

**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**        **Deborah Platt Majoras, Chairman**  
                                 **Pamela Jones Harbour**  
                                 **Jon Leibowitz**  
                                 **William E. Kovacic**  
                                 **J. Thomas Rosch**

**In the Matter of**

**Lockheed Martin Corporation,  
a corporation;**

**Docket No. C-4188**

**The Boeing Company,  
a corporation;**

**and**

**United Launch Alliance, L.L.C.,  
a limited liability company.**

**DECISION AND ORDER**

The Federal Trade Commission (“Commission”), haw 27 81 127 81 12730jy, “Commf-0.05Fsa s a of

The Commission, having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having considered the comments filed by interested persons, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent 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 100 N. Riverside, Chicago, IL 60606.
2. Respondent LM is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 6801 Rockledge Drive, Bethesda, MD 20817.
3. Respondent ULA is a limited liability company 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 12257 South Wadsworth Boulevard, Mailstop 17.545 0 Tdee 17C BT/TT0 1 Tf12 0 0

employees, agents, representatives, predecessors, successors, and assigns of each. ULA shall not include Boeing or LM.

D. "Collaborative Agreement" means any agreement involving collaboration on a proposal or other competitive efforts.

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Prime Contractor or otherwise supporting the Space Vehicle Prime Contractor's efforts in connection with a Program. Data and information provided include, but are not limited to, the types of data and information provided by a Launch Service Prime Contractor to the Space Vehicle Business in connection with a Program.

- N. "Launch Services Prime Contractor" means an entity performing, proposing to perform, or with responsibility to perform, Launch Services for a Government Customer. ULA is a Launch Services Prime Contractor. For purposes of this Order, Launch Services Prime Contractor does not include a Space Vehicle Prime Contractor performing pursuant to a delivery-in-orbit contract.
- O. "Launch Vehicle" means an expendable launch system or other system to launch a Space Vehicle from the earth's surface to earth orbit or beyond. For purposes of this Order, Launch Vehicle does not include the space shuttle system.
- P. "Master Agreement" means the Joint Venture Master Agreement, dated May 2, 2005, and all exhibits, schedules, attachments, and amendments thereto, pursuant to which Boeing and LM formed ULA.
- Q. "Non-Public Launch Services Information" means any information not in the public domain furnished by any Launch Services Prime Contractor other than ULA to Boeing and LM (including Space Vehicle Business),
1. and, if written information, designated by the supplier of the information as proprietary information on the face thereof, or, if oral, visual, or other information, identified as proprietary information in writing by the supplier of the information at any time up to thirty (30) days after such disclosure.
  2. Non-Public Launch Services Information shall not include information:
    - a. that falls within the public domain through no violation of this Order or any other existing agreement intended to protect confidentiality;
    - b. that becomes known from a third party not in breach of a confidentiality or non-disclosure agreement with respect to such information;
    - c. independently known or developed by the recipient without reference to Non-Public Launch Services Information; or
    - d. after seven (7) years from the date of disclosure to Boeing and LM.
- R. "Non-Public Space Vehicle Information" means any information not in the public domain furnished by a Space Vehicle Prime Contractor to ULA,
1. and, if written information, designated in writing by the Space Vehicle Prime Contractor as proprietary information on the face thereof, or, if oral, visual, or other information, identified as proprietary information in writing by the Space Vehicle Prime Contractor at any time up to thirty (30) days after such disclosure.
  2. Non-Public Space Vehicle Information shall not include information:
    - a. that falls within the public domain through no violation of this Order or any other existing agreement intended to protect confidentiality;
    - b. that becomes known from a third party not in breach of a confidentiality or non-disclosure agreement with respect to such information;



AA. “Space Vehicle Prime Contractor” means an entity proposing to deliver, or with responsibility to deliver, a Space Vehicle to a Government Customer. Boeing and LM are Space Vehicle Prime Contractors.

BB. “Technical Support” means access to the laboratories and engineering staffs of LM and Boeing by ULA if needed to address the ability of ULA to provide Launch Services. Contractors.

