

The Burger Court Opinion Writing Database

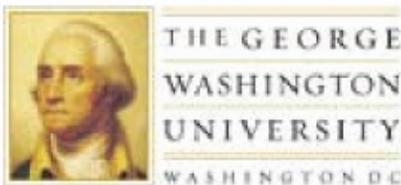
Ford Motor Co. v. United States

405 U.S. 562 (1972)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

November 22, 1971

Re: No. 70-113 - Ford Motor Co. v. U. S.

Dear Bill:

My records show three to reverse on
the remedy so it appears you should assign.

Regards,

WB

Mr. Justice Douglas

Oct 17 Wm Douglas
70-113

3. 11
You joined *Wood's*
opinion
as did *WFB* & *BRW*
CHAMBERS OF
THE CHIEF JUSTICE

Supreme Court of the United States
Washington, D. C. 20543
December 30, 1971

No. 70-113 -- Ford Motor Company v. United States

MEMORANDUM TO THE CONFERENCE:

I have reviewed this case again and the proposed opinion (5th draft) and remain of the view that it is a dubious case under Sec. 7 at best, but that the sweeping remedy is not warranted.

I will stand by to see what if anything Potter or Harry may write if they remain in their conference position.

Regards,
WRB

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

SSSFCNOCUOUCOUCREPS

Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Powell
Mr. Justice Rehnquist

From: The Clerk of the Court
Circulated: MAR 20 1972
Recirculated: _____

TENTATIVE

No. 70-113 -- Ford Motor Company v. United States

MR. CHIEF JUSTICE BURGER, concurring in part and dissenting in part.

It seems to me that the majority opinion in this case overlooks the nature of the spark plug market, as set out in the findings of the District Judge. Those findings lead me to conclude that the District Judge's remedial order goes beyond curing any antitrust evil caused by Ford's actions. For these reasons, I dissent as to the broad sweep of the District Court's remedial decree and I would remand for further consideration.

An understanding of the workings of the spark plug market shows three reasons why the District Court's remedy, which requires Ford to support Autolite's market position for at least five years in part and up to ten years after divestiture, is wrong. First, the District Judge did not find that Ford's acquisition caused any injury to Autolite's competitive position. Rather a reading of his findings makes it apparent that the precariousness of Autolite's expected post-divestment position results from

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION
OFFICE OF THE CLERK OF THE SUPREME COURT

M

Supreme Court of the United States
Washington, D. C. 20543

March 21, 1972

CHAMBERS OF
THE CHIEF JUSTICE

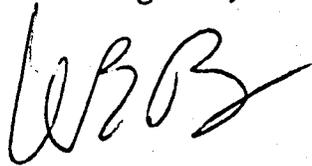
MEMORANDUM TO THE CONFERENCE:

No. 70-113 -- Ford Motor Company v. U.S.

In light of Potter Stewart's concurring opinion, I am developing some factual aspects which may tend to give a slightly different picture of his view of the facts.

This makes it necessary to have the announcement go over until next week.

Regards,



P. S. -- In view of the above Topco will also be deferred.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. SUPREME COURT RECORDS

10/24

1, 2, 5, 6, 7, 10, 12, 13, 14

To: Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Black
Mr. Justice Marshall
Mr. Justice Burger
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-113

From: The

Ford Motor Company,
Appellant,
v.
United States et al.

On Appeal from the United
States District Court for the
Eastern District of Michigan.

Circulation

Recirculation

MAR 27 1972

[April —, 1972]

MR. CHIEF JUSTICE BURGER, concurring in part and dissenting in part.

In addition to requiring divestiture of Autolite, the District Court made ancillary injunctive provisions that go far beyond any that have been cited to the Court. Ford is forbidden to manufacture spark plugs for 10 years; Ford is ordered to purchase one-half of its total annual requirement of spark plugs from the divested company under the "Autolite" name, and Ford is forbidden for the same period from using its own trade name on any spark plugs. These provisions are directed to prevent Ford from making an independent entry into the spark plug market and, in effect, to require it to subsidize Autolite for a period of time. Despite the draconian quality of this restriction on Ford, I can find no justification in the District Court's findings for this remedy. I dissent from the broad sweep of the District Judge's remedial decree. I would remand for further consideration of the remedial aspects of this case.

