

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

)	
In the Matter of)	
)	
THE BOEING COMPANY,)	File No. 971-0006
a corporation.)	
)	

AGREEMENT CONTAINING CONSENT ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of the acquisition of Rockwell International Corporation's Aerospace and Defense business by The Boeing Company ("Boeing"), and it now appearing that Boeing, hereinafter sometimes referred to as "proposed respondent," is willing to enter into an agreement containing an order to refrain from certain acts and to deliver certain assets, and providing for certain other relief:

IT IS HEREBY AGREED by and between proposed respondent, by its duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed respondent Boeing 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 7755 East Marginal Way South, Seattle, Washington 98108.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

4. Proposed respondent shall submit within thirty (30) days of the date this agreement is signed by proposed respondent an initial report, pursuant to Section 2.33 of the Commission's Rules, signed by proposed respondent setting forth in detail the manner in which proposed respondent will comply with Paragraphs II. through X. of the order when and if entered. Proposed respondent shall include in such report a detailed description and explanation of the procedures it has implemented or will implement to comply with Paragraphs II. through X. of the order. Such report will not become part of the public record unless and until the accompanying agreement and order are accepted by the Commission.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to refrain from certain acts and to deliver certain assets, and providing for certain other relief in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The

complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Proposed respondent has read the draft of complaint and order contemplated hereby. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

ORDER

I.

IT IS ORDERED that, as used in this order, the following definitions shall apply:

A. "Respondent" or "Boeing" means The Boeing Company, its directors, officers, employees, agents, representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by The Boeing Company, and the respective directors, officers, employees, agents, representatives, successors and assigns of each. Boeing also includes Rockwell Aerospace and Defense.

B. "Rockwell" means Rockwell International Corporation, a corporation organized, existing and doing business under the laws of the state of Delaware, with its office and principal place of business located at 2201 Seal Beach Boulevard, Seal Beach, California 90740, its directors, officers, employees, agents, representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by Rockwell International Corporation, and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

C. "Rockwell Aerospace and Defense" means Rockwell's Aerospace and Defense businesses, including the Autonetics and Missiles Systems Division, North American Aircraft Division, North American Aircraft Modification Division, Rocketdyne Division, Space Systems Division and Rockwell's interest in United Space Alliance, its directors, officers, employees, agents, representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and

joint ventures controlled by Rockwell Aerospace and Defense, and the respective directors, officers, employees, agents, representatives, successors and assigns of each. Rockwell Aerospace and Defense does not include any of the assets that are not included in the Acquisition and that will remain part of Rockwell after the Acquisition.

D. "Acquisition" means the acquisition of Rockwell Aerospace and Defense by Boeing.

E. "Commission" means the Federal Trade Commission.

F. "Allegheny Teledyne" means Allegheny Teledyne Incorporated, a corporation organized, existing and doing business under and by virtue of the laws of the state of Massachusetts, with its office and principal place of business located at 1000 Six PPG Place, Pittsburgh, Pennsylvania 15222, its directors, officers, employees, agents, representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by Allegheny Teledyne Incorporated, and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

G. "Teledyne Ryan" means Teledyne Ryan Aeronautical, a division of Allegheny Teledyne, with its office and principal place of business located at 2701 Harbor Drive, San Diego, California 92101-1085, its directors, officers, employees, agents, representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by Teledyne Ryan Aeronautical, and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

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

I. "Tier II Plus" or "Global Hawk" means the Tier II Plus high altitude endurance unmanned air vehicle currently being developed for the United States Advanced Research Projects Agency.

J. "Tier II Plus Wings" means the completed and integrated wing assemblies used for Tier II Plus.

K. "Tier II Plus Wings Special Tooling and Special Test Equipment" means all of the special tooling and special test equipment, as the terms special tooling and special test

equipment are defined in Federal Acquisition Regulations, 48 C.F.R. ("FAR") § 45.101, used in the design, development and manufacture of Tier II Plus Wings.

L. "Tier II Plus Wings Engineering and Design Data" means all of the engineering and design data, in both electronic and hard copy, used in the design, development and manufacture of Tier II Plus Wings.

M. "Tier II Plus Prime Agreement" means Agreement No. MDA972-95-3-0013 between Teledyne Ryan and the Defense Advanced Research Projects Agency and any amendments to such agreement.

N. "Phase II Flight & System Performance Test" means all of the flights and tests of Tier II Plus associated with Phase II of the United States Advanced Research Projects Agency's Tier II Plus program.

