

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon accepted the executed Consent Agreement and placed such Agreement on the public record for a period of sixty (60) days, and having duly considered the comment filed thereafter by the Respondent pursuant to § 2.34 of its Rules, and having modified the Decision and Order in certain respects, now in further conformity with the procedure described in § 2.34 of its Rules, the Commission hereby issues its Complaint, makes the following jurisdictional findings and enters the following Order:

1. Respondent The Boeing Company ("Boeing") is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 7755 East Marginal Way South, Seattle, Washington 98108.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this order, the following definitions shall apply:

A. "Respondent" or "Boeing" means The Boeing Company, its directors, officers, employees, agents, representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by The Boeing Company, and the respective directors, officers, employees, agents, representatives, successors and assigns of each. Boeing also includes Rockwell Aerospace and Defense.

B. "Rockwell" means Rockwell International Corporation, a corporation organized, existing and doing business under the laws of the state of Delaware, with its office and principal place of business located at 2201 Seal Beach Boulevard, Seal Beach, California 90740, its directors, officers, employees, agents, representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by Rockwell International Corporation, and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

C. "Rockwell Aerospace and Defense" means Rockwell's Aerospace and Defense businesses, including the Autonetics and Missiles Systems Division, North American Aircraft Division, North American Aircraft Modification Division, Rocketdyne Division, Space Systems Division and Rockwell's interest in United Space Alliance, its directors, officers, employees, agents, representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by Rockwell Aerospace and Defense, and the respective directors, officers, employees, agents, representatives, successors and assigns of each. Rockwell Aerospace and Defense does not include any of the assets that are not included in the Acquisition and that will remain part of Rockwell after the Acquisition.

D. "Acquisition" means the acquisition of Rockwell Aerospace and Defense by Boeing.

E. "Commission" means the Federal Trade Commission.

F. "Allegheny Teledyne" means Allegheny Teledyne Incorporated, a corporation organized, existing and doing business under and by virtue of the laws of the state of Massachusetts, with its office and principal place of business located at 1000 Six PPG Place, Pittsburgh, Pennsylvania 15222, its directors, officers, employees, agents, representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by Allegheny Teledyne Incorporated, and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

G. "Teledyne Ryan" means Teledyne Ryan Aeronautical, a division of Allegheny Teledyne, with its office and principal place of business located at 2701 Harbor Drive, San Diego, California 92101-1085, its directors, officers, employees, agents, representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by Teledyne Ryan Aeronautical, and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

H. "Person" means any natural person, corporate entity, partnership, association, joint venture, government entity, trust or other business or legal entity.

I. "Tier II Plus" or "Global Hawk" means the Tier II Plus high altitude endurance unmanned air vehicle currently being

developed for the United States Advanced Research Projects Agency.

J. "Tier II Plus Wings" means the completed and integrated wing assemblies used for Tier II Plus.

K. "Tier II Plus Wings Special Tooling and Special Test Equipment" means all of the special tooling and special test equipment, as the terms special tooling and special test equipment are defined in Federal Acquisition Regulations, 48 C.F.R. ("FAR") § 45.101, used in the design, development and manufacture of Tier II Plus Wings.

L. "Tier II Plus Wings Engineering and Design Data" means all of the engineering and design data, in both electronic and hard copy, used in the design, development and manufacture of Tier II Plus Wings.

M. "Tier II Plus Prime Agreement" means Agreement No. MDA972-95-3-0013 between Teledyne Ryan and the Defense Advanced Research Projects Agency and any amendments to such agreement.

N. "Phase II Flight & System Performance Test" means all of the flights and tests of Tier II Plus associated with Phase II of the United States Advanced Research Projects Agency's Tier II Plus program.

O. "Tier III Minus" or "DarkStar" means the Tier III Minus high altitude endurance unmanned air vehicle currently being developed for the United States Advanced Research Projects Agency.

P. "Space Launch Vehicle" means any vehicle designed to launch satellites or persons into space.

Q. "Space Launch Vehicle Propulsion System" means any device designed, developed, manufactured or sold by Rocketdyne that is used to provide propulsion to a Space Launch Vehicle.

