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## Multifaceted Case: Price-Fixing Charges Put GE and De Beers Under Tough Scrutiny --- U.S. Says Swap of Information On Industrial Diamonds Was `Criminal Activity' --- Whistle-Blower Alters Tune

By William M. Carley and Amal Kumar Naj. **Wall Street Journal** [New York, N.Y.] 22 Feb 1994: PAGE A1.[Hide highlighting](#)**Abstract (summary)**

The Justice Department could have brought only a civil complaint against the companies, as it did in 1992 when it charged U.S. airlines with fixing air fares through their computer systems. But one official said the government sought the criminal indictment because the GE-De Beers case was viewed as a "hard-core" antitrust violation. If there is a guilty verdict, there could be not only big fines for the corporations, but also jail terms for an employee of GE and one of a De Beers affiliate who also were indicted.

GE's Superabrasives unit, which makes industrial diamonds, is based in Worthington, Ohio. When Mr. Russell was fired as GE vice president and head of Superabrasives in November 1991, he said it was because of his objections to a meeting in London between his boss, GE Senior Vice President Glen Hiner, and top De Beers officials. Mr. Hiner, now chairman of Owens-Corning Fiberglas Corp., has said the meeting was merely to discuss a technology exchange. Mr. Russell claimed it was to conspire about prices.

GE officials say the indictment is misguided because Diamant Boart buys diamonds from GE -- as well as from De Beers -- to make cutting tools. Indeed, an internal GE document shows that Diamant Boart is GE's second biggest customer for diamonds, buying about \$15 million a year. What could be more natural -- and legal -- than for a GE manager like Mr. Frenz to provide prices to a good customer such as Diamant Boart? GE officials ask.

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The Justice Department's criminal indictment against General Electric Co. and De Beers Centenary AG for alleged price fixing promises to be one of the most far-ranging and hard-fought cases in antitrust annals.

It is also becoming one of the most bizarre.

The companies were charged last week with fixing prices in the \$600 million-a-year world market for industrial diamonds. Such industrial diamonds aren't used in jewelry, but in cutting tools for construction, oil drilling and other work.

The Justice Department could have brought only a civil complaint against the companies, as it did in 1992 when it charged U.S. airlines with fixing air fares through their computer systems. But one official said the government sought the criminal indictment because the GE-De Beers case was viewed as a "hard-core" antitrust violation. If there is a guilty verdict, there could be not only big fines for the corporations, but also jail terms for an employee of GE and one of a De Beers affiliate who also were indicted.

To Jack Welch, chairman of GE, the charges are "outrageous." If GE really has broken any law, he said, GE fires offending employees and pleads guilty in court. GE did just that two years ago after a salesman bribed an Israeli general to win orders for jet engines.

But in this case, Mr. Welch says, GE is innocent. In an internal memo, Mr. Welch said: "We will use all the resources of our company to fight these charges, and . . . we will prevail at trial."

Developments leading to this legal confrontation already have produced extraordinary events. There is, for example, Edward Russell, a fired GE executive. It was his allegations of antitrust violations that started the government's investigation. But last week, on the eve of the criminal indictment, Mr. Russell dropped his own whistle-blower suit against GE, saying he didn't have "any personal knowledge" of price fixing.

Then there is the Justice Department's two-year inquiry, which had been hampered because many documents and witnesses are overseas. To help gather evidence, the Federal Bureau of Investigation arrested one De Beers official when he visited the U.S. last year. The startled De Beers man was hustled off to Columbus, Ohio, where he was compelled to testify before a grand jury.

And there was GE's massive attempt last week to stave off the indictment. The effort included last-minute telephone calls from GE headquarters in Fairfield, Conn., to Webster Hubbell, associate attorney general, to get him to hold up the indictment about to be filed by the antitrust division -- an effort that proved futile.

As for De Beers, a spokesman in Johannesburg, South Africa, reiterated earlier denials of wrongdoing. Asked whether De Beers, which is based in Switzerland, would stand trial in Ohio, the spokesman would only say: "We don't do business in the U.S." The company, famed for running the world-wide cartel that controls gem diamond prices, has traditionally shunned U.S. legal proceedings.