O. "Tier III Minus" or "DarkStar" means the Tier III Minus high altitude endurance unmanned air vehicle currently being developed for the United States Advanced Research Projects Agency.

P. "Space Launch Vehicle" means any vehicle designed to launch satellites or persons into space.

Q. "Space Launch Vehicle Propulsion System" means any device designed, developed, manufactured or sold by Rocketdyne that is used to provide propulsion to a Space Launch Vehicle.

R. "Rockwell NAAD" means Rockwell International Corporation's North American Aircraft Division, an entity included within Rockwell Aerospace and Defense and as part of the Acquisition, with its principal place of business at 2201 Seal Beach Boulevard, Seal Beach, California 90740, or any other entity within or controlled by Boeing engaged in, among other things, the research, development, manufacture or sale of Tier II Plus Wings, and its directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by Rockwell NAAD, and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

S. "Rocketdyne" means Rockwell International Corporation's Rocketdyne Division, an entity included within Rockwell Aerospace and Defense and as part of the Acquisition, with its principal place of business at 6633 Canoga Avenue, Canoga Park, California 91304, or any other entity within or controlled by Boeing engaged

in, among other things, the research, development, manufacture or sale of Space Launch Vehicle Propulsion Systems, and its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by Rocketdyne, and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

T. "Boeing Tier III Minus Business" means any entity within or controlled by Boeing that is engaged in, among other things, the research, development, manufacture or sale of Tier III Minus, and its directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by Boeing Tier III Minus Business, and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

U. "Boeing Space Launch Vehicle Business" means any entity within or controlled by Boeing that is engaged in, among other things, the research, development, manufacture or sale of Space Launch Vehicles, and its directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by Boeing Space Launch Vehicle Business, and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

V. "Non-Public Tier II Plus Information" means any information not in the public domain received or developed by Rockwell in its capacity as a provider of Tier II Plus Wings. Non-Public Tier II Plus Information shall not include: (1) information known or disclosed to Respondent, excluding Rockwell Aerospace and Defense, at the time Respondent signs the Agreement Containing Consent Order in this matter, (2) information that, subsequent to the time Respondent signs the Agreement Containing Consent Order in this matter, falls within the public domain through no violation of this order by Respondent, (3) information that, subsequent to the time Respondent signs the Agreement Containing Consent Order in this matter, becomes known to Respondent from a third party not in breach of a confidential disclosure agreement (information obtained from Rockwell or otherwise obtained as a result of the Acquisition shall not be considered information known to Respondent from a third party), or (4) information after six (6) years from the date of disclosure of such Non-Public Tier II Plus Information to Respondent, or such other period as agreed to in writing by Respondent and the provider of the information.

W. "Non-Public Tier III Minus Information" means any information not in the public domain received or developed by Boeing in its capacity as a designer, developer or manufacturer of Tier III Minus. Non-Public Tier III Minus Information shall not include: (1) information known or disclosed to Rockwell NAAD at the time Respondent signs the Agreement Containing Consent Order in this matter, (2) information that, subsequent to the time Respondent signs the Agreement Containing Consent Order in this matter, falls within the public domain through no violation of this order by Respondent, (3) information that, subsequent to the time Respondent signs the Agreement Containing Consent Order in this matter, becomes known to Rockwell NAAD from a third party not in breach of a confidential disclosure agreement, or (4) information after six (6) years from the date of disclosure of such Non-Public Tier III Minus Information to Respondent, or such other period as agreed to in writing by Respondent and the provider of the information.

X. "Non-Public Space Launch Vehicle Information" means (1) any information not in the public domain disclosed by any Space Launch Vehicle manufacturer, other than Boeing, to Rocketdyne in its capacity as a provider of Space Launch Vehicle Propulsion Systems and (a) if written information, designated in writing by the Space Launch Vehicle manufacturer as proprietary information by an appropriate legend, marking, stamp or positive written identification on the face thereof, or (b) if oral, visual or other information, identified as proprietary information in writing by the Space Launch Vehicle manufacturer prior to the disclosure or within thirty (30) days after such disclosure; or (2) any information not in the public domain disclosed by any Space Launch Vehicle manufacturer to Rocketdyne in its capacity as a provider of Space Launch Vehicle Propulsion Systems prior to the Acquisition. Non-Public Space Launch Vehicle Information shall not include: (1) information known or disclosed to Respondent, excluding Rockwell Aerospace and Defense, at the time Respondent signed the Agreement Containing Consent Order in this matter, (2) information that, subsequent to the time Respondent signs the Agreement Containing Consent Order in this matter, falls within the public domain through no violation of this order by Respondent, (3) information that, subsequent to the time Respondent signs the Agreement Containing Consent Order in this matter, becomes known to Respondent from a third party not in breach of a confidential disclosure agreement (information obtained from Rockwell or otherwise obtained as a result of the Acquisition shall not be considered information known to Respondent from a third party), or (4) information after six (6) years from the date of disclosure of such Non-Public Space Launch Vehicle Information to Respondent, or such other period as agreed to in writing by Respondent and the provider of the information.

