

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

**DEFENDANTS AB ELECTROLUX AND ELECTROLUX NORTH AMERICA, INC.'S  
ANSWER AND DEFENSES TO PLAINTIFF'S COMPLAINT**

Defendants AB Electrolux and Electrolux North America, Inc. (collectively, "Electrolux"), by its undersigned counsel, and in answer to Plaintiff's Complaint ("Complaint"), state as follows:

**FIRST DEFENSE – ANSWER TO THE COMPLAINT**

1. Electrolux admits that it and General Electric compete to sell major cooking appliances and that appliances are an essential part of the American household. Electrolux denies the remaining allegations in Paragraph No. 1 of the Complaint.

2. Electrolux denies Plaintiff's characterization of Whirlpool, General Electric, and Electrolux as "The Big Three." Electrolux denies that the proposed acquisition would create a duopoly in the supply of major cooking appliances to American home builders, property managers, and other contract appliance purchasers because many appliance suppliers compete for sales to those customers. Electrolux denies any implication in Paragraph No. 2 of the

Complaint that sales of major cooking appliances to contract customers constitute relevant antitrust markets. Electrolux denies the remaining allegations in Paragraph No. 2 of the Complaint.

3. Electrolux admits that it has made efforts to grow its contract sales. Electrolux denies the remaining allegations in the first, second, and fifth sentences of Paragraph No. 3 of the Complaint, and states that it will continue to compete with numerous appliance suppliers, distributors, and retailers for contract sales. Electrolux lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in the third and fourth sentences of Paragraph No. 3 of the Complaint, which relate to purported statements by General Electric, and therefore denies them. Electrolux denies the remaining allegations in Paragraph No. 3 of the Complaint.

4. Electrolux denies that the proposed acquisition will have any harmful effects, and states that the proposed acquisition will create benefits for consumers and customers in the form of lower prices, new and innovative products, and better service. Electrolux lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in the second and third sentences of Paragraph No. 4 of the Complaint, which relate to all purchasers of major cooking appliances in the United States and purported statements by General Electric, and therefore denies them. Electrolux states that Plaintiff's selective quotation of unidentified written material or communications from Electrolux personnel in the fourth and fifth sentences of Paragraph No. 4 of the Complaint, offered without context, is misleading as framed in the Complaint, and Electrolux respectfully refers the Court to the quoted documents, if identified, for a complete and accurate description of their contents. Electrolux denies the remaining allegations in Paragraph No. 4 of the Complaint.

5. The allegations in Paragraph No. 5 of the Complaint are legal conclusions not subject to admission or denial. To the extent a response is deemed required, Electrolux denies the allegations in Paragraph No. 5 of the Complaint.

6. The allegations in Paragraph No. 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, Electrolux denies that the proposed acquisition would violate any provision of law.

7. Electrolux denies that AB Electrolux and Electrolux North America, Inc. are directly engaged in interstate commerce and that AB Electrolux and Electrolux North America, Inc. directly sell major cooking appliances throughout the United States as both are holding companies. Electrolux lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations relating to General Electric, and therefore denies them. Electrolux denies the remaining allegations in Paragraph No. 7 of the Complaint.

8. Electrolux admits that it has consented, for the purpose of this case only, to personal jurisdiction in this Court. Electrolux lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations relating to General Electric, and therefore denies them. Electrolux denies the remaining allegations in Paragraph No. 8 of the Complaint.

9. Electrolux admits that it has consented, for the purpose of this case only, to venue in this Court. Electrolux lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations relating to General Electric, and therefore denies them.

10. Electrolux admits that Electrolux North America, Inc. is an Ohio corporation headquartered in Charlotte, North Carolina and that it is a wholly-owned subsidiary of AB

Electrolux. Electrolux denies the remaining allegations in Paragraph No. 10 of the Complaint, and states that Electrolux North America, Inc. is a holding company that neither makes nor sells major cooking appliances.

