

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
-against-)	CIVIL ACTION NO. 15816
)	
GENERAL MOTORS CORPORATION,)	
)	
Defendant.)	Entered: 12/31/65
)	

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on July 6, 1956; and defendant, having appeared and filed its answer denying the substantive allegations of such complaint; and plaintiff and defendant, by their respective attorneys, having consented to the making and entry of this Final Judgment, without adjudication of any issue of fact or law herein, without this Final Judgment constituting evidence or any admission by either party hereto with respect to any such issue;

NOW, THEREFORE, without adjudication of any issue of fact or law herein and upon the consent of plaintiff and defendant, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter hereof and of parties consenting hereto. The complaint herein states a claim for relief against defendant under Section 2 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, entitled "An

Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," as amended.

II

The provisions of this Final Judgment shall apply to the defendant, its subsidiaries, successors and assigns engaged in the manufacture, sale, delivery or financing of buses or bus parts within the United States, and to their respective officers, directors, agents, servants and employees, when acting in such capacity, and to all other persons in active concert or participation with the defendant who shall have received actual notice of this Final Judgment by personal service or otherwise. The provisions of this Final Judgment shall not apply to the activities of defendant carried on outside the United States except for imports of bus parts other than replacement parts for buses produced by defendant outside the United States.

III

As used in this Final Judgment and for such purpose only:

(A) "Person" shall mean a person, firm, corporation, association, or any other legal entity;

(B) "Bus" shall mean a new, rubber-tired vehicle of integral construction (the chassis of which, if any, is assembled by the manufacturer of the body) having an internal combustion engine and a seated passenger capacity of twenty-one (21) or more adults and delivered in the United States. The term "bus" shall not be deemed to include a vehicle sold primarily for school service;

(C) "Bus part" shall mean any new part of a bus or a new replacement part thereof.

(D) "Supplier of bus parts" shall mean a person (other than defendant) engaged in the manufacture of bus parts within the United States;

(E) "Bus operator" shall mean a person engaged, directly or through a subsidiary, in providing mass passenger transportation service for adults by bus over city or intercity routes within the United States;

(F) "Bus manufacturer" or "manufacturer of buses" shall mean a person (other than defendant) engaged in the final assembly of buses at the factory level: (1) within the United States, or (2) outside the United States and regularly engaged in the business of soliciting bus operators and delivering, directly or indirectly, buses for use within the United States.

IV

Defendant is hereby enjoined from:

(A) Owning any capital stock or other financial interest in any manufacturer of buses, or any bus operator; provided, however, that this provision shall not apply to an interest arising out of the conversion of a debt interest acquired incident to a sale or other credit transaction and disposed of within a reasonable period of time, or to the ownership of the obligations of any government entity;

(B) Thirty days after knowledge thereof, having or allowing to serve as an officer or director of defendant, or as a staff head or bus sales executive or bus sales representative of the GMC Truck & Coach Division any individual whom it knows to own a material share of the total outstanding stock of any manufacturer of buses or of any person whose principal business is that of bus operator;

(C) Thirty days after knowledge thereof, having or allowing to serve as an officer or director of defendant, or as a staff head or bus sales executive or bus sales representative of the GMC Truck & Coach Division any individual whom it knows to be an officer or director of any manufacturer of buses or any person whose principal business is that of bus operator;

(D) Entering into or maintaining any contract or agreement that any bus operator or manufacturer purchase all or any stated percentage of its requirements of buses or bus parts from defendant, or any source designated by defendant, or for a period of ten (10) years from the date of entry of this Final Judgment, entering into or maintaining any contract or agreement with a "bus operator co-conspirator" as defined in the complaint herein, which provides for or contemplates delivery of buses over a period exceeding twenty-four (24) months; or entering into or maintaining any contract or agreement with any purchaser which provides for or contemplates delivery of buses over a period exceeding twenty-four (24) months unless such contract or agreement entitles the purchaser to cancel any portion of such deliveries upon reasonable notice and upon payment of a reasonable cancellation charge;

(E) Entering into or maintaining any contract or agreement with any supplier of bus parts under the terms of which such supplier is prevented from selling bus parts to any bus manufacturer or bus operator; provided, however, that except as provided otherwise in Section V (G) of this Judgment, this provision shall not apply to any such part which is manufactured with tools, drawings or designs supplied or paid for by defendant.

