

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

*Plaintiff,*

v.

AB ELECTROLUX, ELECTROLUX NORTH  
AMERICA, INC., and GENERAL ELECTRIC  
COMPANY,

*Defendants.*

Case No. 15-cv-01039-EGS

**DEFENDANT GENERAL ELECTRIC COMPANY'S  
ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT**

Defendant General Electric Company ("GE"), by its undersigned counsel, and in answer to Plaintiffs' Complaint ("Complaint"), states as follows:

**PRELIMINARY STATEMENT**

Change is the principal competitive dynamic in the sale of appliance products in the United States, including for the small fraction of appliance products that are the subject of Plaintiff's Complaint. American consumers and the retailers, builders and distributors through whom they buy appliances, demand better, more efficient, and more fully featured products. The intensely competitive market in which Electrolux and GE operate has changed to deliver those products at prices that are lower in real terms than the prices available at the time of the Whirlpool/Maytag merger cleared by the Plaintiff in 2006. These changes have altered historical brand positioning among appliance suppliers as firms such as LG and Samsung, once upstarts known for consumer electronics rather than for appliance products, have increased sales, both in absolute and relative terms, at the expense of longer-established suppliers like Whirlpool,

Kenmore (Sears), General Electric and Electrolux. The forces of change will continue unabated after the Electrolux/GE Appliance merger, and change will continue to alter the appliance business, to the benefit of American consumers, as those newer competitors and others vie to meet constantly evolving consumer demand. General Electric denies the allegations of the Complaint that ignore past, current and future change; contend that future competition in the sale of appliances can be inferred from historical share trends, distribution patterns and brand positioning; and fail to account for the contribution this efficiency-enhancing merger will make to fostering further consumer beneficial change.

### **SPECIFIC DENIALS AND ADMISSIONS**

1. GE admits that it and Electrolux are two of more than twenty manufacturers that compete with each other for sales of major cooking appliances. GE denies that the likely result of the proposed acquisition would be less competition, higher prices, and fewer options for millions of Americans who buy major cooking appliances each year. To the contrary, GE states that the proposed acquisition will enhance competition by creating a more efficient and innovative competitor better positioned to serve evolving consumer demand in a dynamic industry characterized by aggressive price competition, continuous product innovation, new entry, and expansion of existing competitors. GE lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegation that Electrolux owns the “Frigidaire” brand. GE denies the remaining allegations in paragraph 1 of the Complaint.

2. GE denies the allegations in paragraph 2 of the Complaint.

3. GE lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegation that, over the last decade, Electrolux intensified its efforts in the contract channel and made significant investments to serve those purchasers, and thus denies these

allegations. GE states that Plaintiff's selective quotation of unidentified written material or communications from GE personnel in the third sentence of paragraph 3, offered without context, is misleading as framed in the Complaint, and GE respectfully refers the Court to the quoted documents, if identified, for a complete and accurate description of their contents. GE denies the remaining allegations in paragraph 3 of the Complaint.

4. GE lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in the second sentence of this paragraph, and therefore denies this allegation. GE states that Plaintiff's selective quotation of unidentified written material or communications from GE personnel in the third sentence of paragraph 4, offered without context, is misleading as framed in the Complaint, and GE respectfully refers the Court to the quoted documents, if identified, for a complete and accurate description of their contents. GE lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegation in the fourth and fifth sentences of this paragraph, which contain purported statements by Electrolux, and therefore denies these allegations. GE denies the remainder of the allegations in paragraph 4 of the Complaint.

5. The allegations in paragraph 5 are legal conclusions not subject to admission or denial. To the extent a response is deemed required, GE denies the allegations in paragraph 5 of the Complaint.

6. The allegations in paragraph 6 of the Complaint that this Court has subject matter jurisdiction under 15 U.S.C. § 25 and that the action is necessary to prevent violations of 15 U.S.C. § 18 are legal conclusions not subject to admission or denial. To the extent that a response is deemed required, GE denies that the proposed acquisition would violate any provision of law.

7. GE admits that it is engaged in interstate commerce and that GE sells major cooking appliances throughout the United States. GE lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations relating to Electrolux, and therefore denies these allegations. GE denies the remainder of the allegations in paragraph 7 of the Complaint.

8. The allegation in paragraph 8 of the Complaint that this Court has personal jurisdiction over GE is a legal conclusion not subject to admission or denial. GE admits that it is a corporation that transacts business in the District of Columbia and that it sells major cooking appliances to consumers located in the District of Columbia. GE lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations relating to Electrolux, and therefore denies these allegations. GE denies the remainder of the allegations in paragraph 8 of the Complaint.

9. The allegation in paragraph 9 of the Complaint that venue is proper under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. §§ 1391(b) and (c) is a legal conclusion not subject to admission or denial. GE lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations relating to Electrolux, and therefore denies these allegations.

