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IN THE FIRST DISTRICT COURT

FOR THE COUNTY OF CACHE

STATE OF UTAH

THE STATE OF UTAH, Plaintiff, vs. HITACHI SALES CORPORATION OF AMERICA, a California corporation; CONSUMER TECHNOLOGIES, INC., a Utah corporation, individually and dba STOKES BROTHERS; and KIMBALL ELECTRONICS, INC., a Utah corporation, Defendants.	CONSENT DECREE Civil No. 880026602 ~~26667~~ Judge Christoffersen

Plaintiff, State of Utah ("State"), has filed a Complaint (the "Complaint") for civil penalties and for

injunctive relief against defendant Hitachi Sales Corporation of America, a California corporation ("Hitachi"), and others, pursuant to the Utah Antitrust Act, Utah Code Ann. § 76-10-911, et seq. (the "Utah Antitrust Act"). The State and Hitachi (collectively, the "Parties"), by their respective attorneys, have consented to the entry of this Consent Decree in this case, without trial or adjudication of any issue of fact or law. The Parties have agreed and stipulated that this Consent Decree shall not constitute any evidence against or an admission by any of the Parties with respect to any fact alleged in the Complaint, any issue otherwise raised in this case, or any other matter. Further, the Parties have agreed and stipulated that the Consent Decree shall not have any collateral effect against Hitachi. In addition, Hitachi expressly and specifically denies that it has engaged in any of the conduct alleged in the Complaint, or in any other unlawful conduct; and the Parties have agreed and stipulated that nothing in this Consent Decree is intended to constitute, or shall be construed as, a finding of violation of the Utah Antitrust Act or any other law.

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law and upon consent and stipulation of the Parties, and the Court having determined that there is no just reason for delay in entry of final judgment in this matter as to Hitachi and having directed entry of this Consent Decree pursuant to Rule 54(b) of the Utah

Rules of Civil Procedure, it is hereby,

ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter of this action and of Hitachi, pursuant to Hitachi's consent to this Decree. The Complaint alleges claims upon which relief may be granted against Hitachi under the Utah Antitrust Act, Utah Code Ann. §76-10-914(1) (1987 Cum. Supp.).

II

As used in this Consent Decree:

A. "Hitachi" means Hitachi Sales Corporation of America and includes any and all subsidiaries and divisions of Hitachi, and Hitachi is the principal national distributor of Hitachi products (sometimes referred to herein as the "principal national distributor").

B. "Concerning" includes referring to, alluding to, relating to, connected with, respecting, about, regarding, reflecting, constituting, evidencing, or pertaining to.

C. "Attorney General" means the Office of the Attorney General of the State of Utah, including the Assistant Attorney General in charge of antitrust enforcement.

D. "Person" means the plural as well as the singular of natural persons, firms, partnerships, associations, joint ventures, corporations, dba's, and any other form of business, legal person, or any other legal entity.

E. "Retailer" means any person who is engaged in the retail sale of consumer electronic products or accessories in

the State of Utah. The term "retailer," depending upon the context herein, may refer to either a "company buyer" or "retail dealer."

F. "Company buyer" means any person who is appointed by Hitachi as a retailer of certain authorized Hitachi products and who purchases such products directly from Hitachi. Generally, a retailer qualifies as a company buyer when it either orders approximately $100,000 of Hitachi products on an annual basis or has the potential of ordering approximately $100,000 of Hitachi products on an annual basis.

G. "Retail dealer" means any person who is appointed by Hitachi as a retailer of certain authorized Hitachi products and who purchases such Hitachi products at wholesale prices from a wholesale distributor for the purpose of selling those products to consumers in the general public.

H. "Wholesale distributor" means any person who is appointed by Hitachi as a wholesaler of certain authorized Hitachi products and who is in the business of purchasing such Hitachi products from Hitachi, the principal national distributor of Hitachi products, for the chief purpose of selling those products at wholesale to retail dealers of authorized Hitachi products within the State of Utah.

I. "Hitachi products" means Hitachi brand consumer electronic products or accessories; and, depending upon the context herein, "Hitachi products" may refer to either the full line or a limited line of Hitachi products which Hitachi has

authorized a particular retailer or wholesale distributor to purchase and sell.

J. "Wholesale price" means the full price, including all applicable charges, generally paid by a retail dealer to the wholesale distributor or by a company buyer to the principal national distributor for Hitachi products, less any discounts or other price terms extended by the wholesale distributor or the principal national distributor to a retail dealer or company buyer.

K. "Retail price" means the price charged by a retail dealer for Hitachi products which are sold to consumers in the general public.

L. "Business entity" means any dba, sole proprietorship, association, corporation, joint venture or partnership used to transact commerce.

M. "Logan Area" means the commercialized corridor in Utah, including Cache County and extending from Hyrum, Utah on the south and up to and including the Utah/Idaho border on the north.

