

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

WESTINGHOUSE ELECTRIC CORPORATION;
CHALLENGER ELECTRICAL EQUIPMENT
CORPORATION; AND AMERICAN
PROPERTIES CORPORATION,

Defendants.

Civil No. 87-3528

Filed: 12/30/87

Antitrust

Judge Oberborfer

COMPLAINT

The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable and other relief against the defendants named herein and complains and alleges as follows:

I.

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain the violation by defendants, as hereinafter alleged, of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

2. Westinghouse Electric Corporation transacts business and is found within the District of Columbia.

3. Challenger Electrical Equipment Corporation transacts business and is found within the District of Columbia.

II.

Definitions

4. "Circuit breaker" means an overcurrent protection device that acts as a safety switch by interrupting the flow of power in the event of a power overload.

5. "HHI" means the Herfindahl-Hirschman Index, a measure of market concentration calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2600 (30 squared + 30 squared + 20 squared + 20 squared = 2600). The HHI, which takes into account the relative size and distribution of the firms in the market, ranges from virtually zero to 10,000. The index approaches zero when a market is occupied by a large number of firms of relatively equal size. The index increases as the number of firms in the market decreases and as the disparity in size between the leading firms and the remaining firms increases.

6. "Load center" means a metal box designed to accept circuit breakers produced by one or more manufacturers.

7. "Residential circuit breaker" means a circuit breaker, ranging in rating from 15 amperes to about 100 amperes, that is used in a load center in a residential dwelling or a small commercial building.

III.

DEFENDANTS

8. Westinghouse Electric Corporation (hereinafter "Westinghouse") is made a defendant herein. Westinghouse is a corporation organized and existing under the laws of the state of Pennsylvania. It maintains its principal offices in Pittsburgh, Pennsylvania. In 1986, Westinghouse reported total sales of about \$11 billion and net income of about \$670 million. Westinghouse, through its Distribution and Control Business Unit, produces residential circuit breakers for sale in the United States at facilities located in Aguas Buenas and San Lorenzo, Puerto Rico and in the Dominican Republic. In 1986, Westinghouse's sales in the United States of residential circuit breakers totaled about \$35 million.

9. Challenger Electrical Equipment Corporation (hereinafter "Challenger") is made a defendant herein. Challenger is a corporation organized and existing under the laws of the State of Delaware. It maintains its principal offices in Malvern, Pennsylvania. In 1986, Challenger reported total sales of about \$260 million and net income of about \$13 million. Challenger produces residential circuit breakers for sale in the United States at facilities in Caqwas, Comerio, and Canovanas, Puerto Rico and in Albemarle, North Carolina. In 1986, Challenger's sales in the United States of residential circuit breakers totaled about \$56 million, of which about \$35 million were attributable to its Puerto Rican facilities

and about \$21 million were attributable to its Albemarle, North Carolina facility.

10. American Properties Corporation (hereinafter "American") is made a defendant herein. American is a corporation organized and existing under the laws of the state of Delaware. It maintains principal offices in Albermarle, North Carolina. American is a holding company owned by the shareholders of Challenger.

IV.

TRADE AND COMMERCE

11. Residential circuit breakers are produced principally for sale to electrical contractors for use in load centers installed in newly constructed housing. They also are sold to electricians and home owners for use as replacements in and additions to existing load centers. In 1986, approximately \$360 million in residential circuit breakers were sold in the United States.

12. No competitive substitutes exist for residential circuit breakers to which a significant number of purchasers of residential circuit breakers would switch in response to a small but significant nontransitory price increase. The production and sale of residential circuit breakers constitutes a relevant product market for antitrust purposes.

13. Both Westinghouse and Challenger compete nationwide in the production and sale of residential circuit breakers. The

United States constitutes, for antitrust purposes, a relevant geographic market or section of the country for the production and sale of residential circuit breakers.

