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UNITED STATES DISTRICT COURT

DISTRICT OF MONTANA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil Action No.
)	
v.)	COMPLAINT FOR EQUITABLE
)	RELIEF FOR VIOLATIONS
GENERAL ELECTRIC COMPANY,)	OF 15 U.S.C. §§ 1 and 2
)	(SHERMAN ANTITRUST ACT)
Defendant.)	

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 prevent and enjoin defendant General Electric Company ("GE") from continuing to violate the antitrust laws by exacting and seeking to exact commitments from its licensees (1) not to compete with GE in servicing medical equipment, and (2) not to service medical equipment sold to other health care facilities by GE's competitors, and complains and alleges as follows:

1. Health care providers spend over three billion dollars each year to service and repair all types of medical equipment. Hospitals, clinics, and doctors' offices need access to reliable,

high-quality service to ensure both that their medical equipment is available for use when needed by their patients and that the facilities obtain the maximum return on their investments in the equipment.

2. GE offers and sells service for all or most types and brands of medical equipment used in providing health care.

3. Many hospitals maintain and repair their own medical equipment "in house." Having developed an in-house service capacity, such hospitals also frequently service equipment owned by others. Thus, these hospitals are significant actual or potential competitors of GE in servicing medical equipment.

4. Hospitals, clinics, and doctors use various types of imaging equipment, such as magnetic resonance imaging equipment ("MRIs") and CT scanners, to create images of the body's internal structure. GE is the world's largest manufacturer of imaging equipment.

5. From 1988 through the present, GE has licensed hospitals to use certain GE software and other intellectual property to service those hospitals' imaging equipment. As a condition to the issuance of such a license, GE required the hospitals to agree not to compete with GE in servicing certain medical equipment at any other hospital or clinic. These agreements not to service the equipment of others reduced competition in servicing medical equipment.

6. On April 30, 1996, after being notified that the United States was considering the commencement of this action, GE narrowed the breadth of the agreement not to compete in its standard license agreements. GE's new license agreements limit competition in servicing the type ("modality") of GE equipment for which GE's advanced diagnostics are licensed. Under the new licenses, a hospital licensing diagnostic software for its own GE CT scanner agrees not to service any other facility's GE CT scanner.

7. GE's agreements with its licensees also have reduced competition in the sale of imaging equipment. By reducing the number of high-quality, low-cost service providers, these agreements have raised the costs of purchasing and using imaging equipment manufactured by some GE competitors.

8. The agreements GE has exacted from its licensees not to service other facilities' medical equipment are unrelated to any of GE's legitimate interests in licensing its software and manuals.

I.

JURISDICTION AND VENUE

9. The United States files this complaint and institutes these proceedings under Section 4 of the Sherman Act (15 U.S.C. § 4), to prevent and restrain GE from continuing to violate

Sections 1 and 2 of the Sherman Act (15 U.S.C. § 1 and § 2), as amended.

10. GE maintains offices, transacts business, and is found within the District of Montana, within the meaning of 15 U.S.C. § 22.

II.

DEFENDANT

11. GE is a corporation organized and existing under the laws of the State of New York, with its principal place of business at Fairfield, Connecticut. The term "GE," as used herein, includes GE's wholly owned subsidiary General Electric Medical Systems, which is located at Waukesha, Wisconsin, where it manufactures various modalities of imaging equipment, including MRIs, CT scanners, nuclear cameras, radiographic/fluoroscope rooms, and ultrasound machines.

III.

TRADE AND COMMERCE

12. Throughout the period covered by this complaint, GE has manufactured imaging equipment in its facilities in Wisconsin and Japan and has shipped that equipment to hospitals and other health care providers throughout the United States. These

equipment sales occur within, and substantially affect, interstate and foreign commerce.

13. GE's licensing of advanced diagnostic software occurs within, and substantially affects, interstate commerce. GE receives orders for advanced diagnostic software in Wisconsin, licenses the advanced diagnostic software to hospitals and health care providers throughout the United States, and ships the advanced diagnostic software across state lines. GE's licensees, located throughout the United States, travel to Wisconsin for training and send payment for the licenses across state lines.

14. GE's medical equipment service business involves the provision of service and the payment of funds across state lines and this occurs within, and has substantial effects upon, interstate commerce.

IV.

THE INDUSTRY

15. Medical equipment, including imaging equipment, requires regular service, which includes preventive maintenance, general repairs, and emergency service.

16. When purchasing service for medical equipment, most customers desire timely, high-quality, and low-cost service for both quality of care and economic reasons. If no other imaging machine is nearby, as is often the case in sparsely populated

areas such as Montana, having properly maintained and functional imaging equipment may be critical to the proper treatment of patients. Even if there is other imaging equipment nearby, a health care provider will lose revenue if it must transfer a patient from its facility because its imaging equipment is broken.

17. Because of the importance of timely service, hospitals naturally prefer nearby service providers. Service providers that are located relatively far away are at a substantial disadvantage in competing to service any given customer.