2. ULA shall not enter into a Collaborative Agreement with a Space Vehicle Prime Contractor for ULA's supply of Launch Services for a Program until the Compliance Officer has approved a draft of the final Collaborative Agreement.
  - a. ULA shall provide to the Compliance Officer copies of the draft of the final Collaborative Agreement for the approval of the Compliance Officer, prior to execution of the Collaborative Agreement.
  - b. The Compliance Officer shall act within ten (10) business days of receipt of the draft of the final Collaborative Agreement from ULA, and shall not unreasonably withhold approval of such Collaborative Agreement or its terms.
  - c. The Compliance Officer may approve or reject the Collaborative Agreement in its entirety or may reject specific terms of the Collaborative Agreement.
    - (1) If the Compliance Officer approves the Collaborative Agreement in its entirety, then the Compliance Officer shall so notify ULA.
    - (2) If the Compliance Officer disapproves a Collaborative Agreement in its entirety, or rejects specific terms of a Collaborative Agreement:
      - (a) the Compliance Officer shall, no later than ten (10) business days after receipt of the Collaborative Agreement from ULA, refer the matter to the Secretary of the Air Force, including the Compliance Officer's recommendations relating to the Collaborative Agreement;
      - (b) the Secretary of the Air Force, in his or her sole discretion, shall, within ten (10) business days of the referral by the Compliance Officer to the Secretary of the Air Force, make the final determination as to whether to approve the Collaborative Agreement and what terms should be included in such Collaborative Agreement;
      - (c) if a Collaborative Agreement is referred to the Secretary of the Air Force and the Secretary of the Air Force makes his or her final determination, ULA shall enter into such Collaborative Agreement only on the terms determined by the Secretary of the Air Force.
  - d. ULA shall not change, modify, or alter the terms of a Collaborative Agreement that has been entered into pursuant to the procedure described in Paragraph II. of this Order without the prior approval of the Compliance Officer.
    - (1) If the Compliance Officer approves the proposed change, then the Compliance Officer shall so notify ULA.
    - (2) If the Compliance Officer disapproves the change, either in part or in its entirety:
      - (a) the Compliance Officer shall, no later than ten (10) business days after receipt of the proposed change from ULA, refer the matter to the Secretary of the Air Force, including the Compliance Officer's recommendations relating to the proposed change;
      - (b) the Secretary of the Air Force, in his or her sole discretion, shall, within ten (10) business days of the referral by the Compliance Officer to the Secretary of the Air Force, make the final determination as to whether to approve the proposed change;
      - (c) if an agreement or arrangement is referred to the Secretary of the Air Force and the Secretary of the Air Force makes his or her final determination, ULA shall change the agreement or arrangement only as approved by the Secretary of the Air Force.
3. If the Compliance Officer concludes that ULA has Discriminated in violation of this Order, or otherwise failed to comply with the requirements of Paragraph II. of this Order:

- a. The Compliance Officer shall notify ULA immediately, describing the conduct that may violate the Order;
- b. ULA shall commence action to correct the conduct no later than ten (10) business days after such notification and shall, no later than the end of the ten (10) day period:
  - (1) notify the Compliance Officer that it has commenced corrective action; and
  - (2) describe in detail the action it is taking and will take and the amount of time it will take to complete the action to correct the conduct; and
- c. if ULA fails to commence action to correct the conduct within ten (10) business days of such notification, fails to complete the action to correct the conduct