(F) Financing the sale of defendant's buses or rendering any other financial assistance to any bus operator under terms and conditions which are not available to other bus operators similarly qualified as to credit rating, reputation with respect to repayment of debts, the degree of risk involved in the transaction, or any other factors normally taken into consideration in extending such credit; provided, however, that defendant may vary its terms and conditions to meet those offered by any person engaged in the manufacture, sale or financing of buses.

V

Defendant is hereby ordered to:

(A) Sell to any bus operator desiring to purchase a bus from defendant any bus model manufactured by it for sale, and deliver such bus within the limits of its established production schedule;

(B) Sell upon request, and deliver within the limits of its established production schedule on a nondiscriminatory basis, to any manufacturer of buses for original equipment installation in buses made by such manufacturer any model of engine or transmission manufactured by defendant and offered for sale by defendant for original equipment use, or offered in buses manufactured by defendant. Such sales shall be made on the following basis:

(1) Engines and transmissions shall be at the option of the purchaser either (a) in the basic form or forms with standard equipment as normally provided; or (b) with such optional equipment and application modifications (including deletions, additions, substitutions and engineering changes

to adapt the engine or transmission to the bus manufacturer's vehicle) and in such quantities as the manufacturing operation involved normally provides;

(2) In the case of engines or transmissions also sold by defendant to commercial purchasers for installation in original equipment other than buses, the price, warranty, delivery schedule, and other terms and conditions to bus manufacturers shall be not less favorable after taking into account differences in form, optional equipment, application modifications and engineering changes than the prices and terms at which such models of engines and transmissions are offered by defendant to commercial purchasers for use in the most nearly similar application, which shall be deemed to be original equipment used in trucks, whenever applicable;

(3) In the case of engines and transmissions which are not sold by defendant to commercial purchasers for installation in original equipment other than buses, the price, warranty, delivery schedule, and other terms and conditions to bus manufacturers for such engine or transmission shall be not less favorable after taking into account differences in form, optional equipment, application modifications and engineering changes than the lowest price at which defendant sells such engine or transmission for replacement purposes, adjusted to arrive at an original equipment price level. For purposes of this provision, the adjustment to be applied to a replacement part price in order to arrive at an original equipment price will be the percentage of replacement price by which the original equipment price is less than such replacement price on the

most nearly similar engine or transmission made by the defendant's manufacturing operation producing the item to be priced and sold to commercial purchasers on both a replacement and original equipment basis;

(4) The prices charged by defendant under this Subsection (B) for engines and transmissions which are also transferred from other divisions of defendant to the GMC Truck & Coach Division for installation in buses, and which are not sold to commercial purchasers, shall be not less favorable, after taking into account differences in form, optional equipment, application modifications, engineering changes, and other applicable charges, than the interdivisional billing values used at the same time in the transfer of such engines and transmissions to GMC Truck & Coach Division for installation in buses.

(C) Sell upon request, and deliver within the limits of its established production schedule on a nondiscriminatory basis, to any bus manufacturer bus parts for the maintenance, repair or replacement of any engine and transmission sold by defendant for original installation in a bus made by such bus manufacturer.

Such sales shall be made on the following basis:

(1) The price, warranty, delivery schedule and other terms and conditions shall be not less favorable than on sales for such purposes of such parts to manufacturers of equipment other than buses. If such parts are not then currently sold by defendant to manufacturers of equipment other than buses, the price for such parts shall be established on the basis of the replacement price for such parts adjusted by the relationship between truck dealer or bus operator replacement price (whichever is less) and

original equipment manufacturer replacement price on other similar parts made by the manufacturing operation producing the item being priced;

(2) This requirement shall not continue in effect for a longer time than the operation concerned is making such parts available to other customers after the engine or transmission in which they have an application is no longer in current production;

(3) This requirement shall not be for quantities greater than are reasonably needed to maintain or repair the engines or transmissions sold by defendant to such bus manufacturer for installation in original equipment;

(D) For a period of ten years from the date of entry of this Judgment, and also under the conditions described in Subsection V (J) hereof, sell upon request, and deliver within the limits of its established production schedule on a non-discriminatory basis, to any bus manufacturer, for original equipment installation in buses made by such manufacturer, any bus part (other than engines and transmissions and parts thereof) manufactured by defendant and offered for sale by defendant for original equipment use, or then offered in buses manufactured by defendant. Such sales shall be made on the following basis:

