

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

PUBLIC RECORD VERSION

In the Matter of )  
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 **GENCORP INC.,** )  
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 a corporation. )  
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**Docket No. C-4099**  
**File No. 031-0152**

**GENCORP INC.'S PETITION FOR APPROVAL OF PROPOSED DIVESTITURE**

Pursuant to Section 2.41(f) of the Federal Trade Commission ("Commission") Rules of Practice and Procedure, 16 C.F.R. § 2.41(f) (2002), and Paragraph II.A of the Decision and Order (the "Decision and Order") contained in the Agreement Containing Consent Orders approved by the Commission in the above-captioned matter, GenCorp Inc. ("GenCorp") hereby files this Petition for Approval of Proposed Divestiture (the "Petition") requesting the Commission's approval of the divestiture of the former Atlantic Research Corporation ("ARC") In-Space Liquid Propulsion Assets<sup>1</sup> to American Pacific Corporation ("AmPac").

<sup>1</sup> For capitalized terms not defined herein, please see the definitions in the Decision and Order.

## **I. Background: Consent Agreement and Complaint**

On September 15, 2003, GenCorp and the Commission entered into an Agreement Containing Consent Orders (including a Decision and Order and an Order to Hold Separate and Maintain Assets)(collectively, the "Consent Agreement"). On October 14, 2003, the Commission accepted the Consent Agreement for public comment. On October 17, 2003, pursuant to a Purchase Agreement between Aerojet-General Corporation ("Aerojet"), a subsidiary of GenCorp, and ARC, a subsidiary of Sequa Corporation ("Sequa"), dated May 2, 2003, GenCorp completed its acquisition of substantially all of the assets and the assumption of certain liabilities related to the propulsion business of ARC, including the ARC In-Space Liquid Propulsion Business operated out of facilities located in Niagara Falls, NY and Westcott, England and consisting of the research, design, development, manufacture, fabrication, assembly, testing, marketing, distribution, sale and service of propulsion systems, including propellant tanks, for use on satellites and spacecraft.

Paragraph VI.12 of the Commission's Complaint alleges that the acquisition by GenCorp of ARC will substantially lessen competition in the research, development, production, and sale of monopropellant thrusters, bipropellant apogee thrusters, dual mode apogee thrusters and bipropellant attitude control thrusters. Paragraph II.A of the Decision and Order requires GenCorp to divest the former ARC In-Space Liquid Propulsion Assets within six months after the occurrence of the Acquisition.

After several months of searching for a prospective purchaser and many weeks of negotiations with AmPac, GenCorp filed its Motion for Extension of Time for Divestiture with the Commission on April 14, 2004. On April 26, 2004, Aerojet and AmPac executed an Asset Purchase Agreement (including attachments, exhibits and schedules)(collectively, the

"Agreement"). GenCorp submitted a copy of the executed Agreement to Naomi Licker, Esq. in the Commission's Office of Compliance on April 27, 2004. A copy of the Agreement is also provided as Exhibit 1.

GenCorp desires to complete the proposed divestiture of the former ARC In-Space Liquid Propulsion Assets as soon as possible following Commission approval. Prompt consummation will further the purposes of the Decision and Order and is in the interests of the Commission, the public, AmPac and GenCorp because it will allow AmPac to move forward with its business plans for the competitive operation of the business. It will also allow GenCorp to fulfill its obligations under the Consent Agreement. GenCorp accordingly requests that the Commission promptly commence the period of public comment pursuant to Section 2.41(f)(2) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(2)(2002), limit the public comment period to the customary thirty-day period, and grant this Petition by approving the divestiture of the former ARC In-Space Liquid Propulsion Assets to AmPac pursuant to the proposed agreements as soon as practicable after the close of the public comment period.

This Petition describes the principal terms of the Agreement by which GenCorp will divest the former ARC In-Space Liquid Propulsion Assets to AmPac and explains why the agreement satisfies the objectives of the Consent Agreement by establishing a strong and effective competitor in the U.S. markets for the research, development, manufacture and sale of monopropellant thrusters, bipropellant apogee thrusters, dual mode apogee thrusters, and bipropellant attitude control thrusters.

