

Complaint

119 F.T.C.

IN THE MATTER OF

LOCKHEED CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3576. Complaint, May 9, 1995--Decision, May 9, 1995

This consent order allows, among other things, the completion of the merger between Lockheed Corporation and Martin Marietta Corporation, and requires the merged firm to open up the teaming arrangements that each individual firm has with infrared sensor producers in order to restore competition for certain types of military satellites. The consent order also prohibits certain divisions of the merged firm from gaining access through other divisions to competitively sensitive information about competitors' satellite launch vehicles or military aircraft.

Appearances

For the Commission: *Ann B. Malester* and *Laura A. Wilkinson*.

For the respondents: *Richard Parker* and *David Beddon*,
O'Melveny & Meyers, Washington, D.C. *Raymond Jacobson*,
Howrey & Simon, Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("Commission"), having reason to believe that respondent Lockheed Corporation ("Lockheed"), a corporation subject to the jurisdiction of the Commission, has agreed to merge with respondent Martin Marietta Corporation ("Martin Marietta"), a corporation subject to the jurisdiction of the Commission, forming a newly created entity respondent Lockheed Martin Corporation ("Lockheed Martin"), a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act as amended, ("FTC Act"), 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. "*Space Based Early Warning System*" means any satellite system designed to be used for tactical warning and attack assessment, theater and strategic missile defense, and related military purposes by the United States Department of Defense, including but not limited to the Space Based InfraRed ("SBIR") system and successor systems considered by the United States Department of Defense to follow SBIR programmatically.

2. "*Sensors*" means electro-optical sensors for use in any Space Based Early Warning System.

3. "*Lockheed/Hughes Teaming Agreement*" means the teaming agreement entered into on January 15, 1985, between Lockheed and the Electro-Optical and Data Systems Group of the Hughes Aircraft Company for the purpose of submitting a proposal to the United States Department of Defense for the Demonstration/Validation phase of the Follow-On Early Warning System, and all subsequent amendments or other modifications thereto.

4. "*Martin Marietta/Grumman Teaming Agreement*" means the teaming agreement entered into on June 20, 1994, between Martin Marietta and Grumman for the purpose of bidding on or otherwise competing for the United States Department of Defense's Alert, Locate and Report Missiles program, and all subsequent amendments or other modifications thereto.

5. "*Military Aircraft*" means aircraft manufactured for sale to the United States Department of Defense, whether for use by the United States Department of Defense or for transfer to a foreign military sale purchaser.

6. "*LANTIRN Systems*" means dual pod, externally mounted, Low-Altitude Navigation and Targeting Infrared for Night Systems manufactured by Martin Marietta for use on Military Aircraft.

7. "*Expendable Launch Vehicle*" means a vehicle that launches a Satellite(s) from the Earth's surface and is consumed during the process of launching a Satellite(s) and therefore cannot be launched more than one time.

8. "*Satellite*" means an unmanned machine that is launched from the Earth's surface for the purpose of transmitting data back to Earth

and which is designed either to orbit the Earth or travel away from the Earth.

9. "*Respondents*" means Lockheed, Martin Marietta and Lockheed Martin.

II. RESPONDENTS

10. Respondent Lockheed Corporation 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 4500 Park Granada Boulevard, Calabasas, California.

11. Respondent Lockheed Corporation is engaged in among other things the research, development, manufacture and sale of: Satellites, including Satellites for use in Space Based Early Warning Systems; Expendable Launch Vehicles; and Military Aircraft.

12. Respondent Martin Marietta Corporation 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, Maryland.

13. Respondent Martin Marietta Corporation is engaged in among other things the research, development, manufacture and sale of: Satellites, including Satellites for use in Space Based Early Warning Systems; Expendable Launch Vehicles; and LANTIRN Systems.

14. Respondent Lockheed Martin Corporation 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, Maryland.

15. Respondent Lockheed Martin Corporation, through the proposed merger of Lockheed and Martin Marietta, would be engaged in among other things the research, development, manufacture and sale of: Satellites, including Satellites for use in Space Based Early Warning Systems; Expendable Launch Vehicles; LANTIRN Systems; and Military Aircraft.

III. JURISDICTION

16. Respondents are, and at all times relevant herein have been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and are corporations whose business is in or affects commerce as "commerce" is defined in

Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

IV. THE MERGER

17. On or about August 29, 1994, respondents entered into an agreement and Plan of Reorganization whereby respondents would engage in a series of related transactions resulting in a newly created corporation, Lockheed Martin. The value of the transaction is in excess of \$9 billion ("Merger").

V. THE RELEVANT MARKETS

18. The relevant lines of commerce are:

- a. The research, development, manufacture and sale of Satellites, including but not limited to Satellites for use in Space Based Early Warning Systems;
- b. The research, development, manufacture and sale of Sensors;
- c. The research, development, manufacture and sale of Military Aircraft;
- d. The research, development, manufacture and sale of LANTIRN Systems; and
- e. The research, development, manufacture and sale of Expendable Launch Vehicles.

19. The United States is the relevant geographic area in which to analyze the effects of the Merger in all the relevant lines of commerce.