10. GE lacks knowledge or information sufficient to form a belief about the truth or falsity of these allegations relating to Electrolux, and therefore denies the allegations in paragraph 10 of the Complaint.

11. GE admits that it is a New York corporation headquartered in Fairfield Connecticut, that its appliance business is based in Louisville, Kentucky, and that GE sells ranges, cooktops, and wall ovens under the brand names “GE Monogram,” “GE Cafe,” “GE

Profile,” “GE,” “GE Artistry,” and “Hotpoint.” GE admits it is one of the larger and more diversified corporations in the world. GE denies the remaining allegations in paragraph 11 of the Complaint.

12. GE admits the allegations in paragraph 12 of the Complaint except that it denies that the acquisition agreement is between any parties other than AB Electrolux and General Electric Company.

13. GE admits the allegations in the first, second, third, and fourth sentences of paragraph 13, except that GE lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegation that a range is the most common major cooking appliance, and therefore denies that allegation. GE denies the remaining allegations in paragraph 13 of the Complaint.

14. GE lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations concerning purported statements made in Electrolux’s 2013 Annual Report, and therefore denies these allegations. GE admits that it and Electrolux are two of more than twenty manufacturers that compete with each other for sales of major cooking appliances in each channel. GE denies the remaining allegations in paragraph 14 of the Complaint.

15. GE admits that, in the retail channel, manufacturers compete to sell major cooking appliances to retailers and to retail distributors and that GE sells those appliances at wholesale prices. GE admits that retailers generally add a mark-up to the appliances and resell the appliances to the retailers’ customers, but there may be instances where a retailer does not add a mark-up. GE denies the remaining allegations in paragraph 15 of the Complaint.

16. GE admits that retailers make their purchase decisions for ranges, cooktops, and wall ovens based on a variety of factors, including price, brand, and products features, as well as

the ability of the supplier to meet the retailer's delivery, volume, selection, and service needs. GE admits that it invests in advertising and promotions. GE denies the remaining allegations in paragraph 16 of the Complaint.

17. GE admits that, in the contract channel, cooking-appliance suppliers sell to single-family homebuilders, multi-family homebuilders, property managers of apartment and condominium buildings, hotels/motels, and governmental entities. GE admits that cooking-appliance suppliers sell both directly to builders and indirectly to builders through distributors. GE admits that some sales to contract-channel purchasers are negotiated individually between the purchaser and the supplier, but GE states that in some sales, these customers purchase at list prices. GE denies the implicit assumption that these purchasers accept price increases because, in GE's experience, such purchasers often reject price increases. GE denies the remaining allegations in paragraph 17 of the Complaint.

18. GE admits that, like retail-channel purchasers, many contract-channel purchasers make their buying decisions based on a variety of factors, including brand, price, features, and the ability of the manufacturer, distributor, or retailer to meet the purchaser's delivery, volume, selection, and service needs. GE admits that, like retailers, some homebuilders and property managers at times request delivery directly from the appliance supplier on a specific schedule. GE admits that some contract-channel purchasers prefer to contract with a single supplier for major cooking appliances in order to simplify the procurement process, but GE states that many other contract-channel purchasers purchase major cooking appliances from multiple suppliers. GE denies the remaining allegations in paragraph 18 of the Complaint.

19. GE lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegation in paragraph 19 that industry participants recognize that major-cooking

appliance sales to contract customers are different from sales to other customers because GE does not know the views of all or many industry participants, and on this basis, denies the allegation. GE denies the generalized statement that purchasers in the contract channel have needs that are distinct from retail channel purchasers. GE admits that it has separate sales teams for contract-channel sales and for retail-channel sales. It is not clear what Plaintiff means by “pricing processes” and GE therefore denies the allegation that GE has distinct pricing processes for sales into each channel. GE lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in paragraph 19 regarding Electrolux’s sales force and pricing processes, and therefore denies them. GE denies the remaining allegations in paragraph 19 of the Complaint.

20. The allegations in paragraph 20 of the Complaint are legal conclusions not subject to admission or denial. To the extent that a response is deemed required, GE denies the allegations in paragraph 20 of the Complaint.

21. The allegations in paragraph 21 of the Complaint are legal conclusions not subject to admission or denial. To the extent that a response is deemed required, GE denies the allegations in paragraph 21 of the Complaint.

22. The allegations in paragraph 22 of the Complaint are legal conclusions not subject to admission or denial. To the extent that a response is deemed required, GE denies the allegations in paragraph 22 of the Complaint.

23. GE admits that contract-channel customers at times purchase major cooking appliances under individually negotiated contracts. The allegation that sales to contract-channel customers can constitute a relevant antitrust market is a legal conclusion not subject to admission or denial. To the extent that a response is deemed required, GE denies that sales to contract

customers can constitute a relevant antitrust market. GE denies the remaining allegations in paragraph 23 of the Complaint.