## **II. Request for Confidential Treatment**

Because this Petition and its attachments contain confidential and competitively sensitive business information relating to the divestiture of the former ARC In-Space Liquid Propulsion Assets, GenCorp has redacted such confidential information from the public version of this Petition and its attachments. The disclosure of this information would prejudice GenCorp and AmPac, cause harm to the ongoing competitiveness of the former ARC In-Space Liquid Propulsion Assets, and impair GenCorp's ability to comply with its obligations under the Consent Agreement.

Pursuant to Sections 2.41(f)(4) and 4.9(c) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41(f) (2002), GenCorp requests on its own behalf and on behalf of AmPac, that the confidential version of this Petition and its attachments and the information contained herein be accorded confidential treatment under 5 U.S.C. § 552 and Section 4.10(a)(2) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 4.10(a)(2) (2002). The confidential version of this Petition is also exempt from disclosure under Exemptions 4, 7(A), 7(B) and 7(C) of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), 552(b)(7)(A), 552(b)(7)(B), and 552(b)(7)(C), and the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18(a)(h).

## **III. The Former ARC In-Space Liquid Propulsion Business ("In-Space Business") is an Established, Stand-alone Business Requiring No Additional Management Expertise**

AmPac will be acquiring an established, independently-operating business with a sixty-year history of technological development and application as a supplier of liquid fuel propulsion

products and systems for military, commercial and civil applications and its own key employees and business strategies.

The former ARC In-Space Liquid Propulsion Business ("In-Space Business") is a strong competitor in the production of bipropellant attitude control thrusters, dual mode apogee engines and monopropellant thrusters for satellites. The In-Space Business has extensive experience in the manufacture of bipropellant thrusters, particularly the ARC 5-lbf. -- an engine originally developed in the 1970s and now considered the industry standard for 5-lbf bipropellant thrusters. In addition, the In-Space Business is the leading producer of dual mode apogee thrusters -- the LEROS family of engines. The LEROS 1 engine has been used in several recent Mars missions and has been consistently upgraded for higher performance. The In-Space Business has longstanding relationships with the primary customers in the satellite sector of the aerospace industry, and has developed liquid rockets and systems for programs such as Agena, Mercury and the Apollo Lunar Module.

The In-Space Business continues to operate out of two facilities in Niagara, NY, and Westcott, UK which together produce a full range of in-space liquid propulsion thrusters. The Niagara Falls facility has complete engineering capabilities, including a test facility capable of testing all in-space thrusters and systems, and a clean room for final assembly, while the Westcott facility has engineering capability for production support and some testing facilities, as well as a clean room.

Many of the key personnel at these two facilities -- most of whom have remained with the business during the pendency of the divestiture and all of whom will be offered employment

when AmPac consumates the transaction<sup>2</sup> -- have strong backgrounds in engineering and significant experience in the aerospace industry. For example, the Vice President of Liquids, Robert Huebner, has twenty-seven years of engineering, marketing and management experience in the aerospace industry, while the Director of Engineering, Dr. Richard J. Driscoll, has thirty-five years of engineering experience in liquid propulsion and related technical fields. The In-Space Business Engineering Department of the Niagara facility is comprised of a staff of eleven engineers of outstanding technical capability in liquid propulsion thruster design and thruster testing. The In-Space Business has also developed a range of engineering software to support its technical activities and analyze specific data. The engineering section at the Westcott facility is comprised of three members, and is capable of providing a range of skills in support of contracts for bipropellant and monopropellant thrusters. The Westcott Engineering Section operates in close cooperation with the Main Engineering Department based in Niagara Falls, New York.

The In-Space Business sells primarily in the satellite propulsion market, and has a position in the missile system propulsion market. For the worldwide satellite propulsion market, which includes both civil and military satellite programs, historically around thirty new contracts were awarded a year. There was a downturn in the market between 1997 and 2002, but sales have recovered somewhat in 2003 and are expected to return to between twenty and thirty contract awards a year. For the missile system propulsion market, which involves attitude and divert and control systems for maneuvering missiles in flight, the need for strategic programs is expected to grow with the advent of a new missile defense system.