R. "Rockwell NAAD" means Rockwell International Corporation's North American Aircraft Division, an entity included within Rockwell Aerospace and Defense and as part of the Acquisition, with its principal place of business at 2201 Seal Beach Boulevard, Seal Beach, California 90740, or any other entity within or controlled by Boeing engaged in, among other things, the research, development, manufacture or sale of Tier II Plus Wings, and its directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and

joint ventures controlled by Rockwell NAAD, and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

S. "Rockwell NAAD Tulsa" means Rockwell North American Aircraft Division, Tulsa, a Rockwell NAAD facility located at 2000 North Memorial Drive, P.O. Box 582808, Tulsa, Oklahoma 74158, or any other facility within or controlled by Boeing engaged in, among other things, the research, development, manufacture or sale of Tier II Plus Wings, and its directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by Rockwell NAAD Tulsa, and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

T. "Rocketdyne" means Rockwell International Corporation's Rocketdyne Division, an entity included within Rockwell Aerospace and Defense and as part of the Acquisition, with its principal place of business at 6633 Canoga Avenue, Canoga Park, California 91304, or any other entity within or controlled by Boeing engaged in, among other things, the research, development, manufacture or sale of Space Launch Vehicle Propulsion Systems, and its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by Rocketdyne, and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

U. "Boeing Tier III Minus Business" means any entity within or controlled by Boeing that is engaged in, among other things, the research, development, manufacture or sale of Tier III Minus, and its directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by Boeing Tier III Minus Business, and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

V. "Boeing Space Launch Vehicle Business" means any entity within or controlled by Boeing that is engaged in, among other things, the research, development, manufacture or sale of Space Launch Vehicles, and its directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by Boeing Space Launch Vehicle

Business, and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

W. "Non-Public Tier II Plus Information" means any information not in the public domain received or developed by Rockwell in its capacity as a provider of Tier II Plus Wings. Non-Public Tier II Plus Information shall not include: (1) information known or disclosed to Respondent, excluding Rockwell Aerospace and Defense

the time Respondent signs the Agreement Containing Consent Order in this matter, falls within the public domain through no violation of this order by Respondent, (3) information that, subsequent to the time Respondent signs the Agreement Containing Consent Order in this matter, becomes known to Rockwell NAAD Tulsa from a third party not in breach of a confidential disclosure agreement, or (4) information after six (6) years from the date of development of such Boeing Non-Public Tier III Minus Information by Respondent.

Z. "Non-Public Space Launch Vehicle Information" means (1) any information not in the public domain disclosed by any Space Launch Vehicle manufacturer, other than Boeing, to Rocketdyne in its capacity as a provider of Space Launch Vehicle Propulsion Systems and (a) if written information, designated in writing by the Space Launch Vehicle manufacturer as proprietary information by an appropriate legend, marking, stamp or positive written identification on the face thereof, or (b) if oral, visual or other information, identified as proprietary information in writing by the Space Launch Vehicle manufacturer prior to the disclosure or within thirty (30) days after such disclosure; or (2) any information not in the public domain disclosed by any Space Launch Vehicle manufacturer to Rocketdyne in its capacity as a provider of Space Launch Vehicle Propulsion Systems prior to

II.

IT IS FURTHER ORDERED that Respondent shall not hold Teledyne Ryan liable for any damages or costs resulting from the replacement of Respondent as the supplier of Tier II Plus Wings.

III.

IT IS FURTHER ORDERED that:

A. At any time prior to six (6) months of the date this order becomes final, and if Respondent and Teledyne Ryan have not reached an agreement on a new contract for Respondent to provide Tier II Plus Wings to Teledyne Ryan, Respondent shall, upon request from Teledyne Ryan, deliver to business locations in the United States designated by Teledyne Ryan, and assemble, the Tier II Plus Wings Special Tooling and Special Test Equipment. Respondent shall perform its obligations under this Paragraph III.A. as soon as practicable after receiving such request from Teledyne Ryan, but in a timeframe not to exceed ninety (90) days from the receipt of such request, or such other time period as agreed to in writing by Teledyne Ryan. Respondent shall not charge Teledyne Ryan for any costs associated with carrying out Respondent's obligations under this Paragraph III.A. that would not be considered allowable, as the term allowable is defined in FAR § 52.216-7, under the Tier II Plus Prime Agreement. Nothing in this Paragraph shall alter Respondent's or Teledyne Ryan's rights and obligations pursuant to FAR § 52.249-6, as incorporated in any current or future Tier II Plus Wings contract between Respondent and Teledyne Ryan.

B. At any time prior to six (6) months of the date this order becomes final, and if Respondent and Teledyne Ryan have not reached an agreement on a new contract for Respondent to provide Tier II Plus Wings to Teledyne Ryan, Respondent shall, upon request from Teledyne Ryan, deliver to business locations in the United States designated by Teledyne Ryan the Tier II Plus Wings Engineering and Design Data. Respondent shall perform its obligations under this Paragraph III.B. as soon as practicable after receiving such request from Teledyne Ryan, but in a timeframe not to exceed fifteen (15) days from the receipt of such request, or such other time period as agreed to in writing by Teledyne Ryan. Respondent shall not charge Teledyne Ryan for any costs associated with carrying out Respondent's obligations under this Paragraph III.B. that would not be considered allowable, as the term allowable is defined in FAR § 52.216-7, under the Tier II Plus Prime Agreement.

