

form in which they have complied with this order.

IN THE MATTER OF
WESTINGHOUSE ELECTRIC CORPORATION ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-65. Complaint, Jan. 18, 1962—Decision, Jan. 18, 1962

Consent order requiring three corporations and the three individuals who participated directly in the illegal activities in their behalf, to cease engaging in a price-fixing conspiracy in the sale of polyethylene shielding material—sold principally to naval shipyards and used as radiation shields around atomic reactors on naval vessels—in the course of which, at meetings and otherwise, they agreed upon, fixed, and maintained prices, terms, and conditions of sale, and agreed upon the price they would bid on particular bids submissions requested by customers.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (38 Stat. 717, 15 U.S.C. Sec. 41, *et seq.*, 52 Stat. 111), and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that Westinghouse Electric Corporation, a corporation; Daniel L. Sweeney, individually and as Industrial Sales Manager, Micarta Division, Westinghouse Electric Corporation; St. Regis Paper Company, a corporation; The Garrett Corporation, a corporation; Walter L. Clark, individually and as Division Manager, Air Cruisers Division, The Garrett Corporation, and John M. Zeier, an individual, more particularly described and referred to hereinafter as respondent, have violated the provisions of Section 5 of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby names the previously mentioned corporations and individuals, each and all as respondents herein, and issues its complaint against each of the named parties stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Westinghouse Electric Corporation, hereinafter referred to as Westinghouse, is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal office and place of business located at 3 Gateway Center (P.O. Box 2278), Pittsburgh 30, Pa.

Individual respondent Daniel L. Sweeney is the Industrial Sales Manager, Micarta Division, Westinghouse Electric Corporation. The Micarta Division of Westinghouse Electric Corporation is located in Hampton, S.C.

Respondent St. Regis Paper Company, hereinafter referred to as St. Regis, is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 150 East 42nd Street, New York 17, N.Y.

Respondent The Garrett Corporation, hereinafter referred to as Garrett, is a corporation organized and existing under the laws of the State of California, with its principal office and place of business located at 9851-9951 Sepulveda Boulevard, Los Angeles, Calif.

Individual respondent Walter L. Clark is the Division Manager, Air Cruisers Division, The Garrett Corporation. The Air Cruisers Division of The Garrett Corporation is located in Belmar, N.J.

Individual respondent John M. Zeier was an Industrial Sales Manager, Panelyte Division, St. Regis Paper Company. The principal office of the Panelyte Division of the St. Regis Paper Company is located at the same address as respondent St. Regis Paper Company.

Complaint

60 F.T.C.

Said John M. Zeier is not presently an employee of respondent St. Regis Paper Company and has not been connected with St. Regis Paper Company since August 12, 1960. Said John M. Zeier resides at 157 Poe Road, Princeton, N.J.

PAR. 2. The corporate respondents hereinbefore named and described, through their operating divisions, are engaged in the manufacture, sale and distribution, or the sale and distribution of polyethylene shielding material. Each of the corporate respondents is engaged in selling and distributing polyethylene shielding material to customers located in states other than the state in which each corporate respondent respectively maintains production or processing facilities. There has been and is now a pattern and course of interstate commerce in said polyethylene shielding material by corporate respondents within the intent and meaning of the Federal Trade Commission Act. The volume of such business in commerce is substantial.

The individual respondents hereinbefore named and described were, at all times pertinent to this complaint, officials of the respective corporate respondents as hereinbefore described and participated directly in the acts, practices and methods on behalf of their respective corporations hereinafter charged in this complaint as being illegal.

PAR. 3. Each of the corporate respondents is in substantial competition with each of the other corporate respondents named herein in the manufacture, sale, processing and distribution of polyethylene shielding material in interstate commerce except to the extent that competition has been hindered, lessened or restricted and eliminated by the unfair methods of competition and unfair acts and practices hereinafter set forth.

PAR. 4. Polyethylene shielding material, manufactured and sold by the corporate respondents, is used as radiation shields around atomic reactors aboard naval vessels, such as submarines, cruisers, and merchant ships, where considerations of weight make it impractical to use the concrete and lead shielding used for land-based atomic reactors. Corporate respondents purchase pellets of polyethylene from primary manufacturers and process them into sheets of the required size and specifications by means of either extrusion or compression molding.