- (b) the Secretary of the Air Force, in his or her sole discretion, shall, within ten (10) business days after the referral by the Compliance Officer to the Secretary of the Air Force, make the final determination as to whether to approve the criteria and what terms should be included; the Secretary of the Air Force shall approve or alter the source selection criteria within five (5) business days of the decision of the Compliance Officer.
  3. LM or Boeing, as appropriate, shall not change, modify, or alter the selection criteria without the prior approval of the Compliance Officer, and the Compliance Officer shall not unreasonably withhold approval of the changes.
    - a. If LM or Boeing, as appropriate, determines to change, modify, or alter the selection criteria, they shall notify the Compliance Officer in writing, including the proposed changes and the reasons for the changes.
    - b. If the Compliance Officer approves the proposed change, then the Compliance Officer shall so notify LM or Boeing, as appropriate, no later than ten (10) business days after receiving the written notification.
    - c. If the Compliance Officer disapproves the change, either in part or in its entirety:
      - (1) the Compliance Officer shall, no later than ten (10) business days after receipt of the proposed change, refer the matter to the Secretary of the Air Force, including the Compliance Officer's recommendations relating to the proposed changes;
      - (2) the Secretary of the Air Force, in his or her sole discretion, shall, within ten (10) business days after the referral by the Compliance Officer to the Secretary of the Air Force, make the final determination as to whether to approve the proposed changes and notify LM or Boeing, as appropriate;
      - (3) if changes are referred to the Secretary of the Air Force, and the Secretary of the Air Force makes his or her final determination, LM or Boeing, as appropriate, shall change the criteria only as approved by the Secretary of the Air Force.
- B. When LM or Boeing, as appropriate, determines to select ULA as the Launch Services provider for a particular Space Vehicle, it shall seek the prior approval of the Compliance Officer.
1. LM or Boeing, as appropriate, shall notify the Compliance Officer of its determination and fully explain the reasons for the proposed selection.
  2. The Compliance Officer shall act within ten (10) business days after receipt of the written notification and shall not unreasonably withhold approval of the selection.
  3. If the Compliance Officer approves the selection, then the Compliance Officer shall so notify LM or Boeing, as appropriate.
  4. If the Compliance Officer disapproves the selection:
    - a. the Compliance Officer shall, no later than ten (10) business days after receipt of the notification, refer the matter to the Secretary of the Air Force, including the Compliance Officer's recommendations relating to the selection;
    - b. the Secretary of the Air Force, in his or her sole discretion, shall, within ten (10) business days after the referral by the Compliance Officer to the Secretary of the Air Force, make the final determination as to whether to approve the selection and notify LM or Boeing, as appropriate;
    - c. if a selection is referred to the Secretary of the Air Force, and the Secretary of the Air Force makes his or her final determination, the selection shall be made only as determined by the Secretary of the Air Force.

- C. If the Compliance Officer concludes that LM or Boeing has Discriminated in violation of this Order, or otherwise failed to comply with the requirements of Paragraph III. of this Order:
1. The Compliance Officer shall notify LM or Boeing, as appropriate, immediately, describing the conduct that may violate the Order;
  2. LM or Boeing, as appropriate, shall commence action to correct the conduct no later than ten (10) business days after such notification and shall, no later than the end of the ten (10) day period:
    - a. notify the Compliance Officer that it has commenced corrective action, and
    - b. describe in detail the action it is taking and will take and the amount of time it will take to complete the action to correct the conduct; and
  3. If LM or Boeing, as appropriate, fails to commence action to correct the conduct within ten (10) business days of such notification, fails to complete the action to correct the conduct within the amount of time described in its notification to the Compliance Officer, or if the Compliance Officer determines that the corrective action that LM or Boeing, as appropriate, proposes to take will not adequately remedy the violation or will take too long to correct the conduct,
    - a. the Compliance Officer shall refer the matter to the Secretary of the Air Force who shall, in

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B. Boeing and LM, including Space Vehicle Business,

- a. the information is necessary for the provision of Technical Support;
- b. the information is provided only during such time as the Personnel are providing Technical Support to ULA;
- c. the information is provided for the sole purpose of providing Technical Support to ULA;
- d. the information shall be used solely for the purpose of providing Technical Support to ULA; and
- e. ULA and such Personnel comply with the procedures described in Paragraphs V.E.4. and V.F. of this Order.

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- d. any failure by ULA, LM , or Boeing to comply with those provisions shall constitute a failure to comply with this Order; and
  - e. the Compliance Officer shall have the authority to monitor ULA's, LM's, and Boeing's compliance with these provisions.
- F. Respondents shall:
- 1. develop and implement procedures to ensure that their Personnel comply with the obligations contained in Paragraph V. of this Order, including, but not limited to, procedures for monitoring and enforcing these obligations;
  - 2. convey these procedures to their Personnel;
  - 3. require LM Personnel and Boeing Personnel who receive Non-Public Space Vehicle Information to comply with the requirements of Paragraph V. of this Order; and
  - 4. conduct annual training sessions with their Personnel who have or may expect to have duties in connection with these obligations.
- G. LM or Boeing, as applicable, shall ensure that its Personnel receiving Non-Public Space Vehicle Information from ULA are not involved in any LM or Boeing proposal team pursuing those Program(s) and will not assist any such LM or Boeing proposal team during the Program and for a period to continue at least one year following the date of his or her last access to or use of the Non-Public Space Vehicle Information.
- H. If any Non-Public Space Vehicle Information or Non-Public Launch Services Information is transferred, obtained, or used in violation of Paragraph V. of this Order, the Compliance Officer shall have the authority to implement procedures in his or her sole discretion to remedy the violation immediately and shall notify the General Counsel of the DoD and the Federal Trade Commission.
- I. Respondents shall deliver a copy of this Order to any Space Vehicle Prime Contractor prior to obtaining from the Space Vehicle Prime Contractor any Non-Public Space Vehicle Information and to any Launch Services Prime Contractor prior to obtaining from the Launch Services Prime Contractor any Non-Public Launch Services Information.

