

Complaint

99 F.T.C.

IN THE MATTER OF
GENERAL ELECTRIC COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF
THE CLAYTON ACT

Docket C-3088. Complaint, May 4, 1982—Decision, May 4, 1982

This consent order requires a Fairfield, Conn. diversified, industrial company, among other things, to divest its stock in Applicon, a major producer of stand-alone, turnkey, interactive graphics computer aided design/computer aided manufacturing ("CAD/CAM") systems, under a two-part divestiture plan to be completed by March 31, 1982. Pending divestiture, the order prohibits GE from exerting any influence over Applicon's operations; voting its stock in a manner which would be contrary to that in which it votes all other shares; and obtaining, from Applicon, confidential information of any kind. Additionally, for a five-year period, any GE employee who was in any way affiliated with Applicon is barred from serving in any position in Calma Company, a Sunnyvale, Calif. subsidiary of United Telecommunications, Inc., including its board of directors; prohibited from disclosing confidential information received during their tenure with Applicon, and barred from intervening in any of Calma's business operations. GE is also prevented from discriminating against Applicon, when purchasing CAD/CAM systems and products and restricted, for a ten-year period, from acquiring any interest in any firm engaged in the manufacture and sale of CAD/CAM products without prior Commission approval.

Appearances

For the Commission: *George S. Cary, Daniel J. Yakoubian and Donna Bowling.*

For the respondent: *Joseph Handors*, in-house counsel, Fairfield, Conn.

COMPLAINT

The Federal Trade Commission, having reason to believe that respondent, subject to the jurisdiction of the Commission, has acquired Calma Company ("Calma"), a wholly-owned subsidiary of United Telecommunications, Inc., in violation of Section 7 of the Clayton Act, as amended (15 U.S.C. 18), and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45), and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, pursuant to Section 11 of the Clayton Act (15 U.S.C. 21) and Section 5(b) of the Federal Trade Commission Act (15 U.S.C. 45(b)), stating its charges as follows:

I. DEFINITIONS

1. For purposes of this complaint, the following definitions shall apply:

(a) *Respondent* shall mean General Electric Company, a corporation, and its subsidiaries, affiliates, successors, and assigns; and

(b) *Stand-alone, turnkey, interactive graphics computer aided design/computer aided manufacturing ("CAD/CAM") systems* shall mean computer hardware and software products consisting of: (i) a cathode ray tube display; (ii) various input devices including a standard alphanumeric keyboard, a programmable function keyboard, and an electronic pen and tablet; (iii) various output devices including plotters; (iv) a central processing unit consisting of one or more 16 or 32 bit minicomputers; and, (v) various operating systems and applications software packages.

II. RESPONDENT

2. Respondent is a corporation organized and doing business under and by virtue of the laws of the State of New York with its executive offices at 3135 Easton Turnpike, Fairfield, Connecticut.

3. Respondent is a diversified, industrial company with operations in consumer products and services, industrial products and components, technical systems and materials, power systems, coal mining, and industrial electronics. In 1979, Respondent had total assets of \$16.6 billion and total sales of \$22.5 billion.

4. At all times relevant herein, Respondent has been and is now engaged in commerce within the meaning of the Clayton Act, as amended, and is a corporation whose business is in or affecting commerce within the meaning of the Federal Trade Commission Act, as amended.

III. CALMA COMPANY

5. At the time of the acquisition, Calma was a corporation organized and doing business under and by virtue of the laws of the State of California, with its principal executive offices at 527 Lakeside Drive, Sunnyvale, California.

6. Calma is engaged in the production and servicing of CAD/CAM systems. In 1979 Calma had U.S. sales of approximately \$21.0 million and was the third largest U.S. producer of CAD/CAM systems.

7. At all times relevant herein, Calma has been and is now

engaged in commerce within the meaning of the Clayton Act, as amended, and is a corporation whose business is in or affecting commerce within the meaning of the Federal Trade Commission Act, as amended.

IV. APPLICON INCORPORATED

8. Applicon is a corporation organized and doing business under and by virtue of the laws of the State of Massachusetts, with its principal executive offices at 32 Second Ave., Burlington, Massachusetts.

9. Applicon is engaged in the production and servicing of CAD/CAM systems. In 1980, its total assets were \$28.8 million and its total U.S. sales were approximately \$37.0 million. In 1980, Applicon was the second largest U.S. producer of CAD/CAM systems.

10. From approximately June 1, 1971, Respondent has been and is now the largest single holder of common stock in Applicon.