An understanding of the District Court's findings as to the spark plug market shows three reasons why he was in error in requiring Ford to support Autolite. First, the Judge did *not* find that the weakness of an independent Autolite's competitive position resulted from Ford's acquisition. Rather, a reading of his findings

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. SUPREME COURT RECORDS

9

P.7

To: Mr. Justice Douglas
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Souter
 Mr. Justice Powell
 Mr. Justice Rehnquist

2nd DRAFT

From: [illegible]

SUPREME COURT OF THE UNITED STATES

No. 70-113

Received MAR 28 1972

Ford Motor Company,
 Appellant,
 v.
 United States et al. } On Appeal from the United
 States District Court for the
 Eastern District of Michigan.

[April —, 1972]

MR. CHIEF JUSTICE BURGER, concurring in part and dissenting in part.

In addition to requiring divestiture of Autolite, the District Court made ancillary injunctive provisions that go far beyond any that have been cited to the Court. Ford is forbidden to manufacture spark plugs for 10 years; Ford is ordered to purchase one-half of its total annual requirement of spark plugs from the divested company under the "Autolite" name, and Ford is forbidden for the same period from using its own trade name on any spark plugs. These provisions are directed to prevent Ford from making an independent entry into the spark plug market and, in effect, to require it to subsidize Autolite for a period of time. Despite the draconian quality of this restriction on Ford, I can find no justification in the District Court's findings for this remedy. I dissent from the broad sweep of the District Court's remedial decree. I would remand for further consideration of the remedial aspects of this case.

An understanding of the District Court's findings as to the spark plug market shows three reasons why it was in error in requiring Ford to support Autolite. First, the court did *not* find that the weakness of an independent Autolite's competitive position resulted from Ford's acquisition. Rather, a reading of its findings

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. DEPARTMENT OF JUSTICE

B

Please join me

To: The Chief Justice
~~Mr. Justice Black~~
~~Mr. Justice Brennan~~
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice [unclear]

1st DRAFT

From: [unclear]

SUPREME COURT OF THE UNITED STATES

11-24

No. 70-113

Recirculated: _____

Ford Motor Company, }
Appellant, } On Appeal from the United
v. } States District Court for the
United States et al. } Eastern District of Michigan.

[December —, 1971]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This is a direct appeal, 32 Stat. 823, 15 U. S. C. § 29, from a judgment of the District Court (286 F. Supp. 407, 315 F. Supp. 372), holding that Ford Motor Company (Ford) violated § 7 of the Celler-Kefauver Anti-merger Act¹ by acquiring certain assets from Electric Autolite Company (Autolite). The assets included the Autolite trade name, Autolite's only spark plug plant in this country (located at New Fostoria, Ohio), a battery plant, and its nationwide distribution organization for spark plugs and batteries. The present appeal² is limited to that portion of the judgment relating to spark plugs and ordering Ford to divest the Autolite name and the spark

¹ Section 7 provides:

"No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly." 38 Stat. 731, as amended, 64 Stat. 1125, 15 U. S. C. § 18.

² We noted jurisdiction June 7, 1971. 403 U. S. 903.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION
OFFICE OF THE CLERK OF THE SUPREME COURT

Chief Justice
Mr. Justice Black
Mr. Justice Brennan
Mr. Justice Burger
Mr. Justice Douglas
Mr. Justice Marshall
Mr. Justice Stewart
Mr. Justice Sutherland
Mr. Justice White

9/1
Must change
throughout

From: Department

2nd DRAFT

Circulated
11-29

SUPREME COURT OF THE UNITED STATES

No. 70-113

Ford Motor Company, }
Appellant. } On Appeal from the United
v. } States District Court for the
United States et al. } Eastern District of Michigan.

[December —, 1971]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This is a direct appeal, 32 Stat. 823, 15 U. S. C. § 29, from a judgment of the District Court (286 F. Supp. 407, 315 F. Supp. 372), holding that Ford Motor Company (Ford) violated § 7 of the Celler-Kefauver Anti-merger Act¹ by acquiring certain assets from Electric Autolite Company (Autolite). The assets included the Autolite trade name, Autolite's only spark plug plant in this country (located at New Fostoria, Ohio), a battery plant, and extensive rights to its nationwide distribution organization for spark plugs and batteries. The present appeal² is limited to that portion of the judgment relating to spark plugs and ordering Ford to divest the Autolite

¹ Section 7 provides in part:

"No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly." 38 Stat. 731, as amended, 64 Stat. 1125, 15 U. S. C. § 18.

