

Complaint

122 F.T.C.

IN THE MATTER OF

RAYTHEON 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-3681. Complaint, Sept. 3, 1996--Decision, Sept. 3, 1996*

This consent order requires, among other things, a Massachusetts-based high technology company to erect an information "firewall" for the duration of the Navy competition, and prohibits the dissemination of any non-public information concerning Raytheon's procurement of Chrysler Technologies Holding, Inc. ("CTH") officials or employees, or receiving any non-public information concerning the bid.

Appearances

For the Commission: *James H. Holden.*

For the respondent: *Robert D. Paul, White & Case, Washington, D.C.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent, Raytheon Company ("Raytheon"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire all of the voting securities of Chrysler Technologies Holding, Inc. ("CTH"), a corporation subject to the jurisdiction of the Commission, in violation of Section 5 of the Federal Trade Commission Act ("FTC Act"), as amended, 15 U.S.C. 45, and that such acquisition, if consummated, would violate 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; 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 purposes of this complaint the following definitions apply:

1. *"Submarine high data rate satellite communications terminal"* means the system to be procured in the United States Department of the Navy's scheduled competitive procurement of the submarine high data rate satellite communications terminal, a satellite communications system for use on U.S. Navy submarines that is capable of, among other things, transmitting and receiving both super high frequency and extremely high frequency signals.

2. *"Antenna and terminal controls"* means any current or future equipment and services designed, developed, proposed or provided by Electrospace Systems, Inc. in connection with the United States Department of the Navy's procurement of the submarine high data rate satellite communications terminal.

II. RESPONDENT

3. Respondent Raytheon is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal executive offices located at 141 Spring Street, Lexington, Massachusetts.

4. For purposes of this proceeding, respondent 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.

III. ACQUIRED COMPANY

5. Chrysler Technologies Holding, Inc. is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal executive offices located at 1000 Chrysler Drive, Auburn Hills, Michigan. CTH's wholly-owned subsidiary, Electrospace Systems, Inc. ("ESI"), researches and develops, among other things, antenna and terminal controls.

6. CTH 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

7. On April 4, 1996, Raytheon and CTH entered into a Stock Purchase Agreement whereby Raytheon will acquire all of the voting securities of CTH for approximately \$455 million.

V. THE RELEVANT MARKET

8. 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 the submarine high data rate satellite communications terminal.

9. For purposes of this complaint, the relevant geographic area in which to analyze the effects of the acquisition is the United States.

VI. TRADE AND COMMERCE

10. The market for the submarine high data rate satellite communications terminal in the United States is highly concentrated whether measured by Herfindahl-Hirschmann Indices ("HHI") or concentration ratios.

11. Respondent and CTH's prime contractor, GTE Corporation, are two of a very small number of competitors in the scheduled procurement of the submarine high data rate satellite communications terminal.

12. Entry into the market for the research, development, manufacture and sale of the submarine high data rate satellite communications terminal would not occur in a timely manner to deter or counteract the adverse competitive effects described in paragraph thirteen because of the time required to research and develop the necessary technology and because of the timing of the Department of the Navy's scheduled procurement.

VII. EFFECTS OF THE ACQUISITION

13. The effects of the acquisition may be substantially to lessen competition and to tend to create a monopoly in the relevant market set forth above 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, by, among others ways, providing a means for respondent or GTE Corporation to gain access to competitively sensitive non-public

information concerning the other's submarine high data rate satellite communications terminal designs and bidding strategies, whereby actual competition between respondent and GTE Corporation would be reduced.

VIII. VIOLATIONS CHARGED

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

15. The acquisition described in paragraph seven, 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 respondent of all of the voting securities of Chrysler Technologies Holding, Inc. ("CTH"), 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 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 Raytheon Company ("Raytheon") 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 141 Spring Street, Lexington, Massachusetts.

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. "*Respondent*" or "*Raytheon*" means Raytheon Company, its directors, officers, employees, agents, representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by Raytheon Company, and the respective directors, officers, employees, agents, representatives, successors and assigns of each. For purposes of paragraph II of this order, Raytheon does not include ESI.

B. "*CTH*" means Chrysler Technologies Holding, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 1000 Chrysler Drive, Auburn Hills, Michigan, its directors, officers, employees, agents, representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by CTH, and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

C. "*ESI*" means Electrospace Systems, Inc., a wholly-owned subsidiary of Chrysler Technologies Holding, Inc., with its principal office and place of business located at 1301 East Collins Boulevard, Richardson, Texas, or any other entity within or controlled by Chrysler Technologies Holding, Inc. that is engaged in, among other things, the research, development, manufacture or sale of antenna and

terminal controls, its directors, officers, employees, agents, representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by ESI (or such similar entity), and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

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

E. "*Submarine high data rate satellite communications terminal*" means the system to be procured in the United States Department of the Navy's scheduled competitive procurement of the submarine high data rate satellite communications terminal, a satellite communications system for use on U.S. Navy submarines that is capable of, among other things, transmitting and receiving both super high frequency and extremely high frequency signals.

