

IN THE MATTER OF
FEDERAL SIGNAL CORPORATION

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

Docket C-2953. Complaint, Feb. 1, 1979 — Decision, Feb. 1, 1979

This consent order, among other things, requires a Chicago, Ill. manufacturer and seller of public safety and communication equipment to cease, in connection with the sale of such products to governmental entities, from exchanging bidding information with its distributors prior to submission of competitive bids, submitting or soliciting the submission of collusive bids, or employing any other business practice that may hinder or prevent competitors from bidding successfully. The firm is also required to cease furnishing governmental bodies seeking to purchase civil defense warning systems with advertisements or specifications that might induce such bodies to limit distribution of invitations to bid; incorporate the name or model number of firm's products into advertisements for bids or specifications; or draft specifications that would restrain, lessen, or prevent the sale of such devices by others.

Appearances

For the Commission: *John T. Hankins* and *David J. Richman*.

For the respondent: *Gary L. Mowder, Schiff, Hardin & Waiter*,
Chicago, Ill.

COMPLAINT

The Federal Trade Commission having reason to believe that Federal Signal Corporation has violated the provisions of Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. For the purpose of construing this complaint, the following definitions shall apply:

A. "Signal Division products" means any products, or component or accessory thereof, presently or in the future sold by the Signal Division of Federal Signal Corporation, including but not limited to radio equipment, vehicle lights and sirens, speed detecting devices, helmets, visual and audible warning and signaling devices such as lights, sirens, horns and bells, and civil defense warning systems.

B. "Civil defense warning systems" means outdoor warning sirens and components and accessories thereof, which are designed to warn the public of impending enemy attack, storms or other emergency situations. The term includes sirens, activating devices,

timers, telephone relays, and other equipment customarily used in connection with the operation of the sirens.

C. "Distributor" shall mean any person, company or other entity purchasing Signal Division products for resale.

D. "Competitive bidding" means the process by which any bid or quotation is made concerning or in response to any solicitation, announcement, advertisement or request by a public body.

E. "Public body" means any unit of federal, state, county or municipal government, or any other organization funded primarily from tax revenues. The term shall include, but not be limited to police departments, fire departments, highway departments and civil defense organizations.

PAR. 2. Federal Signal Corporation, hereinafter referred to as Federal or respondent, is a corporation organized and doing business under the laws of the State of Delaware with its principal office at 120 S. Riverside Plaza, Chicago, Illinois. Federal's sales in 1975 were in excess of \$68,000,000.

PAR. 3. Federal, through its Signal Division, is engaged in the manufacture, distribution and sale of public safety and communications equipment for commercial and governmental markets. Federal's sales of Signal Division products were in excess of \$29,000,000 in 1975.

PAR. 4. In the course and conduct of its business as aforesaid, respondent causes and has caused its Signal Division products to be shipped from the state in which they are manufactured to distributors and other customers located in other states. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in such products, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Except to the extent that competition has been hindered or restrained by the acts and practices alleged herein, respondent has been and is now in substantial competition, in or affecting commerce, with its own distributors in the offering for sale and sale of Signal Division products and with other manufacturers and distributors in their offering for sale and sale of similar products.

PAR. 6. Federal sells its Signal Division products to distributors located throughout the United States. Federal also sells such products directly to the using customers. Customers of Federal and its distributors include fire departments, police departments, civil defense and disaster warning agencies, and commercial enterprises. In many instances customers purchasing from Federal and its distributors utilize competitive bidding procedures in the purchase of

Signal Division products. In some instances the process of inviting competitive bids is required by law.

PAR. 7. In the course and conduct of its business as aforesaid, respondent, in combination with its distributors, has engaged in the following unfair methods of competition, in or affecting commerce, in connection with the offering for sale, sale and distribution of Signal Division products on a competitive bidding basis:

A) Respondent has exchanged information with its distributors, prior to the submission of bids by respondent and its distributors on particular projects, concerning:

- (1) the intent to submit or not to submit a bid;
- (2) the prices that will be bid.

B) Respondent has entered into agreements with its distributors, prior to the submission of bids by respondent and its distributors on particular projects, concerning:

- (1) whether a bid will be submitted;
- (2) which type of equipment will be bid;
- (3) what prices will be bid; and
- (4) which party will submit the low bid.

C) Respondent has submitted and solicited the submission of collusive bids on particular projects; and

D) Respondent has entered into agreements with its distributors allocating customers among respondent and its distributors.

PAR. 8. The manufacture, distribution and sale of civil defense warning systems constitutes a separate and distinct market. The market for civil defense warning systems is highly concentrated. Federal is the dominant manufacturer in this market and produced more than 70 percent of the civil defense warning systems installed during 1975. Federal has used its dominant position, size and economic power to hinder and frustrate the ability of smaller manufacturers to compete in this market, and to hinder, prevent or lessen competition in the manufacturing and sale of civil defense warning systems. Thus, Federal has been and is now engaged in various monopolistic or other unfair acts, practices, or methods of competition in maintaining a monopoly in the manufacture and sale of civil defense warning systems.