² We noted jurisdiction June 7, 1971. 403 U. S. 903.

change throughout

To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

3rd DRAFT

From: Douglas, J.

SUPREME COURT OF THE UNITED STATES

Filed: 11/29/71

No. 70-113

Ford Motor Company, }
Appellant, } On Appeal from the United
v. } States District Court for the
United States et al. } Eastern District of Michigan.

[December —, 1971]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This is a direct appeal, 32 Stat. 823, 15 U. S. C. § 29, from a judgment of the District Court (286 F. Supp. 407, 315 F. Supp. 372), holding that Ford Motor Company (Ford) violated § 7 of the Celler-Kefauver Anti-merger Act¹ by acquiring certain assets from Electric Autolite Company (Autolite). The assets included the Autolite trade name, Autolite's only spark plug plant in this country (located at New Fostoria, Ohio), a battery plant, and extensive rights to its nationwide distribution organization for spark plugs and batteries. The present appeal² is limited to that portion of the judgment relating to spark plugs and ordering Ford to divest the Autolite

¹ Section 7 provides in part:

"No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly." 38 Stat. 731, as amended, 64 Stat. 1125, 15 U. S. C. § 18.

² We noted jurisdiction June 7, 1971. 403 U. S. 903.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U. S. DEPARTMENT OF JUSTICE

B
M 10, 12, 13
JP

To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall ✓
Mr. Justice Blackmun

5th DRAFT From: Douglas, J.

SUPREME COURT OF THE UNITED STATES

No. 70-113

Circulated
Revised 12/13/71

Ford Motor Company, }
Appellant, } On Appeal from the United
v. } States District Court for the
United States et al. } Eastern District of Michigan.

[December —, 1971]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This is a direct appeal, 32 Stat. 823, 15 U. S. C. § 29, from a judgment of the District Court (286 F. Supp. 407, 315 F. Supp. 372), holding that Ford Motor Company (Ford) violated § 7 of the Celler-Kefauver Anti-merger Act¹ by acquiring certain assets from Electric Autolite Company (Autolite). The assets included the Autolite trade name, Autolite's only spark plug plant in this country (located at New Fostoria, Ohio), a battery plant, and extensive rights to its nationwide distribution organization for spark plugs and batteries. The present appeal² is limited to that portion of the judgment relating to spark plugs and ordering Ford to divest the Autolite

¹ Section 7 provides in part:

"No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly." 38 Stat. 731, as amended, 64 Stat. 1125, 15 U. S. C. § 18.

² We noted jurisdiction June 7, 1971. 403 U. S. 903.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U. S. DEPARTMENT OF JUSTICE

14

Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice

6th DRAFT

From: [illegible]

SUPREME COURT OF THE UNITED STATES

No. 70-113

3/6/72

Ford Motor Company, Appellant, v. United States et al.	}	On Appeal from the United States District Court for the Eastern District of Michigan.
---	---	---

[December —, 1971]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This is a direct appeal, 32 Stat. 823, 15 U. S. C. § 29, from a judgment of the District Court (286 F. Supp. 407, 315 F. Supp. 372), holding that Ford Motor Company (Ford) violated § 7 of the Celler-Kefauver Anti-merger Act¹ by acquiring certain assets from Electric Autolite Company (Autolite). The assets included the Autolite trade name, Autolite's only spark plug plant in this country (located at New Fostoria, Ohio), a battery plant, and extensive rights to its nationwide distribution organization for spark plugs and batteries. The present appeal² is limited to that portion of the judgment relating to spark plugs and ordering Ford to divest the Autolite

¹ Section 7 provides in part:

"No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly." 38 Stat. 731, as amended, 64 Stat. 1125, 15 U. S. C. § 18.

² We noted jurisdiction June 7, 1971. 403 U. S. 903.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U. S. SUPREME COURT

B

8, 12, 13, 14

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

7th DRAFT

From: Douglas, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

No. 70-113

Recirculated: 3-21

Ford Motor Company,)
Appellant,) On Appeal from the United
v.) States District Court for the
United States et al.) Eastern District of Michigan.