## **VI.**

### **IT IS FURTHER ORDERED** that:

- A. By no later than twenty-four (24) months after the closing of the Transaction, ULA shall have separate communication networks and management information systems from the networks and systems of Boeing and LM (including Space Vehicle Business), with appropriate firewalls and confidentiality protections in place.
- B. By no later than three (3) months after the closing of the Transaction:
  - 1. ULA shall have separate physical locations segregated from Boeing and LM (including Space Vehicle Business), although the respective businesses may be located on the same campus with clearly demarcated separate facilities; ULA's physical locations, facilities, and business shall be secured separately from LM and Boeing (including Space Vehicle Business) so that ULA's physical locations and facilities cannot be accessed by LM or Boeing (including Space Vehicle





## VIII.

**IT IS FURTHER ORDERED** that:

- A. No later than thirty (30) days after the closing of the Transaction:
  - 1. Respondents shall distribute this Order to the Personnel of ULA and Space Vehicle Business.
  - 2. In a separate communication:
    - a. ULA shall inform all of its Personnel of the terms and requirements of this Order and require all ULA Personnel to adhere to such provisions.
    - b. Boeing and LM shall inform all of its Space Vehicle Business Personnel of the terms and requirements of this Order and require all Space Vehicle Business Personnel to adhere to such provisions.
  
- B. No later than three (3) months after the closing of the Transaction, Respondents shall:
  - 1. develop procedures, policies, and practices relating to the receipt, identification, custody, use, and disposal of any Non-Public Space Vehicle Information or Non-Public Launch Services Information and incorporate such procedures, policies, and practices into Respondents' operations manuals or other systems used for disseminating such procedures, policies, and practices;
  - 2. complete the development of new procedures or the incorporation into existing procedures measures to be used in the event any Personnel of Respondents fails to comply with such procedures, policies, and practices; and
  - 3. complete the provision of in-person or computer-based training of ULA and Space Vehicle

- B. Respondents shall not object to the Compliance Officer chosen by the Secretary of Defense.
- C. To perform his or her duties and responsibilities pursuant to this Order, and subject to any legally recognized privilege, the Compliance Officer shall be authorized to and may:
1. interview any of Respondents' Personnel, upon three (3) days' notice to that Respondent and without restraint or interference by Respondents, relating to any matters contained in this Order as determined by the Compliance Officer;
  2. during normal business hours, inspect and copy any document in the possession, custody, or control of Respondents relating to any matters contained in this Order as determined by the Compliance Officer;
  3. during normal business hours, obtain access to and inspect any systems or equipment to which Respondents' Personnel have access;
  4. during normal business hours, obtain access to and inspect any physical facility, building, or other premises to which Respondents' Personnel have access; and
  5. require Respondents to provide documents, data, and other information to the Compliance Officer in such form as the Compliance Officer may direct and within such time periods as the Compliance Officer may require.
- D. The Compliance Officer may require Respondents to comply with his or her requests relating to Respondents' compliance with their obligations pursuant to this Order within reasonable time limits established by the Compliance Officer.
1. The Compliance Officer shall convey to Respondents the time limits applicable to the request at the time he or she makes the request.
  2. Failure to comply with the Compliance Officer's requests within the time limits established by the Compliance Officer shall be a violation of this Order; provided, however, that the Compliance Officer shall, within the initial time limits established, afford Respondents the opportunity to request additional time if needed and the Compliance Officer shall not unreasonably withhold approval of such a request for an extension.
- E. The Compliance Officer shall:
1. investigate any complaint or representation made to him or her, or made available to him or her with respect to any matter arising in relation to or connected with compliance by Respondents with this Order;
  2. solicit and accept comments from third parties regarding Respondents' compliance with this Order as the Compliance Officer deems necessary and appropriate;
  3. use DoD or other United States government staff as appropriate; and
  4. hire, at the cost and expense of Respondents, a third party (or third parties) who shall be solely accountable to the Compliance Officer, shall have such duties and responsibilities as determined by the Compliance Officer and that do not exceed the Compliance Officer's duties and responsibilities as set forth in this Order and shall have the same access as the Compliance Officer pursuant to Paragraph IX.C. of this Order; provided, however, that the professional staff (including third party consultants) reporting to the Compliance Officer shall be no larger than ten (10) persons (measured by full-time equivalents), with such maximum to be expanded solely with the permission of the Secretary of the Air Force as necessary pursuant to this Order; and provided that such professional staff (including third party consultants) shall

maintain the confidentiality of business sensitive or proprietary information and documents of Respondents or any other person.