II.

IT IS FURTHER ORDERED that Respondent shall not hold Teledyne Ryan liable for any damages or costs resulting from the replacement of Respondent as the supplier of Tier II Plus Wings.

III.

IT IS FURTHER ORDERED that:

A. At any time prior to six (6) months of the date this order becomes final, and if Respondent and Teledyne Ryan have not reached an agreement on a new contract for Respondent to provide Tier II Plus Wings to Teledyne Ryan, Respondent shall, upon request from Teledyne Ryan, deliver to business locations in the United States designated by Teledyne Ryan, and assemble, the Tier II Plus Wings Special Tooling and Special Test Equipment. Respondent shall perform its obligations under this Paragraph III.A. as soon as practicable after receiving such request from Teledyne Ryan, but in a timeframe not to exceed ninety (90) days from the receipt of such request, or such other time period as agreed to in writing by Teledyne Ryan. Respondent shall not charge Teledyne Ryan for any costs associated with carrying out Respondent's obligations under this Paragraph III.A. that would not be considered allowable, as the term allowable is defined in FAR § 52.216-7, under the Tier II Plus Prime Agreement. Nothing in this Paragraph shall alter Respondent's or Teledyne Ryan's rights and obligations pursuant to FAR § 52.249-6, as incorporated in any current or future Tier II Plus Wings contract between Respondent and Teledyne Ryan.

B. At any time prior to six (6) months of the date this order becomes final, and if Respondent and Teledyne Ryan have not reached an agreement on a new contract for Respondent to provide Tier II Plus Wings to Teledyne Ryan, Respondent shall, upon request from Teledyne Ryan, deliver to business locations in the United States designated by Teledyne Ryan the Tier II Plus Wings Engineering and Design Data. Respondent shall perform its obligations under this Paragraph III.B. as soon as practicable after receiving such request from Teledyne Ryan, but in a timeframe not to exceed fifteen (15) days from the receipt of such request, or such other time period as agreed to in writing by Teledyne Ryan. Respondent shall not charge Teledyne Ryan for any costs associated with carrying out Respondent's obligations under this Paragraph III.B. that would not be considered allowable, as the term allowable is defined in FAR § 52.216-7, under the Tier II Plus Prime Agreement.

IV.

IT IS FURTHER ORDERED that Respondent shall not assert or enforce any proprietary rights in any Tier II Plus Wings Special Tooling and Special Test Equipment or Tier II Plus Wings Engineering and Design Data delivered pursuant to Paragraph III. of this order.

V.

IT IS FURTHER ORDERED that:

A. At any time prior to six (6) months of the date this order becomes final, and if Respondent and Teledyne Ryan have not reached an agreement on a new contract for Respondent to provide Tier II Plus Wings to Teledyne Ryan, Respondent shall provide, upon request from Teledyne Ryan, such assistance to personnel designated by Teledyne Ryan as is reasonably necessary to such personnel to design and manufacture Tier II Plus Wings. Such assistance shall include, but not be limited to, consultation with employees of Respondent knowledgeable in the design and manufacture of Tier II Plus Wings, and training at facilities designated by Teledyne Ryan for a period of time and in a manner sufficient to satisfy Teledyne Ryan's management that the designated personnel are appropriately trained in the design and manufacture of Tier II Plus Wings. Respondent shall convey to personnel designated by Teledyne Ryan all know-how necessary to design and manufacture Tier II Plus Wings. However, Respondent shall not be required to continue providing such assistance for more than one (1) year from the date Respondent begins providing such assistance, and shall not be required to provide personnel for more than the equivalent of four (4) man-years during this one (1) year period. Respondent shall not charge Teledyne Ryan for any costs associated with carrying out Respondent's obligations under this Paragraph V.A. that would not be considered allowable, as the term allowable is defined in FAR § 52.216-7, under the Tier II Plus Prime Agreement.