[March 23, 1972]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This is a direct appeal, 32 Stat. 823, 15 U. S. C. § 29, from a judgment of the District Court (286 F. Supp. 407, 315 F. Supp. 372), holding that Ford Motor Company (Ford) violated § 7 of the Celler-Kefauver Anti-merger Act¹ by acquiring certain assets from Electric Autolite Company (Autolite). The assets included the Autolite trade name, Autolite's only spark plug plant in this country (located at New Fostoria, Ohio), a battery plant, and extensive rights to its nationwide distribution organization for spark plugs and batteries. The present appeal² is limited to that portion of the judgment relating to spark plugs and ordering Ford to divest the Autolite

¹ Section 7 provides in part:

"No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly." 38 Stat. 731, as amended, 64 Stat. 1125, 15 U. S. C. § 18.

² We noted jurisdiction June 7, 1971. 403 U. S. 903.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U. S. DEPARTMENT OF JUSTICE

8
/

p. 10

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

8th DRAFT

From: Douglas, J.

SUPREME COURT OF THE UNITED STATES

No. 70-113

Recirculated: 3-28

Ford Motor Company,)
Appellant,)
v.) On Appeal from the United
United States et al.) States District Court for the
Eastern District of Michigan.

[March 29, 1972]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This is a direct appeal, 32 Stat. 823, 15 U. S. C. § 29, from a judgment of the District Court (286 F. Supp. 407, 315 F. Supp. 372), holding that Ford Motor Company (Ford) violated § 7 of the Celler-Kefauver Anti-merger Act¹ by acquiring certain assets from Electric Autolite Company (Autolite). The assets included the Autolite trade name, Autolite's only spark plug plant in this country (located at New Fostoria, Ohio), a battery plant, and extensive rights to its nationwide distribution organization for spark plugs and batteries. The present appeal² is limited to that portion of the judgment relating to spark plugs and ordering Ford to divest the Autolite

¹Section 7 provides in part:

"No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly." 38 Stat. 731, as amended, 64 Stat. 1125, 15 U. S. C. § 18.

² We noted jurisdiction June 7, 1971. 403 U. S. 903.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U. S. DEPARTMENT OF JUSTICE

B M

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 29, 1971

RE: No. 70-113 - Ford Motor Co. v.
United States

Dear Bill:

I agree.

Sincerely,



Mr. Justice Douglas

cc:The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. DEPARTMENT OF JUSTICE

3
1

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall ✓
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Stewart, J.

No. 70-113

Circulated: MAR 23 1972

Recirculated: _____

Ford Motor Company,)
Appellant,) On Appeal from the United
v.) States District Court for the
United States et al.) Eastern District of Michigan.

[March 23, 1972]

MR. JUSTICE STEWART, concurring in the result.

The spark plug industry as it stood prior to Ford's acquisition of Autolite was hardly characterized by vigorous competition. For 25 years, the industry had consisted of AC, owned by and supplying original equipment (OE) plugs to General Motors; Champion, independent and supplying Ford; Autolite, independent and supplying Chrysler; and a number of small producers who had no OE sales and only a miniscule share of the aftermarket.¹ The habit among mechanics of installing replacement plugs carrying the same brand as the automobile's original plugs, reinforced by the unwillingness of service stations to stock more than two or three brands,² made possible the "OE tie," which rendered any large-scale entry into the aftermarket virtually impossible without first obtaining a large OE customer. Moreover, price competition was minimal, both in the OE market (where any reduction in the six-cent price would immediately be matched by rivals), and in the aftermarket

¹ Both Champion and Autolite supplied original equipment plugs to American Motors, which in 1961 had roughly 5% of the domestic automobile market.

² According to a 1966 survey, only 11% of all metropolitan area service stations stocked any brand of spark plug other than Champion, AC, or Autolite, and only 30% stocked all three of the leading brands.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

UNIVERSITY MICROFILMS

3
P. 2

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall ✓
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

2nd DRAFT

SUPREME COURT OF THE UNITED STATES By: Stewart, J.

No. 70-113

Circulated: _____

Recirculated: MAR 22 1972

Ford Motor Company, }
Appellant, } On Appeal from the United
v. } States District Court for the
United States et al. } Eastern District of Michigan.

[March 23, 1972]

MR. JUSTICE STEWART, concurring in the result.