III

This Consent Decree is enforceable against Hitachi and any of Hitachi's subsidiaries or divisions which, after entry by the court of this Consent Decree, violate the terms hereof through the conduct of their respective directors, officers, employees, agents, successors or assigns. Within a reasonable time after the date of entry by the Court of this Consent Decree,

Hitachi shall provide notice of this Consent Decree to its, and any of its subsidiaries' and divisions' respective, directors, officers, employees, agents, successors, and assigns, who from time to time may be engaged in conduct (a) affecting the State of Utah and (b) concerning retailers, company buyers, retail dealers and/or wholesale distributors which is within the scope and subject matter of this Consent Decree. However, nothing contained in this Consent Decree shall apply to any intracorporate transaction or communication solely between or among (a) Hitachi and its directors, officers, employees or agents, or (b) Hitachi and its parent companies, affiliated companies, divisions or controlled or wholly-owned subsidiaries.

IV.

INJUNCTION

For a period of five (5) years from the date of entry by the Court of this Consent Decree, Hitachi is enjoined, restrained and ordered, as follows:

A. Hitachi is hereby restrained and enjoined from entering into any contract, combination or conspiracy, with any Utah retail dealer, wholesale distributor, company buyer or other person to fix, maintain, or stabilize the price or price level at which such person or business entity sells Hitachi products in or into the State of Utah.

B. Hitachi is hereby restrained and enjoined from entering into any contract, combination or conspiracy, in unreasonable restraint of trade, with any Utah retail dealer,

wholesale distributor, company buyer or other person to terminate, fail to fill orders of, or discriminate against with respect to provision of credit terms, any Utah retail dealer, wholesale distributor or company buyer of Hitachi products for failing to adhere to any of Hitachi's suggested price or price levels for those products.

C. The following provisions shall apply to Hitachi's appointment and/or maintenance of any retail dealers or company buyers for Hitachi products in the Logan Area:

(1) Within a reasonable time after entry by the Court of this Consent Decree, upon proper application or recommendation being made to Hitachi, Hitachi shall appoint and maintain one other retail dealer or company buyer (hereinafter, the "new dealer") for Hitachi products in the Logan Area, in addition to the existing company buyer in the Logan Area (i.e., Consumer Technology, dba Stokes Brothers), provided the new dealer at the time of the appointment and at all relevant times thereafter (i) shall satisfy Hitachi's standard qualifications for a retail dealer or company buyer of Hitachi products, as applicable to the Western United States and as generally formulated and modified from time to time in accordance with Paragraph IV C (3), _intra_, and (ii) shall comply with or otherwise perform any applicable distributor-dealer agreement and appointment in respect thereof, dealer agreement or similar written agreement, as the case may be, concerning Hitachi and any such retail dealer or company buyer. The new dealer in the Logan

Area, depending upon its volume or potential volume of purchases, may be either a company buyer for Hitachi products who purchases directly from Hitachi or a retail dealer for Hitachi products who purchases from a wholesale distributor for Hitachi products in or for Utah. Any additional retail dealer(s) or company buyer(s) for Hitachi products in the Logan Area over the two in number required by this Paragraph IV C, may be required by Hitachi to meet Hitachi's general requirements for company buyer(s) or retail dealer(s), as the case may be.

(2) Hitachi is hereby further restrained and enjoined from arbitrarily and unreasonably refusing to appoint or maintain, or from arbitrarily and unreasonably withdrawing the appointment of, the existing company buyer or the new dealer for Hitachi products in the Logan Area, where the applicable provisos described in Paragraph IV C (1) (i) and (ii), supra, have been satisfied.

(3) Hitachi's current standard qualifications for the appointment and maintenance of a retail dealer or company buyer of Hitachi products constitute confidential, proprietary information of Hitachi and are summarized in a Memorandum, designated as Appendix "1", which has been delivered to the Attorney General and will remain under seal and be held in confidence by the Attorney General, unless after reasonable notice to Hitachi, the Court orders otherwise upon a showing of good cause. Such standard qualifications may from time to time be amended by Hitachi; and, in the case of material changes which may affect the Logan Area, Hitachi shall provide the Attorney

General with reasonable advance notice of any such amendment(s) before the effective date thereof. If the Attorney General regards any such amendment(s) as anticompetitive or unreasonable for purposes of this Consent Decree, the Attorney General may file a noticed motion with the Court to enjoin the amendment(s) from taking effect or to obtain some other appropriate relief.

V.

A. Within twenty (20) days of the date of entry by the Court of this Consent Decree, Hitachi shall send a letter to all of its current authorized Utah retail dealers, wholesale distributor(s) and company buyers providing them with a summary of the substance of the terms of Paragraph IV hereof. The form of this letter shall first be subject to reasonable approval by the Attorney General.

VI.

