IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

GENERAL ELECTRIC COMPANY
DE BEERS CENTENARY AG
PETER FRENZ
PHILIPPE LIOTIER

NO. CR-2-94-019

15 U.S.C. § 1
18 U.S.C. § 2

2/17/94

INDICTMENT

THE GRAND JURY CHARGES:

1. GENERAL ELECTRIC COMPANY, DE BEERS CENTENARY AG, PETER FRENZ and PHILIPPE LIOTIER are indicted and made defendants herein.

OFFENSE CHARGED

2. Beginning at least as early as 1991 and continuing through at least sometime in 1992, the exact dates being unknown to the Grand Jury, the defendants and co-conspirators formed, joined, and participated in a conspiracy to raise list prices of various industrial diamond products worldwide. The conspiracy restrained interstate and foreign trade and commerce.

DEFENDANTS AND CO-CONSPIRATORS

3. Defendant GENERAL ELECTRIC COMPANY (GE) is a Delaware corporation headquartered in Fairfield, Connecticut. GE operates worldwide and had approximately $61 billion in sales in 1993. At all times relevant to this

Indictment, defendant GE manufactured, distributed, and sold industrial diamond products through GE Superabrasives, an operating unit of GE's Plastics division. GE Superabrasives is headquartered in Worthington, Ohio.

4. Defendant DE BEERS CENTENARY AG is a Swiss corporation headquartered in Lucerne, Switzerland. Defendant DE BEERS CENTENARY AG has linked corporate ownership with De Beers Consolidated Mines, Ltd., a South African corporation. At all times relevant to this Indictment, defendant DE BEERS CENTENARY AG and De Beers Consolidated Mines, Ltd. owned or controlled various companies that manufactured, distributed, and sold industrial diamond products (collectively referred to as DE BEERS).

5. DE BEERS manufactures industrial diamond products in South Africa, Ireland, and Sweden through a 50/50 joint venture with Sibeka Société d'Enterprise et d'Investissements, S.A. (SIBEKA), a Belgian corporation. Defendant DE BEERS CENTENARY AG has approximately a 20% ownership interest in SIBEKA. The majority of the shares of SIBEKA are indirectly owned by Société Générale de Belgique (Société Générale), a Belgian corporation. Defendant DE BEERS CENTENARY AG markets, distributes, and sells, through De Beers Industrial Diamonds (Ireland), an Irish corporation, all of the industrial diamond products manufactured through the joint venture with SIBEKA.

6. Defendant PETER FRENZ (FRENZ) was, at all times relevant to this Indictment, the Managing Director of GE Superabrasives Europe, GmbH. FRENZ

oversaw the European operations of GE Superabrasives and reported directly to GE Superabrasives management in Worthington, Ohio.

7. Defendant PHILIPPE LIOTIER (LIOTIER) held several positions during the time period relevant to this Indictment. By approximately mid-1990, LIOTIER was the Director in Charge of Industrial Holdings and Strategy at Société Générale, a Director of SIBEKA, and a Director of SIBEKA's wholly-owned subsidiary, Diamant Boart, S.A. (Diamant Boart), a Belgian corporation. Diamant Boart is a diamond tool manufacturer that purchases industrial diamond products from both GE and DE BEERS. From approximately mid-1990 until January 1, 1992, LIOTIER served as the chief executive of Diamant Boart. LIOTIER's tenure as chief executive of Diamant Boart ended on January 1, 1992; LIOTIER assumed other duties with Société Générale and continued to serve as a Director of SIBEKA. In early November 1993, LIOTIER left Société Générale to join Compagnie Financière de Suez, a French company that is the majority shareholder of Société Générale.

8. Whenever this Indictment refers to any act, deed, or transaction of a corporation, the allegation means that the corporation engaged in the act, deed, or transaction by or through its officers, directors, agents, employees, or representatives while they were actively engaged in the management, direction, control, or transaction of the corporation's business or affairs.

9. Various persons and firms, not made defendants in this Indictment, participated in and performed acts and made statements in furtherance of the charged conspiracy.

THE INDUSTRIAL DIAMOND INDUSTRY

10. GE and DE BEERS are the two dominant manufacturers of industrial diamond products in the world. Industrial diamond is manufactured by applying extremely high pressure and temperature to carbon-rich material to transform it into diamond.

11. Industrial diamond products are generally sold to diamond tool manufacturers. DE BEERS sells almost all of its industrial diamond products through distributors. GE sells most of its industrial diamond products directly to diamond tool manufacturers. Diamond tool manufacturers incorporate industrial diamond products into cutting and polishing tools that are used for a variety of manufacturing and construction applications, including road construction, stone cutting and polishing, automobile manufacturing, mining, and oil drilling.

12. The list price increases that GE and DE BEERS implemented in early 1992 that are the subject of this Indictment affected three separate industrial diamond products: saw diamond, compacts tooling, and drilling products.