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<sup>2</sup> The transfer of the UK facilities is accomplished through a share purchase. Accordingly, employees will continue to be employed by the autonomous business and not directly by AmPac.

Pursuant to the Hold Separate Order, GenCorp retained an independent trustee to supervise the In Space Business during the divestiture process. The Hold Separate Trustee (“HST”), Mr. Charles L. Wilkins, Senior Managing Director of FTI Consulting Inc., in Washington, D.C., was vested with all powers and authorities required to oversee and administer the Business. The HST visited the Niagara Falls and Westcott facilities on several occasions, established a Hold Separate Procedures Plan and Agreement, which included a Transition Services Agreement calling for continuing support of the In Space Business by Aerojet. Aerojet has provided all of the required services under the Transition Services Agreement, and has offered to continue the services as requested by AmPac.

The HST also conducted an independent audit of the intellectual property assets of the In Space Business, to ensure that all such assets had been properly separated from Aerojet and secured by the In Space Business. All of the HST’s recommendations directed to Aerojet with respect to the intellectual property were implemented by Aerojet. The HST has also reported independently to the FTC on a monthly basis since his appointment, has not identified any problems out of the ordinary course with the In Space Business, and has found that GenCorp and Aerojet have complied with their obligations under the Hold Separate Order.

During the Hold Separate period and continuing to today, the In Space Business has not experienced any unusual employee terminations, increased retirements or severances, or claims out of the ordinary course of business. The Respondents have continued all employment benefits either by maintaining the plans operated by ARC, or by implementing substantially identical plans provided by Aerojet. The Respondents also supported the normal annual performance review and merit increase policies, and paid management incentive bonuses to eligible

employees consistent with past practices at ARC and ARC UK Ltd. These actions have ensured the continuing retention of the incumbent workforce in both locations, ensuring their availability for employment by a purchaser of the In Space Business.

The HST, working with the management of the In Space Business, developed and approved a strategic business plan for the In Space Business. The business has performed largely in accordance with that plan and sales are ahead of plan. With respect to facilities and equipment, the Respondents have funded capital expenditure requests sought by the In Space Business and approved by the HST. All other operating plans of the In Space Business with respect to facility maintenance, upgrades, and renovations have been implemented according to their terms.

#### **IV. AmPac Will be a Strong and Effective Competitor**

Paragraph II. of the Decision and Order requires GenCorp to divest the former ARC In-Space Liquid Propulsion Assets to a single Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission, absolutely and in good faith and at no minimum price within six months after the acquisition of ARC by GenCorp. Pursuant to this requirement, GenCorp has diligently sought a buyer that would be acceptable to the Commission.

Pursuant to the "Statement of the Federal Trade Commission's Bureau of Competition on Negotiating Merger Remedies" (2003) (the "Merger Remedies Statement"), to be an acceptable buyer, a divestiture buyer must be competitively and financially viable. The buyer must be able -- with the package of assets to be divested -- to maintain or restore competition in the relevant market. Key factors to consider are whether the proposed buyer has (1) the financial capacity



and incentives to acquire and operate the package of assets and (2) the competitive ability to maintain or restore competition in the marketplace.

AmPac has both the financial capacity and the incentives to acquire and operate the package of assets and the competitive ability to maintain or restore competition in the marketplace. AmPac's satisfaction of these key factors demonstrates that it is an acceptable buyer suitable for approval by the Commission.

**A. AmPac has the financial ability to complete the transaction successfully and invest in the former ARC In-Space Liquid Propulsion Assets going forward.**

AmPac has the financial capacity, resources and incentives to acquire the In-Space Liquid Propulsion Assets and ensure their continued operation as a viable, ongoing business. AmPac is a publicly traded company with its common shares listed on the NASDAQ under the symbol "apfc".

