

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Deborah Platt Majoras, Chairman
Pamela Jones Harbour
Jon Leibowitz
William E. Kovacic
J. Thomas Rosch

_____)
In the Matter of)
)
THE BOEING COMPANY,) Docket No. C-4188
a corporation;)
)
and)
)
LOCKHEED MARTIN CORPORATION,)
a corporation.)
)
_____)

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act, and its authority thereunder, 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 with Respondent Lockheed Martin Corporation (“Lockheed”), a corporation subject to the jurisdiction of the Commission, to form a joint venture to be named United Launch Alliance L.L.C. (“ULA”) in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 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. “Commission” means the Federal Trade Commission.
2. “Boeing” means The Boeing Company, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by The Boeing Company, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

3. "Lockheed" means Lockheed Martin Corporation, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Lockheed Martin Corporation, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

4. "ULA" means United Launch Alliance, L.L.C., its general partners, directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by ULA, and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each. ULA shall not include Boeing or LM.

5. "DOD" means the United States Department of Defense.

6. "Launch Services" means the service of using a Launch Vehicle to place a Space Vehicle into earth orbit or beyond for the United States.

7. "Launch Vehicle" means an expendable launch-system or other system to launch a Space Vehicle from the earth's surface to earth orbit or beyond. Launch Vehicle shall not include the space shuttle system.

8. "Space Vehicle" means a spacecraft or multiple spacecrafts weighing not less than 4,150 pounds, in total, to be launched to low earth orbit at a ninety degrees inclination reference orbit, or a lighter spacecraft or multiple spacecrafts to higher orbital parameters requiring equivalent lift capacity, procured or proposed to be procured pursuant to a Program with the capability of performing various scientific, military, exploration, observation, intelligence, reconnaissance, communication or other space missions.

9. "Respondents" means Boeing and Lockheed, individually and collectively.

II. RESPONDENTS

10. Respondent Boeing is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 100 North Riverside, Chicago, Illinois 60606.

11. Respondent Lockheed is a corporation organized, existing, and doing business under and by virtue of the laws of Maryland, with its office and principal place of business located at 6801 Rockledge Drive, Bethesda, Maryland 20817.

12. Respondents, among other things, are engaged in the manufacturing, research, and development of Launch Vehicles and the sale of Launch Services to the United States. Respondents are also engaged in the manufacturing, research, development, and sale of Space Vehicles to the United States.

13. Respondents are, and at all times relevant herein have been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. §12, and are corporations whose business is in or affects commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

III. THE PROPOSED JOINT VENTURE

14. Pursuant to a Joint Venture Master Agreement dated May 2, 2005, Boeing and Lockheed agreed to combine their respective Launch Services businesses to form a joint venture called ULA (“Transaction”).

IV. THE RELEVANT MARKETS

15. For the purposes of this Complaint, there are two distinct relevant lines of commerce in which to analyze the effects of the Transaction:

- a. the research, development, and sale of Medium to Heavy (“MTH”) Launch Services; and
- b. the research, development, and sale of Space Vehicles.

16. The United States government purchases MTH Launch Services to launch its Space Vehicles. There is no alternative technology to deliver Space Vehicles to their necessary orbit or flight trajectory, nor is there any alternative technology to execute the multitude of unique functions the United States government purchases Space Vehicles to perform.

17. For the purposes of this Complaint, the relevant geographic market is the United States. Federal law and national security imperatives require that the U.S. government purchase MTH Launch Services and Space Vehicles from domestic companies.

V. THE STRUCTURE OF THE MARKET

18. The U.S. markets for MTH Launch Services and Space Vehicles are highly concentrated. In the MTH Launch Services market, Boeing and Lockheed are the only competitors, and their consolidation will result in a monopoly. In the U.S. market for Space Vehicles, three firms, Boeing, Lockheed, and Northrop Grumman, account for the large majority of sales.

VI. ENTRY CONDITIONS

19. ULA's monopoly in the U.S. MTH Launch Services market is likely to be durable, due to the extremely high barriers to entry that are present in the market. The U.S. Space Vehicle market is also characterized by extremely high barriers to entry. In these markets, design and development alone requires many years and costs in excess of a billion dollars. Even if a firm does attempt to enter these markets, significant market impact is likely to be many years away. Due to the expense involved and the vital national security and scientific services provided by Space Vehicles, the United States government only purchases proven, reliable MTH Launch Services and Space Vehicles. As a result, successful new entry into the relevant markets is unlikely to occur in the foreseeable future.

VII. EFFECTS OF THE ACQUISITION

20. The effects of the Transaction, if consummated, may be to substantially lessen competition and to tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, in the following ways, among others:

- a. Respondents, through their joint ownership of ULA, may gain access to competitively sensitive non-public information concerning other Space Vehicle suppliers, whereby:
 - i. actual competition between Respondents and other Space Vehicle suppliers would be reduced; and
 - ii. the research, development, innovation, and quality of Space Vehicles may be reduced;
- b. ULA, through its joint ownership by Respondents, may gain access to competitively sensitive non-public information concerning other potential MTH Launch Services competitors, whereby:
 - i. actual competition between ULA and potential MTH Launch Service suppliers would be reduced; and
 - ii. the research, development, innovation, and quality of Launch Services may be reduced;
- c. ULA, as a supplier of MTH Launch Services, may be in a position to disadvantage or raise the costs of Space Vehicle suppliers that compete against Respondents' Space Vehicle businesses by withholding support and information relating to a Launch Vehicle necessary to make a Space Vehicle compatible with a Launch Vehicle; and

d. Respondents, as suppliers of Space Vehicles, may be in a position to disadvantage or raise the costs of entry to potential MTH Launch Services suppliers by withholding support and information relating to a Space Vehicle necessary to make a Space Vehicle compatible with a Launch Vehicle.

VIII. VIOLATIONS CHARGED

21. The Transaction described in Paragraph 14 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

22. The Transaction described in Paragraph 14, 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.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this first day of May, 2007, issues its Complaint against said Respondents.

By the Commission.

Donald S. Clark
Secretary

SEAL: