

Complaint

119 F.T.C.

IN THE MATTER OF

ALLIANT TECHSYSTEMS INC.

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-3567. Complaint, April 7, 1995--Decision, April 7, 1995

This consent order permits, among other things, Alliant Techsystems Inc. ("Alliant"), a Minnesota-based defense contractor, to acquire Hercules Inc.'s propellant division, Hercules Aerospace Company, under certain conditions, and requires Alliant to prevent its newly acquired propellant division from sharing non-public information with Alliant's ammunition and munitions division. Alliant also has to notify its propellant customers of the Commission order before obtaining any non-public information from them.

Appearances

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

For the respondent: *Ronald A. Bloch and Timothy J. Waters,*
McDermott, Will & Emery, Washington, D.C.

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent, Alliant Techsystems Inc. ("Alliant"), a corporation subject to the jurisdiction of the Federal Trade Commission, has agreed to acquire certain stock and assets of Hercules Incorporated, a corporation subject to the jurisdiction of the Federal Trade 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 ("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

For the purposes of this complaint the following definitions apply:

1. "*Propellant*" and "*Explosives*" mean substances used to propel or activate Weapons.
2. "*Weapons*" means ammunition or munitions.

II. RESPONDENT

3. Respondent Alliant is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its principal place of business located at 600 Second Street, N.E., Hopkins, Minnesota.

4. Respondent, through its Defense Systems Business Group, is engaged in the research, development, manufacture and sale of Weapons and weapon systems.

5. Respondent, through the proposed acquisition of substantially all of the stock and assets relating to Hercules Aerospace Company, would be engaged in the research, development, manufacture and sale of Propellant and Explosives, which are used to propel or activate Weapons.

III. THE ACQUIRED COMPANY

6. Hercules Incorporated is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its principal place of business at Hercules Plaza, Wilmington, Delaware.

7. Hercules Incorporated, through its unincorporated division, Hercules Aerospace Company, is engaged in the research, development, manufacture and sale of Propellant and Explosives, which are used to propel or activate Weapons.

IV. JURISDICTION

8. For purposes of this proceeding, respondent Alliant is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended,

15 U.S.C. 12, and is a corporation whose business in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

V. THE ACQUISITION

9. On July 11, 1994, Alliant agreed to acquire substantially all of the stock and assets relating to Hercules Aerospace Company, an unincorporated division of Hercules Incorporated, for consideration totalling approximately \$466 million.

VI. TRADE AND COMMERCE

10. The relevant lines of commerce are the research, development, manufacture and sale of Propellant or Explosives and the research, development, manufacture and sale of Weapons.

11. The relevant section of the country in which to evaluate the effects of the acquisition is the United States.

12. The relevant line of commerce consisting of the research, development, manufacture and sale of Propellant or Explosives is highly concentrated, whether measured by Herfindahl-Hirschmann Indices ("HHI") or two-firm and four-firm concentration ratios.

13. Entry into the research, development, manufacture and sale of Propellant or Explosives is difficult and unlikely.

VII. EFFECTS OF THE ACQUISITION

14. The effect of the acquisition may be substantially to lessen competition or to tend to create a monopoly in the market for the research, development, manufacture and sale of Weapons in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. The acquisition may increase and enhance the position and ability of Alliant to gain access to competitively significant and non-public information concerning other Weapons manufacturers.

15. The effect identified in paragraph fourteen may increase the likelihood that, in the market for the research, development, manufacture and sale of Weapons:

- a. Direct actual competition between Alliant and other Weapons manufacturers will be reduced; and
- b. Advancements in Weapons research, innovation, and quality will be reduced.

VIII. VIOLATIONS CHARGED

16. The acquisition agreement described in paragraph nine constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

17. The acquisition described in paragraph nine, 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 Federal Trade Commission Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the proposed acquisition by respondent of certain assets and businesses of the Hercules Aerospace Company of Hercules Incorporated ("Hercules"), and the respondent 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 respondent 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

Respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent 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 respondent has violated the said Acts, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the

executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comment filed thereafter by an interested person pursuant to Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Alliant Techsystems Inc. ("Alliant") 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 600 Second Street, N.E., Hopkins, Minnesota.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, 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. "*Alliant*" or "*Respondent*" means Alliant Techsystems Inc., its predecessors, subsidiaries, divisions, groups and affiliates controlled by Alliant, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

B. "*Defense Systems*" means (1) Alliant's Defense Systems Business Group, an unincorporated division of Alliant with its principal place of business at 600 Second Street, N.E., Hopkins, Minnesota, as well as its officers, employees, agents, divisions, subsidiaries, successors, and assigns, and the officers, employees or agents of the Defense Systems Business Group's divisions, subsidiaries, successors and assigns, and (2) Hercules Defense Electronics Systems, Inc., a corporation with its principal place of business at 13133 34th Street North, Clearwater, Florida, as well as its officers, employees, agents, divisions, subsidiaries, successors, and assigns, and the officers, employees or agents of Hercules Defense Electronics Systems, Inc.'s divisions, subsidiaries, successors and assigns. Defense Systems is principally engaged in the research, development, manufacture and sale of Weapons and weapon systems.

C. "*Hercules*" means Hercules Incorporated, a corporation organized, existing and doing business under the laws of Delaware with its principal place of business at Hercules Plaza, Wilmington, Delaware.

D. "*Person*" means any natural person, corporate entity, partnership, association, joint venture, government entity, trust or other business or legal entity.

E. "*Commission*" means the Federal Trade Commission.

F. "*Propellant or Explosives*" means substances used to propel or activate Weapons.

G. "*Weapons*" means ammunition and munitions.

H. "*Acquisition*" means the acquisition by Alliant of substantially all of the assets and stock relating to Hercules Aerospace Company, an unincorporated division of Hercules.