(1) In the case of parts also offered to commercial purchasers for installation in original equipment other than buses: such parts shall be offered in the form or forms normally provided by defendant, and with such application modifications and engineering changes, and in such quantities, as are normally provided by manufacturers of such parts and as the manufacturing operation involved is equipped to provide on a normal operating basis; the prices and terms to bus manufacturers for such parts shall

be not less favorable after taking into account differences in form, application modifications, and engineering changes than the prices and terms at which each of such components is offered to other commercial purchasers;

(2) In the case of parts which are not sold by defendant to commercial purchasers for installation in original equipment other than buses:

(a) Such parts shall be current model parts and assemblies listed in the GM Coach Master Parts Price List (not including interior and exterior trim and structural parts embodying styling features) and sold for replacement to bus operators;

(b) The prices and terms to bus manufacturers for such parts, f.o.b. the GMC Truck & Coach Division parts warehouse at Pontiac, Michigan, shall be not less favorable than the lowest price at which such items are sold to truck dealers or to bus operators; provided, however, that if a bus manufacturer shall order bus parts on a scheduled parts shipment basis, defendant shall price bus parts at the lowest price charged to truck dealers or bus operators less 15 per cent. Scheduled parts shipment basis shall mean that the bus manufacturer submit a firm order to the GMC Truck & Coach Division Pontiac Office not oftener than once a month, between the first and the tenth of the month, with a reasonable lead time such as will permit defendant to produce the parts on a regular production run, and with shipment made in bulk to one destination in quantities not less than original equipment requirements for 25 buses.

(c) The prices and terms to bus manufacturers for such parts manufactured by other divisions of defendant and transferred to GMC Truck & Coach Division for use on buses, which parts are ordered and purchased on a scheduled parts shipment basis from the supplying division by such bus manufacturers in the same form in which such parts are transferred to GMC Truck & Coach Division shall be not less favorable than the interdivisional billing values used at the same time in the transfer of such parts to GMC Truck & Coach Division for installation in buses, adjusted for any material interdivisional allowance for tooling furnished by GMC Truck & Coach Division;

(E) For a period of ten years from the date of entry of this Judgment, sell upon request, and deliver within the limits of its established production schedule on a nondiscriminatory basis, to any bus manufacturer bus parts for maintenance, repair or replacement of any part (other than engine and transmission parts) sold by defendant for original installation in a bus made by such bus manufacturer. Such sales shall be made on the following basis:

(1) In the case of such parts also offered to other commercial original equipment purchasers, the prices and terms to bus manufacturers shall be not less favorable than the prices and terms at which such parts are sold to other original equipment manufacturers for such purposes;

(2) In the case of such parts not offered to other commercial original equipment purchasers and which are listed in the GM Coach Master Parts Price List, the prices and terms for such parts f.o.b. the GMC Truck & Coach Division parts warehouse at Pontiac, Michigan, shall be not less favorable than the lowest price at which such

items are sold to truck dealers or to bus operators.

(3) This requirement shall not continue in effect for a longer time than the division of defendant concerned is making such parts available to other customers after the part in which they have an application is no longer in current production;

(4) This requirement shall not be for quantities greater than are reasonably needed to maintain, repair, or replace the bus parts sold by defendant to such bus manufacturers for installation in original equipment;

(F) So long as it engages in the manufacture and financing of buses, make available upon request, on no less favorable terms and conditions than it then finances purchases by operators of buses manufactured by defendant, financing of other bus manufacturers' new bus sales to bus operators similarly qualified, taking into account credit rating, degree of risk, and other factors normally taken into consideration in extending such credit; provided, however,

(1) That, if requested by defendant, the manufacturer-seller shall first have furnished to defendant a repurchase agreement satisfactory to defendant applicable to such transactions; and

(2) That defendant may vary the aforesaid terms and conditions in any particular transaction to meet those offered by any other person engaged in extending credit;

(G) For a period of ten years from the date of this Judgment, at the request of any bus manufacturer, authorize any supplier from which defendant is purchasing bus parts (not including interior and exterior trim and structural parts embodying styling features) manufactured by said supplier with tools, drawings, or designs supplied or paid for by defendant to

furnish such parts to said bus manufacturer provided such bus manufacturer shall pay to defendant a proportionate share of the cost of said tools, drawings or designs.