11. From approximately June 1, 1971, Respondent has had and now has substantial opportunities to influence the business operations of Applicon.

12. At all times relevant herein, Applicon has been and is now engaged in commerce within the meaning of the Clayton Act, as amended, and is a corporation whose business is in or affecting commerce within the meaning of the Federal Trade Commission Act, as amended.

V. ACQUISITION

13. On December 5, 1980, General Electric and United Telecommunications entered into an agreement under which Respondent agreed to purchase all the outstanding shares of Calma, for \$100 million plus additional incentive payments not to exceed \$70 million, which are contingent upon cumulative sales of Calma during the 4-year period of January 1, 1981 through December 31, 1984.

VI. TRADE AND COMMERCE

14. The relevant line of commerce in which to evaluate the effects of GE's acquisition of Calma is CAD/CAM systems and submarkets thereof, and the relevant section of the country is the United States as a whole.

15. Sales of CAD/CAM systems in the United States are substantial, amounting to an estimated \$213 million in 1979.

16. Applicon and Calma are and have been for many years substantial and actual competitors in the manufacture and sale of CAD/CAM systems.

17. In the year 1979 Applicon had sales of CAD/CAM systems in the United States of approximately \$37.0 million accounting for approximately 17.3% of total U.S. sales. Calma had sales of CAD/CAM systems in the United States of approximately \$21.0 million in 1979 accounting for approximately 9.8% of total U.S. sales.

18. Concentration in the manufacture and sale of CAD/CAM systems is high. In 1979, the top four firms accounted for approximately 69.3% and the top six firms approximately 83.8% of U.S. sales of CAD/CAM systems.

19. On a *pro-forma* basis, the acquisition of Calma increased the 1979 four-firm concentration from approximately 69.3% to approximately 78.2% and reduced the number of substantial competitors to five from six.

20. Barriers to entry into the manufacture and sale of CAD/CAM systems are substantial.

VII. EFFECTS OF THE ACQUISITION

21. The effect of the acquisition of Calma by Respondent may be substantially to lessen competition and to create a monopoly in the manufacture and sale of CAD/CAM systems in the United States in the following ways, among others:

- (a) substantial actual and potential competition between Applicon and Calma and other firms in the manufacture and sale of CAD/CAM systems has been substantially lessened;
- (b) already high concentration in the manufacture and sale of CAD/CAM systems has been increased; and
- (c) the likelihood of eventual deconcentration may be lessened.

VIII. THE VIOLATION CHARGED

22. The aforesaid acquisition constitutes a violation of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Federal Trade Commission, having initiated an investigation of the acquisition of Calma Company (hereinafter "Calma"), by

General Electric Company (hereinafter "GE"), and GE having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge GE with violations of the Federal Trade Commission Act and the Clayton Act; and

GE, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by GE of all the jurisdictional facts set forth in the aforesaid draft of complaint and the relevant line of commerce, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by GE 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 GE has violated the said Acts, 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, 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. GE is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with executive offices located at 3135 Easton Turnpike, Fairfield, Connecticut.

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

ORDER

I.

It is ordered, That for the purposes of this order the following definitions shall apply:

1. *GE* means General Electric Company, a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its offices at 3135 Easton Turnpike, Fairfield, Connecticut, as well as its directors, officers, employees, agents, its divisions, subsidiaries, controlled affiliates, successors,

assigns, and the directors, officers, employees, or agents of GE's divisions, subsidiaries, affiliates, successors, or assigns.

2. *Calma* means Calma Company, a wholly-owned subsidiary of United Telecommunications, Inc., and a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal offices at 527 Lakeside Drive, Sunnyvale, California, as well as its directors, officers, employees, agents, its divisions, subsidiaries, successors, assigns, and the directors, officers, employees, or agents of Calma's parents, divisions, subsidiaries, affiliates, successors, or assigns.

3. *Applicon* means Applicon, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, with its principal offices at 32 Second Ave., Burlington, Massachusetts, as well as its directors, officers, employees, agents, its divisions, subsidiaries, successors, assigns, and the directors, officers, employees, or agents of Applicon's divisions, subsidiaries, affiliates, successors, or assigns.

4. *Eligible Person* means any individual, corporation (including subsidiaries thereof), partnership, joint venture, trust, unincorporated association, other business or legal entity, or any combination thereof: (i) acquiring an amount of Applicon's stock that will not result in its ownership or control, directly or indirectly, of 250,000 or more shares of Applicon common stock; or (ii) acquiring Applicon stock on an established stock exchange (other than through a privately negotiated sale which is "crossed" on an exchange) or through a public offering; or (iii) acting as an underwriter for the purpose of reselling such shares pursuant to a secondary public offering.