The spark plug industry as it stood prior to Ford's acquisition of Autolite was hardly characterized by vigorous competition. For 25 years, the industry had consisted of AC, owned by and supplying original equipment (OE) plugs to General Motors; Champion, independent and supplying Ford; Autolite, independent and supplying Chrysler; and a number of small producers who had no OE sales and only a miniscule share of the aftermarket.¹ The habit among mechanics of installing replacement plugs carrying the same brand as the automobile's original plugs, reinforced by the unwillingness of service stations to stock more than two or three brands,² made possible the "OE tie," which rendered any large-scale entry into the aftermarket virtually impossible without first obtaining a large OE customer. Moreover, price competition was minimal, both in the OE market (where any reduction in the six-cent price would immediately be matched by rivals), and in the aftermarket (where spark plugs accounted for such a small percentage

¹ Both Champion and Autolite supplied original equipment plugs to American Motors, which in 1961 had roughly 5% of the domestic automobile market.

² According to a 1966 survey, only 11% of all metropolitan area service stations stocked any brand of spark plug other than Champion, AC, or Autolite, and only 30% stocked all three of the leading brands.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

LIBRARY OF CONGRESS

12
P. 3

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall ✓
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Stewart, J.

No. 70-113

Circulated: _____

Recirculated: MAR 28 1972

Ford Motor Company,)
Appellant,) On Appeal from the United
v.) States District Court for the
United States et al.) Eastern District of Michigan.

[March 29, 1972]

MR. JUSTICE STEWART, concurring in the result.

The spark plug industry as it stood prior to Ford's acquisition of Autolite was hardly characterized by vigorous competition. For 25 years, the industry had consisted of AC, owned by and supplying original equipment (OE) plugs to General Motors; Champion, independent and supplying Ford; Autolite, independent and supplying Chrysler; and a number of small producers who had no OE sales and only a miniscule share of the aftermarket.¹ The habit among mechanics of installing replacement plugs carrying the same brand as the automobile's original plugs, reinforced by the unwillingness of service stations to stock more than two or three brands,² made possible the "OE tie," which rendered any large-scale entry into the aftermarket virtually impossible without first obtaining a large OE customer. Moreover, price competition was minimal, both in the OE market (where any reduction in the six-cent price would immediately be matched by rivals), and in the aftermarket (where spark plugs accounted for such a small percentage

¹ Both Champion and Autolite supplied original equipment plugs to American Motors, which in 1961 had roughly 5% of the domestic automobile market.

² According to a 1966 survey, only 11% of all metropolitan area service stations stocked any brand of spark plug other than Champion, AC, or Autolite, and only 30% stocked all three of the leading brands.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

LIBRARY OF CONGRESS

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 30, 1971

Re: No. 70-113 - Ford Motor Co. v.
United States

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Douglas

Copies to Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. SUPREME COURT LIBRARY

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 29, 1971

Re: No. 70-113 - Ford Motor Co. v. U. S.

Dear Bill:

Please join me.

Sincerely,



T.M.

Mr. Justice Douglas

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. SENATE LIBRARY OF CONGRESS

B
M

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Blackmun, J.

Circulated: 3/23/72

No. 70-113

Recirculated: _____

Ford Motor Company,)
Appellant,) On Appeal from the United
v.) States District Court for the
United States et al.) Eastern District of Michigan.

[March —, 1972]

MR. JUSTICE BLACKMUN, concurring in part and dissenting in part.

I concur in Part I of the Court's opinion and in that portion of Part II which approves divestiture as part of the remedy. I cannot agree, however, that prohibiting Ford from using its own name or its trade name on any spark plugs for five years and enjoining it entirely from manufacturing plugs for 10 years is just, equitable or necessary. Instead, the stringency of those remedial provisions strikes me as confiscatory and punitive. The Court's opinion, *ante*, p. 3, recognizes that Ford could develop its own spark plug division internally and place itself in the same position General Motors has occupied for so long, but that this would take from five to eight years. The restraint on Ford's entering the spark plug area is thus for a period longer than it would take Ford to achieve a position in the market through internal development. And to deny it the use of its own name is to deny it a property right that has little to do with this litigation.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. SUPREME COURT RECORDS

M

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 28, 1972

MEMORANDUM TO THE CONFERENCE

Re: No. 70-113 - Ford Motor Co. v. United States

I have not had time to review the several re-circulations that have come through in this case the last two days. I shall be able to do this by tomorrow or Thursday. Under the circumstances I ask that the decision in the case be withheld until Monday.

H.A.B.
—