For a period of five (5) years from the date of entry by the Court of this Consent Decree, Hitachi is ordered to conduct an annual antitrust compliance program intended to educate its appropriate management officials, sales staff, and employees, in a format designed to be understandable by lay persons, about the general requirements and prohibitions of antitrust law concerning illegal price-fixing, illegal non-price restraints of both a vertical and horizontal nature with respect to distribution of Hitachi products, and illegal price discrimination. Hitachi shall make and keep an attendance list for each such annual antitrust compliance program. For each such annual program, Hitachi shall provide the Attorney General with

written confirmation of the date, general nature of the program and general description of the identity of the attendees at the program. Hitachi is further ordered to file with the Attorney General on each anniversary date of this Consent Decree, a report setting forth the steps it has taken during the prior year to advise its appropriate management officials, sales staff and employees, of Hitachi's and their respective obligations under this Consent Decree.

VII

(A) For the purpose of determining or securing compliance with this Consent Decree, representatives of the Attorney General shall be permitted, upon reasonable notice to Hitachi and subject to any legally recognized privilege, and in the presence of Hitachi's legal counsel, if desired:

(1) Access during normal office hours for inspection and copying of all records and documents in possession or under control of Hitachi which are relevant to any matters contained in this Consent Decree and to which this Consent Decree is applicable. Hitachi stipulates that any such information obtained by the Attorney General pursuant to this subparagraph may be submitted to the above Court in connection with any attempts to enforce this Consent Decree by the State of Utah.

(2) Subject to the reasonable convenience of Hitachi, and without restraint or interference from it, to interview officers, directors, agents or employees of Hitachi, who may have legal counsel present, concerning any matters

relevant to those contained in this Consent Decree or to which this Consent Decree is applicable.

(B) No information obtained by the means permitted in this Paragraph VII shall be divulged by any representative of the Attorney General to any person other than a duly authorized representative of the Attorney General, except in the regular course of legal proceedings in which the State of Utah is a party for the purpose of securing compliance with this Consent Decree or as otherwise required by law.

VIII

In the event that the State of Utah files a motion for an order finding Hitachi in violation of this Consent Decree, the State of Utah may also seek civil penalties in addition to those provided for herein, but not duplicative thereof; and at any hearing on such motion, Hitachi waives its right to a jury trial and consents to a court trial on any issue raised by the motion for assessment of civil penalties or Hitachi's response.

IX

Contemporaneously with the filing of this Consent Decree, Hitachi shall pay to the Utah Attorney General, Antitrust Revolving Fund, the sum of $97,000.00, of which $50,000.00 is a civil penalty and $47,000.00 of which is Hitachi's share of costs and attorney's fees incurred by the Attorney General in this matter.

X

Upon written request by the Attorney General, subject

to the reasonable convenience of Hitachi, Hitachi through its officers, employees and agents, shall reasonably cooperate with the State of Utah as necessary in the prosecution of any charges similar to those in the Complaint against other defendants, by instructing its appropriate officers, employees and agents to (a) submit to interviews reasonably requested by the Attorney General and to truthfully answer questions therein, and (b) truthfully testify, under penalty of perjury or contempt of court, at deposition or trial of any antitrust action brought against other defendants by the Attorney General in respect of charges similar to those in the Complaint. Should Hitachi be proven, to the satisfaction of the Court, not to be reasonably cooperating with the State of Utah as provided for in this Paragraph, the Court, upon petition of the State of Utah, may assess Hitachi with additional civil penalties and costs which are proportionate to the degree of failure to cooperate as required herein.

XI

For a period of five (5) years from the date of entry by the Court of this Consent Decree, jurisdiction is retained by the Court for the purpose of enabling any of the Parties to this Consent Decree to apply to this Court at any time for such further orders as may be necessary or appropriate for the construction or carrying out of this Consent Decree or for the modification of any of the provisions herein and for the enforcement of compliance therewith and the punishment of the

violation of any of the provisions contained herein.

XII

Further, nothing in this Consent Decree is intended to constitute, or shall be construed as, a finding of violation of the Utah Antitrust Act or any other law; the Court expressly declines to make any such finding. This Consent Decree shall not have any collateral effect against Hitachi in any lawsuit, arbitration, or other legal or equitable proceeding of any kind; and this Consent Decree shall not constitute any evidence against or an admission by any of the Parties with respect to any fact alleged in the Complaint, any issue otherwise raised in this case, or any other matter.

XIII

Hitachi shall not interfere with or otherwise impede or frustrate any other defendant's compliance with the injunctive provisions or other obligations or requirements applicable to any such defendant as may be set forth in a Consent Decree entered against that defendant in this action.

XIV

Entry of this Consent Decree is in the public interest.

DATED this 23rd day of May, 1988.

BY THE COURT:

DISTRICT COURT JUDGE
First Judicial District