(a) Saw diamond is manufactured and sold in single crystal form in various grades and mesh sizes. Diamond tool manufacturers bond the saw diamond to cutting edges for industrial saw blades and other cutting

tools. GE's saw diamond is trademarked Metal Bond Sawing (MBS). DE BEERS' saw diamond is trademarked Saw Diamond Abrasive (SDA).

(b) Compacts tooling is manufactured by bonding diamond onto a tungsten carbide base to form a cutting surface. Compacts tooling is manufactured as round discs that can be cut to numerous specific shapes and sizes by either the industrial diamond manufacturer or the diamond tool manufacturer. Compacts tooling is used in various machining tools. GE's compacts tooling is trademarked Compax. DE BEERS' compacts tooling is trademarked Syndite.

(c) Drilling products are manufactured by bonding diamond onto a tungsten carbide base. Drilling products are then incorporated into drill bits to form the cutting surface used for oil drilling and mining. GE's drilling products are trademarked Stratapax and Geoset. DE BEERS' drilling products are trademarked Syndrill.

DESCRIPTION OF THE CONSPIRACY

13. The charged conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendants and co-conspirators to raise list prices of industrial diamond products. To coordinate and carry out the conspiracy to raise list prices, GE and DE BEERS provided each other with advance, detailed information reflecting their future list prices and pricing plans.

MEANS AND METHODS OF THE CONSPIRACY

14. Beginning at least as early as 1991, the defendants and co-conspirators used the following scheme and mechanism to raise list prices for industrial diamond products:

(a) FRENZ provided DE BEERS, through LIOTIER, with advance, detailed information reflecting GE's future list prices and pricing plans. FRENZ provided the GE future pricing information to LIOTIER under the pretext and cover that LIOTIER was receiving the information for the sole benefit of Diamant Boart, an industrial diamond customer, rather than for the benefit of the industrial diamond manufacturing interests of SIBEKA and DE BEERS; and

(b) LIOTIER provided GE, through FRENZ, with advance, detailed information reflecting DE BEERS' future list prices and pricing plans. LIOTIER provided the DE BEERS' future pricing information to FRENZ under the pretext and cover that LIOTIER was providing the information to GE for the sole benefit of Diamant Boart, rather than for the benefit of the industrial diamond manufacturing interests of SIBEKA and DE BEERS.

15. In furtherance of the charged conspiracy, the defendants and co-conspirators did the following things, among others:

(a) In or around mid-November 1991, FRENZ provided LIOTIER with detailed written information regarding GE's future list prices and pricing plans for saw diamond. FRENZ did not provide any other person or company with these detailed GE pricing plans at the time that he provided them to LIOTIER.

(1) On or about November 13, 1991, FRENZ faxed to LIOTIER written details of GE's plans for a future saw diamond price increase, including GE's proposed price list for saw diamond. FRENZ obtained the information that he faxed to LIOTIER from preliminary drafts of GE's future price lists and pricing plans that: (a) had not been circulated among GE management; (b) had not been finalized; and (c) even when finalized, directed that the price lists and pricing plans not be disclosed either to other GE personnel or to customers.

(2) On or about November 13, 1991, FRENZ received a finalized internal GE memo detailing GE's saw diamond price increase plans. The memo was sent only to select GE managers, and directed that the pricing information be kept strictly confidential and not be disclosed either to other GE personnel or to customers. Following receipt of the memo, on or about November 14, 1991, FRENZ faxed to LIOTIER a complete future price list for saw diamond, and corrections to the GE future pricing plans that he had faxed to LIOTIER the previous day.

(b) In or around mid-December 1991, LIOTIER provided FRENZ with detailed written information regarding DE BEERS' future list prices and pricing plans for saw diamond, compacts tooling, and drilling products. LIOTIER did not provide other people or companies with these detailed DE BEERS pricing plans at the time that he provided them to FRENZ.

(1) On or about December 13, 1991, LIOTIER provided FRENZ with written details of DE BEERS' plans for future price increases for saw diamond, compacts tooling, and drilling products. The DE BEERS plans included future list prices for saw diamond that would be announced on February 3, 1992 and implemented on March 2, 1992. The plans also specified the percentage by which prices for compacts tooling and drilling products would be increased, and stated that these increases would be announced on January 8, 1992 and implemented on February 3, 1992.

(2) On or about December 16, 1991, FRENZ faxed the information that he had received from LIOTIER on or about December 13, 1991 to the GE Superabrasives International Sales Manager in Worthington, Ohio. FRENZ's cover memorandum states, in part:

> Ph. Liotier of DIAMANT BOART (SOCIETE GENERALE) informed me about planned price increases of DE BEERS early 1992. The attached information was given to him confidentially. Please treat the information carefully.
>
> * * *
>
> . . . Liotier is supporting a price increase and would like to know by December 18, 1991, 18.00 hours European time whether GES [GE Superabrasives] is going to follow.

On or about December 18, 1991, at 18.00 hours European time, FRENZ met with LIOTIER.

