UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
U.S. Department of Justice
Antitrust Division
1401 H Street, NW
Suite 3000
Washington, DC 20530-2199

Plaintiff,

v.

NORTHROP GRUMMAN CORPORATION,
1840 Century Park East
Los Angeles, CA 90067,

and

TRW INC.,
1900 Richmond Rd.
Cleveland, OH 44124-2760,

Defendants.

Case No. 1:02CV02432

JUDGE: Gladys Kessler

DECK TYPE: ANTITRUST

DATE: May 27, 2003

UNITED STATES' CERTIFICATE OF COMPLIANCE WITH
THE ANTITRUST PROCEDURES AND PENALTIES ACT

The United States of America hereby certifies that it has complied with the provisions of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) ("APPA"), and states:

1. The Complaint, proposed Final Judgment, and Stipulation and Order, by which the parties have agreed to the Court's entry of the Final Judgment following compliance with the APPA, were filed on December 11, 2002. The United States filed its Competitive Impact Statement on December 23, 2002.

2. Pursuant to 15 U.S.C. § 16(b), the proposed Final Judgment, Stipulation and Order, and Competitive Impact Statement were published in the *Federal Register* on January 14, 2003 (68 Fed. Reg. 1861). A copy of the *Federal Register* notice is attached hereto as Exhibit 1.

3. Pursuant to 15 U.S.C. §16(b), the United States furnished copies of the Complaint, Stipulation and Order, proposed Final Judgment, and Competitive Impact Statement to anyone requesting them.

4. Pursuant to 15 U.S.C. § 16(c), a summary of the terms of the proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement was published in *The Washington Post*, a newspaper of general circulation in the District of Columbia, during a seven-day period in January 2003 (January 10 - January 16). A copy of the Proof of Publication from *The Washington Post* is attached hereto as Exhibit 2.

5. On December 23, 2002, defendants filed with this Court declarations that describe their communications with employees of the United States concerning the proposed Final Judgment, as required by 15 U.S.C. § 16(g).

6. The sixty-day public comment period specified in 15 U.S.C. § 16(b) began on January 14, 2003 and ended on March 17, 2003. During that period, the United States received four comments on the proposed settlement. The United States evaluated and responded to each comment, and published the comments and its responses in the *Federal Register*, pursuant to 15 U.S.C. §§ 16 (b) and (d). 68 Fed. Reg. 28,264). Copies of the comments and the United States's responses are attached hereto as Exhibits 3 - 6, and they are summarized below.

A. The Complaint and Proposed Final Judgment

The Complaint in this case alleged that the acquisition of TRW, one of the few companies able to act as prime contractor for United States reconnaissance satellite programs that use radar, electro-optical, and infrared payloads, by Northrop, one of the only two suppliers of such payloads for those programs, would lessen competition by giving Northrop the incentive and ability to favor its own payloads and/or prime contractor capabilities to the detriment or foreclosure of competitors. The proposed Final Judgment remedies this impact on competition by requiring that Northrop keep its payload and prime contractor businesses separate, and make its payloads and prime contractor capabilities available to competitors on a non-discriminatory basis. The United States consented to such behavioral remedies, rather than requiring structural relief, in order to permit the United States Government to realize certain benefits from the proposed transaction. To help ensure that Northrop honors its obligations to operate in a non-discriminatory manner, the Final Judgment establishes that Northrop's activities will be monitored by a Compliance Officer, chosen by the Secretary of the Air Force, and in certain circumstances disputes regarding Northrop's actions may be decided by the Compliance Officer or, ultimately, by the Secretary.

B. The Boeing Company Comment

The Boeing Company, a satellite system prime contractor, requested that two modifications be made to the proposed Final Judgment. First, it requested that the definition of "Payload" be expanded to include signals intelligence technology, in addition to the electro-optical, infrared, and radar technology that are specifically included in the definition. The stated concern was that Northrop might not in the future

make signals intelligence payloads available on a non-discriminatory basis to all potential primes, especially on programs that might require both radar and signals intelligence technologies. In its response, the United States noted that the scope of the Final Judgment is limited to remedying the anticompetitive effects that might arise from Northrop's acquisition of TRW, which result from the combination of Northrop's payload capabilities and TRW's satellite prime capabilities. Because, according to the Boeing comment, TRW possessed signals intelligence payload and satellite prime capabilities before its acquisition by Northrop, any competitive harm in this regard would not be the result of the merger, and for that reason was not addressed in the proposed Final Judgment.

Boeing's second request concerned the powers of the Compliance Officer, to whom the Final Judgment grants broad, flexible authority to ensure that the requirements of the Final Judgment are carried out. Boeing requested that the Compliance Officer be given express authority to seek access to classified information for potential competitors on programs that might require such access. The United States responded that the Final Judgment is designed to modify private anticompetitive conduct, not to modify government procedures, especially such sensitive procedures as those governing access to classified information. The United States further noted that agencies are always empowered to modify their own procedures to expand the number of competitors eligible for a project.