11. Electrolux lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations relating to General Electric in Paragraph No. 11 of the Complaint, and therefore denies them.

12. Electrolux admits the allegations in Paragraph No. 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. Electrolux admits the allegations in the first, second, third, and fourth sentences of Paragraph No. 13 of the Complaint, except that Electrolux 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. The remaining allegations in Paragraph No. 13 of the Complaint are too generalized to be true or meaningful. For example, a range can be a good substitute for a cooktop and wall oven, and some ranges cost more than a cooktop and wall oven combined while others cost less. Electrolux therefore denies the remaining allegations in Paragraph No. 13 of the Complaint.

14. Electrolux admits the allegations in the second and third sentences of Paragraph No. 14 of the Complaint. Electrolux states that Plaintiff's selective quotation of language from Electrolux's 2013 Annual Report, offered without context, is misleading as framed in the Complaint, and Electrolux respectfully refers the Court to the quoted document for a complete and accurate description of its contents. Electrolux denies the remaining allegations in Paragraph No. 14 of the Complaint.

15. Electrolux admits that it and numerous other manufacturers and appliance suppliers sell major cooking appliances to retailers and retail distributors and that it sells those appliances at wholesale prices. Electrolux admits that, as a general matter, retailers 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. Electrolux denies that retailers have the incentive and ability to pass any wholesale price increases on to their customers. Electrolux denies any implication that retailers accept wholesale price increases because retailers repeatedly reject manufacturer and appliance supplier price increases. Electrolux lacks knowledge or information sufficient to form a belief about the truth or falsity of the remaining allegations in Paragraph No. 15 of the Complaint, and therefore denies them.

16. Electrolux admits that some customers make their major cooking appliance purchase decisions based on price and features and some customers also consider brand and other factors. Electrolux admits that it invests in advertising and promotion to increase awareness and sales of its appliances. Electrolux lacks information sufficient to form a belief about the truth or falsity of the allegations in Paragraph No. 16 of the Complaint regarding other cooking-appliance suppliers. Electrolux denies the remaining allegations in Paragraph No. 16 of the Complaint.

17. Electrolux admits that cooking-appliance suppliers sell to single-family homebuilders, multi-family homebuilders, property managers of apartment and condominium buildings, hotels/motels, and governmental entities. Electrolux admits that some cooking-appliance suppliers sell both directly to builders and indirectly through distributors. Electrolux admits that some sales to single-family homebuilders, multi-family homebuilders, property managers of apartment and condominium buildings, hotels/motels, governmental entities, and

distributors are negotiated individually between the purchaser and the seller, while in some sales, these customers make purchases at list prices. Electrolux denies that these customers often have the incentive and ability to pass wholesale price increases on to home buyers or renters.

Electrolux denies any implication that these customers simply accept price increases because they often reject manufacturer and appliance supplier price increases. Electrolux lacks knowledge or information sufficient to form a belief about the truth or falsity of the remaining allegations in Paragraph No. 17 of the Complaint, and therefore denies them.

18. Electrolux admits that some contract customers make their major cooking appliance purchasing decisions based on brand, price, and the ability of the appliance supplier to meet the customers' needs. Electrolux denies that contract customers' needs generally include the availability of a wide array of products and exacting service and delivery capabilities. Electrolux admits that some homebuilders and property managers prefer to purchase directly from the appliance supplier while others prefer to purchase from distributors, and admits that homebuilders and property managers, like retailers, generally, but not always, need appliances delivered on a specific delivery schedule, but states that the quantity of appliances a homebuilder or property manager needs at a given date and time varies. Electrolux admits that some contract customers prefer to contract with a single supplier for major cooking appliances in order to simplify the procurement process, but states that many contract customers contract with or purchase appliances from multiple appliance suppliers and distributors. Electrolux denies that suppliers need to offer major cooking, refrigeration, and dishwashing appliances, with multiple models across various prices points because appliance suppliers have successfully sold products in select appliance categories to contract customers. Electrolux denies that suppliers often will not mix and match kitchen appliances by purchasing from different appliance suppliers because

many contract customers do mix and match kitchen appliance brands whether by purchasing from different appliance suppliers or by purchasing the different appliances from a distributor. Electrolux denies the remaining allegations in Paragraph No. 18 of the Complaint.