B. Upon reasonable request from Teledyne Ryan, Respondent shall provide such additional technical assistance relating to the Tier II Plus Wings to personnel designated by Teledyne Ryan as is reasonably necessary to enable personnel designated by Teledyne Ryan to complete the Phase II Flight & System Performance Test. Such assistance shall include, but not be limited to, consultation with employees of Respondent knowledgeable in the design and manufacture of Tier II Plus Wings, and training at facilities designated by Teledyne Ryan for

a period of time and in a manner sufficient to satisfy Teledyne Ryan's management that the designated personnel have sufficient knowledge relating to Tier II Plus Wings to be able to support fully Teledyne Ryan's efforts to complete the Phase II Flight & System Performance Test requirements. However, Respondent shall not be required to continue providing such assistance after the completion of the Phase II Flight & System Performance Test. Respondent shall charge Teledyne Ryan at a rate of no more than \$90 per hour for providing such technical assistance.

VI.

IT IS FURTHER ORDERED that:

A. Respondent shall not provide, disclose or otherwise make available to the Boeing Tier III Minus Business any Non-Public Tier II Plus Information.

B. Respondent shall use any Non-Public Tier II Plus Information only in Respondent's capacity as a provider of Tier II Plus Wings or technical assistance, pursuant to Paragraph V. of this order.

VII.

IT IS FURTHER ORDERED that:

A. Respondent shall not provide, disclose or otherwise make available to Rockwell NAAD any Non-Public Tier III Minus Information.

B. Respondent shall use any Non-Public Tier III Minus Information only in its capacity as a designer, developer or manufacturer of Tier III Minus.

VIII.

IT IS FURTHER ORDERED that:

A. Rocketdyne shall not, absent the prior written consent of the proprietor of Non-Public Space Launch Vehicle Information, provide, disclose or otherwise make available to Boeing Space Launch Vehicle Business any Non-Public Space Launch Vehicle Information.

B. Rocketdyne shall use any Non-Public Space Launch Vehicle Information only in its capacity as a provider of Space Launch Vehicle Propulsion Systems, absent the prior written consent of the proprietor of the Non-Public Space Launch Vehicle Information.

IX.

IT IS FURTHER ORDERED that Respondent shall deliver a copy of this order to any Space Launch Vehicle manufacturer prior to obtaining, either from the Space Launch Vehicle manufacturer or through the Acquisition, any information outside the public domain relating to that manufacturer's Space Launch Vehicle.

X.

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.

XI.

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, 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 Paragraphs II. through X. of this order. Respondent shall include in its reports information sufficient to identify all Space Launch Vehicle Manufacturers with whom Respondent has entered into an agreement for the research, development, manufacture or sale of Space Launch Vehicle Propulsion Systems.

XII.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in 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 Respondent that may affect compliance obligations arising out of the order.

XIII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this order, 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 representative of the Commission:

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

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

XIV.

IT IS FURTHER ORDERED that this order shall terminate twenty (20) years from the date this order becomes final, except as otherwise provided in this order.

Signed this _____ day of _____, 1996.

**FEDERAL TRADE COMMISSION
BUREAU OF COMPETITION**

THE BOEING COMPANY

By: _____
Steven K. Bernstein
John E. Scribner
Attorneys

Counsel for the Federal
Trade Commission

By: _____
Theodore J. Collins
Vice President and
General Counsel

By: _____
Benjamin S. Sharp
Perkins Coie
Counsel for Boeing
Corporation

APPROVED:

Ann Malester
Assistant Director

William J. Baer
Director
Bureau of Competition

APPENDIX I

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of)
)
)
THE BOEING COMPANY,) File No. 971-0006
 a corporation.)

)

INTERIM AGREEMENT

This Interim Agreement is by and between The Boeing Company ("Boeing"), a corporation organized and existing under the laws of the State of Delaware, and the Federal Trade Commission ("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, Boeing has proposed to acquire Rockwell International Corporation's Aerospace and Defense business; 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 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, Boeing entering into this Interim Agreement shall in no way be construed as an admission by Boeing that the proposed Acquisition constitutes a violation of any statute; and

WHEREAS, Boeing 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, Boeing 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. Boeing 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 Boeing signs the Consent Agreement.

2. Boeing 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, Teledyne Ryan Aeronautical, McDonnell Douglas Corporation and Lockheed Martin Corporation.