IV.

IT IS FURTHER ORDERED that Respondent shall not assert or enforce any proprietary rights in any Tier II Plus Wings Special Tooling and Special Test Equipment or Tier II Plus Wings Engineering and Design Data delivered pursuant to Paragraph III. of this order.

V.

IT IS FURTHER ORDERED that:

A. At any time prior to six (6) months of the date this order becomes final, and if Respondent and Teledyne Ryan have not reached an agreement on a new contract for Respondent to provide Tier II Plus Wings to Teledyne Ryan, Respondent shall provide, upon request from Teledyne Ryan, such assistance to personnel designated by Teledyne Ryan as is reasonably necessary to such personnel to design and manufacture Tier II Plus Wings. Such assistance shall include, but not be limited to, consultation with employees of Respondent knowledgeable in the design and manufacture of Tier II Plus Wings, and training at facilities designated by Teledyne Ryan for a period of time and in a manner sufficient to satisfy Teledyne Ryan's management that the designated personnel are appropriately trained in the design and manufacture of Tier II Plus Wings. Respondent shall convey to personnel designated by Teledyne Ryan all know-how necessary to design and manufacture Tier II Plus Wings. However, Respondent shall not be required to continue providing such assistance for more than one (1) year from the date Respondent begins providing such assistance, and shall not be required to provide personnel for more than the equivalent of four (4) man-years during this one (1) year period. Respondent shall not charge Teledyne Ryan for any costs associated with carrying out Respondent's obligations under this Paragraph V.A. that would not be considered allowable, as the term allowable is defined in FAR § 52.216-7, under the Tier II Plus Prime Agreement.

B. Upon reasonable request from Teledyne Ryan, Respondent shall provide such additional technical assistance relating to the Tier II Plus Wings to personnel designated by Teledyne Ryan as is reasonably necessary to enable personnel designated by Teledyne Ryan to complete the Phase II Flight & System Performance Test. Such assistance shall include, but not be limited to, consultation with employees of Respondent knowledgeable in the design and manufacture of Tier II Plus

Wings, and training at facilities designated by Teledyne Ryan for a period of time and in a manner sufficient to satisfy Teledyne Ryan's management that the designated personnel have sufficient knowledge relating to Tier II Plus Wings to be able to support fully Teledyne Ryan's efforts to complete the Phase II Flight & System Performance Test requirements. However, Respondent shall not be required to continue providing such assistance after the completion of the Phase II Flight & System Performance Test. Respondent shall charge Teledyne Ryan at a rate of no more than \$90 per hour for providing such technical assistance.

VI.

IT IS FURTHER ORDERED that:

A. Respondent shall not provide, disclose or otherwise make available to the Boeing Tier III Minus Business any Non-Public Tier II Plus Information.

B. Respondent shall use any Non-Public Tier II Plus Information only in Respondent's capacity as a provider of Tier II Plus Wings or technical assistance, pursuant to Paragraph V. of this order.

VII.

IT IS FURTHER ORDERED that:

A. Respondent shall not provide, disclose or otherwise make available to Rockwell NAAD any Non-Public Tier III Minus Information.

B. Respondent shall use any Non-Public Tier III Minus Information only in its capacity as a designer, developer or manufacturer of Tier III Minus.

VIII.

IT IS FURTHER ORDERED that Respondent shall not provide, disclose or otherwise make available to Rockwell NAAD Tulsa any Boeing Non-Public Tier III Minus Information.

IX.

IT IS FURTHER ORDERED that:

A. Rocketdyne shall not, absent the prior written consent of the proprietor of Non-Public Space Launch Vehicle Information, provide, disclose or otherwise make available to Boeing Space Launch Vehicle Business any Non-Public Space Launch Vehicle Information.

B. Rocketdyne shall use any Non-Public Space Launch Vehicle Information only in its capacity as a provider of Space Launch Vehicle Propulsion Systems, absent the prior written consent of the proprietor of the Non-Public Space Launch Vehicle Information.

X.

IT IS FURTHER ORDERED that Respondent shall deliver a copy of this order to any Space Launch Vehicle manufacturer prior to obtaining, either from the Space Launch Vehicle manufacturer or through the Acquisition, any information outside the public domain relating to that manufacturer's Space Launch Vehicle.

XI.

IT IS FURTHER ORDERED that Respondent shall comply with all terms of the Interim Agreement, attached to this order and made a part hereof as Appendix I.

XII.