- F. Respondents shall use their best efforts to assist the Compliance Officer and the Compliance Officer's staff in satisfaction of their responsibilities pursuant to this Order.
- G. Respondents shall cooperate with the Compliance Officer and his or her staff and shall take no action to interfere with or to impede the performance of the Compliance Officer and his or her staff in satisfaction of these responsibilities.
- H. Each of Respondents shall furnish to the Compliance Officer a compliance report, to be submitted as directed by the Compliance Officer, but in any event no less frequently than on an annual basis or more frequently than quarterly.
  - 1. The compliance report of each Respondent shall contain an affidavit that describes the actions that that Respondent has taken and the steps that that Respondent has implemented to comply with the terms of this Order and shall be verified as true and correct by an officer of that Respondent.
  - 2. The Compliance Officer may direct Respondents to include in their reports any other information the Compliance Officer deems useful or necessary.
- I. The Compliance Officer shall report in writing on an annual basis to the Secretary of the Air Force, the General Counsel of the DoD, and the Compliance Division of the Commission, summarizing the actions the Compliance Officer has undertaken in performing his or her duties pursuant to this Order. Such report shall include any compliance reports submitted by Respondents to the Compliance Officer pursuant to Paragraph IX.H. of this Order.
- J. If the Compliance Officer is unable to perform his or her duties for whatever reason, the Compliance Officer shall promptly notify the individuals listed in Paragraph IX.I. of this Order. The Secretary of Defense shall then appoint another Compliance Officer. The Secretary of Defense shall have the sole discretion to replace the Compliance Officer at any time when the Secretary of Defense considers such action appropriate.
- K. If the Compliance Officer determines to investigate any assertions or allegations of noncompliance, the Compliance Officer shall advise Respondents as soon as practical of the assertions or allegations of noncompliance that the Compliance Officer intends to investigate, the Compliance Officer shall afford Respondents reasonable time limits, to be determined by the Compliance Officer in his or her sole discretion, to attempt to

M. Respondents:

1. shall bear all of their costs of monitoring, complying with, or enforcing this Order, and all such reasonable costs of the DoD arising solely from monitoring, complying with, or enforcing this Order, excluding the salaries and benefits of United States government employees, and including, but not limited to, the costs of the Compliance Officer and the costs associated with the retention of third parties to assist the Compliance Officer.
2. shall not charge to the DoD, either directly or indirectly, any costs of DoD referred to in Paragraph IX.M.1. of this Order; Respondents shall not charge to DoD, either directly or indirectly, any of Respondents' costs, referred to in Paragraph IX.M.1. of this Order, including any remedial costs, as defined by Paragraph IX.M.3. of this Order; provided, however, that costs referred to in Paragraph IX.M.1. of this Order, incurred by Respondents, other than remedial costs, associated with normal business activities that could reasonably have been undertaken by Respondents in the absence of this Order are not subject to the charging restrictions of Paragraph IX.M.2. of this Order, whether or not such activities are affected by this Order; and further provided that, in the event that the Commission determines to seek civil penalties based on non-compliance with provisions of this Order, and the conduct at issue is held to be compliant with the Order, the remedial costs disallowed pursuant to Paragraph IX.M. of this Order may be charged to DoD.
3. Remedial costs are those costs, incurred by Respondents, relating directly to the administration of measures to remedy conduct of Respondents in violation of this Order, where the following conditions are met:
  - a. the conduct of Respondents was not undertaken pursuant to prior written direction or

documents in the possession or under the control of that Respondent relating to any matters contained in this Order; and

- B. Upon five (5) days' notice to that Respondent and without restraint or interference from it, to interview officers, directors, employees, independent contractors, or agents of that Respondent, who may have counsel present, relating to