3. Boeing agrees to submit, within thirty (30) days of the date the Consent Agreement is signed by Boeing, an initial report, pursuant to Section 2.33 of the Commission's Rules, signed by Boeing setting forth in detail the manner in which Boeing will comply with Paragraphs II. through X. of the Consent Agreement. Boeing agrees to include in such report a detailed description and explanation of the procedures it has implemented or will implement to comply with Paragraphs II. through X. of the Order.

4. Boeing agrees that, from the date Boeing 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. Boeing 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, upon written request, and on reasonable notice, to Boeing made to its principal office, Boeing shall permit any duly authorized representative or 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 Boeing relating to compliance with this Interim Agreement; and

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

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

Dated: Accepted for public comment by the Commission on
December 5, 1996. Donald S. Clark
Secretary of the Commission

FEDERAL TRADE COMMISSION

THE BOEING COMPANY

By: _____
Stephen Calkins
General Counsel

By: _____
Theodore J. Collins
Vice President and
General Counsel

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

)	
)	
In the Matter of)	
)	Docket No.
THE BOEING COMPANY,)	
a corporation.)	
)	
)	

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that Respondent, The Boeing Company ("Boeing"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire the Aerospace and Defense Business of Rockwell International Corporation ("Rockwell"), 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 an 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

1. "High Altitude Endurance Unmanned Air Vehicle" means any unmanned aircraft designed to perform high-altitude, broad-area reconnaissance missions and manufactured for sale to the United States Department of Defense.
2. "Tier II Plus" or "Global Hawk" means the Tier II Plus High Altitude Endurance Unmanned Air Vehicle currently being developed for the Department of Defense's Advanced Research Projects Agency.
3. "Tier III Minus" or "DarkStar" means the Tier III Minus High Altitude Endurance Unmanned Air Vehicle currently being developed for the Department of Defense's Advanced Research Projects Agency.
4. "Tier II Plus Team" means Teledyne Ryan Aeronautical and the group of subcontractors, including Rockwell Aerospace and Defense, which are currently developing Tier II Plus.

5. "Tier III Minus Team" means the team comprised of Boeing and Lockheed Martin Corporation which is currently developing Tier III Minus.

6. "Space Launch Vehicle" means any vehicle designed to launch satellites or persons into space.

7. "Space Launch Vehicle Propulsion System" means any device that is used to provide propulsion to a Space Launch Vehicle.

8. "Respondent" means Boeing.

II. RESPONDENT

9. Respondent is a corporation organized and existing under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 7755 East Marginal Way South, Seattle, Washington 98108.

10. Respondent is engaged in, among other things, the research, development, manufacture and sale of High Altitude Endurance Unmanned Air Vehicles and Space Launch Vehicles.

11. 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

12. Rockwell Aerospace and Defense Business ("Rockwell Aerospace and Defense") is a division of Rockwell, a corporation organized and existing under and by virtue of the laws of the state of Delaware, with its principal office and place of business located at 2201 Seal Beach Boulevard, Seal Beach, California 90740.

13. Rockwell Aerospace and Defense is engaged in, among other things, the research, development, manufacture and sale of wings for High Altitude Endurance Unmanned Air Vehicles, and Space Launch Vehicle Propulsion Systems.

14. Rockwell Aerospace and Defense 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

15. On or about July 31, 1996, Boeing entered into an Agreement and Plan of Merger, whereby Boeing would acquire Rockwell Aerospace and Defense for approximately \$3.025 billion ("Acquisition").

V. THE RELEVANT MARKETS

16. For purposes of this Complaint, the relevant lines of commerce in which to analyze the effects of the Acquisition are:

a. the research, development, manufacture and sale of High Altitude Endurance Unmanned Air Vehicles;

b. the research, development, manufacture and sale of Space Launch Vehicles; and

c. the research, development, manufacture and sale of Space Launch Vehicle Propulsion Systems.

17. For purposes of this Complaint, the United States is the relevant geographic area in which to analyze the effects of the Acquisition in all relevant lines of commerce.

VI. STRUCTURE OF THE MARKETS

18. The market for the research, development, manufacture and sale of High Altitude Endurance Unmanned Air Vehicles is highly concentrated as measured by the Herfindahl-Hirschman Index ("HHI") or the two-firm and four-firm concentration ratios ("concentration ratios"). Respondent and Rockwell are members of the only two teams which produce High Altitude Endurance Unmanned Air Vehicles.

