

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

directors, officers, employees, agents and representatives, and their respective successors and assigns.

D. "*Space Systems*" means the Space 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 Satellites, and its subsidiaries, divisions, groups and affiliates controlled by Space Systems, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

E. "*Aeronautical Systems*" means Lockheed Aeronautical Systems Group, an entity with its principal place of business at 2859 Paces Ferry, Suite 1800, Atlanta, Georgia, which is engaged in, among other things, the research, development, manufacture and sale of Military Aircraft, and its subsidiaries, divisions, groups and affiliates controlled by Aeronautical Systems, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

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

G. "*Astronautics*" means Martin Marietta's Astronautics Company, an entity with its principal place of business at P.O. Box 179, Denver, Colorado, which is engaged in, among other things, the research, development, manufacture and sale of Satellites and Expendable Launch Vehicles, and its subsidiaries, divisions, groups and affiliates controlled by Astronautics, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

H. "*Astro Space*" means Martin Marietta's Astro Space Company, an entity with its principal place of business at P.O. Box 800, Princeton, New Jersey, which is engaged in, among other things, the research, development, manufacture and sale of Satellites, and its subsidiaries, divisions, groups and affiliates controlled by Astro Space, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

I. "*Electronics and Missiles*" means Martin Marietta's Electronics and Missiles Company, an entity with its principal place of business

at 5600 Sand Lake Road, Orlando, Florida, which is engaged in, among other things, the manufacture and sale of LANTIRN Systems, and its subsidiaries, divisions, groups and affiliates controlled by Electronics and Missiles, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

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

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

L. "*Hughes*" means GM Hughes Electronics Corporation, 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 7200 Hughes Terrace, Los Angeles, California.

M. "*Grumman*" means Northrop Grumman Corporation, 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 1840 Century Park East, Los Angeles, California.

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

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

P. "*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.

Q. "*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.

R. "*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.

S. "*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.

T. "*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.

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

V. "*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.

W. "*Non-Public LANTIRN Information*" means any information not in the public domain furnished by any Military Aircraft manufacturer to Electronics and Missiles in its capacity as the provider of LANTIRN Systems, and (1) if written information, designated in writing by the Military Aircraft manufacturer as proprietary information by an appropriate legend, marking, stamp, or positive written identification on the face thereof, or (2) if oral, visual or other information, identified as proprietary information in writing by the Military Aircraft manufacturer prior to the disclosure or within thirty (30) days after such disclosure. Non-Public LANTIRN Information shall not include: (i) information already known to respondents, (ii) information which subsequently falls within the public domain through no violation of this order by respondents, (iii) information which subsequently becomes known to respondents from a third party not in breach of a confidential disclosure agreement, or (iv) information after six (6) years from the date of disclosure of such Non-Public LANTIRN Information to respondents, or such other

period as agreed to in writing by respondents and the provider of the information.

X. "*Non-Public ELV Information*" means any information not in the public domain furnished by an Expendable Launch Vehicle manufacturer to Space Systems, Astro Space or Astronautics in their capacities as providers of Satellites, and (1) if written information, designated in writing by the Expendable Launch Vehicle manufacturer as proprietary information by an appropriate legend, marking, stamp, or positive written identification on the face thereof, or (2) if oral, visual or other information, identified as proprietary information in writing by the Expendable Launch Vehicle manufacturer prior to the disclosure or within thirty (30) days after such disclosure. Non-Public ELV Information shall not include: (i) information already known to respondents, (ii) information which subsequently falls within the public domain through no violation of this order by respondents, (iii) information which subsequently becomes known to respondents from a third party not in breach of a confidential disclosure agreement, or (iv) information after six (6) years from the date of disclosure of such Non-Public ELV Information to respondents, or such other period as agreed to in writing by respondents and the provider of the information.

Y. "*Merger*" means the merger of Martin Marietta and Lockheed.

II.

It is further ordered, That respondents shall not enforce or attempt to enforce any provision contained in the Lockheed/Hughes Teaming Agreement that prohibits in any way Hughes from (1) competing against Lockheed for any part of any Space Based Early Warning System, or (2) teaming or otherwise contracting with any other person for the purpose of bidding on, developing, manufacturing, or supplying any part of any Space Based Early Warning System. Respondents shall not enforce or attempt to enforce any proprietary rights in the electro-optical sensors developed by Hughes in connection with or by virtue of the Lockheed/Hughes Teaming Agreement in a manner that would inhibit Hughes from competing with respondents for any part of any Space Based Early Warning System.

III.