The company is debt-free and has reported healthy revenues and net income in each of the last five years. Ampac's most recent Form 10-K is provided as Exhibit 2. The company's most recent Form 10-Q and second quarter financial results are provided as Exhibits 3 and 4, respectively. AmPac's current debt-free condition provides great flexibility in making additional investments in the business, as such investments may become necessary in the future.

Further, the In-Space Business is a strategically-important element in space flight and other military applications. AmPac believes the business will provide a healthy return in the future. This anticipated profitability will provide even greater flexibility to invest in and expand the business.

**B. As an established, integrated and experienced supplier of specialty chemicals to producers of solid fuel propellants and missiles used in space exploration, commercial satellite transportation and national defense programs, AmPac has**

**the necessary industry experience, customer relationships and knowledge of the divestiture assets to operate the business successfully.**

The Bureau of Competition's "Study of the Commission's Divestiture Process (the "Divestiture Study")(1999), discusses several factors that help to identify an acceptable divestiture buyer. The Divestiture Study cites the buyer's experience in the relevant industry and knowledge of the assets to be purchased as key to a successful divestiture.

AmPac is an established leader in the specialty chemicals industry.<sup>3</sup> Founded in 1955 as Pacific Engineering & Production Co. of Nevada (PEPCON), the company quickly became a leading manufacturer of perchlorate chemicals. PEPCON initially issued stock to the public in 1972 and in 1982 completed a merger with American Pacific Corporation, a real estate development and financial services company with interests in California, Florida and New York. By 1985, the company decided to divest all of its non-Nevada real estate development and financial services activities and focus on diversifying and growing the business to strengthen its position in the specialty chemicals marketplace. In 1989, the Company designed and constructed a new state-of-the-art manufacturing facility and relocated its manufacturing operations to Utah. Today, AmPac consists of two operating subsidiaries and four operating divisions.

Over the past two decades, AmPac has been focused on the diversification and growth of its specialty chemicals business. AmPac produces and develops the specialty chemical ammonium perchlorate ("AP") which is used as an oxidizing agent in composite solid propellants for rockets, booster motors and missiles. The company also produces a variety of other specialty chemicals and environmental protection equipment, including Sodium Azide,

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<sup>3</sup> AmPac is incorporated in the State of Delaware and has its headquarters in Las Vegas, Nevada. The company's mailing address is: American Pacific Corporation, 3770 Howard Hughes Parkway, Suite 300, Las Vegas, Nevada 89109. Its manufacturing facilities are located about 15 miles northwest of Cedar City, Utah.

which is used primarily in the inflation of automotive airbags, and Halotron products, an environmentally friendly substitute for halons, which have been used as fire extinguishing agents by commercial and industrial users since the 1970s. Products manufactured by AmPac are used in the aerospace industry, military and defense systems, the explosives industry, fire extinguishing systems, automotive airbag systems, the pharmaceuticals industry, and the environmental protection equipment industry.

AmPac is the premier worldwide producer of perchlorate chemicals. For over 40 years, the company has provided space and defense programs with ammonium perchlorate. AmPac's highest propellant grade of AP ("Grade I AP") is employed in the Space Shuttle launch system, the Minuteman Missile, the Delta and Atlas families of commercial space launch vehicles and a number of defense-related missiles and rockets. Principal customers for Grade I AP are contractors with the National Aeronautics and Space Administration ("NASA"), the Department of Defense ("DOD") and other commercial space programs. Aerojet is one of the company's established customers (for the Atlas family of commercial rockets), as is Alliant Techsystems, Inc. (for the Space Shuttle Program and the Delta family of commercial rockets). AmPac also produces a small amount of other perchlorate chemicals used in a variety of applications, including munitions, explosives, propellants and initiators.