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of Superabrasives in November 1991, he said it was because of his objections to a meeting in London between his boss, GE Senior Vice President Glen Hinéř, and top De Beers officials. Mr. Hiner, now chairman of Owens-Corning Fiberglas Corp., has said the meeting was merely to discuss a technology exchange. Mr. Russell claimed it was to conspire about prices.

The next year, Mr. Russell filed suit against GE in federal court in Cincinnati, asserting that he was unfairly discharged. About the same time the Justice Department subpoenaed thousands of documents from GE.

While the Russell lawsuit's allegations against Mr. Hiner captured most media attention, Mr. Russell had also fingered two midlevel officials, one at GE and one at a De Beers affiliate. These two, he told the Justice Department, were the men actually carrying out the alleged conspiracy. The investigation began to focus on the pair. Last week, the grand jury indicted them both.

One is Peter Frenz, managing director of the GE Superabrasives unit based near Frankfurt, which oversees the unit's European operations. The other is Philippe Liotier, who was managing director of Diamant Boart SA in Brussels. The two men, the indictment says, were exchanging pricing information on a regular basis in 1991 and 1992.

GE officials say the indictment is misguided because Diamant Boart buys diamonds from GE -- as well as from De Beers -- to make cutting tools. Indeed, an internal GE document shows that Diamant Boart is GE's second biggest customer for diamonds, buying about \$15 million a year. What could be more natural -- and legal -- than for a GE manager like Mr. Frenz to provide prices to a good customer such as Diamant Boart? GE officials ask.

But the indictment states that Diamant Boart is owned by a Belgian company, Sibeka, which in turn is 20% owned by De Beers. And it is through a 50-50 joint venture with Sibeka that De Beers produces its industrial diamonds. In short, the De Beers-Sibeka-Diamant Boart complex is at once one of GE's biggest customers, and GE's biggest competitor.

It was by exploiting this relationship, the Justice Department says, that the price-fixing plot could be carried out. Under the guise of supplying price quotes to a customer, GE and De Beers could coordinate pricing moves. Data could be funneled from GE through the Diamant Boart conduit to De Beers, and vice versa.

The Justice Department regards this as a subterfuge. Anne Bingaman, chief of the Justice Department's antitrust division, says: "The division will not tolerate . . . sophisticated schemes that are used to fix prices and to disguise criminal activity." The two companies, she added, "dominate" the industrial-diamond market, accounting for 80% of sales.

According to the indictment, events unfolded in this sequence:

GE's Mr. Frenz, using a preliminary draft of a proposed price increase he had gotten from Superabrasives headquarters in Ohio, faxed the information to Mr. Liotier in November 1991. In mid-December, Mr. Liotier reciprocated, providing Mr. Frenz with details of De Beers's proposed price increases. Mr. Frenz promptly faxed that back to GE Superabrasives headquarters in Ohio.

De Beers's proposed price increases covered a broader range of diamond products than GE's initial move. Now the question was whether GE would follow De Beers's broader action. Mr. Frenz raised that issue in a memo that he sent along with the De Beers price list.

"Liotier of Diamant Boart . . . informed me about the planned price increases of De Beers effective early 1992," Mr. Frenz wrote. "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 Dec. 18, 1991, 1800 hours European time whether GE Superabrasives is going to follow."

The night of the deadline, Messrs. Frenz and Liotier dined together.

On Jan. 6, 1992, the indictment continues, Mr. Frenz got GE Superabrasives' formal announcement to its sales force detailing the price increases. The Ohio announcement had intentionally omitted medium-grade saw diamond, called MBS70, from the increase. Mr. Frenz immediately called Ohio, asking that MBS-70 be included because De Beers was raising its price on the product. Two days later, Mr. Frenz got another fax from GE Superabrasives with the future prices -- modified by hand to reflect the price increase for MBS-70. That evening, the indictment adds, Mr. Frenz met with Mr. Liotier.

GE announced its first batch of higher prices to customers and distributors Jan. 20. De Beers followed Jan. 23.

There is no doubt the Justice Department had problems assembling its evidence. Last year it was able to snare James Whitehead, who has succeeded Mr. Liotier as managing director of Diamant Boart, only when Mr. Whitehead visited the U.S., partly to attend the Masters golf tournament in Augusta, Ga. What Mr. Whitehead told the grand jury in Columbus isn't known. He couldn't be reached for comment.

