

IN THE MATTER OF

HUGHES DANBURY OPTICAL SYSTEMS, INC., 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-3652. Complaint, April 30, 1996--Decision, April 30, 1996

This consent order prohibits, among other things, the respondents from enforcing the exclusivity provisions contained in a teaming agreement -- between Hughes Danbury Optical Systems, Inc. and Xinetics, Inc. -- thereby ensuring that the Boeing Corp. team has a source for deformable mirrors other than Itek Optical Systems, once Itek is acquired by Hughes. The order also prohibits the respondents from accessing proprietary information from Itek regarding the Boeing team's airborne laser technical design or the cost of its adaptive optics system.

Appearances

For the Commission: *Ann B. Malester, John Scribner and William J. Baer.*

For the respondents: *Bill Slowey and Steven Cernak*, in-house counsel, Detroit, MI.

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 Hughes Danbury Optical Systems, Inc. ("HDOS"), Hughes Electronics Corporation, and General Motors Corporation, hereinafter sometimes referred to collectively as respondents, all corporations subject to the jurisdiction of the Commission, have agreed to purchase the business and selected assets of the Itek Optical Systems Division of Litton Systems, Inc., a wholly-owned subsidiary of Litton Industries, Inc., 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. *"Airborne Laser System"* means a system that will utilize a 747 aircraft, equipped with a high energy laser projector, to fly at high altitudes near the forward edge of a battle area to locate and destroy incoming short-range missiles.

2. *"Boeing-Lockheed Martin Team"* means the team including The Boeing Company, Lockheed Martin Corporation and Itek Optical Systems, a division of Litton Systems, Inc., among others, that currently holds a Phase I concept design contract for the Phillips Laboratory Airborne Laser Program.

3. *"HDOS/Xinetics Letter of Intent"* means the Letter of Intent entered into on September 21, 1995, between HDOS and Xinetics in which HDOS expresses its intention to use Xinetics as a supplier of any Deformable Mirror which may be required for the Phillips Laboratory Airborne Laser Program.

4. *"Phillips Laboratory Airborne Laser Program"* is a United States Air Force Advanced Technology Demonstration Program to develop and then demonstrate the necessary technologies to acquire, track, and destroy theater ballistic missiles during the boost phase of flight.

5. *"Respondents"* means Hughes Danbury Optical Systems, Inc., Hughes Electronics Corporation, and General Motors Corporation.

6. *"Rockwell-Hughes Team"* means the team including Rockwell International Corporation, Hughes Electronics Corporation, Hughes Danbury Optical Systems, Inc., and Xinetics Incorporated, among others, that currently holds a Phase I concept design contract for the Phillips Laboratory Airborne Laser Program.

7. *"Xinetics"* means Xinetics Incorporated, a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 410 Great Road #A6, Littleton, Massachusetts.

II. RESPONDENTS

8. Respondent Hughes Danbury Optical Systems, Inc. ("HDOS"), 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 100 Wooster Road, Danbury, Connecticut.

9. Respondent Hughes Electronics Corporation ("Hughes") 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 7200 Hughes Terrace, Los Angeles, California.

10. Respondent General Motors Corporation ("GM") is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office located at 3044 W. Grand Blvd., Detroit, Michigan.

11. For purposes of this proceeding, 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 businesses are in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

III. ACQUIRED COMPANY

12. Itek Optical Systems ("Itek") is a division of Litton Systems, Inc., a wholly-owned subsidiary of Litton Industries, Inc., 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 10 Maguire Blvd. Lexington, Massachusetts.

13. For purposes of this proceeding, Itek 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 is in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

IV. THE ACQUISITION

14. On or about September 26, 1995, HDOS entered into a letter of intent to purchase the business and selected assets of Itek ("the Acquisition").

V. THE RELEVANT MARKET

15. For purposes of this complaint, the relevant line of commerce in which to analyze the effects of the Acquisition is the research, development, manufacture and sale of an Airborne Laser System for use in the Phillips Laboratory Airborne Laser Program.