(H) Nothing in the foregoing provisions of this Section V shall be deemed:

(1) To require defendant to sell any model of bus or any bus part as to which any other person (excluding for a period of ten (10) years from the date of entry of this Final Judgment a "bus operator co-conspirator" as defined in the complaint herein) hereafter owns, otherwise than by purchase, assignment or license from defendant, patent rights or designs without such person's consent when required, which defendant will make every reasonable effort to obtain at the time defendant arranges for the use of such patent rights or designs; or

(2) To require defendant to use for comparison purposes any price to an original equipment manufacturer which is lower than the normal price to such class of customers to the extent such price (a) meets a price offered by a competitor, or (b) makes only due allowance for differences in the cost of manufacture, sale or delivery resulting from differing methods or quantities in which such bus part is sold to such purchaser; or

(3) To require defendant to sell any bus parts if the intended applications are unsuitable and are not made suitable for the safe and efficient use of such items; provided that as to engines and transmissions defendant, at the request of the intended purchaser, will provide the assistance normally furnished to other customers in seeking to make such intended applications suitable.

(I) Grant to plaintiff, any bus manufacturer, supplier of bus parts, bus operator, or Canadian manufacturer of bus parts, making written request therefor, to the extent it has power to do so:

(1) A nonexclusive royalty free license for use in buses under any United States patent during the full term thereof owned by defendant as of the date of entry of this Final Judgment;

(2) A nonexclusive license for use in buses, under any United States patents during the full term thereof as may be granted to defendant during the period five years from the date of entry of this Final Judgment, royalty free for the period of the first five years from the date of issuance of the patent and thereafter at reasonable royalties;

(3) A nonexclusive license for use in buses under any United States patents during the full term thereof as may be granted to the defendant during the period beginning five years and ending ten years after the date of entry of this Final Judgment at reasonable royalties;

Provided, however, that in the case of each such license, other than to a bus manufacturer under subparagraph (1), the licensee thereof shall in return grant to defendant for use in buses a nonexclusive license on the same terms on which the licensee received its license from defendant under all patents during the full term thereof as may thereafter be issued to said licensee covering improvements on the invention disclosed and claimed in the patents licensed by defendant, except that in the case of a license under subparagraph (2) the grantback shall be on a reasonable royalty basis at any time the licensee is obligated to pay royalties.

(J) So long as this Final Judgment is in effect, the provisions of Subsections V (D) and (E) shall apply with respect to the sale of any bus part to a bus manufacturer who orders such part to fulfill a contract issued under a competitive invitation to bid requiring the use of such part.

VI

After the third and before the tenth anniversary of the date of entry of this Final Judgment, upon a showing that the total annual deliveries of buses within the United States have substantially increased above the average 1964-1965 level of approximately 3900 buses per year and that no substantial additional competitor has entered the bus business, or at any time before such tenth anniversary, upon a showing that a substantial existing competitor has disappeared and has not been replaced by a comparable new entrant, plaintiff may seek from the Court on a single occasion (and if the first application be denied, on a second occasion) such other and further relief as is hereinafter provided.

(A) If, at the time of plaintiff's application for relief under this Section, defendant has a physically separate plant in the United States which is manufacturing or is capable of manufacturing a substantial number of buses of the types and specifications then being made by defendant and which can be sold without impairing defendant's continuing capability to manufacture buses and other products in substantial volume, then plaintiff may request the Court to order defendant to offer such separate plant for sale, for a period of one year commencing ninety (90) days after the Court's order becomes final, to a purchaser satisfactory to plaintiff desiring to utilize such plant for the purpose of manufacturing buses.

(B) The minimum price at which defendant shall be required to sell such plant shall be its fair market value as determined by the average of the appraisals of three qualified appraisers, of whom defendant and plaintiff each shall select one and the two thus selected shall, in turn, select the third. Defendant shall not be required to sell on credit terms, but shall convey title either to a purchaser desiring to utilize such plant for the purpose of manufacturing buses, or, at the option of such a company that does not desire to take title, to any other purchaser entering into a lease-back or other long-term real estate financing arrangement with such a company.

(C) If, at the time of plaintiff's application for relief under this Section, defendant has no such physically separate plant, then plaintiff may request the Court to order defendant (i) to create, within a period of not more than five years, such a physically separate plant capable of manufacturing a substantial number of buses of the types and specifications then being made by defendant, and (ii) to offer such plant for sale for a period of one year after its completion and otherwise in accordance with the terms of Subsections (A) and (B) of this Section, unless defendant shall show to the satisfaction of the Court that at rated capacity on a single shift operation the cost to defendant of manufacturing buses in such a physically separate plant would be substantially higher than the cost to defendant of manufacturing buses in existing facilities; provided, however, that plaintiff may nevertheless request the Court to order defendant to construct such a physically separate plant if plaintiff presents at the time of its application a purchaser willing and able to enter into a firm contractual commitment,

when the Court's order becomes final, to purchase the proposed separate plant at cost upon its completion.