VI. STRUCTURE OF THE MARKETS

20. Because of the exclusive nature of the Lockheed/Hughes Teaming Agreement and the Martin Marietta/Grumman Teaming Agreement, the market for the research, development, manufacture and sale of Satellites for use in Space Based Early Warning Systems is highly concentrated as measured by the Herfindahl-Hirschmann Index ("HHI") or the two-firm and four-firm concentration ratios ("concentration ratios").

21. Respondents are actual competitors in the relevant market for the research, development, manufacture and sale of Satellites for use in Space Based Early Warning Systems.

22. The market for the research, development, manufacture and sale of Sensors is highly concentrated as measured by the HHI or concentration ratios.

23. The market for the research, development, manufacture and sale of LANTIRN Systems is highly concentrated as measured by the HHI or concentration ratios.

24. Respondents, through the proposed Merger, would be engaged in the research, development, manufacture and sale of both Military Aircraft and LANTIRN Systems, which are used in Military Aircraft.

25. Respondents, through the proposed Merger, would be engaged in the research, development, manufacture and sale of a wide range of Expendable Launch Vehicles and Satellites, which are launched from the Earth's surface by Expendable Launch Vehicles.

VII. BARRIERS TO ENTRY

26. Because of the exclusive nature of the Lockheed/Hughes Teaming Agreement and the Martin Marietta/Grumman Teaming Agreement, entry into the research, development, manufacture and sale of Satellites for use in Space Based Early Warning Systems is difficult and unlikely.

27. Entry into the market for the research, development, manufacture and sale of Sensors is difficult and unlikely.

28. Entry into the research, development, manufacture and sale of LANTIRN Systems is difficult and unlikely.

VIII. EFFECTS OF THE MERGER

29. The effects of the Merger, if consummated, may be substantially to lessen competition or to tend to create a monopoly in the markets for research, development, manufacture and sale of: Satellites for use in Space Based Early Warning Systems; Military Aircraft; and Expendable Launch Vehicles in violation of 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, in the following ways, among others:

a. Actual, direct and substantial competition between respondents in the market for the research, development, manufacture and sale of Satellites for use in Space Based Early Warning Systems will be eliminated;

b. Respondents may disadvantage Military Aircraft competitors by modifying LANTIRN Systems in a manner that raises the costs of competing Military Aircraft;

c. Respondents may gain access to competitively sensitive non-public information concerning other Military Aircraft manufacturers, whereby:

(1) Actual competition between respondents and Military Aircraft manufacturers will be reduced; and

(2) Advancements in Military Aircraft research, development, innovation and quality will be reduced; and

d. Respondents may gain access to competitively sensitive non-public information concerning other Expendable Launch Vehicle manufacturers, whereby:

(1) Actual competition between respondents and Expendable Launch Vehicle manufacturers will be reduced; and

(2) Advancements in Expendable Launch Vehicle research, development, innovation and quality will be reduced.

IX. VIOLATIONS CHARGED

30. The Merger described in paragraph seventeen, if consummated, would constitute a violation of 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.

31. The Merger agreement described in paragraph seventeen constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed merger of respondent Lockheed Corporation ("Lockheed") and respondent Martin Marietta

Corporation ("Martin Marietta"), forming respondent Lockheed Martin Corporation ("Lockheed Martin"), and it now appearing that Lockheed, Martin Marietta and Lockheed Martin, hereinafter sometimes referred to as "respondents," having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and

Respondents, by their attorneys, and counsel for the Commission having thereafter executed an Interim Agreement and an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreements is for settlement purposes only and does not constitute admissions by respondents that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated said Acts, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed Consent Agreement and Interim Agreement and placed such agreements on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Lockheed 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 4500 Park Granada Boulevard, Calabasas, California.
2. Respondent Martin Marietta 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, Maryland.

3. Respondent Lockheed Martin 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, Maryland.

4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That, as used in this order, the following definitions shall apply:

A. "*Lockheed*" means Lockheed Corporation and its predecessors, successors, subsidiaries, divisions, groups and affiliates controlled by Lockheed, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

B. "*Missile Systems*" means the Missile Systems Division of Lockheed Missiles & Space Company, Inc., an entity with its principal place of business at 1111 Lockheed Way, Sunnyvale, California, which is engaged in, among other things, the research, development, manufacture and sale of Expendable Launch Vehicles, and its subsidiaries, divisions, groups and affiliates controlled by Missile Systems, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

C. "*Commercial Space*" means Lockheed Commercial Space Company, Inc., an entity with its principal place of business at 1111 Lockheed Way, Sunnyvale, California, and Lockheed-Khrunichev-Energia International ("LKEI"), a joint venture between Lockheed Commercial Space Company, Inc., Khrunichev Enterprise and Energia Scientific-Productive Entity with its principal place of business at 2099 Gateway Place, Suite 220, San Jose, California, which are engaged in, among other things, the research, development, manufacture, marketing and sale of Expendable Launch Vehicles, and its subsidiaries, divisions, joint venture partners, groups and affiliates controlled by Commercial Space, and their respective