18. There are many modalities of imaging equipment, such as CT scanners, MRIs, and nuclear cameras, each of which employs different technologies. As health care providers use this medical equipment to create different types of images, the different modalities generally are not interchangeable. An MRI, for example, is better suited than a CT scanner for imaging soft tissue. A CT scanner can disclose a tumor that less sophisticated x-ray equipment cannot detect. Thus each modality of imaging equipment competes in a separate product market.

19. Several manufacturers sell one or more modalities of imaging equipment throughout the United States. Because imaging equipment requires regular service and repair, the availability of prompt and effective service is an important factor for customers in choosing among different brands of imaging

equipment. Manufacturers that lack a nearby service presence compete at a substantial disadvantage compared with manufacturers that have local service support. In an area where a manufacturer lacks a sufficient installed base of its own equipment to support a new service engineer, the most efficient way for the manufacturer to supply service for its equipment may be through existing local service providers.

20. GE offers and sells service for all or most types and brands of medical equipment, including imaging equipment.

21. GE competes with other providers, such as independent service organizations, to service medical equipment. Not all service providers, however, are able to service all types of medical equipment. Because of the technological differences among types of equipment, a service engineer needs extensive training and practice on a particular modality before he or she is qualified to service it. Similarly, because of the technological differences among different brands, a service engineer needs training and practice on each brand of equipment that the engineer wants to service.

22. Some hospitals service their own medical equipment in house to save money and time. After investing in service staff, tools, and training, many of these hospitals conclude that it would be efficient and profitable to service other health care providers' medical equipment as well.

23. For some health care facilities, a hospital with in-house service capability is the only provider, or one of very few service providers, located nearby. In addition, many in-house service departments offer higher-quality and lower-cost service than other types of service providers, such as independent third-party servicing organizations. As a result, hospitals with in-house service departments are among GE's most significant actual or potential competitors in servicing medical equipment. These hospitals also are potentially low-cost and efficient service representatives for manufacturers.

24. Of the imaging equipment manufacturers that sell equipment in the United States, only GE and Philips Medical Systems have significant service presence in Montana. Other imaging equipment manufacturers and independent service providers offer only limited service in Montana.

25. Several hospitals in Montana, including St. Patrick Hospital ("St. Patrick") in Missoula and Deaconess Medical Center ("Deaconess") in Billings, have in-house service departments. In the past, both St. Patrick and Deaconess have sold service to other health care facilities.

26. Most new models of imaging equipment use computers and operating software to process images and run the equipment's mechanical and electronic functions. These models also employ diagnostic software that service engineers use for various

purposes, such as analyzing the computer's operation and analyzing and calibrating the equipment's mechanical and electronic functions. GE has service manuals that supplement the diagnostic software.

27. For the imaging equipment it sells, GE develops basic and advanced diagnostic materials. The advanced diagnostics are more sophisticated than the basic diagnostics, enabling service engineers to service GE's imaging equipment much more quickly. GE's own engineers use the advanced diagnostics when they service GE equipment.

28. GE licenses its basic diagnostics to every purchaser of its imaging equipment; however, GE requires a separate, additional agreement as a condition of licensing advanced diagnostics.

29. Across the United States, more than 500 hospitals with in-house service departments, including St. Patrick, Deaconess, and other hospitals in Montana, have licensed GE's advanced diagnostics to increase the speed with which they service their own GE imaging equipment.

30. Generally, the basic and advanced diagnostic software and manuals for one model of GE imaging equipment cannot be used with another GE model, even if the two models are both of the same modality (*e.g.*, if both are CT scanners). Moreover, GE's

software and service manuals will not work on any other manufacturer's equipment.

V.

FIRST OFFENSE

31. GE has entered into numerous agreements with hospitals in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1), as amended. Specifically, in exchange for giving hospitals access to its advanced diagnostics or training for the servicing of its imaging equipment, GE regularly sought and exacted from those hospitals their commitment not to compete with GE in servicing medical equipment for other health care providers. Those agreements appear in GE's advanced diagnostics licenses, including licenses signed by St. Patrick and Deaconess.

32. From at least 1988 until 1992, GE agreed to license hospitals to use its advanced diagnostics provided that each hospital agreed (1) not to compete with GE in servicing any other health care provider's imaging equipment, and (2) not to service imaging equipment sold to other health care facilities by GE's competitors. Under these agreements, the hospitals also agreed to prohibit their service employees from competing with GE during the employees' business and off hours.

33. In 1992, GE broadened the scope of the restrictions in its advanced diagnostics licensing agreements so that the hospitals agreed not to compete with GE in servicing any kind of medical equipment whatsoever. Specifically, GE wrote the following commitments into its standard license agreement, under the heading "Continuing Representations":

You are not and you are not an affiliate of any person or entity who is a competitor of ours.

* * *

You have no full or part time employee who services any type of medical equipment of any person or entity other than you.

Under this agreement, a hospital that licensed advanced diagnostics for a GE CT scanner, for example, agreed not to service a LoRad mammography machine at a neighboring clinic.