19. Electrolux lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegation in Paragraph No. 19 of the Complaint that industry participants recognize that major-cooking appliance sales to contract customers are different from sales to other customers because Electrolux does not know the views of many or all industry participants, and therefore denies the allegation. Electrolux denies that contract customers have distinct needs from retail customers because the appliances sold to retail and contract customers are the same, the service and delivery needs of some retail and contract customers are the same or similar, and many contract customers purchase from retailers. Electrolux admits that it has sales teams for contract and retail sales, but states that any given retail or contract salesperson calls on customers that sell both to consumers and contract customers. Electrolux denies that it has distinct pricing processes for sales to retail and contract customers except admits that the process for offering prices in a specific case can differ from customer to customer. Electrolux lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph No. 19 of the Complaint regarding General Electric's appliance business sales force and pricing processes, and therefore denies them. Electrolux denies the remaining allegations in Paragraph No. 19 of the Complaint.

20. The allegations in Paragraph No. 20 of the Complaint are legal conclusions not subject to admission or denial. To the extent that a response is deemed required, Electrolux denies the allegations in Paragraph No. 20 of the Complaint.

21. The allegations in Paragraph No. 21 of the Complaint are legal conclusions not

subject to admission or denial. To the extent that a response is deemed required, Electrolux denies the allegations in Paragraph No. 21 of the Complaint.

22. The allegations in Paragraph No. 22 of the Complaint are legal conclusions not subject to admission or denial. To the extent that a response is deemed required, Electrolux denies the allegations in Paragraph No. 22 of the Complaint.

23. The allegation that sales to contract 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, Electrolux denies that sales to contract customers can constitute a relevant antitrust market. Electrolux admits that some contract customers purchase major cooking appliances through individually negotiated contracts, while some purchase major cooking appliances at list prices. Electrolux denies that contract customers could be made subject to targeted price increases because they can purchase major cooking appliances from numerous appliance suppliers, distributors, and retailers. Electrolux denies that the proposed acquisition will harm any customers. Electrolux denies the remaining allegations in Paragraph No. 23 of the Complaint.

24. Electrolux admits that home buyers typically buy their homes with major cooking appliances already purchased and installed. Electrolux admits that property managers typically furnish an apartment with major cooking appliances already installed, and renters typically do not purchase and install ranges, cooktops, or wall ovens for properties they rent. Electrolux denies that contract customers could be made subject to and could not reasonably avoid targeted price increases because they can purchase major cooking appliances from numerous appliance suppliers, distributors, and retailers. Electrolux denies the remaining allegations in Paragraph No. 24 of the Complaint.

25. Electrolux denies the allegations in the first sentence of Paragraph No. 25 of the Complaint. Electrolux lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in the second sentence of Paragraph No. 25 of the Complaint, and therefore denies them.

26. The allegations in Paragraph No. 26 of the Complaint are legal conclusions not subject to admission or denial. To the extent that a response is deemed required, Electrolux denies the allegations in Paragraph No. 26 of the Complaint.

27. Electrolux admits that it has stipulated that it “will not argue that the relevant geographic market is broader than the United States.” Electrolux denies the remaining allegations in Paragraph No. 27 of the Complaint.

28. Electrolux admits that following the proposed acquisition, Electrolux and General Electric’s appliances business would be operated as a single firm. Electrolux denies that contract customers would have only two meaningful options following the transaction because contract customers can and do buy from numerous appliance suppliers, distributors, and retailers. Electrolux denies that the proposed acquisition would reduce competition or lead to higher prices. Electrolux denies the remaining allegations in Paragraph No. 28 of the Complaint.

