

INTERLOCUTORY, MODIFYING, VACATING, AND MISCELLANEOUS ORDERS

IN THE MATTER OF

ALLIANT TECHSYSTEMS INC.

Docket No. 9254.

Order, October 2, 2000

Order reopening and modifying order.

ORDER REOPENING AND MODIFYING ORDER

On June 13, 2000, Alliant Techsystems Inc. (“Alliant”) filed its *Petition of Alliant Techsystems Inc. to Reopen and Modify Final Order* (“Petition”) requesting that the Federal Trade Commission (“Commission”) reopen the order in Docket No. 9254 (“Order”) and replace the prior approval requirement with a prior notice requirement to be in effect until the Order is scheduled to terminate.¹ Alliant made its Petition pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. § 45(b), Section 2.51 of the Commission’s Rules of Practice and Procedure, 16 C.F.R. § 2.51, and the *FTC Policy Statement Concerning Prior Approval and Prior Notice Provisions*, issued on June 21, 1995, and published at 60 Fed. Reg. 39,745-47 (August 3, 1995) (“*Prior Approval Policy Statement*” or “*Policy Statement*”). The Petition was on the public record for thirty days. No comments were received.

The Commission, in its *Prior Approval Policy Statement*, “concluded that a general policy of requiring prior approval is no longer needed,” citing the availability of the premerger notification and waiting period requirements of Section 7A of the Clayton Act, commonly referred to as the Hart-Scott-Rodino (“HSR”) Act, 15 U.S.C. § 18a, to protect the public interest in

¹ The Order was issued on March 16, 1993, and became final on March 25, 1993, the date on which the Order was served on Alliant. Accordingly, the prior notification provisions will terminate on March 25, 2003.

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effective merger law enforcement. *Prior Approval Policy Statement* at 2. The Commission announced that it will “henceforth rely on the HSR process as its principal means of learning about and reviewing mergers by companies as to which the Commission had previously found a reason to believe that the companies had engaged or attempted to engage in an illegal merger.” As a general matter, “Commission orders in such cases will not include prior approval or prior notification requirements.” Id.

The Commission stated that it will continue to fashion remedies as needed in the public interest, including ordering narrow prior approval or prior notification requirements in certain limited circumstances. The Commission said in its *Prior Approval Policy Statement* that “a narrow prior approval provision may be used where there is a credible risk that a company that engaged or attempted to engage in an anticompetitive merger would, but for the provision, attempt the same or approximately the same merger.” The Commission also said that “a narrow prior notification provision may be used where there is a credible risk that a company that engaged or attempted to engage in an anticompetitive merger would, but for an order, engage in an otherwise unreportable anticompetitive merger.” Id. at 3. As explained in the *Prior Approval Policy Statement*, the need for a prior notification requirement will depend on circumstances such as the structural characteristics of the relevant markets, the size and other characteristics of the market participants, and other relevant factors.

The Commission in its *Prior Approval Policy Statement* announced its intention “to initiate a process for reviewing the retention or modification of these existing requirements” and invited respondents subject to such requirements “to submit a request to reopen the order.” Id. at 4. The Commission determined that, “when a petition is filed to reopen and modify an order pursuant to . . . [the *Prior Approval Policy Statement*], the Commission will apply a rebuttable presumption that the public

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interest requires reopening of the order and modification of the prior approval requirement consistent with the policy announced" in the *Policy Statement*. Id.

Consistent with the Commission's *Prior Approval Policy Statement*, the presumption is that the prior approval requirement in this Order should be terminated. Nothing to overcome the presumption having been presented, the Commission has determined to reopen the proceedings and modify the Order in Docket No. 9254 to set aside the prior approval requirement.

The record in this case shows a credible risk that the respondent could engage in transactions that might be anticompetitive, but not reportable under the HSR Act. In addition, Alliant's Petition specifically seeks a modification that substitutes a prior notice provision for prior approval. Accordingly, pursuant to the *Prior Approval Policy Statement*, the Commission has determined to reopen the proceeding in Docket No. 9254 and modify the Order to delete the prior approval requirements of Paragraphs II and 111 and substitute prior notification provisions.

ACCORDINGLY, IT IS ORDERED that this matter be, and it hereby is, reopened; and

IT IS FURTHER ORDERED that Paragraphs II and III of the Order in Docket No. 9254, be and hereby are modified, as of the effective date of this order to read as follows:

II.

IT IS FURTHER ORDERED, that for a period commencing on the date this order becomes final and continuing for ten (10) years, Alliant shall not, without providing advance written notification to the Commission, directly or indirectly, through subsidiaries or otherwise, acquire: (1) any interest in the whole or any part of the stock, share capital, or equity of any systems contractor for 30mm lightweight ammunition or 120mm tank ammunition; or (2) any assets of a systems contractor for 30mm

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lightweight ammunition or 120mm tank ammunition. **Provided however**, that this paragraph II shall not apply to the sale of products or services in the ordinary course of business.

Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as “the Notification”), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of Alliant and not of any other party to the transaction. Alliant shall provide the Notification to the Commission at least thirty (30) days prior to consummating any such transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Alliant shall not consummate the transaction until twenty (20) days after substantially complying with such request. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition. **Provided, however**, that prior notification shall not be required by this Paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

III.

IT IS FURTHER ORDERED that, for a period commencing on the date this order becomes final and continuing for ten (10) years, Alliant shall not, without providing advance written notification to the Commission, directly or indirectly, through subsidiaries or otherwise, sell or otherwise transfer to any systems contractor for 30mm lightweight ammunition or 120mm tank ammunition: (1) any interest in or any part of the stock, share

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capital, or equity of Alliant, or (2) any assets used for or previously used for (and still suitable for use for) systems contracting of 30mm lightweight ammunition or 120 mm tank ammunition. **Provided however**, that this paragraph III shall not apply to the sale of products or services in the ordinary course of business.

Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as “the Notification”), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required **only** of Alliant and not of any other party to the transaction. Alliant shall provide the Notification to the Commission at least thirty (30) days prior to consummating any such transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Alliant shall not consummate the transaction until twenty (20) days after substantially complying with such request. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition. **Provided, however**, that prior notification shall not be required by this Paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

By the Commission.

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IN THE MATTER OF

HOECHST MARION ROUSSEL, INC., ET AL.

Docket No. 9293 Order, November 28, 2000

On November 27, 2000, Complaint Counsel and Counsel for Hoechst Marion Roussel, Inc., Carderm Capital L.P., and Andrx Corporation filed a joint motion to withdraw this matter from adjudication for the purpose of allowing the Commission to consider a consent agreement in disposition of this matter.

ORDER WITHDRAWING MATTER FROM ADJUDICATION

This matter is before the Commission upon the joint motion filed by Complaint Counsel and Counsel for Respondents that this matter be withdrawn from adjudication -- pursuant to Sections 3.25 (b) and (c) of the Commission Rules of Practice, 16 C.F.R. §§ 3.25(b),(c) (2000) -- for the purpose of considering a proposed consent agreement executed by Complaint Counsel and Counsel for Respondents. Counsel represent that in their views the agreement is appropriate to settle the issues in this proceeding and that it conforms to the requirements of Rule 2.32 of the Commission Rules of Practice.

IT IS ORDERED that the aforesaid motion to withdraw this matter from adjudication be, and it hereby is, granted.

By the Commission.