The U.S. also had Belgian police search Mr. Liotier's office. What documents the police found isn't known. Mr. Liotier also couldn't be reached for comment. Neither could Mr. Frenz.

Hit by a grand jury subpoena, GE turned over thousands of documents. But not all. According to pretrial testimony in Mr. Russell's case, his successor as head of GE Superabrasives, John Blystone, had his secretary remove a file on grounds that some of them were "personal." As a result, the file wasn't turned over to the Justice Department.

Later, when the secretary, Denise Maurer, gave a deposition, she disclosed the existence of the file and said the documents were "all business related." Mr. Russell's attorney contends that one document, a handwritten memo by Mr. Blystone about his conversation with Superabrasives' sales manager, supports charges of price fixing. The memo was finally turned over to the Justice Department last year -- eight months after it was subpoenaed.

All the evidence, GE says, doesn't add up to an antitrust violation. Yes, Mr. Frenz did have dinner with Mr. Liotier after the GE man asked Superabrasives headquarters to respond to the De Beers proposed price increase. But Mr. Frenz didn't get an answer by mealtime, so Messrs. Frenz and Liotier merely gossiped at dinner.

In any event, GE adds, Mr. Frenz didn't have authority to change prices, which could be increased only by officials at Superabrasives headquarters in Ohio, and the unit's officials acted independently. GE added in a statement that Mr. Frenz "acted properly under antitrust compliance practices in receiving competitive information from a customer, marking its date and source, and forwarding it to the pricing-decision makers." GE said Mr. Frenz "had no pricing authority, no improper intent, no personal motive -- and no culpability." What's more, GE says, after the price increases of early 1992, GE's and De Beers's list prices were even further apart than they were before.

GE spared no effort to head off the indictment. One potential witness who might support the Justice Department charges was Mr. Russell.

After his two-year court fight with GE, his sudden settlement was stunning. Mr. Russell had brought his suit under Ohio's whistle-blower statute, which required him to prove he was fired because he was trying to expose what he believed was a conspiracy. In the settlement, Mr. Russell reversed himself, saying he was convinced by the evidence that Mr. Welch had fired him because GE's chairman considered him a poor performer.

Events culminated last week. According to persons familiar with the case, an antitrust-division official called GE last Monday to say that it would be indicted Thursday, the last day the Justice Department believed that the grand jury in Columbus could act. Ben Heineman, GE's general counsel, telephoned Mr. Hubbell at the Justice Department, asking him to hold up the indictment because it would prejudice the coming Russell trial. Mr. Hubbell said he would consider the matter.

On Wednesday Judge Herman Weber, who was presiding over Mr. Russell's lawsuit, called the parties to his office in Cincinnati to see if the case could be settled before trial. In the judge's office were Mr. Russell and his lawyer, and Mr. Welch and a GE lawyer. The outcome: GE would pay an undisclosed portion of Mr. Russell's legal fees, which are estimated by outside lawyers at roughly \$2 million. In addition, GE would give Mr. Russell a GE retired officer's medical and insurance benefits. A company spokeswoman, Joyce Hergenhan, vice president for public relations, says GE's cost for Mr. Russell's package of benefits is less than \$250,000.

For his part, Mr. Russell signed a statement that he hadn't "any personal knowledge" of antitrust violations. Suddenly, Mr. Russell's value as a potential witness against GE in the government's criminal case had been severely damaged.

GE lawyers, still trying to head off the indictment, faxed the Russell statement to the Justice Department late Wednesday. To make sure top Justice officials read about it, Ms. Hergenhan called reporters at The Wall Street Journal and the Washington Post to provide a statement about Mr. Russell's apparent capitulation. The Journal ran the story Thursday morning; the Post delayed until Friday.

(A Justice Department spokeswoman, Gina Talamona, says the Russell settlement "won't have any impact" on the government's case.)

On Thursday morning, Mr. Heineman phoned Mr. Hubbell again. This time Mr. Heineman requested that the indictment be delayed, and reviewed by the associate attorney general himself.

Mr. Hubbell referred the GE lawyer to Ms. Bingaman, the antitrust-division chief. But she had gone out to deliver a speech. When Ms. Bingaman returned Mr. Heineman's call, about 4 p.m. Thursday, she told the GE lawyer the indictment had been filed minutes before.

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