

**CONCURRING STATEMENT OF**

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enforcement policy, the views of DoD as a major customer are entitled to no less respect in this case.

From a purely practical perspective, I must consider the potential role of DoD testimony if the Commission were to seek a preliminary injunction over DoD's objections. As a Commissioner, I am responsible for evaluating litigation risk before sending Commission staff into court. Customer testimony, standing alone, certainly would not (and should not) be dispositive, in this or any other merger case. I expect, however, that DoD's conclusions would influence a judge's decision whether to grant a preliminary injunction – especially in light of the national security overlay and DoD's expertise.

The proposed consent order addresses three competitive concerns that, in DoD's view, are not "inextricably linked" to ULA's putative national security advantages. The AAPC acknowledges that the proposed consent agreement "does not attempt to remedy the loss of direct

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Dkt. No. 9316, Statement of the Commission (June 13, 2005), *available at* <http://www.ftc.gov/os/adjpro/d9316/050613commstatement.pdf>; *id.*, Dissenting Statement of Commissioner Pamela Jones Harbour, *available at* <http://www.ftc.gov/os/adjpro/d9316/050613harbourstatement.pdf> ).

light of our agencies' established protocol for concurrent review of defense industry transac