I. "*Non-Public Information*" means any information not in the public domain furnished by a Weapons developer, manufacturer or systems contractor to Alliant in Alliant's capacity as a provider of Propellant or Explosives; provided (a) if written information is furnished, it is designated in writing by the Weapons developer, manufacturer or systems contractor as proprietary information by an appropriate legend, marking, stamp, or positive written identification on the face thereof, or (b) if oral, visual or other information is furnished, it is identified as proprietary information in writing by the Weapons developer, manufacturer or systems contractor prior to the disclosure to Alliant or within thirty (30) days after such disclosure. Non-Public Information shall not include (i) information already known to Alliant, (ii) information which subsequently falls within the public domain through no violation of this order by Alliant, (iii) information which subsequently becomes known to Alliant from a third party not in breach of a confidential disclosure agreement with a Weapons developer, manufacturer or systems contractor, or (iv) information after six (6) years from the date of disclosure to Alliant or such other period as agreed to in writing by Alliant and the Weapons developer, manufacturer or systems contractor.

II.

It is further ordered, That:

A. Alliant shall not, absent the prior written consent of the proprietor of Non-Public Information, provide, disclose, or otherwise make available to Defense Systems any Non-Public Information; and

B. Alliant shall use any Non-Public Information it obtains only in its capacity as a provider of Propellant or Explosives, absent the prior written consent of the proprietor of Non-Public Information.

III.

It is further ordered, That, Alliant shall deliver a copy of this order to any United States Weapons developer, manufacturer or systems contractor prior to first obtaining any Non-Public Information relating to the developer's, manufacturer's or systems contractor's Weapons either from the Weapons developer, manufacturer, or systems contractor or through the Acquisition; provided that for Non-Public Information described in paragraph I. Section I.(b) of this order, Alliant shall deliver a copy of this order within ten (10) days of the written identification by the Weapons developer, manufacturer or systems contractor.

IV.

It is further ordered, That:

A. Within sixty (60) days after the date this order becomes final, respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with paragraphs II and III of this order; and

B. One (1) year from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at such other times as the Commission may require, respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with this order. To the extent not prohibited by United States Government national security requirements, respondent shall include in its reports information sufficient to identify all United States Weapons developers, manufacturers or systems contractors with whom respondent has

entered an agreement for the research, development, manufacture or sale of Propellant or Explosives.

V.

It is further ordered, That respondent shall notify the Commission at least thirty days prior to any proposed change in respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in respondent, that may affect compliance obligations arising out of this order.

VI.

It is further ordered, That, for the purpose of determining or securing compliance with this order, and subject to any legally recognized privilege and applicable United States Government security requirements, upon written request, and on reasonable notice, respondent shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this order; and

B. Upon five (5) days' notice to respondent and without restraint or interference from it, to interview officers, directors, or employees of respondent, who may have counsel present, regarding such matters.

VII.

It is further ordered, That this order shall terminate twenty (20) years from the date this order becomes final.

CONCURRING STATEMENT OF COMMISSIONER MARY L. AZCUENAGA

Today, the Commission accepts a consent agreement that resolves allegations that the acquisition of the stock and assets of Hercules

Aerospace Company, an unincorporated division of Hercules Incorporated, by Alliant Techsystems Inc. may substantially lessen competition in research, development, manufacture and sale of propellant, explosives or weapons. I concur in the finding of reason to believe the law has been violated, but write separately to add two observations about the remedy.

First, the consent order omits the ten-year prior approval provision that the Commission usually imposes in cases brought under Section 7 of the Clayton Act. My vote in favor of accepting the consent order despite this omission is based on the highly unusual facts of this case. I continue to believe that prior approval requirements should be standard in Section 7 cases.

Second, the order prohibits Alliant from misusing or appropriating nonpublic information obtained from a competitor in the development of weapons. Although we have had few similar cases, recently the Commission imposed a similar remedy in Martin Marietta Corp., Dkt. No. 3500 (June 22, 1994). I joined in that decision and again do so here. Nonetheless, I question the extent to which this provision of the order adds to the protection afforded by private contracts to respect confidentiality and the extent to which the Commission can effectively monitor compliance with this requirement. Enforcement experience and further analysis may well suggest a need for different, more effective remedies.

IN THE MATTER OF

FORMU-3 INTERNATIONAL, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3568. Complaint, April 11, 1995--Decision, April 11, 1995*

This consent order prohibits, among other things, the Ohio weight-loss centers from misrepresenting the performance, efficacy or safety of any weight-loss program they offer, or the competence or training of their personnel, in the future. The consent order requires the respondents to possess scientific evidence to substantiate future claims, and, in addition, to make certain disclosures in conjunction with weight-loss and safety maintenance claims in the future.

Appearances

For the Commission: *Brenda Doubrava, Phillip Broyles and Christian White.*

For the respondents: *Robert J. Newbold, Canton, OH.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Formu-3 International, Inc., a corporation, Formu-3 of Northern Ohio, Inc., a corporation, and Formu-3 of Southern Ohio, Inc., a corporation (referred to collectively herein as respondents or Formu-3) have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Formu-3 International, Inc., is an Ohio corporation with its office and principal place of business located at 4790 Douglas Circle N.W., Canton, Ohio.

Respondent Formu-3 of Northern Ohio, Inc., is an Ohio corporation with its office and principal place of business located at 4790 Douglas Circle N.W., Canton, Ohio.

Respondent Formu-3 of Southern Ohio, Inc., is an Ohio corporation with its office and principal place of business located at 4790 Douglas Circle N.W., Canton, Ohio.