M. R. Irwin

Litton v. AT&T
Walter Adams

Litton Industries, a west coast industrial conglomerate, developed a computerized telephone branch exchange in the early 70's. The telephone switch embodied solid-state memory and software features. It was a state of the art innovation. Litton decided to enter the telephone business subscriber market (PBX) in competition with equipment provided by the Bell System (AT&T).

The telephone company required an electronic box as a protective device to tie outside equipment to their network. Bell's own PBX equipment did not required such a device. The device, apparently in short supply, inhibiting Litton's sales to its customers. AT&T also delayed setting up standard specifications permitting the direct attachment of a non-Bell PBX to the telephone network.

Bell's response to Litton's equipment was successful. Litton withdrew from the interconnect market, filed an antitrust suit against AT&T and charged that Bell's actions constituted market foreclosure that reinforced the company's equipment monopoly.

I received a call from Professor Walter Adams in 1980. Adams had been retained as an expert witness by Howrey-Simon, a Washington Law Firm, representing Litton. Professor Adams asked me to join the anti-trust team. I agree to do so.

Litton's complaint, filed in the U.S. Southern District Court in Manhattan, was assigned to Judge William C. Conner. AT&T insisted that the company's tariffs and practices were

subject to approval by state public utility commissions as well as the U.S. Federal Communication Commission. Bell argued that, as a regulated common carrier, the company was exempt from any private anti-trust action. The proper venue, Bell insisted, rested within the appropriate regulatory authorities.

Confronted with the issue of jurisdiction, Judge William Conner appointed a court magistrate to address the venue for the Litton suit. The court magistrate submitted a 270-page report and concluded that a regulatory commission stood as the proper forum for such action. The magistrate recommended that Judge Conner dismiss the Litton anti-trust complaint.

Judge Conner over ruled the magistrate, a jury was impaneled and a formal trial began in January, 1981. The trial, lasting over six months, produced 18,000 pages of transcript. AT&T alone delivered five million pages of discovery, supported by some 3,500 legal assistants. Litton produced three and a half million pages of discovery. AT&T's legal expenses exceeded $60 million dollars; Litton's topped $10 million dollars.

Litton regarded the case as a serious endeavor. The company sent Bell discovery documents to the Far East for computer card punching, then stored the files at Litton's computer center in California. In New York, the company leased the floor of a building across the street from Manhattan Court House. A tour of the floor revealed banks of CRT terminals enabling Litton the attorneys to retrieve papers and prepare trial exhibits.

Howrey and Simon retained my services as an expert witness and Attorney John Bodner directed my testimony. On the stand, Bodner asked a series of questions detailing AT&T's response to Litton's competitive PBX. I responded that the protective device coupler plus the absence of a standard certification program blocked Litton's access to its customers.

John Bodner next informed the Judge that I was to be a fact witness. He questioned my role as chief of the Western Electric Division - FCC Task Force, between the years, 1972-1974. My staff consisted of some dozen personnel. They focused on the prices, cost and economic performance of Western Electric, AT&T's supply affiliate. Western equipment, billed to Bell operating companies, became part of the telephone company's investment , base upon which service rates were posted to the subscribing public.

The FCC trial staff had been given discovery authority during the 1972-1974 period. The process of document accumulation took the following pattern. A staff member would draft a letter requesting a Bell study, report or conference meeting. The letter passed my desk for review. I forwarded the request to Peter Andersen, the director of the FCC Task Force. We would discuss the letter. And a letter was sent to AT&T. AT&T was instructed to send their reply to me. Our office catalogued the letter then delivered the material to the interested staff member.

During the period of the trial staff, AT&T retained the McKenzie Associates, a consulting company. The company analyzed and assess Bell's position in the PBX market. Originally, the trial staff asked for a McKenzie report dated January, 1973. AT&T responded that the report, in draft form, was unavailable. The trial staff next requested McKenzie's report dated June, 1973. AT&T responded they had not retained a copy of the report. In November, 1973, AT&T delivered a McKenzie report to the FCC trial staff.

While on the witness stand, John Bodner handed me the November 1973 McKenzie report. He asked if I had seen the report. I acknowledged that I had. Bodner next handed me the 1973 June McKenzie report and asked whether I had seen the report. I testified that I had not. Bodner then asked me to compare the June and the November report.

I responded that the June McKenzie report listed competitors in the PBX market that included, among other firms, Litton industries. Second, McKenzie recommended that AT&T form a separate corporate affiliate dedicated to leasing its customer premise equipment. Both Bell's competitors and McKenzie affiliate recommendation were excised from the November report. AT&T's Executive Policy Committee had approved the changes.

AT&T's attorney apposed the introduction of the McKenzie report on grounds that the FCC trial staff work was separate and apart from the anti-trust suit pending before the court. Litton's attorney John Bodner implied that the "sanitize" June report by a regulated communication carrier removed AT&T from anti-trust protection, under the Noer-Pennington doctrine.

My files had been subject to AT&T discovery prior to the trial. When on the stand Bell's attorney pulled out a manuscript submitted to the McGraw-Hill book company for publication. He asked the fate of the manuscript. I replied that McGraw-Hill had rejected the manuscript. At that point, I heard a loud moan from back of the courtroom. Walter Adams was apparently upset by AT&T's cross-examination technique employed against his former graduate assistant.

In June 1981, the trial ended. The jury awarded Litton $76 million in damages. Anti-trust awards, however, are subject to treble damages. The jury, in effect, had awarded Litton $276 million. The case then hit a dramatic turn of events. A Howrey and Simon attorney had withheld discovery documents from Litton to AT&T. And the documents were damaging to Litton's case.

AT&T argued that Litton's anti-trust suit was fatally flawed and that judge Conner should dismiss the case. Judge Conner, nevertheless, ruled that AT&T pay Litton $275 million.

He turned to Howrey and Simon and stated that AT&T did not have to reimburse the firm for its $10 million dollar legal fee.

At the end of the Litton v. AT&T case, William Simon, Howrey and Simon's lead attorney, declared that he had originally sought damages of $500 million dollars. On the other hand, he did acknowledge that $275 million dollars was not "chicken feed."