(D) Nothing contained herein shall require defendant to create or sell facilities for the manufacture of engines, transmissions or any parts which defendant regularly offers for general sale to vehicle manufacturers if defendant shows that such engines, transmissions, or parts, as the case may be, cannot be manufactured primarily for incorporation in buses manufactured by the purchaser at such separate plant as economically as they can be procured by the purchaser from other sources, including defendant.

(E) In a proceeding under this Section, it shall not be open to defendant to oppose relief on the ground that it has not violated Section 2 of the Sherman Act or on any ground not specified in this Section VI. Defendant shall be entitled to oppose the relief described in Subsection (A) or (C) of this Section on the ground that, upon the entry of the purchaser into the bus manufacturing business, either the purchaser, any other established bus manufacturer or defendant is not likely to be able to operate as a viable competitor in the sale of buses in the United States, or that defendant does not have the largest share of the bus market. The burden of proof as to any such defense shall be on the defendant. Defendant shall also be entitled to rebut any evidence introduced by the plaintiff.

(F) In the event of a sale under this Section, (i) the Court may apply to defendant such of the injunctive provisions set forth in Sections IV and V hereof for such period as it deems appropriate to promote competitive conditions; and (ii) unless defendant shows to the satisfaction of the Court that the purchaser has such technical resources for the manufacture of buses that further assistance would not be of material significance, the

Court may order the defendant to provide technical assistance within the then existent technology of defendant's bus manufacturing operations in the design, construction and equipment of such plant and in establishing manufacturing methods and procedures. Such technical assistance shall be provided for such period of time and on such terms as the Court may deem appropriate between competitors, including free access to such of defendant's then existing patents and know-how arising out of defendant's bus manufacturing operations as the purchaser reasonably requires for manufacturing buses, subject to reasonable restrictions prohibiting the use of such patents or know-how for purposes other than manufacturing buses.

(G) In the event that defendant is ordered to offer such physically separate plant for sale under this Section and the offer is not accepted, then defendant shall be relieved of any further liabilities or obligations under this Section; provided that if at any subsequent time before the tenth anniversary of the date of entry of this Final Judgment defendant still possesses such plant in a physically separate state and plaintiff shows that market conditions have changed substantially since the date of the Court's order to offer such plant for sale, plaintiff may apply to the Court for a further order that defendant again offer such physically separate plant for sale for a period of one year commencing ninety (90) days after the Court's order becomes final and otherwise subject to the terms and conditions of this Section. In the event that plaintiff applies for such a further order defendant may oppose such relief on any ground specified in this Section VI. In the event that a sale of such plant is consummated under this Section, then defendant shall be relieved of any further liabilities or obligations under this Section except as imposed by Subsection (F).

(H) Nothing contained herein shall require defendant to guarantee the financial success of the purchaser or the quality of its products, or to refrain from competing with all other bus manufacturers, including the purchaser, to the best of defendant's ability.

(I) Nothing in this Section VI shall be construed to impose any limitation upon the provisions of Section IX.

VII

The provisions of this Final Judgment or of any Court order pursuant to this Final Judgment shall be in full force and effect only so long as defendant engages in the manufacture and sale of buses but in any event for a period not longer than twenty-five (25) years from the date of entry of this Final Judgment, except that Court orders under Section VI, subparagraph (F)(i), may apply for the benefit of a purchaser under Section VI any of the injunctive provisions set forth in Sections IV and V hereof for such period as the Court may deem appropriate.

VIII

For the purpose of securing compliance with this Judgment and for no other purpose:

(A) Any duly authorized representative or representatives of the Department of Justice shall, upon written request by the Attorney General or the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to the defendant made to its principal office, and subject to any legally recognized privilege, be permitted:

(1) Access during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under

the control of said defendant related to any matters contained in this Judgment;

(2) Subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview officers or employees of said defendant, who may have counsel present, regarding any such matters.

(B) Upon such written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment as from time to time may be necessary for the enforcement of this Final Judgment; provided that no information obtained by the means provided for in this Section shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

IX

Jurisdiction of this cause is retained for the purpose of enabling the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment or for the modification or termination of any of the provisions thereof or for the purpose of the enforcement of compliance therewith and the punishment of violations thereof.

/s/ THEODORE LEVIN
United States District Judge

Dated: December 31, 1965