Statement of Commissioner William E. Kovacic, with whom Chairman Deborah Platt Majoras and Commissioner J. Thomas Rosch Join

In the Matter of Lockheed Martin Corporation, The Boeing Company, and United Launch Alliance, L.L.C., FTC File No. 051 0165, Docket No. C-4188

The formation of the United Launch Alliance, L.L.C. (ULA) raised the question of how competition policy should account for "national security." A proper competition policy assessment of the effect of the ULA venture or other defense industry transactions upon the national security of the United States does not implicate factors beyond those routinely considered in antitrust analysis of mergers outside the defense sector – namely, the likely effect of the combination upon price, quality, and innovation. Predicting the likely effect of a defense industry merger can pose significant analytical challenges, yet the performance of such tasks is no more formidable than the evaluation of proposed mergers in other sectors, such as the pharmaceutical industry, marked by high degrees of technological dynamism and regulatory complexity. There is no sound reason to suggest that the Federal Trade Commission (FTC) is unable to use a traditional competitive effects methodology to test assertions that a merger in the defense sector advances national security goals. The way to do so is to press proponents of such views, including the Department of Defense (DOD), to demonstrate how the competitive effects of the transaction in question – with respect to price, quality, or innovation – would be benign or procompetitive. That is what took place in the matter at hand.

In reviewing defense industry mergers, competition authorities and the DOD generally should apply a presumption that favors the maintenance of at least two suppliers for every weapon system or subsystem. *See* William E. Kovacic & Dennis E. Smallwood, *Competition Policy, Rivalries, and Defense Industry Consolidation*, 8 J. Econ. Persp. 91, 101-02 (1994). The decisive factor that overrides this presumption and supports the settlement approved today is the cost of subdividing a small number of launches in the face of a national policy that mandates the maintenance of two families of launch vehicles. The capability of a launch vehicle producer resides chiefly in three places: in teams of engineers who develop designs, in teams of production workers who translate the designs into working hardware, and in teams of launch site personnel who prepare vehicles for launch. Experience increases the ability of these teams to execute their tasks skillfully. There comes a point at which subdividing a relatively small number of design, production, or launch events between two firms denies each firm the experience it needs to remain proficient. The compelling justification for permitting the ULA transaction to proceed, subject to conditions, is its capacity to improve quality in the performance of design, production, and launch preparation tasks in a discipline in which operational reliability is a paramount objective.

In a number of past instances, the federal antitrust agencies have relied upon these or related scale economy or quality rationales as the bases for permitting the only two remaining suppliers of a defense-related product or service to combine their operations. The Department of

Justice (DOJ) and the FTC ordinarily might insist that the means for determining the identity of the industry survivor is to hold a last round of competitive bidding