14. The production and sale of residential circuit breakers in the United States is highly concentrated. In 1986, Challenger, the third largest producer of residential circuit breakers in the United States, accounted for about 13 percent of the market, and Westinghouse, the fifth largest producer, accounted for about 10 percent. Of the remaining eight firms that compete in the United States in the residential circuit breaker market, only five accounted for more than 5 percent of sales in 1987. Imports of residential circuit breakers accounted for only about 3 percent of total United States sales in 1986. By acquiring Challenger's residential circuit breaker plants located in Puerto Rico, Westinghouse would become the second largest producer of residential circuit breakers in the United States with a market share of over 20 percent. By requiring through an ancillary agreement that the shareholders of Challenger, the only firm that previously had produced a load center compatible with the residential circuit breakers that Challenger produces at its North Carolina facility, not produce such a load center, Westinghouse would eliminate that facility as a competitor in the production and sale of residential circuit breakers for use in load centers installed in newly constructed housing. The acquisition and ancillary agreement would increase the HHI by about 208 to 1866.

15. Successful new entry into the production and sale of residential circuit breakers involves significant time. Among the reasons that entry are time consuming is the need to design a full line of residential circuit breakers of all amperages customarily used in residential dwellings, the need to obtain Underwriters Laboratories, Incorporated (UL) approval for new residential circuit breakers, and the need to offer a circuit breaker that is compatible with a load center suitable for use in newly constructed housing.

16. Westinghouse and Challenger sell substantial quantities of residential circuit breakers throughout the United States. Westinghouse and Challenger are each engaged in interstate commerce and their activities substantially affect interstate commerce.

V.

VIOLATION ALLEGED

17. On or about October 1, 1987, Westinghouse and Challenger entered into an agreement providing for Westinghouse to purchase the stock of Challenger. Thus, Westinghouse would acquire all of Challenger's residential circuit breaker business, except Challenger's facility in Albemarle, North Carolina, which first would have been sold by Challenger to American, a corporation owned by certain shareholders of Challenger. The agreement further provides that the shareholders of American not produce a load center compatible with the residential circuit breaker produced at the Albemarle

facility. The purchase price to be paid by Westinghouse is \$195 million.

18. The effect of the proposed acquisition by Westinghouse of Challenger under the terms of the aforesaid agreement may be substantially to lessen competition in violation of Section 7 of the Clayton Act, in the following ways, among others:

- a. actual and potential competition between Westinghouse and Challenger in the production and sale of residential circuit breakers in the United States will be eliminated; and
- b. competition generally in the production and sale of residential circuit breakers in the United States may be substantially lessened.


PRAYER

WHEREFORE, plaintiff prays:

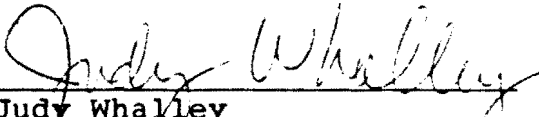
1. That the acquisition of Challenger by Westinghouse under the terms of the aforesaid agreement be adjudged to be in violation of Section 7 of the Clayton Act;
2. That American Properties Corporation be ordered and directed to divest itself of its residential circuit breaker business to a purchaser that is able promptly to become a viable independent competitor in the production and sale of residential circuit breakers;
3. That plaintiff have such other and further relief as the Court may deem just and proper; and

4. That plaintiff recover the costs of this action.

Respectfully submitted,



Michael Boudin
Acting Assistant Attorney General

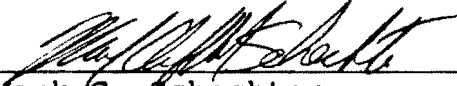


Judy Whalley



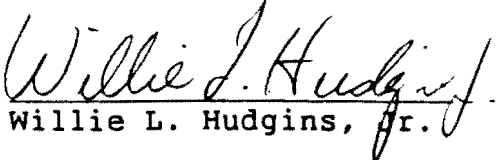
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Dated: December 30, 1987



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