F. "*Antenna and terminal controls*" means any current or future equipment and services designed, developed, proposed or provided by ESI in connection with the United States Department of the Navy's procurement of the submarine high data rate satellite communications terminal.

G. "*Non-public information of Raytheon*" means any information not in the public domain and in the possession or control of Raytheon relating to the submarine high data rate satellite communications terminal.

H. "*Non-public information of ESI*" means any information not in the public domain and in the possession or control of ESI relating to the submarine high data rate satellite communications terminal, and any information not in the public domain furnished by Rockwell International Corporation or GTE Corporation or any other company to ESI in its capacity as subcontractor to Rockwell International Corporation in connection with the U.S. Navy's procurement of the submarine high data rate satellite communications terminal.

I. "*Acquisition*" means Raytheon's acquisition of all of the voting securities of Chrysler Technologies Holding, Inc.

II.

It is further ordered, That:

A. Raytheon shall not provide, disclose or otherwise make available, directly or indirectly, to ESI any non-public information of Raytheon until either: (1) the United States Department of the Navy

selects only one supplier for the submarine high data rate satellite communications terminal; or (2) the United States Department of the Navy cancels its procurement of the submarine high data rate satellite communications terminal entirely.

B. Raytheon shall not obtain or seek to obtain, directly or indirectly, any non-public information of ESI until either: (1) the United States Department of the Navy selects only one supplier for the submarine high data rate satellite communications terminal; or (2) the United States Department of the Navy cancels its procurement of the submarine high data rate satellite communications terminal entirely.

III.

It is further ordered, That respondent 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 paragraph II of this order are complied with or until such other time as is stated in said Interim Agreement.

IV.

It is further ordered, That within twenty (20) days of the date this order becomes final, and annually on the anniversary of the date this order becomes final until either the United States Department of the Navy selects only one supplier for the submarine high data rate satellite communications terminal or cancels its procurement of the submarine high data rate satellite communications terminal entirely, 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 paragraph II of this order.

V.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or sale of any division or any other change in the

corporation, in each instance where such change may affect compliance obligations arising out of the 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 national security requirements, upon written request, and on reasonable notice, respondent shall permit any duly authorized representatives 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 respondent, to interview officers, directors, or employees of respondent, who may have counsel present, regarding any such matters.

VII.

It is further ordered, That respondent's obligations under this order shall terminate when either: (1) the United States Department of the Navy selects only one supplier for the submarine high data rate satellite communications terminal; or (2) the United States Department of the Navy cancels its procurement of the submarine high data rate satellite communications terminal entirely.

APPENDIX I

INTERIM AGREEMENT

This Interim Agreement is by and between Raytheon Company ("Raytheon"), a corporation organized and existing under the laws of the State of Delaware, 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.*

PREMISES

Whereas, Raytheon has proposed to acquire all of the outstanding voting securities of Chrysler Technologies Holding, Inc.; 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 during the period prior to the final issuance 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, Raytheon entering into this Interim Agreement shall in no way be construed as an admission by Raytheon that the proposed Acquisition constitutes a violation of any statute; and

Whereas, Raytheon understands 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, Raytheon agrees, 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. Raytheon agrees to execute and be bound by the terms of the order contained in the Consent Agreement, as if it were final, from the date Raytheon signs the Consent Agreement.

2. Raytheon agrees 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, Rockwell International Corporation, and GTE Corporation.

3. Raytheon agrees to submit, within twenty (20) days of the date the Consent Agreement is signed by Raytheon, an initial report, pursuant to Section 2.33 of the Commission's Rules, signed by Raytheon setting forth in detail the manner in which Raytheon will comply with paragraph II of the Consent Agreement.

4. Raytheon agrees that, from the date Raytheon signs the Consent Agreement until the first of the dates listed in subparagraphs 4.a. and 4.b., it 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; or

b. The date the Commission finally issues its Complaint and its Decision and Order.

5. Raytheon waives 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, Raytheon shall permit any duly authorized representative or representatives of the Commission:

a. Access, during the office hours of Raytheon 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 Raytheon relating to compliance with this Interim Agreement; and

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

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

Complaint

122 F.T.C.

IN THE MATTER OF

PRECISION MOULDING CO., INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3682. Complaint, Sept. 3, 1996--Decision, Sept. 3, 1996*

This consent order prohibits, among other things, a California-based supplier of wood products used to construct frames for artists' canvases from requesting, suggesting, urging or advocating that any competitor raise, fix or stabilize prices or price levels, and from entering into any agreement or conspiracy to fix, raise or maintain prices.

Appearances

For the Commission: *Michael Antalics, William Lanning and William Baer.*

For the respondent: *Bruce Ryan, Paul, Hastings, Janofsky & Walker, 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, having reason to believe that Precision Moulding Co., Inc., a corporation, hereinafter sometimes referred to as respondent or "Precision," has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Precision Moulding Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at 3308 Cyclone Court, Cottonwood, California, and its mailing address at P.O. Box 406, Cottonwood, California.

PAR. 2. Respondent is now, and for some time has been, engaged in the manufacture, advertising, offering for sale, sale and distribution of stretcher bars and other wood products. A "stretcher bar" is an art