29. Electrolux admits that Plaintiff considers the HHI as a measure of purported concentration and states that the Horizontal Merger Guidelines speak for themselves. Electrolux states that the Horizontal Merger Guidelines are not controlling authority. Electrolux denies the remaining allegations in Paragraph No. 29 of the Complaint.

30. Electrolux denies that the HHIs alleged in Paragraph No. 30 reflect the HHIs for the properly defined relevant antitrust product markets, and denies the remaining allegations in Paragraph No. 30 of the Complaint.

31. Electrolux admits that it and General Electric sell major cooking appliances, and that following the proposed acquisition, Electrolux and General Electric's appliances business would be operated as a single firm. Electrolux denies the remaining allegations in Paragraph No. 31 of the Complaint.

32. Electrolux denies Plaintiff's characterization of Whirlpool, General Electric, and Electrolux as "The Big Three." Electrolux denies that contract customers would be left with only two meaningful options following the proposed acquisition because purchasers can and do buy from numerous appliance suppliers, distributors, and retailers that all compete for contract customers' business. Electrolux denies the remaining allegations in Paragraph No. 32 of the Complaint.

33. Electrolux admits that it competes with all competitors to win sales from contract customers and that Electrolux's contract sales have shown some increase in recent years. Electrolux admits that it has gained business from some of the largest home builders in the country, and that General Electric, among others, has served and continues to serve those customers. Electrolux lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegation in the third, fourth, and fifth sentences of Paragraph No. 33 of the Complaint, and therefore denies them. Electrolux denies the remaining allegations in Paragraph No. 33 of the Complaint.

34. Electrolux admits that it and General Electric sell major cooking appliances under multiple brand names and across a range of prices. Electrolux denies that it would likely find it profitable to increase the prices of many of the combined firm's cooking appliance models following Electrolux's acquisition of General Electric's appliances business because, were Electrolux to attempt to raise such prices, it would likely lose sales to numerous other cooking

appliance competitors such that any attempted price increase would not be profitable. Electrolux further denies that it would likely find it profitable to raise prices to Sears for major cooking appliances that Electrolux manufactures for the Kenmore brand because Sears has numerous options from other cooking appliance manufacturers and would likely turn to those other competitors were Electrolux to attempt to raise such prices to Sears. Electrolux denies the remaining allegations in Paragraph No. 34 of the Complaint.

35. Electrolux admits that it manufactures ranges, cooktops, and wall ovens for the Kenmore brand. Electrolux denies Plaintiff's characterization of "value" and "mass market" pricing segments, which Plaintiff does not define. Electrolux denies the remaining allegations in Paragraph No. 35 of the Complaint.

36. Electrolux denies the allegations in Paragraph No. 36 of the Complaint. Electrolux states that there are low barriers to entry to manufacturing or selling appliances in the United States for any type of appliance or type of customer, and entry and expansion by current and new entrants—which can already be seen through the growth of Samsung and LG and the entry of Chinese, German, and Turkish manufacturers—is likely to defeat any alleged anticompetitive effects, which Electrolux denies will occur.

37. Electrolux denies the allegations in Paragraph No. 37 of the Complaint. Electrolux states that its acquisition of General Electric's appliances business is expected to produce substantial acquisition-specific and cognizable efficiencies and other procompetitive effects that will benefit consumers through lower prices, new and innovative product offerings, and better service.

38. Electrolux denies the allegations in Paragraph No. 38 of the Complaint.

39. Electrolux states that Plaintiff is not entitled to the relief requested in Paragraph

No. 39 of the Complaint.

**SECOND DEFENSE**

Granting the relief sought is contrary to the public interest.

**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 acquisition-specific and cognizable 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/ John M. Majoras

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*Counsel for Defendants AB Electrolux and  
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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 Trial Setting and Case Management Order entered by the Court on July 21, 2015 (Docket No. 28), I served the foregoing to the below individuals via either ECF or email.

/s/ John M. Majoras

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