted by them from the purchasers of turbine-generators and thus to fix the delivered prices of turbine-generators entering into commerce between and among the various States of the United States and of the District of Columbia. Pursuant to, and for the purpose of carrying out said agreement, combination and understanding, these respondents have, among other things, done the following:

(a) By agreement among themselves have fixed and maintained, and at the date of the amended complaint herein were still fixing and maintaining uniform delivered prices for turbine-generators;

(b) By agreement among themselves have fixed and maintained, and at the date of the amended complaint herein were still fixing and maintaining uniform performance guarantees for said turbine-generators;

(c) Adopted at their own, and adhered to, the delivered pricing sheets compiled by one of the respondents although the same are unrelated to the individual costs of the respective respondents;

(d) Adopted as their own the confidential performance data compiled by one of the said respondents, although the same are unrelated to the actual or true theoretical performance of the turbine-generators of the respective respondents;

(e) Conferred, compared, and discussed, before submitting delivered prices in competitive bidding for turbine-generators, with each other, the delivered prices to be charged for said products, and agreed, as a result thereof, to submit identical bids not only for said turbine-generators, but for the numerous "extras" necessary for the proposed installation of said turbine-generators.

PAR. 5. The capacity, tendency, and effect of said agreement, combination, and understanding and the said acts and practices of these respondents as set forth in paragraph 4 hereof, are, and have been to monopolize in said respondents the business of dealing in and distributing turbine-generators; to unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in said industry and to deprive the purchasing and consuming public of the advantages in price, service and other considerations which they would receive and enjoy under conditions of normal and unobstructed or free and fair competition in said trade and industry; to otherwise operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in said trade and industry and to obstruct the natural flow of trade in the channels of interstate commerce.

CONCLUSION

The aforesaid acts and practices of respondents General Electric Company, Westinghouse Electric & Manufacturing Co., Allis-Chalmers Manufacturing Co., and Elliott Company are to the prejudice of the public and of said respondents' competitors and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This matter coming on to be heard by the Commission on the complaint filed herein on October 9, 1936, the amended complaint filed herein on November 13, 1936, and the answers of respondents General Electric Company, Westinghouse Electric & Manufacturing Co., Elliott Company and Allis-Chalmers Manufacturing Co., herein, filed herein on March 9, 1937, in which said respondents, in so far as this proceeding relates to the business of selling or offering for sale turbine-generators, state that they desire to waive hearing on the charges set forth in the amended complaint in so far as the same refers to alleged unfair methods of competition in commerce within the intent and meaning of Section 5 of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that for the sole purpose of avoiding the trouble and expense incident to further continuation of this proceeding they refrain from contesting this proceeding, and consent that all the material facts alleged in said amended complaint may be deemed to be admitted as unfair methods of competition in commerce within the intent and meaning of Section 5 of said Federal Trade Commission Act, but not within the intent and meaning of any other law of the United States, such answers not constituting an admission of any conclusions of law and not constituting an admission of fact for any other purpose nor to be used against them in any other proceeding, suit or action, and that said respondents consent that the Commission may without trial, without the taking of evidence, and without any other proceeding make and enter its findings as to the facts and issue and serve upon them an order to cease and desist from any methods of competition alleged in the amended complaint which constitute violations of Section 5 of the Federal Trade Commission Act;

Now, therefore, it is hereby ordered, That the respondents, General Electric Company, Westinghouse Electric & Manufacturing Co., Allis-Chalmers Manufacturing Co. and Elliott Company, and their successors, officers, agents, and employees, forthwith cease and desist in connection with the business of selling or offering for sale turbine-generators in interstate commerce, from doing and performing, by agreement, combination or conspiracy between or among any two or more of said respondents the following acts and things:

1. Fixing and maintaining uniform delivered prices;
2. Fixing and maintaining uniform performance guarantees where the same are unrelated to the actual or true theoretical performance of the turbine-generators of the respective respondents;

3. Adopting as their own and adhering to the delivered pricing sheets of any of the respondents;

4. Submitting uniform or identical delivered prices in competitive bidding for turbine-generators and for the extra equipment necessary for their installation, and submitting uniform or identical performance guarantees for said turbine-generators where the same are unrelated to the actual or true theoretical performance of the turbine-generators of the respective respondents;

Provided, however, That nothing contained in this order shall prohibit the respondents, or any of them, from exchanging scientific, technical, or engineering data or information with respect to the actual performance, rating, or capacity of turbine-generators manufactured by them, or any of them, or from participating with one another, or with third persons, in discussions, meetings or studies of a scientific, technical or engineering character for the purpose of improving, standardizing or simplifying their products or testing methods or facilities relating thereto, defining technical terms, or promoting safety, such as:

(1) Determining the highest actual efficiency practically obtainable by turbine-generators of various types or sizes and under various conditions, and (2) standardizing the various types or sizes of turbine-generators and specifying the actual performance or characteristics which a turbine-generator should attain under given conditions in order to be designated as of a specific type or size, and provided further that nothing in this order contained shall prohibit the respondents, or any of them, from using, in such manner as any of said respondents may individually so desire to do, the results of the technical or engineering data and information above referred to; but this proviso is in no way to be construed as permitting the said several respondents named in this order to accomplish unlawfully what is specifically prohibited in paragraphs 2 and 4 of this order; and

Provided further, That the prohibitions of this order shall not apply to any lawful action taken under patents or license agreements relating thereto.

It is hereby further ordered, That respondents shall, within 60 days of the date of service upon them of this order, file with this Commission a report or reports in writing stating the manner and form in which they shall have complied with this order.

IN THE MATTER OF
WESTINGHOUSE ELECTRIC & MANUFACTURING
COMPANY ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 2941. Complaint, Nov. 13, 1936¹—Decision, Apr. 2, 1937

Where eight corporations engaged in manufacture and sale of condensers, largest consumers of which included public utilities, whether public or privately owned, and municipal, State, and Federal Governments, and in connection with which not only initial cost, but efficiency and performance guarantees, with their decided effect upon cost of operation, are vital factors and become inseparable from the prices to be paid therefor to prospective purchasers thereof, and constituting a group so large and influential in the manufacture of such products that they were able to influence and control the flow of trade thereof between and among various States and in the District of Columbia, and, but for the below set forth practices, and prior thereto, in competition with one another as to prices in the sale thereof; for the purpose of eliminating price competition among themselves—

Entered into and carried out an agreement, combination and understanding among themselves to fix and maintain, and by which they did fix and maintain, uniform delivered prices to be exacted from the purchasers of condensers, and thus to fix delivered prices of such products entering into commerce among and between the various States and in the aforesaid District, and, pursuant thereto—

- (1) Fixed and maintained, by agreement among themselves, uniform delivered prices for such products, and adopted as their own, and adhered to, the delivered price sheets compiled by one of their number, notwithstanding the fact the same were unrelated to their respective individual costs;
- (2) Fixed and maintained, by agreement among themselves, uniform performance guarantees for such condensers, and adopted as their own confidential performance data compiled by one of their number, notwithstanding the fact the same were unrelated to the actual or true theoretical performance of their said respective products;
- (3) Conferred, compared and discussed, before submitting delivered prices in competitive bidding for condensers, with each other, the delivered prices to be charged therefor, and agreed, as a result thereof, to submit identical bids, not only for such products, but for the numerous "extras" necessary for the proposed installation thereof; and
- (4) Took disciplinary action against any of their number who failed to abide by the delivered prices, in accordance with said agreement, combination and understanding;

With the result that business of dealing in and distributing said products was monopolized in themselves, competition in industry in question was unreasonably lessened, eliminated, restrained, stifled, and hampered, and competition therein suppressed, and purchasing and consuming public was deprived of advantages in price, service and other considerations which they

¹ Amended complaint.