19. Respondent, through the Acquisition, would be a member of both the Tier II Plus Team and the Tier III Minus Team.

20. The market for Space Launch Vehicle Propulsion Systems is highly concentrated as measured by the HHI or concentration ratios.

21. Respondent, through the proposed Acquisition, would be engaged in the research, development, manufacture and sale of a wide range of Space Launch Vehicles and Space Launch Vehicle Propulsion Systems.

VII. BARRIERS TO ENTRY

22. Entry into the market for the research, development, manufacture and sale of High Altitude Endurance Unmanned Air

Vehicles would not occur in a timely manner to deter or counteract the adverse competitive effects described in Paragraph 26 because of, among other things, the difficulty involved in developing the technology and expertise necessary to produce High Altitude Endurance Unmanned Air Vehicles.

23. Entry into the market for the research, development, manufacture and sale of High Altitude Endurance Unmanned Air Vehicles is not likely to occur to deter or counteract the adverse competitive effects described in Paragraph 26 because of, among other things, the expense required to develop the technology and expertise necessary to produce High Altitude Endurance Unmanned Air Vehicles.

24. Entry into the market for the research, development, manufacture and sale of Space Launch Vehicle Propulsion Systems would not occur in a timely manner to deter or counteract the adverse competitive effects described in Paragraph 26 because of, among other things, the difficulty involved in developing the technology and expertise necessary to produce Space Launch Vehicle Propulsion Systems.

25. Entry into the market for the research, development, manufacture and sale of Space Launch Vehicle Propulsion Systems is not likely to occur to deter or counteract the adverse competitive effects described in Paragraph 26 because of, among other things, the expense required to develop the technology and expertise necessary to produce Space Launch Vehicle Propulsion Systems.

VIII. EFFECTS OF THE ACQUISITION

26. The effects of the Acquisition may be substantially to lessen competition and to tend to create a monopoly in the United States markets for High Altitude Endurance Unmanned Air Vehicles and Space Launch Vehicles 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, in the following ways, among others:

a. by reducing actual, direct and substantial competition between the Tier II Plus Team and the Tier III Minus Team in the research, development, manufacture and sale of High Altitude Endurance Unmanned Air Vehicles;

b. by increasing the likelihood that the Department of Defense would be forced to pay higher prices for High Altitude Endurance Unmanned Air Vehicles;

c. by increasing the likelihood that quality and technological innovation in the High Altitude Endurance Unmanned Air Vehicle market would be reduced;

d. by allowing Respondent to gain access to competitively sensitive non-public information concerning the Tier II Plus team, whereby:

(1) actual, direct and substantial competition between the Tier II Plus Team and the Tier III Minus Team in the High Altitude Endurance Unmanned Air Vehicle market would be reduced;

(2) the likelihood that the Department of Defense would be forced to pay higher prices for High Altitude Endurance Unmanned Air Vehicles would be increased; and

(3) quality and technical innovation in the High Altitude Endurance Unmanned Air Vehicle market would be reduced; and

e. by allowing Respondent to gain access to competitively sensitive non-public information concerning other Space Launch Vehicle manufacturers, whereby:

(1) actual competition between Respondent and other Space Launch Vehicle manufacturers would be reduced; and

(2) quality and technical innovation in the Space Launch Vehicle market would be reduced.

IX. VIOLATIONS CHARGED

27. The Acquisition described in Paragraph 15 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

28. The Acquisition described in Paragraph 15, 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.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this Complaint to be signed by the Secretary and its official seal to be affixed, at Washington, D.C. this _____ day of _____, A.D. 1996.

By the Commission.

Donald S. Clark
Secretary

SEAL

**ANALYSIS OF PROPOSED CONSENT ORDER
TO AID PUBLIC COMMENT**

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an agreement containing a proposed Consent Order from The Boeing Company ("Boeing") designed to remedy the anticompetitive effects likely to result from Boeing's proposed acquisition of Rockwell International Corporation's Aerospace and Defense business ("Rockwell Aerospace and Defense"). The proposed Consent Order enables Teledyne Ryan, the prime contractor for the Tier II Plus high altitude endurance unmanned air vehicle ("HAE UAV"), to replace Boeing as its teammate and wing supplier for Tier II Plus, without incurring any significant cost or risk, by requiring Boeing, at Teledyne Ryan's request, to deliver to Teledyne Ryan all of the assets needed to manufacture wings for the Tier II Plus and provide technical assistance to Teledyne Ryan. In addition, the proposed Consent Order prohibits Boeing's space launch vehicle division from gaining access to any non-public information that Boeing's space launch vehicle propulsion system division will receive after the acquisition from competing space launch vehicle providers.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and any comments

received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Order.