(3) On or about December 19, 1991, LIOTIER faxed DE BEERS' future list prices for certain compacts tooling and drilling products to FRENZ. The English translation of the fax cover sheet from LIOTIER states: "Enclosed [is] the information requested on Syndite and Syndrill." On or about December 20, 1991, FRENZ faxed the DE BEERS future list prices for compacts tooling and drilling products to the GE Superabrasives International Sales Manager in Worthington, Ohio.

(c) On or about January 6, 1992, FRENZ received GE's formal announcement to its sales force detailing GE's saw diamond price increase. GE had intentionally omitted its medium-grade saw diamond (MBS-70) from the saw diamond price increase. Upon receiving the announcement,

FRENZ immediately requested that GE increase prices for MBS-70 because DE BEERS was planning to raise the price of its comparable medium-grade saw diamond. Based on FRENZ's request, GE added MBS-70 to its price increase.

(d) On or about January 8, 1992, FRENZ requested and received a fax from GE Superabrasives containing GE's revised future price list for saw diamond, modified by hand to reflect the addition of an increase for MBS-70. That evening, FRENZ met privately with LIOTIER. Other than FRENZ, GE's sales force did not receive the revised future price list with the addition of MBS-70 until January 9, 1992.

(e) On or about January 6, 1992, at FRENZ's request, the GE Superabrasives product manager for compacts tooling sent FRENZ draft written details of GE's plans for a future compacts tooling price increase. These plans: (i) had not been circulated among GE management; (ii) had not been finalized; and (iii) even when finalized, directed that the price lists and pricing plans not be disclosed to customers until January 20, 1992.

(f) On or about January 8, 1992, LIOTIER provided DE BEERS' comprehensive future price lists for compacts tooling and drilling products to FRENZ.

(g) On or about January 17, 1992, FRENZ faxed to LIOTIER the final version of GE's compacts tooling price list, containing handwritten

notes showing the changes to the compacts tooling price list that FRENZ had previously provided to LIOTIER.

(h) On or about January 24, 1992, at FRENZ's request, the GE Superabrasives product manager for drilling products prepared and sent to FRENZ an advance draft of GE's proposed future list prices for drilling products for FRENZ's private meeting with LIOTIER on January 27, 1992. These plans had not been circulated among GE management and had not been finalized.

(i) On or about February 18, 1992, FRENZ faxed to LIOTIER a confidential, internal GE memo to reassure DE BEERS that GE had increased list prices for drilling products in accord with the price list FRENZ had previously provided to LIOTIER.

(j) In or around late February 1992, GE decided to delay for two weeks the effective date of its price increases for compacts tooling and drilling products. On or about February 26, 1992, after FRENZ learned of the delay, he informed GE Superabrasives managers that a delay in the effective date for the compacts tooling and drilling products price increases would "jeopardize [GE's] entire price increase including saw diamond." On or about February 27, 1992, GE rescinded the delay, and FRENZ informed LIOTIER that the delay would not occur.

(k) GE issued new saw diamond and compacts tooling price lists to customers and distributors on or about January 20, 1992. The saw diamond increase was effective on February 17, 1992, and the compacts tooling increase was effective on March 2, 1992. GE issued a new drilling products price list on or about January 29, 1992, effective March 2, 1992.

(l) DE BEERS' distributors issued new compacts tooling and drilling products price lists to customers on or about January 23, 1992, effective February 1, 1992. DE BEERS' distributors issued a new saw diamond price list on or about February 17, 1992, effective March 9, 1992.

(m) The advance, detailed information reflecting GE's future list prices and pricing plans for saw diamond, compacts tooling, and drilling products that FRENZ provided to LIOTIER starting in November 1991 was not provided to GE distributors or customers at the time FRENZ gave LIOTIER this information.

(n) The advance, detailed information reflecting DE BEERS' future list prices and pricing plans for saw diamond, compacts tooling, and drilling products that LIOTIER provided to FRENZ in December 1991 was not provided to DE BEERS' distributors or customers at the time LIOTIER gave FRENZ this information.

TRADE AND COMMERCE

16. At all times relevant to this Indictment, the defendants and co-conspirators were the dominant manufacturers of industrial diamond products worldwide.

17. At all times relevant to this Indictment, the defendants and co-conspirators sold and distributed industrial diamond products in a continuous and uninterrupted flow of interstate and foreign commerce to customers located in states and countries other than the state and countries in which the industrial diamond products were manufactured.

18. In particular, GE manufactured industrial diamond products in Worthington, Ohio, and sold and shipped them to customers in states other than Ohio and countries other than the United States.

19. DE BEERS' industrial diamond products were not manufactured in the United States, but they were sold and shipped throughout the United States by a distributor located in New York, New York.

20. The activities of the defendants and co-conspirators that are the subject of this Indictment were within the flow of, and substantially affected, interstate and foreign trade and commerce.

JURISDICTION AND VENUE

21. The conspiracy charged in this Indictment was carried out, in part, within the Southern District of Ohio and within the five years preceding the return of this Indictment.

ALL IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1, AND TITLE 18, UNITED STATES CODE, SECTION 2.

A TRUE BILL.

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