C. Lockheed Martin Corporation Comment

The comment submitted by Lockheed Martin Corporation, another satellite system prime contractor, contained essentially four requests for modifications that Lockheed claimed were necessary to make the proposed Final Judgment fully effective. First, Lockheed requested modifications to the requirement that Northrop negotiate in good faith to enter into teaming agreements with prime contractors wishing to use Northrop payloads to compete for satellite programs. Specifically, Lockheed proposed that Northrop be required to negotiate "on a timely basis," which would generally mean within thirty days of a prime contractor's expressing a desire to team. The United States responded that such a provision is unnecessary because "good faith" necessarily includes timeliness, and that the modification proposed by Lockheed in fact would inject more uncertainty, not less, into the execution of the Final Judgment.

Lockheed next requested deletion or modification of the provision limiting Northrop's obligation to provide payloads to all satellite system primes if the number of primes seeking the payload, or the burden of working with each of them, becomes unreasonably large. In its response, the United States noted that this provision recognizes that Northrop's resources are not unlimited, and that forcing Northrop to team with every company that seeks Northrop's services could harm the Department of Defense by resulting in inferior products. The United States also pointed out that the Compliance Officer, not Northrop, will have the authority to determine when the provision may be invoked by Northrop.

Lockheed's third concern was that the definition of "discriminate" prohibits Northrop from taking actions that advantage Northrop or disadvantage its competitors in

the procurement process "for any reason other than the competitive merits," an exception that Lockheed believes may enable Northrop to evade its responsibilities under the Final Judgment. The United States responded that the purpose of the clause is to prevent Northrop from engaging in anticompetitive conduct while permitting Northrop to continue to make teaming decisions in the manner it employed before it acquired TRW. Prior to the acquisition, Northrop and TRW chose teammates based on a number of considerations, including which pairings offered the best chance to win the project; the "competitive merits" clause simply permits this rational process to continue, without requiring Northrop to offer all potential teammates precisely the same terms. The United States also noted that the Compliance Officer has the flexibility to determine whether Northrop has discriminated against any particular potential teammate.

Finally, Lockheed urged that the time periods for certain actions to be taken by the Compliance Officer or the Secretary of the Air Force be increased from five to ten days. The United States responded that the shorter time periods should be maintained, because expanding them would increase uncertainties and would be unnecessary given the Compliance Officer's continuing oversight of Northrop's conduct.

D. Raytheon Company Comment

Raytheon Company, a payload competitor, requested that the Final Judgment be clarified in several ways. First, Raytheon proposed that the definition of "Payload" be modified to make clear that it covers signals intelligence and a number of other technologies and products. In its response, the United States emphasized that the Final Judgment is designed to remedy only those competitive problems made possible by this

particular acquisition, and that those problems are potential foreclosures in radar, electro-optical, and infrared technologies. The United States also noted that, while the Final Judgment requires Northrop to provide complete, functioning payloads, it does not require that Northrop provide components of those payloads as separate products, nor does it change Northrop's pre-existing ability to decide whether a given task will be considered payload work or prime contractor work. Raytheon expressed similar concern that Northrop could refuse to provide satellites as a separate product if Raytheon were trying to compete as a prime contractor. The United States again responded that the Final Judgment is designed to remedy the anticompetitive effects resulting from the combination of Northrop's payload capability and TRW's prime contractor capability, and to require Northrop to make available those capabilities, not satellites as a separate product.

Raytheon's third point was that, when Northrop's payload and prime contractor businesses are teamed with each other, Northrop should be required to make available to competing teams the results of any investments or developments to which both businesses contribute. The United States in its response noted that such a requirement would strip from Northrop basic intellectual property protections, and thus reduce the incentive for Northrop to permit its payload and prime businesses to team, even if formation of such a team would be in the best interests of the Department of Defense. Instead of employing inflexible rules such as the one proposed by Raytheon, the Final Judgment relies on the Compliance Officer to take into account all relevant factors in deciding whether Northrop has engaged in discriminatory conduct that violates the terms of the Final Judgment.

E. Neil F. Keehn Comment

Neil F. Keehn, a former employee of TRW, requested that the proposed Final Judgment be modified to include provisions placing additional limitations on Northrop, and additional duties on the Compliance Officer, that arise from matters unrelated to the acquisition or any potential competitive issues that it may raise. The United States responded that the Final Judgment was designed to address the potential lessening of competition resulting from the acquisition of TRW by Northrop, and could not be used to address the type of concerns raised by Mr. Keehn.

7. The public comments did not persuade the United States to withdraw its consent to entry of the proposed Final Judgment. With the United States having published its proposed settlement and filed and published its responses to public comments, and defendants having certified their pre-settlement contacts with government officials, the parties have fulfilled their obligations under the APPA. Pursuant to the Stipulation and Order the Court entered on December 11, 2002, and 15 U.S.C. §16(e), this Court may now enter the Final Judgment, if the Court determines that the entry of the Final Judgment is in the public interest.

8. For the reasons set forth in the Competitive Impact Statement and the Motion for Entry of Final Judgment, the United States strongly believes that the Final Judgment is in the public interest and urges the Court to enter the Final Judgment without further proceeding.

Dated: May 27, 2003

Respectfully submitted,

/s/

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