On or about July 31, 1996, Boeing agreed to acquire Rockwell Aerospace and Defense for approximately \$3.025 billion. The proposed complaint alleges that the acquisition, if consummated, would violate 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, in the markets for HAE UAVs and space launch vehicles.

The proposed Consent Order would remedy the alleged violations in each market. First, Boeing and Rockwell are members of the only two teams currently competing in the design and development of HAE UAVs. Boeing and its teammate Lockheed Martin are currently developing the Tier III Minus HAE UAV, and Teledyne Ryan and a team of subcontractors, including Rockwell Aerospace and Defense, are currently developing the Tier II Plus HAE UAV.

HAE UAVs are unmanned aircraft used to perform high-altitude, broad area reconnaissance. These aircraft are controlled from the ground and transmit reconnaissance sensor data on a real time basis. HAE UAVs are being designed to satisfy the Defense Airborne Reconnaissance Office's goal of providing the U.S. military with the ability to obtain responsive and continuous reconnaissance data from anywhere within enemy

territory, day or night, as the needs of the warfighter dictate.

Under its teaming agreement with Lockheed Martin, Boeing is responsible for providing, among other things, the wings, launch station and avionics for Tier III Minus. As a subcontractor to Teledyne Ryan for Tier II Plus, Rockwell is responsible for providing only the aircraft's wings. The proposed acquisition therefore would position Boeing as a member of both competing HAE UAV teams while Boeing would stand to earn a far greater share of the revenue from its participation on the Tier III Minus team than it could earn from its role as the wing supplier for the Tier II Plus team.

The acquisition is likely to lead to anticompetitive effects in the HAE UAV market. Because the proposed acquisition would cause Boeing to be a member of the only two competing HAE UAV teams, Boeing would be in a position to raise price and/or reduce quality on one or both teams. Boeing would not only have the opportunity to diminish competition, but would also have the incentive to cause the Tier II Plus team to become non-competitive because Boeing stands to earn significantly more revenue from its participation in the Tier III Minus program than it would earn as a supplier of wings to the Tier II Plus team. Moreover, if the Tier II Plus system became non-competitive, or simply less competitive, Boeing would then be in a position to also raise the price of the Tier III Minus system.

The proposed consent agreement resolves the likely anticompetitive effects of the acquisition in the HAE UAV market by enabling Teledyne Ryan to replace Rockwell Aerospace and Defense, which would be owned by Boeing after the acquisition, as the Tier II Plus wing supplier without incurring any significant costs or risk. As a result, Boeing will either agree to supply Tier II Plus wings in a competitive manner after the acquisition or be replaced by Teledyne Ryan.

Specifically, under the terms of the Order, Boeing is required to deliver, upon request from Teledyne Ryan, to business locations in the United States designated by Teledyne Ryan, at no cost to Teledyne Ryan, all of the assets needed to produce Tier II Plus wings, including the special tooling, special test equipment, engineering data and design data. Teledyne Ryan can request that Boeing deliver such assets at anytime prior to six months from the date the Order becomes final, provided Teledyne Ryan and Boeing have not agreed to a new contract for Boeing to supply wings for Tier II Plus. This ensures that Boeing will have the incentive to compete vigorously to remain a supplier of wings for Tier II Plus. In addition, Boeing is prohibited from asserting or enforcing any proprietary rights in such equipment or data, or holding Teledyne Ryan liable for any damages or costs resulting from the replacement of Boeing as the Tier II plus wing supplier.

In order to ensure a smooth transition of the wing manufacturing to a new supplier and to offset any lost learning curve efficiencies, the proposed Order requires Boeing to provide technical assistance, not to exceed four man years over a one year period, at no cost to Teledyne Ryan. Because Teledyne Ryan may need Boeing's assistance in resolving any technical issues that arise during the upcoming Tier II Plus flight tests, the Order requires Boeing to provide additional technical assistance through the duration of such tests. Finally, in order to prevent the anticompetitive flow of competitively sensitive information, the order establishes a "firewall" between Boeing's Tier III Minus business and the Rockwell North American Aircraft Division that is currently providing Tier II Plus wings.