IT IS FURTHER ORDERED that within sixty (60) days of the date this order becomes final and annually for the next ten (10) years on the anniversary of the date this order becomes final, and at such other times as the Commission may require, Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with Paragraphs II. through X. of this order. Respondent shall include in its reports information sufficient to identify all Space Launch Vehicle Manufacturers with whom Respondent has entered into an agreement for the research, development, manufacture or sale of Space Launch Vehicle Propulsion Systems.

XIII.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in Respondent, such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or sale of any division or any other change in Respondent that may affect compliance obligations arising out of the order.

XIV.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this order, subject to any legally recognized privilege and applicable United States Government national security requirements, upon written request, and on reasonable notice, Respondent shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondent relating to any matters contained in this order; and

B. Upon five (5) days' notice to Respondent and without restraint or interference from it, to interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

XV.

IT IS FURTHER ORDERED that this order shall terminate on March 5, 2017, except as otherwise provided in this order.

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED: March 5, 1997

APPENDIX I

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of)
)
)
THE BOEING COMPANY,) File No. 971-0006
 a corporation.)

)

INTERIM AGREEMENT

This Interim Agreement is by and between The Boeing Company ("Boeing"), a corporation organized and existing under the laws of the State of Delaware, and the Federal Trade Commission ("Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. § 41, *et seq.*

PREMISES

WHEREAS, Boeing has proposed to acquire Rockwell International Corporation's Aerospace and Defense business; and

WHEREAS, the Commission is now investigating the proposed Acquisition to determine if it would violate any of the statutes the Commission enforces; and

WHEREAS, if the Commission accepts the Agreement Containing Consent Order ("Consent Agreement"), the Commission will place it on the public record for a period of at least sixty (60) days and subsequently may either withdraw such acceptance or issue and serve its Complaint and decision in disposition of the proceeding pursuant to the provisions of Section 2.34 of the Commission's Rules; and

WHEREAS, the Commission is concerned that if an understanding is not reached preserving competition during the period prior to the final issuance of the Consent Agreement by the Commission (after the 60-day public notice period), there may be interim competitive harm and divestiture or other relief resulting from a proceeding challenging the legality of the proposed Acquisition might not be possible, or might be less than an effective remedy; and

WHEREAS, Boeing entering into this Interim Agreement shall in no way be construed as an admission by Boeing that the proposed Acquisition constitutes a violation of any statute; and

WHEREAS, Boeing understands that no act or transaction contemplated by this Interim Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Interim Agreement,

NOW, THEREFORE, Boeing agrees, upon the understanding that the Commission has not yet determined whether the proposed Acquisition will be challenged, and in consideration of the Commission's agreement that, at the time it accepts the Consent Agreement for public comment, it will grant early termination of the Hart-Scott-Rodino waiting period, as follows:

1. Boeing agrees to execute and be bound by the terms of the Order contained in the Consent Agreement, as if it were final, from the date Boeing signs the Consent Agreement.

2. Boeing agrees to deliver, within three (3) days of the date the Consent Agreement is accepted for public comment by the Commission, a copy of the Consent Agreement and a copy of this Interim Agreement to the United States Department of Defense, Teledyne Ryan Aeronautical, McDonnell Douglas Corporation and Lockheed Martin Corporation.

3. Boeing agrees to submit, within thirty (30) days of the date the Consent Agreement is signed by Boeing, an initial report, pursuant to Section 2.33 of the Commission's Rules, signed by Boeing setting forth in detail the manner in which Boeing will comply with Paragraphs II. through X. of the Consent Agreement. Boeing agrees to include in such report a detailed description and explanation of the procedures it has implemented or will implement to comply with Paragraphs II. through X. of the Order.

4. Boeing agrees that, from the date Boeing signs the Consent Agreement until the first of the dates listed in subparagraphs 4.a. and 4.b., it will comply with the provisions of this Interim Agreement:

a. ten (10) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Section 2.34 of the Commission's Rules; or

b. the date the Commission finally issues its Complaint and its Decision and Order.

5. Boeing waives all rights to contest the validity of this Interim Agreement.

6. For the purpose of determining or securing compliance with this Interim Agreement, subject to any legally recognized privilege and applicable United States Government national security requirements, upon written request, and on reasonable notice, to Boeing made to its principal office, Boeing shall permit any duly authorized representative or representatives of the Commission:

a. access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Boeing relating to compliance with this Interim Agreement; and

b. upon five (5) days' notice to Boeing and without restraint or interference from it, to interview officers, directors, or employees of Boeing, who may have counsel present, regarding such matters.

7. This Interim Agreement shall not be binding until accepted by the Commission.

Dated: Accepted for public comment by the Commission on
December 5, 1996. Donald S. Clark
Secretary of the Commission

FEDERAL TRADE COMMISSION

THE BOEING COMPANY

By: _____
Stephen Calkins
General Counsel

By: _____
Theodore J. Collins
Vice President and
General Counsel