

**IN THE 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. 1:15-cv-01039-EGS

**UNITED STATES' RESPONSE TO DEFENDANTS' MOTION  
TO RECALL KEITH MCLOUGHLIN**

The United States does not oppose the Court's consideration of the November 21, 2015 Declaration of Keith R. McLoughlin (Dkt. No. 331-2). And, while the United States appreciates the opportunity to recall Mr. McLoughlin for further cross-examination before the testimony of Professor Michael Whinston, we believe that would be unnecessary in light of the declaration and Defendants' statements on the November 20, 2015 trial record.

*Samsung/LG Affordable Ranges.* At trial on November 19, Mr. McLoughlin testified that LG and Samsung sell ranges at \$399 and \$499. *See* Trial Tr. 2111:23-25, 2130:19-22, 2130:24-231:16, 2141: 3-10, 2141:15-23. Mr. McLoughlin's declaration states that he misspoke and that he has "no information about retail prices, promotional or otherwise of \$399 or \$499 for LG or Samsung ranges" and that instead he was talking about "a \$399 price of a Whirlpool range."

(Dkt. No. 331-2 at ¶¶ 6-7). The United States does not oppose the Court’s consideration of Mr. McLoughlin’s testimony or his declaration.

*No Failing Firm Defense.* Mr. McLoughlin also testified that not allowing his company to buy GE’s appliances business threatened “dire” consequences and that GE would likely “have to exit” the appliances business. Trial Tr. 1976 1-3. Mr. McLoughlin went on to claim the consequences were even worse for his company, asserting that “[w]e have to do this” and without it “the company’s gone.” Trial Tr. 1976:17-22.

However, Defendants have not asserted the failing firm defense in this case. *See, e.g.*, Trial Tr. 2199:24-2200:4 (“MR. MAJORAS: Your Honor, in terms of the failing defense [sic] – I’m sorry, the failing firm defense, the party – the defendants have not raised that as affirmative defense. We’ve not briefed that. We were not making an argument on that specific defense.”); *id.* at 2209:7-9 (“MR. DENIS: Thank you, Your Honor. If I could address this on behalf of GE. GE does not contend that the Appliance Division is a failing company or a failing division in any sense.”). If they had, there would have been significant discovery and expert work on that issue because there are clear principles that a defendant must meet to prove a failing-firm defense. *See Citizen Pub. Co. v. U.S.*, 394 U.S. 131, 136-38 (1969) (failing-firm defense considered where “resources of one company were so depleted and the prospect of rehabilitation so remote that it faced the probability of a business failure” and there was “no other prospective purchaser”); Horizontal Merger Guidelines § 11.

Moreover, Electrolux’s own investor statements showed it is a healthy business. GE’s investor statements and Mr. Blankenship’s testimony confirmed that GE’s appliance business was healthy. *See, e.g.*, Trial Tr. 1794:5-1795:4. In fact, in GE’s press release announcing this merger, Mr. Jeffrey Immelt – GE’s corporate head – stated that GE’s appliances is a “great

business” and Mr. McLoughlin described GE appliances as “a well-run operation with strong capabilities in key areas such as R&D, engineering, supply chain and customer service.”

PX02010. In light of Defendants making clear that they are not making a failing-firm defense and the evidence of the two companies’ health, further inquiry into Mr. McLoughlin’s testimony about dire consequences to Electrolux and GE if this merger is stopped is unnecessary.

Dated: November 21, 2015

/s/ Ethan C. Glass  
Ethan C. Glass (D.D.C. Bar #MI0018)  
Steven Kramer  
Kelsey W. Shannon (D.C. Bar #990386)  
U.S. Department of Justice  
Antitrust Division, Litigation III Section  
450 Fifth Street, NW #4000  
Washington, D.C. 20530  
Telephone: (202) 305-1489  
Facsimile: (202) 514-7308  
ethan.glass@usdoj.gov

*Counsel for Plaintiff United States of  
America*

**CERTIFICATE OF SERVICE**

I certify that on November 21, 2015, I filed the foregoing with the Court using its CM/ECF System.

Dated: November 21, 2015

/s/ Kelsey W. Shannon  
Ethan C. Glass (D.D.C. Bar #MI0018)  
Kelsey W. Shannon (D.C. Bar #990386)  
U.S. Department of Justice  
Antitrust Division, Litigation III Section  
450 Fifth Street, NW #4000  
Washington, D.C. 20530  
Telephone: (202) 598-2854  
Facsimile: (202) 514-7308  
kelsey.shannon@usdoj.gov

*Counsel for Plaintiff United States of  
America*