24. GE admits that home buyers typically buy their homes with ranges, cooktops, and/or wall ovens already purchased and installed. GE admits that property managers generally furnish an apartment with ranges, cooktops and/or wall ovens already installed, and renters generally do not purchase and install ranges, cooktops, or wall ovens for properties they rent. GE denies the remaining allegations in paragraph 24 of the Complaint.

25. GE lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegation in the second sentence of paragraph 25 of the Complaint, and therefore denies this allegation. GE denies the remaining allegations in paragraph 25 of the Complaint.

26. The allegations in paragraph 26 of the Complaint are legal conclusions not subject to admission or denial. To the extent that a response is deemed required, GE denies the allegations in paragraph 26 of the Complaint.

27. GE admits that it has stipulated that it “will not argue that the relevant geographic market is broader than the United States.” GE denies the remaining allegations in paragraph 27 of the Complaint.

28. GE admits that following the proposed acquisition, Electrolux and GE’s appliances business would be operated as a single firm. GE denies the remaining allegations in paragraph 28 of the Complaint.

29. GE admits that HHI is a measure of market concentration. GE states that the Horizontal Merger Guidelines speak for themselves. GE denies the remaining allegations in paragraph 29 of the Complaint.

30. GE lacks knowledge or information sufficient to form a belief about the truth or



falsity of the HHI calculations alleged in paragraph 30 of the Complaint. GE denies that the HHI calculations are based on properly defined antitrust markets. GE denies the remaining allegations in paragraph 30 of the Complaint.

31. GE admits that it and Electrolux are two of more than twenty manufacturers that compete with each other for sales of major cooking appliances. GE admits that following the proposed acquisition, Electrolux and GE's appliances business would be operated as a single firm. GE denies the remaining allegations in paragraph 31 of the Complaint.

32. GE denies the allegations in paragraph 32 of the Complaint.

33. GE lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations concerning Electrolux share increases, Electrolux prices, and Electrolux services to builders, and therefore denies these allegations. GE states that Plaintiff's selective quotation of unidentified written material or communications from GE personnel in the fifth sentence of paragraph 33, offered without context, is misleading as framed in the Complaint, and GE respectfully refers the Court to the quoted documents, if identified, for a complete and accurate description of their contents. GE denies the remaining allegations in paragraph 33 of the Complaint.

34. GE admits that it and Electrolux sell major cooking appliances in the United States. GE admits that it and Electrolux each have multiple brand names used to sell ranges, cooktops, and wall ovens across a range of prices. GE denies the remaining allegations in paragraph 34 of the Complaint.

35. GE admits that Electrolux manufactures cooking appliances for Kenmore. GE denies Plaintiff's characterization of "value" and "mass market" pricing segments, which Plaintiff does not define. GE denies the remaining allegations in paragraph 35 of the Complaint.

36. GE denies the allegations in paragraph 36 of the Complaint.

37. GE denies the allegations in paragraph 37 of the Complaint.

38. The allegations in paragraph 38 are legal conclusions not subject to admission or denial. To the extent a response is deemed required, GE denies the allegations in paragraph 38 of the Complaint.

39. GE states that Plaintiff is not entitled to the relief requested in paragraph 39 of the Complaint.

### **AFFIRMATIVE DEFENSES**

GE asserts the following affirmative defenses, without assuming the burden of proof on such defenses that would otherwise rest with Plaintiff. GE reserves the right to assert and rely upon any other defenses that may become available or known to GE throughout the course of this action, and to amend, or seek to amend, its answer or affirmative defenses.

#### **FIRST DEFENSE**

The Complaint fails to state a claim upon which relief can be granted.

#### **SECOND DEFENSE**

Granting the relief sought is contrary to the public interest because it would, among other things, harm consumers.

#### **THIRD DEFENSE**

The Complaint fails adequately to allege any relevant antitrust product markets or relevant antitrust geographic markets.

#### **FOURTH DEFENSE**

The proposed acquisition is procompetitive. The acquisition will result in substantial merger-specific efficiencies and other procompetitive effects that will directly benefit consumers.

These benefits greatly outweigh any alleged anticompetitive effects.

Dated: July 24, 2015

Respectfully submitted,

/s/ Paul T. Denis

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**CERTIFICATE OF SERVICE**

I certify that on July 24, 2015, pursuant to Paragraph 13 of the Stipulation Regarding Scheduling and Case Management and [Proposed] Trial Setting and Case Management Order filed on July 16, 2015 (Docket No. 28), I served the foregoing to the below individuals via the Court's ECF system.

/s/ Craig G. Falls

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JONES DAY

Dated: July 24, 2015