5. *Initial Divestiture Period* shall mean the period through and including December 31, 1981.

6. *Final Divestiture Period* shall mean the period from the end of the Initial Divestiture Period through and including March 31, 1982.

7. *Documents* means all writings of every kind including, but not limited to, books, records, statements, minutes, reports, studies, memoranda, correspondence, agreements, print-outs, telegrams, diary entries, pamphlets, notes, charts, tabulations, releases, and purchase orders (including any notes, attachments, riders, modifications, etc.) in the possession, custody, or control of GE. The term *documents* also includes voice recordings and reproductions or film impressions of any of the aforementioned writings as well as copies of documents which are not identical duplicates of the originals and copies of documents the originals of which are not in the possession, custody, or control of the company. The term *documents* further

includes data compilations in machine readable form used in data processing, together with the programming instructions and other written material necessary to understand or use such data compilations.

8. *Relating to* means in whole or in part constituting, containing, embodying, reflecting, identifying, stating, referring to, dealing with, or in any way pertaining to.

9. *CAD/CAM product* means any stand-alone, turnkey, interactive graphics computer aided design/computer aided manufacturing system.

II.

It is further ordered, That:

1. GE shall divest absolutely during the Initial Divestiture Period to Eligible Persons at least two-thirds of the total number of shares of stock in Applicon held by GE either through a secondary public offering, the costs of which are to be borne by GE, through private placement, or according to the provisions of Securities and Exchange Commission Rule 144, 17 C.F.R. 230.144 (1980).

2. GE shall divest absolutely during the Final Divestiture Period, through private placements to Eligible Persons, all the remaining shares of stock in Applicon held by GE, with the exception that no more than 100,000 of such shares may be divested according to the provisions of Securities and Exchange Commission Rule 144, 17 C.F.R. 230.144 (1980).

III.

It is further ordered, That pending the divestiture required under Paragraph II of this order:

1. GE shall not, directly or indirectly, exert any control over or influence or interfere with any of the business decisions, operations or policies of Applicon.

2. No GE officer, employee, representative or agent shall serve in any Applicon position or on Applicon's Board of Directors.

3. GE shall cause its shares of stock in Applicon to be voted *pro-rata* according to the manner in which all other outstanding shares of common stock in Applicon are voted.

4. GE shall not require Applicon to make available or communicate, and shall not seek to obtain or exploit, directly or indirectly, any of Applicon's trade secrets, proprietary or other confidential

business information of any kind, except in the ordinary course of GE's relationship with Applicon in its capacity as a licensor or licensee, lessor or lessee, purchaser or seller of any product, and except as such information may be required under applicable law to be disclosed in selling or disposing of Applicon stock.

IV.

It is further ordered, That:

1. GE shall return to Applicon forthwith upon issuance of this order all non-public documents containing trade secrets or proprietary or other confidential business information received from Applicon:

(a) which were obtained by an officer or employee of GE during such officer or employee's tenure as a director of Applicon;

(b) which were obtained by an officer or employee of GE in connection with discussions with Applicon regarding a possible joint venture;

(c) which, regardless of how obtained, (unless independently obtained by Calma prior to its acquisition by GE) disclose the functions, applications, design or features of any new Applicon product or enhancement to any existing product and the timing of the introduction of any new Applicon product or enhancement to any existing product (except to the extent disclosed in connection with the use or prospective use of Applicon products by GE); Applicon's actual or estimated costs or profit margins; Applicon's research and development plans, projects or expenditures; Applicon's business plans; or any Applicon decision to purchase or produce any component of any existing or new product;

and shall destroy all copies of such documents and all other documents containing Applicon trade secrets or proprietary or other confidential business information, which information was received in the manner described in 1(a) or 1(b) or is of the type described in 1(c).

2. For a period of five years after ceasing to be a director of Applicon no officer or employee of GE who obtained trade secrets, proprietary or confidential information or documents from Applicon during such officer or employee's tenure as a director of Applicon shall:

(a) disclose such information (including to other GE officers or employees);

- (b) exert any control over or influence or interfere in any way with the business decisions or operations of Calma;
- (c) cause Calma, directly or indirectly, to adopt policies preferred, suggested, or dictated by such director;
- (d) cause Calma to change its existing policies or methods of operations;
- (e) serve in any Calma position or on Calma's Board of Directors or in any GE position with responsibility for Calma; or
- (f) confer, advise, or consult with regard to Calma.