More particularly, Federal has, since at least 1972, adopted and maintained various business practices to restrain, lessen or prevent the sale of civil defense warning systems by others engaged in the

manufacture and sale of such products. Respondent has engaged in the following monopolistic acts and practices:

A) Respondent, individually and in combination with its distributors, has participated in the preparation of advertisements soliciting bids and specifications used to obtain and evaluate bids for civil defense warning systems. In the course of this action, respondent has engaged in manipulating the terms contained in such advertisements and specifications with the purpose and effect of hindering or preventing the sellers of other brands of civil defense warning systems from bidding effectively on civil defense warning systems;

B) Respondent has submitted bids, and solicited its distributors to submit bids, which are not intended to secure business, but are intended to hinder or prevent competitors from bidding successfully;

C) In response to requests from public bodies for the names of firms which can bid on civil defense warning systems, respondent generally provides only the names of sellers of its products.

PAR. 9. The aforesaid conduct of respondent in the sale and distribution of Signal Division products, including civil defense warning systems, both individually and in combination with its distributors, has the capacity, tendency, and effect of:

a) restricting, restraining, or eliminating competition among respondent, its distributors, and manufacturers and distributors of competitive products;

b) undermining and subverting the competitive bidding procedures utilized by public bodies and others in the purchase of such products;

c) raising, fixing, stabilizing, and maintaining the prices paid by public bodies for such products;

d) depriving purchasers of such products of the benefits of free and open competition;

e) monopolizing the market for civil defense warning systems;

f) creating, preserving, and increasing barriers to entry into the market for civil defense warning systems.

PAR. 10. The acts and practices of respondent in combination with its distributors, as set out in Paragraph Seven herein, constitute an agreement, combination, or conspiracy to restrict or eliminate competition in the sale and distribution of Signal Division products; are all to the prejudice of actual and potential competitors and buyers of respondent's products, and the public; have a dangerous tendency to and have actually restrained and prevented competition in the sale of Signal Division products and therefore constitute

unfair methods of competition, in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act.

PAR. 11. The acts and practices of respondent, as set out in Paragraph Eight herein, both individually and in combination with its distributors, have a tendency to and have actually restrained and prevented competition in the sale of civil defense warning systems; and have created and maintained in respondent a monopolistic control over the terms and conditions of the sale of such products and therefore constitute unfair methods of competition, in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Denver Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Federal Signal Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1415 West 22nd St., Oak Brook, Illinois.

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

ORDER

I

It is ordered, That respondent, Federal Signal Corporation, its subsidiaries, successors, assigns, officers and directors, and respondent's agents, representatives and employees, individually or in concert with others, directly or indirectly, or through any corporate or other device, in connection with the distribution, offering for sale, or sale of Signal Division products by Federal or any of its distributors, to public bodies on a competitive bidding basis, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

1. Exchanging information with any of its distributors, prior to any bid being submitted on any particular project, concerning:

- a) the intent to submit or not to submit a bid; or
- b) the price(s) that will be bid;

2. Entering into any agreement or understanding with any of its distributors, prior to any bid being submitted on any particular project, concerning:

- a) the intent to submit or not to submit a bid;
- b) the type of equipment that will be bid;
- c) the price(s) that will be bid; or
- d) the party which will submit the low bid;

3. Submitting or soliciting the submission of any collusive bid;

4. Allocating or attempting to allocate customers among respondent and its distributors, provided that respondent may furnish the name of one or more of its distributors to any buyer or prospective buyer of respondent's products.

II

It is further ordered, That respondent, in connection with the distribution, offering for sale, or sale of civil defense warning systems by Federal or any of its distributors, to public bodies on a competitive bidding basis, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

1. Furnishing, directly or indirectly, prior to the submission of any written bid, any written specification to such public body (other than specifications established by any department of the federal government) to be substantially incorporated into materials used to obtain or evaluate bids;
2. Influencing or attempting to influence any such public body to:
 - a) limit the distribution of invitations to bid to respondent and/or its distributors;
 - b) incorporate the name or model number of any of respondent's products into advertisements for bids or specifications used to obtain or evaluate bids;
 - c) draft specifications which disqualify sellers of competitive products from bidding effectively;
3. Preparing any part of any advertisement for bids or specification used by a public body to obtain or evaluate bids.

Nothing contained in Part II of the order shall prohibit respondent from conducting surveys of civil defense warning system needs for public bodies and providing quotations containing descriptions of civil defense warning systems and estimated costs. All such quotations shall contain the following statement in close proximity to the product description:

Civil defense warning systems produced by other manufacturers may provide adequate coverage for the area surveyed even though such systems may contain differing numbers of sirens having different decibel ratings or functioning in a different manner. The names and addresses of other recognized manufacturers of civil defense warning systems will be provided upon request.

It is further ordered, That respondent, upon request by a public body, provide the names and addresses of all other manufacturers of civil defense warning systems known to respondent.