34. On several occasions, after learning that a licensee or its employees had serviced another facility's medical equipment, GE contacted the licensee, notified it that its conduct violated the license agreement's terms, and sought the licensee's commitment not to compete with GE in the future.

35. In April 1996, after being notified that the United States was considering the commencement of this action, GE again modified its standard license agreement for advanced diagnostics. Hospitals now agree not to compete with GE in servicing any other facility's GE imaging equipment of the same modality as that for which the advanced diagnostics are licensed. For example, a

hospital that licenses software for its GE CT scanner agrees not to service any GE CT scanner at another facility.

36. Despite those recent modifications, the licenses now in effect continue to restrain in-house service personnel from competing with GE in servicing imaging equipment that is incompatible with the licensed advanced diagnostics. For example, a licensee of software for a new GE x-ray machine agrees not to service older GE x-ray equipment on which the diagnostic software will not operate.

37. For the purpose of forming and effectuating its agreements not to compete, GE:

(a) offered actual and potential competitors in the various geographic service markets valuable advanced diagnostics and training in exchange for their commitment to stop servicing other health care providers' medical equipment;

(b) offered actual and potential competitors in the various geographic service markets valuable advanced diagnostics and training in exchange for their commitment not to expand their service operations;

(c) provided valuable advanced diagnostics and training in exchange for the licensees' commitment that neither the licensees nor their employees would compete with GE in servicing medical equipment or provide service for

medical equipment sold to other health care facilities by GE's competitors; and

(d) sought to enforce the agreements not to compete when it discovered that licensees or their employees were servicing other health care providers' medical equipment.

VI.

HARM TO COMPETITION

38. GE's agreements with its licensees have eliminated significant actual or potential high-quality, low-cost competitors throughout the United States from numerous markets for servicing medical equipment.

39. In Montana, GE's agreements with St. Patrick and Deaconess have prevented those hospitals from offering service for medical equipment to nearby health care facilities. Those hospitals are the only, or two of very few, actual or potential service providers other than GE for many health care facilities in Montana. But for the commitments GE exacted from them, St. Patrick and Deaconess would have preferred to service other hospitals' and clinics' medical equipment.

40. Throughout the United States, health care providers that use imaging equipment have been forced to pay supra-competitive prices to have their equipment serviced.

41. Medical equipment owners and operators, and their patients, have been denied the benefits of free and open competition in the servicing of medical equipment in Montana and throughout the United States.

42. Medical equipment owners and operators, and their patients, have been denied the benefits of free and open competition in the sale of medical equipment in Montana and throughout the United States.

43. Less service has been purchased by medical equipment owners and operators than would have been purchased in the absence of GE's restraints.

44. By preventing hospitals with in-house service organizations from servicing other manufacturers' equipment, GE's agreements have made it more costly and difficult for those manufacturers to sell their imaging equipment in areas where they lack a significant installed base.

45. GE's agreements with its licensees in Montana have disadvantaged many of GE's competitors in selling imaging equipment in Montana and have reduced customer choice.

VII.

SECOND OFFENSE

46. Each and every allegation in paragraphs 1 through 45 of this complaint is here realleged with the same force and effect as though said paragraphs were here set forth in full.

47. Since at least 1992, GE has deliberately exacted commitments from numerous hospitals not to compete with GE in servicing any other facility's imaging equipment as a condition to GE's issuance of an advanced diagnostics license. In so doing, GE has combined with those hospitals with the specific intent of excluding competition in violation of Section 2 of the Sherman Act (15 U.S.C. § 2), as amended.

VIII.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays:

1. That the Court adjudge and decree that the above alleged agreements not to compete imposed by GE constitute illegal restraints of the aforesaid interstate trade and commerce in violation of Section 1 of the Sherman Act.

2. That the Court adjudge and decree that the above alleged combination to monopolize is in violation of Section 2 of the Sherman Act.

3. That GE, its officers, directors, agents, employees, subsidiaries, and successors, and all other persons acting or claiming to act on its behalf, be permanently enjoined, restrained, and prohibited from, in any manner, directly or indirectly, continuing, enforcing, or renewing these agreements, or from engaging in any other combination, conspiracy, agreement,

understanding, plan, program, or other arrangement limiting competition in the service of medical equipment, except for reasonable limitations on the use of copyrighted software and manuals themselves.

4. That GE, its officers, directors, agents, employees, subsidiaries, and successors, and all other persons acting or claiming to act on its behalf, be permanently enjoined, restrained and prohibited from, in any manner, directly or indirectly, offering anything of value, including diagnostic materials or training, to an actual or potential competitor, to induce that competitor not to compete with GE in the service of medical equipment.

5. That GE be enjoined from enforcing every service contract entered into between GE and any health care provider while GE's agreements not to compete were in effect.

6. That the Plaintiff have such other relief as the Court may deem just and proper to prevent recurrence of the alleged violations and to dissipate the anticompetitive effects of GE's past violations.

7. That the Plaintiff recover the costs of this action.