16. For purposes of this complaint, the United States is the relevant geographic area in which to analyze the effects of the Acquisition in the relevant line of commerce.

17. The relevant market set forth in paragraphs fifteen and sixteen is highly concentrated as measured by the Herfindahl-Hirschmann Index ("HHI") or the two-firm and four-firm concentration ratios ("concentration ratios"), as there are only two teams competing in this market.

18. Entry into the research, development, manufacture and sale of an Airborne Laser System for the Phillips Laboratory Airborne Laser Program would not occur in a timely manner to deter anticompetitive effects because the bids for that program are due in July 1996.

19. Because Itek is exclusively teamed with Lockheed Martin on the Boeing-Lockheed Martin Team and HDOS is exclusively teamed with Rockwell on the Rockwell-Hughes Team for the Phillips Laboratory Airborne Laser Program, HDOS and Itek are actual competitors in the relevant market set forth in paragraphs fifteen and sixteen.

VI. EFFECTS OF THE ACQUISITION

20. The effects of the Acquisition, if consummated, may be substantially to lessen competition or to tend to create a monopoly in the relevant market 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 the Boeing-Lockheed Martin Team and the Rockwell-Hughes Team in the research, development, manufacture and sale of an Airborne Laser System for use in the Phillips Laboratory Airborne Laser Program will be reduced;

b. Respondents may disadvantage the Boeing-Lockheed Martin Team competing for the Phillips Laboratory Airborne Laser Program in a manner that raises the costs of that competing team; and

c. Respondents may gain access to competitively sensitive non-public information concerning the Boeing-Lockheed Martin Team for the Phillips Laboratory Airborne Laser Program competition, whereby:

(1) Actual competition between the Boeing-Lockheed Martin Team and the Rockwell-Hughes Team for the Phillips Laboratory Airborne Laser Program will be reduced; and

(2) Advancements in Airborne Laser System research, development, innovation and quality for the Phillips Laboratory Airborne Laser Program will be reduced.

VII. VIOLATIONS CHARGED

21. The acquisition agreement described in paragraph fourteen constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

22. The acquisition described in paragraph fourteen, 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.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the proposed acquisition by respondents of the assets and businesses of the Itek Optical Systems Division of Litton Systems, Incorporated ("Itek"), and the 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, their attorneys, and counsel for the Commission having thereafter executed 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 agreement is for settlement purposes only and does not constitute an admission 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 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, now in further conformity with the procedure described 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 Hughes Danbury Optical Systems, Incorporated ("HDOS"), 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 100 Wooster Road, Danbury, Connecticut.

2. Respondent Hughes Electronics Corporation ("Hughes") 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 7200 Hughes Terrace, Los Angeles, California.

3. Respondent General Motors Corporation ("GM") 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 3044 W. Grand Blvd., Detroit, Michigan.

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. "*HDOS*" means Hughes Danbury Optical Systems, Inc., its officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by HDOS, and the respective officers, employees, agents, and representatives, successors and assigns of each.

B. "*Hughes*" means Hughes Electronics Corporation, its officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Hughes, and the respective officers, employees, agents, and representatives, successors and assigns of each.

C. "*GM*" means General Motors Corporation, its officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by GM, and the respective officers, employees, agents, and representatives, successors and assigns of each.

D. "*Itek*" means Itek Optical Systems Division of Litton Systems, Incorporated, its officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Itek, and the respective officers, employees, agents, and representatives, successors and assigns of each.

E. "*Respondents*" means HDOS, Hughes and GM.

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

G. "*Xinetics*" means Xinetics Incorporated, a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 410 Great Road #A6, Littleton, Massachusetts.

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

I. *"HDOS/Xinetics Letter of Intent"* means the Letter of Intent entered into on September 21, 1995, between HDOS and Xinetics in which HDOS expresses its intention to use Xinetics as a supplier of any Deformable Mirror which may be required for the Phillips Laboratory Airborne Laser Program.