It is further ordered, That respondents shall not enforce or attempt to enforce any provision contained in the Martin Marietta/Grumman Teaming Agreement that prohibits in any way Grumman from (1) competing against Martin Marietta for any part of any Space Based Early Warning System, or (2) teaming or otherwise contracting with any other person for the purpose of bidding on, developing, manufacturing, or supplying any part of any Space Based Early Warning System. Respondents shall not enforce or attempt to enforce any proprietary rights in the electro-optical sensors developed by Grumman in connection with or by virtue of the Martin Marietta/Grumman Teaming Agreement in a manner that would inhibit Grumman from competing with respondents for any part of any Space Based Early Warning System.

IV.

It is further ordered, That:

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

B. Respondents shall use any Non-Public LANTIRN Information obtained by Electronics and Missiles only in Electronics and Missiles' capacity as the provider of LANTIRN Systems, absent the prior written consent of the proprietor of Non-Public LANTIRN Information.

V.

It is further ordered, That respondents shall deliver a copy of this order to any United States Military Aircraft manufacturer prior to obtaining any Non-Public LANTIRN Information relating to the manufacturer's Military Aircraft either from the Military Aircraft's manufacturer or through the Merger; provided that for Non-Public LANTIRN Information described in paragraph I.W.(2) of this order, respondents shall deliver a copy of this order within ten (10) days of the written identification by the Military Aircraft manufacturer.

VI.

It is further ordered, That respondents shall not make any modifications, upgrades, or other changes to LANTIRN Systems or any component or subcomponent thereof that discriminate against any other Military Aircraft manufacturer with regard to the performance of the Military Aircraft or the time or cost required to integrate LANTIRN Systems into the Military Aircraft. Provided, however, that nothing in this paragraph shall prohibit respondents from making any such modifications, upgrades, or other changes that are: (1) necessary to meet competition from (a) foreign military aircraft, or (b) other products designed to provide targeting, terrain following, or night navigation functions comparable in performance to LANTIRN Systems; or (2) approved in writing by the Secretary of Defense or his or her designee.

VII.

It is further ordered, That:

A. Respondents shall not, absent the prior written consent of the proprietor of Non-Public ELV Information, provide, disclose, or otherwise make available to Astronautics, Missile Systems or Commercial Space any Non-Public ELV Information obtained by Astro Space or Space Systems; and

B. Respondents shall use any Non-Public ELV Information obtained by Astronautics, Astro Space or Space Systems only in Astronautics's, Astro Space's and Space System's capacities as providers of Satellites, absent the prior written consent of the proprietor of Non-Public ELV Information.

VIII.

It is further ordered, That respondents shall deliver a copy of this order to any United States Expendable Launch Vehicle manufacturer prior to obtaining any Non-Public ELV Information relating to the manufacturer's Expendable Launch Vehicle(s) either from the Expendable Launch Vehicle manufacturer or through the Merger; provided that for Non-Public ELV Information described in paragraph I.X.(2) of this order, respondents shall deliver a copy of

this order within ten (10) days of the written identification by the Expendable Launch Vehicle manufacturer.

IX.

It is further ordered, That respondents shall comply with all terms of the Interim Agreement, attached to this order and made a part hereof as Appendix I. Said Interim Agreement shall continue in effect until the provisions in paragraphs II, III, IV, V, VI, VII and VIII are complied with or until such other time as is stated in said Interim Agreement.

X.

It is further ordered, That within sixty (60) days of the date this order becomes final and annually for the next ten (10) years on the anniversary of the date this order becomes final, and at such other times as the Commission may require, respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which they have complied and are complying with this order. To the extent not prohibited by United States Government national security requirements, respondents shall include in their reports information sufficient to identify (a) all modifications, upgrades, or other changes to LANTIRN Systems for which respondents have requested and/or received written approval from the Secretary of Defense or his or her designee pursuant to paragraph VI of this order, (b) all United States Military Aircraft manufacturers with whom respondents have entered into an agreement for the research, development, manufacture or sale of LANTIRN Systems, and (c) all United States Expendable Launch Vehicle manufacturers with whom respondents have entered into an agreement for the research, development, manufacture or sale of Satellites.

XI.

It is further ordered, That respondents shall notify the Commission at least thirty days prior to any proposed change in respondents, such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution

of subsidiaries or any other change in respondents that may affect compliance obligations arising out of this order.

XII.

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 national security requirements, upon written request, and on reasonable notice, any 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 that respondent relating to any matters contained in this order; and

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

XIII.

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

APPENDIX I

INTERIM AGREEMENT

This Interim Agreement is by and between Lockheed Corporation ("Lockheed"), a corporation organized and existing under the laws of the State of Delaware, Martin Marietta Corporation ("Martin Marietta"), a corporation organized and existing under the laws of the State of Maryland, Lockheed Martin Corporation ("Lockheed Martin"), a corporation organized and existing under the laws of the State of Maryland (collectively referred to as "proposed respondents"), and the Federal Trade Commission (the "Commission"), an independent agency of the United States

Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively, the "Parties").

PREMISES

Whereas, Martin Marietta and Lockheed have proposed the merger of their businesses by the formation of a new corporation, Lockheed Martin; and

Whereas, the Commission is now investigating the proposed Merger to determine if it would violate any of the statutes the Commission enforces; and

Whereas, if the Commission accepts the Agreement Containing Consent Order ("Consent Agreement"), the Commission will place it on the public record for a period of at least sixty (60) days and subsequently may either withdraw such acceptance or issue and serve its complaint and decision in disposition of the proceeding pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving competition during the period prior to the final acceptance of the Consent Agreement by the Commission (after the 60-day public notice period), there may be interim competitive harm and divestiture or other relief resulting from a proceeding challenging the legality of the proposed Merger might not be possible, or might be less than an effective remedy; and

Whereas, proposed respondents entering into this Interim Agreement shall in no way be construed as an admission by proposed respondents that the proposed Merger constitutes a violation of any statute; and

Whereas, proposed respondents understand that no act or transaction contemplated by this Interim Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Interim Agreement.

Now, therefore, the Parties agree, upon the understanding that the Commission has not yet determined whether the proposed Merger will be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Agreement, it will not seek further relief from proposed respondents with respect to the proposed Merger, except that the Commission may exercise any and all rights to enforce this Interim

Agreement, the Consent Agreement, and the final order in this matter, and, in the event that proposed respondents do not comply with the terms of this Interim Agreement, to seek further relief pursuant to Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and Section 7 of the Clayton Act, 15 U.S.C. 18, as follows:

1. Proposed respondents agree to execute and be bound by the terms of the order contained in the Consent Agreement, as if it were final, from the date the Consent Agreement is accepted for public comment by the Commission.

2. Proposed respondents agree to deliver within three (3) days of the date the Consent Agreement is accepted for public comment by the Commission, a copy of the Consent Agreement and a copy of this Interim Agreement to the United States Department of Defense, GM Hughes Electronics Corporation, Loral Corporation, Northrop Grumman Corporation, Rockwell International Corporation and TRW Incorporated.

3. Proposed respondents agree to submit within thirty (30) days of the date the Consent Agreement is signed by the proposed respondents, an initial report, pursuant to Section 2.33 of the Commission's Rules, signed by the proposed respondents setting forth in detail the manner in which the proposed respondents will comply with paragraphs II, III, IV, V, VI, VII and VIII of the Consent Agreement.

4. Proposed respondents agree that, from the date the Consent Agreement is accepted for public comment by the Commission until the first of the dates listed in subparagraphs 4.a and 4.b, they will comply with the provisions of this Interim Agreement:

- a. Ten business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Section 2.34 of the Commission's Rules;

- b. The date the Commission finally accepts the Consent Agreement and issues its Decision and Order.

5. Proposed respondents waive all rights to contest the validity of this Interim Agreement.

6. For the purpose of determining or securing compliance with this Interim Agreement, subject to any legally recognized privilege and applicable United States Government national security

requirements, and upon written request, and on reasonable notice, to any proposed respondent made to its principal office, that proposed respondent shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of that proposed respondent 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 that proposed respondent relating to compliance with this Interim Agreement; and

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

7. This Interim Agreement shall not be binding until accepted by the Commission.

IN THE MATTER OF

THE PENN TRAFFIC COMPANY

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-3577. Complaint, May 15, 1995--Decision, May 15, 1995*

This consent order permits, among other things, the Penn Traffic Company to acquire a number of Acme supermarkets from American Stores Company, but requires it to divest, to a Commission approved acquirer or acquirers within twelve months, one supermarket in each of the three Pennsylvania areas designated (Towanda, Mount Carmel, and Pittston). If the divestitures are not completed on time, the consent order permits the Commission to appoint a trustee to complete the transactions. In addition, the consent order requires the respondent, for ten years, to obtain Commission approval before acquiring any interest in any entity that owns or operates a supermarket in any of the three areas designated.

Appearances

For the Commission: *Ronald Rowe, Marimichael Skubel and William Baer.*

For the respondent: *Ken Hart, Donovan, Leisure, Newton & Irvine, New York, N.Y. Chris MacAvoy, Collier, Shannon, Rill & Scott, 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 The Penn Traffic Company ("Penn Traffic"), a corporation, subject to the jurisdiction of the Commission, has acquired certain assets of American Stores Company ("American"), 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, 15 U.S.C. 45, and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows: