



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

---

**IN THE MATTER OF GENCORP, INC.**

---

FTC File No. 031-0152

---

**COMMENTS OF CITIZENS FOR VOLUNTARY TRADE**

---

Proposed Consent Order Announced October 15, 2003  
Comments Filed November 12, 2003

---

Pursuant to the FTC's publication of a proposed consent agreement in the above captioned matter<sup>1</sup>, Citizens for Voluntary Trade, a Virginia nonprofit corporation, files the following comments.

**I**

GenCorp Inc. is an Ohio corporation (headquartered in California) founded in 1915 as a tire and rubber manufacturer. During a restructuring in the 1980s, GenCorp became a holding company for three separate engineering businesses: Aerojet, Aerojet Fine Chemicals, and GDX Automotive. This case involves the Aerojet subsidiary, which produces missile and aerospace propulsion systems for military and commercial clients.

In May 2003, Aerojet agreed to purchase the Virginia-based propulsion business of Atlantic Research Corporation, a subsidiary of Sequa Corporation. According to Aerojet, the acquired Atlantic assets generated \$150 million in sales during 2002, and Aerojet paid Atlantic \$133 million for the assets. The deal makes Aerojet the second-leading U.S.

---

<sup>1</sup> 68 Fed. Reg. 60,691-60,694 (October 23, 2003).

manufacturer of solid propulsion systems, and the leading manufacturer of missile propulsion systems.<sup>2</sup>

The FTC, acting under the Hart-Scott-Rodino Antitrust Improvement Act of 1976, filed a complaint to prevent the completion of Aerojet's purchase due to alleged antitrust concerns. The FTC's complaint alleges Aerojet's purchase of the Atlantic assets "may \* \* \* substantially lessen competition or tend to create a monopoly"<sup>3</sup> in four markets of in-space propulsion thrusters. These thrusters are used to place or maintain a spacecraft, such as a satellite, in orbit around the Earth. The merger of Aerojet and the Atlantic business, the FTC claims, will force customers to pay more for these specialized thrusters, while simultaneously reducing Aerojet's incentive to further develop their products.

In a proposed consent order filed together with the complaint, Aerojet agreed to divest two of Atlantic's production facilities, along with related assets, to a third party within six months of completing the Atlantic purchase. The FTC must approve any buyer, and should Aerojet be unable to find a buyer, the FTC will appoint a trustee to find a buyer. Under the terms of the proposed order, Aerojet was allowed to complete the Atlantic acquisition in October 2003, even though the order itself is subject to public comment and final approval by the Commission.

## II

The FTC's principal argument against the Aerojet-Atlantic deal, as originally proposed, is that the number of competitors in the in-space propulsion thruster markets would be reduced without any expectation of new competition arising in the near future. The Commission describes a number of barriers to entry into the marketplace, most of them erected by the Government itself: For example, foreign producers of thrusters are not acceptable substitutes, the Commission says, because U.S. export regulations "make it very burdensome and time consuming" for customers to

---

<sup>2</sup> GenCorp-Aerojet press release:  
[www.aerojet.com/program/framecontent.pl?url=http://www.aerojet.com/redir2.cfm&program\\_ID=45](http://www.aerojet.com/program/framecontent.pl?url=http://www.aerojet.com/redir2.cfm&program_ID=45)

<sup>3</sup> Complaint, p. 4.

deal with.<sup>4</sup> And in general, the Commission found that any potential new entrant “would need to undertake the difficult, expensive and time-consuming process of researching and developing a viable in-space propulsion thruster, acquiring the necessary production and testing assets, obtaining the appropriate environmental permits, and developing the expertise needed to successfully design, manufacture, and market these products.”

The FTC creates unreasonable expectations when it demands private businesses take responsibility for barriers imposed by the government on the private sector. Aerojet and Atlantic are not liable for the Government’s decision to impose import restrictions on foreign propulsion manufacturers; nor should private firms be denied their economic liberties based on the general difficulty of entering a particular market.

A key reason these propulsion markets lack competition is that the markets are rather small. In order to need in-space propulsion thrusters, a customer must first possess a spacecraft that requires such thrusters. Satellites are not exactly mass-market consumer goods; as the FTC acknowledges, the government and large commercial firms are the principal customers of spacecraft and their various parts.

Thus, there is little credibility to the FTC’s view that customers such as the U.S. Department of Defense face irreparable harm because Aerojet and Atlantic possess “market power” over four subsets of the overall spacecraft propulsion industry. Even Aerojet’s non-government customers are large commercial aerospace firms. If Aerojet’s prices rise to an intolerable level, government and private customers would likely have little difficulty expressing their objections; if necessary, the DOD and private customers could produce the necessary engines themselves without contracting Aerojet. That this option may prove less convenient than having two or more third-party competitors does not, in our view, justify an antitrust attack on a supplier that happens to enjoy “market power.”

---

<sup>4</sup> Analysis of Agreement to Aid Public Comment, p. 3.

## Comments of Citizens for Voluntary Trade

The FTC acts as if Aerojet's market power is the product of illegal or illicit activities. But there is no evidence in the record that suggests, much less proves, this view. As best we can determine, Aerojet's economic power derives wholly from its competition within the marketplace. Here, the FTC seeks to curb this valid economic power through the arbitrary use of the agency's political power; presumably the FTC is protecting the DOD and other customers from the potential inconvenience of a price increase. Once again, this does not justify antitrust action.

The most bizarre claim advanced by the FTC deals with Atlantic's alleged monopoly in the "bipropellant attitude control thruster" (hereinafter "BACT") market. Prior to the announced Aerojet acquisition, the FTC alleges Atlantic "essentially [had] a monopoly position" as the "only firm with recent sales" to U.S. customers. Aerojet is not a competitor in the BACT market, despite the FTC's view that "it has substantial expertise and technology in this area, has produced these thrusters in the recent past, and is a *likely potential entrant* into the market,"<sup>5</sup> (italics added). In other words, Aerojet violated the antitrust laws, according to the FTC, when it acquired an existing *de facto* monopolist in a market that Aerojet was not competing in. So not only is Aerojet liable for barriers to market entry imposed by the government, it is also breaking the law by deciding not to enter the market themselves.

This is quite a theory. Under the FTC's reasoning, a firm violates the antitrust laws whenever it is theoretically capable of entering a market but chooses not to do so. Here, the FTC presents no evidence Aerojet was actually about to enter the market—only that it could if it wanted to. From this the Commission declares Aerojet a "likely potential entrant," and punishes them accordingly. Taken to the next level, the FTC could prosecute a firm that chooses not to enter a market because of the high costs associated with the government's entry barriers; for example, a firm might begin developing thruster technology to compete with Aerojet's existing products, but after reviewing the regulatory barriers, this hypothetical firm chooses to cease its efforts. The FTC

---

<sup>5</sup> Analysis, p. 4.

Comments of Citizens for Voluntary Trade

could then, under the “likely potential entrant” theory, prosecute this firm for failing to compete. After all, consumers are being denied, in this example, their “right” to the benefits of the new firm’s potentially competitive product.

The “likely potential entrant” theory is just the latest attempt by the FTC to fabricate illegal actions where none exist. Aerojet’s only offense here was acquiring a competitor in pursuit of both companies’ economic self-interest. The Commission, especially under its current leadership, tends to view corporate self-interest as inherently anti-consumer and anticompetitive. In this case, the FTC is more interested in protecting the Department of Defense and a handful of large aerospace firms than it is protecting property rights and the capitalist system. CVT respectfully submits this FTC has its priorities backwards.

Comments of Citizens for Voluntary Trade

**III**

For the reasons discussed above, and those stated in previous comments we have filed, Citizens for Voluntary Trade requests the FTC reject entry of the proposed order and dismiss the complaint against GenCorp.

Respectfully Submitted,  
CITIZENS FOR VOLUNTARY

TRADE

S.M. Oliva  
*President*  
Post Office Box 66  
Arlington, VA 22210  
(571) 242-1766

Dated: November 13, 2003