III

It is further ordered, That respondent, for a period of five years from the date of service of this order:

1. Institute a continuing surveillance program to insure that its distributors of civil defense warning systems are not engaging in any act or practice which, if engaged in by respondent, would violate Paragraphs 1, 2, or 3 of Part II of this order;
2. Upon receiving information indicating that any of its distributors of civil defense warning systems has engaged in any such act or practice, respondent shall obtain the written assurance of such

distributor that such conduct shall not again occur. If the distributor fails to provide such written assurance, respondent shall forthwith cease and desist from supplying civil defense warning systems to such distributor;

3. Upon ascertaining that a distributor, after having given such written assurance, has again engaged in any such act or practice, forthwith cease and desist from supplying civil defense warning systems to such distributor.

IV

It is further ordered, That respondent, for a period of three years from the date of service of this order, in connection with each bid on civil defense warning systems submitted to a public body:

- 1) include a copy of the letter set forth in Appendix A hereto and a copy of this order with each such bid; and
- 2) maintain a file concerning each such bid, such file to include a copy of the bid and accompanying letter, all work papers used in computing the bid, and a copy of each document furnished to the public body involved.

The files described herein shall be made available for Commission inspection upon reasonable notice.

V

It is further ordered, That respondent shall within thirty days after service upon it of this order, distribute a copy of the order to each of the respondent's operating divisions, to each of its present corporate officers and to each domestic sales representative in the Signal Division, and to its future corporate officers and Signal Division domestic sales representatives within five days of their assumption of office or employment with respondent corporation.

VI

It is further ordered, That respondent shall notify the Commission at least thirty days prior to any proposed change in its organization, such as dissolution, assignment or sale resulting in organization, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this order.

It is further ordered, That the respondent shall within sixty days after service upon it of this order, file with the Commission a report,

in writing, setting forth in detail the manner and form in which it has complied with this order.

APPENDIX A

(Official Stationery of Federal Signal Corporation)

Dear _____:

Federal Signal Corporation has entered into a consent agreement with the Federal Trade Commission concerning the company's competitive bidding practices. The agreement is for settlement purposes only and does not constitute an admission of any law violations. Part I of the Order issued pursuant to the agreement applies to the sale of all Signal Division products. Parts II, III, and IV apply to sales of civil defense warning systems.

A copy of the order issued by the Commission is enclosed. If, in connection with this bid or at any time in the future, you believe that Federal has engaged in any of the practices prohibited by the Order, report the details in writing to:

Federal Trade Commission
Washington, D. C. 20580

You are also requested, at your option, to send a copy of any such letter to:

Federal Signal Corporation
Attention: President

Very truly yours,

(Name)
President
Federal Signal Corporation

IN THE MATTER OF
INDIANA FEDERATION OF DENTISTS

Docket 9118. Interlocutory Order, Feb. 5, 1979

ORDER DENYING PETITION OF STATE OF INDIANA TO
INTERVENE

The State of Indiana, by its Attorney General, has appealed from a decision of Administrative Law Judge Paul R. Teetor (the "ALJ") denying its application to intervene in this proceeding. Because we do not believe that there has been a sufficient showing of the necessity for intervention, we cannot grant the petition.¹ The State of Indiana, however, is granted leave to appear in the proceeding as *amicus curiae* and to submit such briefs as it deems necessary to adequately represent the interests of the State on its own behalf and as *parens patriae* for its citizens.

The complaint in this matter was issued in October, 1978, and charges the respondent Indiana Federation of Dentists with, *inter alia*, illegally conspiring to frustrate cost control programs administered by a number of insurance companies. In essence, the respondent and its members, a small group of Indiana dentists, are alleged to have agreed among themselves to refuse to submit X-rays and other diagnostic tests to insurers, who seek such information in order to assure that a dentist's proposed treatment is the least expensive treatment adequate to remedy a patient's dental ills.

Respondent has raised as an affirmative defense the assertion that its members are proscribed by Indiana law from submitting diagnostic materials, such as X-rays, to third party insurance payers, because such companies may employ non-dentists to review the X-rays. Respondent notes that Indiana law forbids the practice of dentistry by non-dentists, and contends that review of X-rays constitutes the practice of dentistry. Under this so-called "state action" defense, respondent in effect asserts that it is acting as a private attorney general to enforce Indiana law.

The State of Indiana apparently agrees with respondent about what constitutes the "practice of dentistry,"² and seeks permission

¹ Unlike the ALJ, we do not believe that the proposed intervenor's status as a state bars its application here. Section 5(b) of the Federal Trade Commission Act provides: "Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the Commission to intervene and appear in said proceeding by counsel or in person." The term "person" as used in the antitrust laws may encompass a state, *Lafayette v. Louisiana Power & Light Co.*, 435 U.S. 389 (1978). A consistent interpretation should be given to the implementing provision of the Commission's Rules of Practice, Section 3.14, albeit slightly different phraseology is used there. Indeed, the Commission has previously permitted intervention by sovereign states, see e.g., *Florida Citrus Mutual*, Dkt. 6074 (February 12, 1953).

² See Unofficial Advisory Letter, dated March 14, 1974, from Curtis Plopper, Deputy Attorney General of the

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