J. *"Phillips Laboratory Airborne Laser Program"* is a United States Air Force Advanced Technology Demonstration program to develop and then demonstrate the necessary technologies to acquire, track, and destroy theater ballistic missiles during the boost phase of flight.

K. *"Non-Public ABL Information"* means any information not in the public domain received or developed by Itek in its capacity as a subcontractor to Lockheed Martin Corporation for the Phillips Laboratory Airborne Laser Program. Non-Public ABL Information shall not include: (i) information which subsequently falls within the public domain through no violation of this order by respondents, or (ii) information which subsequently becomes known to respondents not in breach of a confidential disclosure agreement.

II.

It is further ordered, That respondents shall not enforce or attempt to enforce any provision contained in the HDOS/Xinetics Letter of Intent, or take any other action, that would inhibit Xinetics from teaming or otherwise contracting with any other person for the purpose of bidding on, designing, developing, manufacturing, or supplying any part of the Phillips Laboratory Airborne Laser Program.

III.

It is further ordered, That:

A. Respondents shall not receive, gain access to or in any manner obtain any Non-Public ABL Information without the express written permission of Lockheed Martin Corporation.

B. Upon request from Lockheed Martin Corporation, respondents shall provide to Lockheed Martin Corporation any Non-Public ABL Information in a timely fashion not to exceed seven (7) days from the

receipt of such request. Respondents may require payment for their own direct costs in providing such information.

IV.

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.

V.

It is further ordered, That within sixty (60) days of the date this order becomes final and every sixty days thereafter for the first year after 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. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with paragraph II and paragraph III of the order. Respondents shall include in their compliance reports copies of all written communications, all internal memoranda, and all reports and recommendations concerning compliance with the provisions in paragraph II and paragraph III of the order.

VI.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate 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 the corporate respondents that may affect compliance obligations arising out of the order.

VII.

It is further ordered, That, for the purpose of determining or securing compliance with this order, respondents 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 any 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.

APPENDIX I

INTERIM AGREEMENT

This Interim Agreement is by and between Hughes Danbury Optical Systems, Incorporated ("HDOS"), Hughes Electronics Corporation ("Hughes"), and General Motors Corporation ("GM"), three corporations organized and existing under the laws of the State of Delaware (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, HDOS has proposed to acquire the Itek Optical systems Division of Litton Systems, Incorporated ("Itek"); and

Whereas, the Commission is now investigating the proposed acquisition 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 acquisition 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 acquisition 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 acquisition will be challenged, and in consideration of the Commission's agreement that, at the time it accepts the Consent Agreement for public comment, it will grant early termination of the Hart-Scott-Rodino waiting period, 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, The Boeing Company, Lockheed Martin Corporation and Xinetics 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 paragraph II and paragraph III 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 (10) 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 issues its complaint and 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, proposed respondents 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 any proposed respondent relating to any matters contained in 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

AZRAK-HAMWAY INTERNATIONAL, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3653. Complaint, May 2, 1996--Decision, May 2, 1996*

This consent order prohibits, among other things, the New York-based manufacturers and distributors of toys from using deceptive demonstrations and certain other misrepresentations. In addition, the consent order requires the respondents to offer full refunds to consumers who bought Steel Tec toy vehicles, and to notify television stations that ran the challenged advertisements of the Commission action, and of the availability of guidelines for screening children's advertising.

Appearances

For the Commission: *Toby M. Levin* and *Dean Forbes*.

For the respondents: *Aaron Locker, Locker, Greenberg & Brainin*, New York, N.Y.

COMPLAINT

The Federal Trade Commission, having reason to believe that Azrak-Hamway International, Inc., a corporation, and Marvin Azrak and Ezra Hamway, individually and as officers of said corporation ("respondents"), 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 Azrak-Hamway International, Inc. is a New York corporation, with its principal office or place of business at 1107 Broadway, New York, New York.

Respondent Marvin Azrak is the Senior Executive Vice President, and an owner and director of Azrak-Hamway International, Inc. Individually or in concert with others, he formulates, directs, and controls the acts and practices of Azrak-Hamway International, Inc., including the acts and practices alleged in this complaint. His