Polyethylene shielding is manufactured and sold for the purpose described above in several sizes, the most frequently used of which are 4 feet by 8 feet and 3 feet by 5 feet. The thickness of the polyethylene shielding generally ranges from $\frac{1}{8}$ inch to $1\frac{1}{2}$ inches. Polyethylene shielding is manufactured and sold in two forms, virgin and borated. The principal customers for polyethylene shielding material are naval shipyards engaged in installing atomic reactors in various types

of ships. These naval shipyards are those operated by the United States Government or by private shipyards working under Government contracts. Nearly every sale of polyethylene shielding material to these shipyards is the result of awards on bids made by one or more of the respondents in response to requests for secret bids by these customers. All polyethylene shielding material sold for this type of defense work must meet the requirements of military specification No. MIL-P-19336 C (ships). While the volume of total polyethylene shielding sales is comparatively small, being \$1,596,000 during the year 1959, it is a very essential material to the defense of the United States and to the atomic energy program. Furthermore, it is very likely that many more uses of polyethylene shielding material will be developed in the future.

PAR. 5. During the years 1958 and 1959 each and all of the respondents named herein have engaged in unfair methods of competition and unfair acts and practices in commerce in the manufacture, sale and distribution of polyethylene shielding material in that they have, through conspiracy, combination, agreement, and planned common courses of action, and as a part thereof, done and performed the following:

- (a) Fixed prices;
- (b) Fixed and maintained prices, terms and conditions of sale;
- (c) Attended meetings at which the prices at which polyethylene shielding material would be listed on the various respondent's price lists was agreed upon;
- (d) Used agreed upon prices in submitting bids for polyethylene shielding material to various customers requesting such bids;
- (e) Held meetings and agreed upon the price which the respondents would bid on particular bids submissions requested by customers.

PAR. 6. The acts and practices of the respondents, as herein alleged, have had and do have the effect of hindering, lessening, restricting, restraining and eliminating competition in the sale of polyethylene shielding material; are all to the prejudice of customers of respondents and of the public; and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy

of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint contemplated by such agreement, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Westinghouse Electric Corporation is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal office and place of business located at 3 Gateway Center (P.O. Box 2278), Pittsburgh 30, Pa.

Daniel L. Sweeney is the Industrial Sales Manager, Micarta Division, Westinghouse Electric Corporation. The Micarta Division of Westinghouse Electric Corporation is located in Hampton, S.C.

St. Regis Paper Company is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 150 East 42nd Street, New York 17, N.Y.

The Garrett Corporation is a corporation organized and existing under the laws of the State of California, with its principal office and place of business located at 9851-9951 Sepulveda Boulevard, Los Angeles, Calif.

Walter L. Clark is the Division Manager, Air Cruisers Division, The Garrett Corporation. The Air Cruisers Division of The Garrett Corporation is located in Belmar, N.J.

John M. Zeier was an Industrial Sales Manager, Panelyte Division, St. Regis Paper Company. The principal office of the Panelyte Division of the St. Regis Paper Company is located at 150 E. 42nd Street, New York 17, N.Y. Said John M. Zeier has not been employed or in any way connected with respondent St. Regis Paper Company or its Panelyte Division since August 12, 1960. Said John M. Zeier now resides at 157 Poe Road, Princeton, N.J.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That corporate respondents Westinghouse Electric Corporation, a corporation; St. Regis Paper Company, a corporation; The Garrett Corporation, a corporation, their respective officers, agents, representatives and employees, and individual respondents Daniel L. Sweeney, individually and as industrial sales manager, Micarta Division, Westinghouse Electric Corporation; Walter L. Clark, individually and as division manager, Air Cruisers Division, The Garrett Corporation; and John M. Zeier, individually, directly, indirectly or through any corporate or other device in connection with the manufacture, sale and distribution or sale and distribution in commerce between and among the several states of the United States and in the District of Columbia of polyethylene shielding material, do forthwith cease and desist from entering into, cooperating in, carrying out or continuing any conspiracy, planned common course of action, understanding, combination or agreement between any one or more of said respondents, or between any one or more of said respondents and any other person, persons or business entity not a party hereto, to do or perform any of the following acts, practices or things:

- A. Fix or maintain prices, terms or conditions for the sale of polyethylene shielding material;
- B. Fix or maintain prices, terms or conditions of sale to be used in submitting bids on polyethylene shielding material; and
- C. Bid or quote, refrain from bidding or quoting, or causing another to bid or quote or refrain from bidding or quoting to any purchaser or prospective purchaser of polyethylene shielding material.