AmPac's years of experience in the solid fuel production industry have provided it an intimate understanding, both of the technological requirements of the In-Space Business and the commercial and competitive landscape. Further, because many of the In-Space Business's customers are entities with whom AmPac already has long-standing relationships, AmPac is well-positioned to maintain and expand those customer relationships as a strong competitor in

the marketplace virtually immediately. Finally, AmPac has proven that, with the necessary technology and know-how, it is capable of successfully entering into new businesses. For example, in 1990, pursuant to an exclusive licensing agreement with Dynamit Nobel A.G. ("Dynamit Nobel"), AmPac became a producer and supplier of Sodium Azide in North America, a specialty chemical used as a gas generant in certain automotive airbag safety systems. AmPac produces Sodium Azide at its production facility in Iron County, Utah which is operated by the company's wholly-owned subsidiary, American Azide Corporation ("AAC").

**C. AmPac has the competitive ability to maintain or restore competition in the marketplace.**

The Merger Remedies Statement suggests that the proposed buyer should have an "economic incentive to maintain or restore competition in the relevant market." The Divestiture Study emphasizes the importance of the buyer's commitment (*i.e.* substantial investment in the relevant business).

AmPac's vision is to be a manufacturer of chemicals, products and systems to the aerospace and defense industries. The company's strategic plan is to grow into these segments through acquisition and development of businesses that are known and understood by AmPac. Because the type of thrusters designed, manufactured and marketed by the In-Space Business are a necessary component of virtually all space flight and many modern military applications, acquisition of the In-Space Business is an excellent fit with AmPac's strategic plan.

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**V. The Agreement Satisfies the Requirements of the Consent Agreement to Divest the Former ARC In-Space Liquid Propulsion Assets**

Pursuant to the Merger Remedies Statement, the divestiture agreement must convey all assets required to be divested and must not contain any provisions inconsistent with the terms of the Commission's order or with the remedial objectives of the order. The Merger Remedies Statement also provides that, in evaluating the terms of the divestiture agreement, the staff will rely, in large part, on the buyer.

The Agreement conveys all assets required to be divested and does not contain any provisions inconsistent with the terms of the Consent Order or its remedial objectives. As such, the Agreement complies with and satisfies the purposes of the Consent Agreement. Pursuant to the Agreement, GenCorp, through its wholly-owned subsidiary Aerojet, has agreed to sell and AmPac has agreed to purchase all rights, title and interest of GenCorp and its affiliates in the ARC In-Space Liquid Propulsion Assets for the purchase price of [CONFIDENTIAL INFORMATION REDACTED], subject to post-closing purchase price adjustments.

As set forth in more detail in the Agreement, the acquired assets and rights include: (i) the NY Lease; (ii) the Owned Equipment; (iii) the Government Equipment, (iv) the Leased Equipment, (v) the Business Intellectual Property, (vi) the Contracts, (vii) the Licenses, (viii) the

Governmental Permits, (ix) the Business Records, (x) the Warranties, (xi) the legal and beneficial title to and ownership of the Transferred ARC UK Shares, and (xii) the Receivables, Inventory and Assets. Pursuant to the Agreement, GenCorp will assist AmPac in obtaining any third-party consents, approvals, assignments and novations necessary for the operation of the divested assets.

## **VI. Conclusion**


The proposed divestiture of the former ARC In-Space Liquid Propulsion Assets to AmPac will accomplish the purposes of the Consent Agreement and remedy any alleged lessening of competition in the research, development, production, and sale of monopropellant thrusters, bipropellant apogee thrusters, dual mode apogee thrusters and bipropellant attitude control thrusters as a result of GenCorp's acquisition of ARC.

AmPac will be acquiring an established, independently-operating business requiring no additional management expertise. AmPac will be a strong and effective competitor in the relevant markets. The company has the financial ability to complete the transaction successfully and invest in the former ARC In-Space Liquid Propulsion Assets going forward. As an established, integrated and experienced supplier of specialty chemicals to producers of solid fuel propellants and missiles used in space exploration, commercial satellite transportation and national defense programs, AmPac has the necessary industry experience, customer relationships and knowledge of the divestiture assets to operate the business successfully. Finally, AmPac has the competitive ability to maintain or restore competition in the marketplace. Accordingly, GenCorp respectfully requests that the Commission approve the proposed divestiture and acquirer.

Respectfully submitted,

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