

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of)
)
)
) Docket No. C-3723
THE BOEING COMPANY,)
 a corporation.)
)
_____)

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that Respondent, The Boeing Company ("Boeing"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire the Aerospace and Defense Business of Rockwell International Corporation ("Rockwell"), a corporation subject to the jurisdiction of the Commission, in violation of Section 5 of the Federal Trade Commission Act ("FTC Act"), as amended, 15 U.S.C. § 45, and that such an acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18 and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45; and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. DEFINITIONS

1. "High Altitude Endurance Unmanned Air Vehicle" means any unmanned aircraft designed to perform high-altitude, broad-area reconnaissance missions and manufactured for sale to the United States Department of Defense.

2. "Tier II Plus" or "Global Hawk" means the Tier II Plus High Altitude Endurance Unmanned Air Vehicle currently being developed for the Department of Defense's Advanced Research Projects Agency.

3. "Tier III Minus" or "DarkStar" means the Tier III Minus High Altitude Endurance Unmanned Air Vehicle currently being developed for the Department of Defense's Advanced Research Projects Agency.

4. "Tier II Plus Team" means Teledyne Ryan Aeronautical and the group of subcontractors, including Rockwell Aerospace and Defense, which are currently developing Tier II Plus.

5. "Tier III Minus Team" means the team comprised of Boeing and Lockheed Martin Corporation which is currently developing Tier III Minus.

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

7. "Space Launch Vehicle Propulsion System" means any device that is used to provide propulsion to a Space Launch Vehicle.

8. "Respondent" means Boeing.

II. RESPONDENT

9. Respondent is a corporation organized and existing 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.

10. Respondent is engaged in, among other things, the research, development, manufacture and sale of High Altitude Endurance Unmanned Air Vehicles and Space Launch Vehicles.

11. For purposes of this proceeding, Respondent is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

III. ACQUIRED COMPANY

12. Rockwell Aerospace and Defense Business ("Rockwell Aerospace and Defense") is a division of Rockwell, a corporation organized and existing under and by virtue of the laws of the state of Delaware, with its principal office and place of

business located at 2201 Seal Beach Boulevard, Seal Beach, California 90740.

13. Rockwell Aerospace and Defense is engaged in, among other things, the research, development, manufacture and sale of wings for High Altitude Endurance Unmanned Air Vehicles, and Space Launch Vehicle Propulsion Systems.

14. Rockwell Aerospace and Defense is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

IV. THE ACQUISITION

15. On or about July 31, 1996, Boeing entered into an Agreement and Plan of Merger, whereby Boeing would acquire Rockwell Aerospace and Defense for approximately \$3.025 billion ("Acquisition").

V. THE RELEVANT MARKETS

16. For purposes of this Complaint, the relevant lines of commerce in which to analyze the effects of the Acquisition are:

- a. the research, development, manufacture and sale of High Altitude Endurance Unmanned Air Vehicles;
- b. the research, development, manufacture and sale of Space Launch Vehicles; and
- c. the research, development, manufacture and sale of Space Launch Vehicle Propulsion Systems.

17. For purposes of this Complaint, the United States is the relevant geographic area in which to analyze the effects of the Acquisition in all relevant lines of commerce.

VI. STRUCTURE OF THE MARKETS

18. The market for the research, development, manufacture and sale of High Altitude Endurance Unmanned Air Vehicles is highly concentrated as measured by the Herfindahl-Hirschman Index

("HHI") or the two-firm and four-firm concentration ratios ("concentration ratios"). Respondent and Rockwell are members of the only two teams which produce High Altitude Endurance Unmanned Air Vehicles.

19. Respondent, through the Acquisition, would be a member of both the Tier II Plus Team and the Tier III Minus Team.

20. The market for Space Launch Vehicle Propulsion Systems is highly concentrated as measured by the HHI or concentration ratios.

21. Respondent, through the proposed Acquisition, would be engaged in the research, development, manufacture and sale of a wide range of Space Launch Vehicles and Space Launch Vehicle Propulsion Systems.

VII. BARRIERS TO ENTRY

22. Entry into the market for the research, development, manufacture and sale of High Altitude Endurance Unmanned Air Vehicles would not occur in a timely manner to deter or counteract the adverse competitive effects described in Paragraph 26 because of, among other things, the difficulty involved in developing the technology and expertise necessary to produce High Altitude Endurance Unmanned Air Vehicles.

23. Entry into the market for the research, development, manufacture and sale of High Altitude Endurance Unmanned Air Vehicles is not likely to occur to deter or counteract the adverse competitive effects described in Paragraph 26 because of, among other things, the expense required to develop the technology and expertise necessary to produce High Altitude Endurance Unmanned Air Vehicles.

24. Entry into the market for the research, development, manufacture and sale of Space Launch Vehicle Propulsion Systems would not occur in a timely manner to deter or counteract the adverse competitive effects described in Paragraph 26 because of, among other things, the difficulty involved in developing the technology and expertise necessary to produce Space Launch Vehicle Propulsion Systems.

25. Entry into the market for the research, development, manufacture and sale of Space Launch Vehicle Propulsion Systems is not likely to occur to deter or counteract the adverse competitive effects described in Paragraph 26 because of, among

other things, the expense required to develop the technology and expertise necessary to produce Space Launch Vehicle Propulsion Systems.

VIII. EFFECTS OF THE ACQUISITION

26. The effects of the Acquisition may be substantially to lessen competition and to tend to create a monopoly in the United States markets for High Altitude Endurance Unmanned Air Vehicles and Space Launch Vehicles in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, in the following ways, among others:

a. by reducing actual, direct and substantial competition between the Tier II Plus Team and the Tier III Minus Team in the research, development, manufacture and sale of High Altitude Endurance Unmanned Air Vehicles;

b. by increasing the likelihood that the Department of Defense would be forced to pay higher prices for High Altitude Endurance Unmanned Air Vehicles;

c. by increasing the likelihood that quality and technological innovation in the High Altitude Endurance Unmanned Air Vehicle market would be reduced;

d. by allowing Respondent to gain access to competitively sensitive non-public information concerning the Tier II Plus team, whereby:

(1) actual, direct and substantial competition between the Tier II Plus Team and the Tier III Minus Team in the High Altitude Endurance Unmanned Air Vehicle market would be reduced;

(2) the likelihood that the Department of Defense would be forced to pay higher prices for High Altitude Endurance Unmanned Air Vehicles would be increased; and

(3) quality and technical innovation in the High Altitude Endurance Unmanned Air Vehicle market would be reduced; and

e. by allowing Respondent to gain access to competitively sensitive non-public information concerning other Space Launch Vehicle manufacturers, whereby:

(1) actual competition between Respondent and other Space Launch Vehicle manufacturers would be reduced; and

(2) quality and technical innovation in the Space Launch Vehicle market would be reduced.

IX. VIOLATIONS CHARGED

27. The Acquisition described in Paragraph 15 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C.

§ 45.

28. The Acquisition described in Paragraph 15, if