It is further ordered, That corporate respondents Westinghouse Electric Corporation, a corporation; St. Regis Paper Company, a corporation; The Garrett Corporation, a corporation, their respective officers, agents, representatives, employees, and individual respondents Daniel L. Sweeney, individually and as industrial sales manager, Micarta Division, Westinghouse Electric Corporation; Walter L. Clark, individually and as division manager, Air Cruisers Division, The Garrett Corporation; and John M. Zeier, individually, directly, indirectly or through any corporate or other device in connection with the manufacture, sale and distribution or sale and distribution in commerce between and among the several states of the United States and in the District of Columbia of polyethylene shielding material, do individually and independently forthwith cease and desist from:

- A. Attending meetings at which any other respondent or respondents or manufacturers of polyethylene shielding material not a party

hereto are present, at which the prices, terms or conditions for the sale of polyethylene shielding material are discussed;

B. Attending meetings at which any other respondent or respondents or manufacturers of polyethylene shielding material not a party hereto are present, at which the prices, terms or conditions for the sale of polyethylene shielding material to be bid on particular bids are discussed;

C. Holding or participating in any discussions by telephone or otherwise, with any competitor or competitors pertaining to prices, terms or conditions of sale of polyethylene shielding material;

D. Sending to, requesting from, or exchanging with any competitor or competitors any information written or oral pertaining to prices, terms or conditions of sale of polyethylene shielding material; and

E. Formulating or submitting any bid on polyethylene shielding material to a purchaser or prospective purchaser the prices or terms and conditions of sale of which are based in any way upon information obtained in a manner prohibited by (A), (B), (C) and (D) above.

It is further ordered, That corporate respondents Westinghouse Electric Corporation, a corporation; St. Regis Paper Company, a corporation; The Garrett Corporation, a corporation, shall, within sixty (60) days after the effective date of this order, each individually and independently:

A. Review its then prevailing prices for polyethylene shielding material;

B. Cancel existing price lists for polyethylene shielding material, and cancel existing prices for polyethylene shielding material not based on lawful considerations;

C. Determine prices for polyethylene shielding material based upon lawful considerations; and

D. Establish the prices determined under (C) above, which prices shall become effective not later than sixty (60) days from the date of service of this order, provided, however, that establishment of any new prices within said sixty (60) days shall not be construed as indicating that the former prices were in any way unlawful. Nothing contained herein shall prevent any respondent acting independently and for a lawful purpose from hereafter deviating from, modifying or otherwise changing prices established hereunder.

Provided, however, that:

(1) Nothing contained in this order shall prohibit any respondent or the officers, agents, representatives or employees of such respondent from communicating in any way with the officers, agents, representa-

tives or employees of such respondent in connection with the purchase or sale (by bid or otherwise) of polyethylene shielding material, or from negotiating or entering into with any other person, persons, or business entity any *bona fide* purchase or sale (by bid or otherwise) of polyethylene shielding material at prices, terms or conditions of sale independently offered or accepted in such transaction.

(2) Nothing contained in this order shall be construed as prohibiting any respondent from formulating or submitting a joint bid for polyethylene shielding material with any other person, persons or business entity to any governmental unit or agency or in connection with any contract to be performed for any governmental unit or agency if such joint bid is expressly requested by the purchaser or if such joint bid is expressly made known to the purchaser by the time of the official opening of the bid or the date of contract of sale, whichever is earlier, providing that, for a period of five (5) years from the effective date of this order any respondent submitting such a joint bid for polyethylene shielding material notify the Federal Trade Commission of each such joint bid within thirty (30) days after the official opening of the bid or the date of contract of sale, whichever is earlier.

It is further ordered, That each of the respondents shall, within sixty (60) days after the service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which each has complied with this order.