Boeing is also a significant competitor in the research, development, manufacture and sale of space launch vehicles, and is expected to bid for the upcoming Department of Defense ("DoD") Evolved Expendable Launch Vehicle ("EELV") program. The EELV competition is expected to produce the next generation of launch vehicles to replace all current medium to heavy launchers -- Lockheed Martin's Atlas, Titan II and Titan IV series, and McDonnell Douglas's Delta series -- with a single family of vehicles capable of launching medium and heavy payloads into orbit at a significantly lower cost. The EELV will handle the bulk of the U.S. government's launch requirements after the year

2000 and is also expected to be used for commercial applications. Boeing, McDonnell Douglas, Lockheed Martin and Alliant Techsystems are currently facing a down-selection from four to two contractors in the next phase of the EELV program.

Rockwell, through its Rocketdyne Division ("Rocketdyne"), is one of the world's leading manufacturers of space launch vehicle propulsion systems. Currently, Boeing and McDonnell Douglas are planning to use Rocketdyne propulsion systems as part of their EELV proposals. Thus, the proposed acquisition would vertically integrate Boeing as an EELV bidder and a launch vehicle propulsion systems provider.

Because an EELV manufacturer that is using a Rockwell propulsion system must work very closely with Rockwell in order to integrate that system into its EELV, Boeing and McDonnell Douglas have provided, and will continue to provide, a wide range of competitively sensitive proprietary design, performance, cost-related, marketing and business strategy information to Rockwell.

If DoD selects the Boeing and McDonnell Douglas teams as the finalists for the EELV competition, Boeing's launch vehicle division could gain access to the proprietary information that McDonnell Douglas has provided to Rockwell's launch vehicle propulsion business, which could affect the prices and services that Boeing would offer. Thus, the proposed acquisition

increases the likelihood that competition between the participants in the EELV program would decrease.

In addition, Boeing also competes in the commercial market for space launch vehicles and Rockwell also supplies space launch propulsion systems to Boeing's commercial space launch vehicle competitors. As a result, the proposed acquisition may result in similar anticompetitive effects in future commercial space launch vehicle procurements. In addition to causing higher prices, the proposed acquisition may also reduce innovation in the commercial space launch vehicle market, as Boeing's competitors who use Rockwell propulsion systems will be less willing to invest in new space launch vehicle developments for fear that Boeing will be able to "free-ride" off their technological developments.

To remedy the proposed acquisition's likely anticompetitive effects in the space launch vehicle market, the proposed Consent Order preserves the confidentiality of space launch vehicle suppliers' proprietary information by prohibiting Boeing's division that provides space launch vehicle propulsion systems from making any proprietary information from competing space launch vehicle manufacturers available to Boeing's space launch vehicle division. Under the proposed Consent Order, Boeing may only use such information in its capacity as a provider of space launch vehicle propulsion systems. Non-public information in this context includes any information not in the public domain

that is designated as proprietary information by any space launch vehicle manufacturer that provides such information to Boeing as well as information not in the public domain provided by any space launch vehicle manufacturer to Rockwell prior to the acquisition. The purpose of the proposed Consent Order is to preserve the opportunity for full competition in the market for the research, development, manufacture and sale of space launch vehicles. The Commission has issued similar orders limiting potentially anticompetitive information transfers following mergers or acquisitions, including Lockheed Martin, (C-3685)(September 20, 1996); Raytheon Company, (C-3681)(September 10, 1996); Lockheed Corporation/Martin Marietta Corporation, (C-3576)(May 9, 1995); Alliant Techsystems Inc., (C-3567)(April 7, 1995); Martin Marietta, (C-3500)(June 28, 1994).

Under the provisions of the proposed Consent Order, Boeing is required to deliver a copy of the Order to any space launch vehicle manufacturer prior to obtaining any information from such manufacturer that is outside of the public domain. The Order also requires Boeing to provide the Commission a report of compliance with the provisions of the Order within (60) days of the date the Order becomes final, and annually for the next (10) years on the anniversary of the date the Order becomes final.

In order to preserve competition in the relevant markets during the period prior to the final acceptance of the proposed

Consent Order (after the 60-day public notice period), Boeing has entered into an Interim Agreement with the Commission in which it has agreed to be bound by the proposed Consent Order as of the date the Commission accepts the proposed Consent Order subject to final approval.

The purpose of this analysis is to facilitate public comment on the proposed Consent Order, and it is not intended to constitute an official interpretation of the agreement and proposed Consent Order or to modify in any way their terms.