3. Officers and employees of GE who obtained Applicon trade secrets, proprietary, or other confidential business information or documents from any officer or employee of GE who obtained such information or documents during his tenure as a director of Applicon shall keep such information or documents confidential and shall not disclose (including to other GE officers or employees) or make use of such information or documents for five years from the final date of the director's term in office.

4. GE and each of its officers and employees shall keep confidential and not disclose (including to other GE officers or employees) any trade secrets or proprietary or other confidential business information obtained from Applicon during the course of discussions with Applicon regarding a possible joint venture and shall make no use of such information for a period of five years from the date of receipt of the information.

5. Paragraphs IV.3 and IV.4 shall not apply to information which appears in issued patents or printed publications independently available to GE, or which GE can show by written records is in GE's possession through channels independent of Applicon or was independently developed by GE officers or employees without use of information subject to paragraph IV of this order.

6. GE shall forthwith distribute a copy of this order to each of its operating divisions, and to present or future personnel, agents, or representatives having responsibilities relating to the subject matter of paragraphs IV.1 through IV.6, and shall secure from each such person a signed statement acknowledging receipt of such a copy. GE employees subject to paragraphs IV.2, IV.3 and IV.4 shall execute affidavits acknowledging receipt of this order.

V.

It is further ordered, That:

1. For a period of two years following the issuance of this order,

GE shall not adopt, promote, foster, permit, or condone, either formally or informally, any policy with regard to the purchase of any CAD/CAM product which discriminates against Applicon on any basis other than the relative merits of any such product in the application for which it is being purchased, and GE shall, in connection with the purchase of any CAD/CAM product, make its purchase decision based solely on sound business practice which requires using the best sources of supply of products that will provide the greatest total value; that is the best evaluated combination of quality, price, delivery, service and other elements of value.

2. GE shall not enforce its statement of Policy No. 20.11, issued December 7, 1966, entitled "Company Use of General Electric Products," or any amendments to such policy, to the extent that such policy or amendments thereto conflict with the mandate set out in paragraph V.1 of this order.

3. GE shall forthwith and semiannually during the 2-year period following issuance of this order, distribute a copy of this order to each of its officers and employees who are responsible for the purchase of any CAD/CAM product.

VI.

It is further ordered, That periodically, as the Commission shall require during the five years subsequent to the issuance of this order, GE shall submit in writing to the Commission a verified report setting forth in detail the manner and form in which GE intends to comply or has complied with this order.

VII.

It is further ordered, That GE notify the Commission at least thirty (30) days prior to any proposed change in GE 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 effect compliance obligations arising out of this order.

VIII.

It is further ordered, That, for a period of ten years from the date of issuance of this order, GE, its parents, divisions, subsidiaries, affiliates, successors or assigns shall not, directly or indirectly, acquire any stock, share capital or equity interest in, or assets used in the manufacture or sale in or to the U.S. of any CAD/CAM

products by any concern, corporate or non-corporate, engaged in the manufacture or sale of any CAD/CAM products without the prior approval of the Commission.

IN THE MATTER OF
WESTERN GENERAL DAIRIES, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3089. Complaint, May 4, 1982—Decision, May 4, 1982

This consent order requires a Utah dairy cooperative to cease engaging in price discrimination in the sale and distribution of raw milk and dairy products, or communicating in any manner disparaging or derogatory information or opinions concerning competing firms. Commencing one year from its effective date, the order bars the cooperative from restricting, for more than six months, the sale or transfer of "base" by any of its members to any bona fide Grade A milk producer. ("Base" is a member's right to receive from the cooperative the going rate for raw milk.)

Appearances

For the Commission: *David M. Newman and Jerome M. Steiner, Jr.*

For the respondent: *Randon W. Wilson, Jones, Waldo, Holbrook & McDonough, Salt Lake City, Utah.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Western General Dairies, Inc., an incorporated cooperative association, hereinafter sometimes referred to as respondent, has violated the provisions of said Acts, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Western General Dairies, Inc. is an incorporated cooperative association organized, existing and doing business under and by virtue of the laws of the State of Utah;

Respondent during the period 1973 to 1975 acted as a marketing agent for Federated Dairy Farms, Inc., General Dairies, Inc., and Upper Snake River Valley Dairymen's Association, each an incorporated cooperative association, hereinafter collectively referred to as the "other cooperatives."

Respondent currently owns and operates and for some time last past has owned and operated a number of processing facilities, each