NORTHROP GRUMMAN

Northrop Grumman Corporation
1840 Century Park East
Los Angeles, California 90067-2199

October 31, 2006

Donald S. Clark
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: In the Matter of Lockheed Martin Corporation,
The Boeing Company and United Launch Alliance, L.L.C.,
File No. 051-0165

Dear Secretary Clark:

Northrop Grumman Corporation hereby respectfully submits the following Comments on the provisionally accepted Consent Order covering the proposed joint venture between Lockheed Martin Corporation and The Boeing Company, known as the United Launch Alliance (or "ULA").

Northrop Grumman is a global defense company headquartered in Los Angeles, California. Northrop competes with Lockheed and Boeing in many areas, including in the "space vehicle business" where each is a "space vehicle prime contractor" seeking "government customer" "programs" as those terms are defined by the ULA Consent Order. But, unlike Lockheed and Boeing, Northrop is not vertically integrated into the launch services business. Instead, heretofore, Northrop has depended on the competition between Lockheed and Boeing in providing launch services to ensure the availability of those services for Northrop's space vehicles on non-discriminatory terms and to ensure the protection of Northrop's proprietary confidential space vehicle information from disclosure to Lockheed and Boeing's competing space vehicle businesses.

As all concerned have acknowledged, the creation of the durable launch services monopoly embodied within the ULA will end Northrop's ability to rely on the safeguard of competition; but, it will not end Northrop's dependence on Lockheed, Boeing and the ULA for launch services.

The Analysis of Agreement Containing Consent Order to Aid Public Comment in this matter, which specifically identifies Northrop by name four times, observes that "the creation of ULA increases the likelihood that competitively sensitive information from third parties will be

disclosed among ULA, Boeing and Lockheed in a manner that harms competition" and that ". . .Northrop will no longer be able to utilize competition between Boeing and Lockheed in the MTH launch services market to negotiate the creation of firewalls and other protections for their confidential information." (Analysis to Aid Public Comment at page 5.)

Instead of competition, the Department of Defense and the Federal Trade Commission have crafted a system of behavioral regulation to attempt to protect Northrop, and others, from ULA's incentive to discriminate in the provision of launch services to Northrop's space vehicle business and to expropriate Northrop's space vehicle confidential information for use in Lockheed and Boeing's own space vehicle businesses.

However, as Commissioner Harbour observed in her Concurring Statement in this matter: "Conduct restrictions, standing alone, generally are viewed as insufficient to address the underlying market mechanisms from which competitive harm may arise. Here, in lieu of market-based competition, the monopolist ULA will be subjected to an elaborate and highly regulatory system of oversight by a 'compliance officer' appointed by the Secretary of Defense. Ordinarily, such a system would not be considered an effective remedy. . . ." (Concurring statement of Commissioner Pamela Jones Harbour at page 2.)

In an earlier letter from FTC Assistant Director, Mergers I, Michael R. Moiseyev to DOD Deputy General Counsel Douglas P. Larsen, that was made public in conjunction with placing the ULA Consent Order on the record for comment, the further observation is made that ". . . as vertically integrated suppliers, Boeing and Lockheed likely would have incentives to share confidential Northrop information. . .with their respective satellite businesses, thereby adversely affecting the Government satellite market. While the ability to share such information is limited by the Commission's order in *In the Matter of the Boeing Company* (Docket No. C-3992), it is possible that the exchange of information that is not prohibited under that order may occur after the merger." (Letter from Michael P. Moiseyev to Douglas P. Larsen, July 6, 2006, at page 3.)

From this, it is clear that Northrop, and competition in the space vehicle segment, will be at risk in dealing with the ULA, and it is clear that the risk will be mitigated only by the complex regulation of the proposed ULA Consent Order and Northrop's own ability to ensure that Northrop positions itself and its confidential information in ways that maximize the effectiveness of the regulatory scheme.

But there is a part of the regulatory scheme that, until today, has been invisible to Northrop. The proposed ULA Consent Order provides in Sections V.E.5. and V.E.6. that ULA may disclose Northrop's proprietary confidential space vehicle information to Lockheed and Boeing personnel "as necessary to provide services consistent with Respondents' obligations pursuant to the Transition Services Agreements." The Proposed Consent Order further provides in Section V.E.5.a. that Boeing and Lockheed "shall comply with the confidentiality provisions of the Transition Services Agreements;" and, in Section V.E.6, that ULA may disclose confidential Northrop space vehicle information to Lockheed and Boeing "to the extent necessary to enable Lockheed and Boeing to continue to provide, after the expiration of the Transition Services Agreements, similar administrative services to those that had been provided . . . pursuant to the Transition Services Agreements if . . . standard industry-wide confidentiality

provisions have been executed by the appropriate parties and have been submitted to the Compliance Officer . . . ."

The referenced Transition Services Agreements have not been made public. Northrop has not seen them, and has not been made fully aware of their contents. At the same time, Northrop is being urged by Boeing to propose bilateral non-disclosure agreements that would supplement the confidentiality provisions of the proposed ULA Consent Order and the Transition Services Agreements.

Today Northrop was provided with excerpts from the Transition Services Agreements. Those excerpts are said to be the confidentiality provisions of the Transition Services Agreement. They appear to cover four situations in three sections: (1) Lockheed Martin's provision of transition services to ULA; (2) ULA's provision of transition services to Lockheed Martin; and (3) Boeing's provision of transition services to ULA and ULA's provision of transition services to Boeing. We are grateful to have been made privy to these confidentiality provisions that were evidently crafted to cover the special circumstances of the transition services environment; that is, where a Boeing or Lockheed employee who is not a ULA employee becomes privy to confidential ULA information. What these excerpts do not reveal is whether or how Northrop confidential information is protected in the unique situation of the transition services environment. In fact, it appears there is a hole in the confidentiality wall through which Northrop information may pour. The relationships created by the Proposed Consent Order's Section V.C. and V.D. are constructed in such a way that ULA, Lockheed and Boeing are restricted in their use and disclosure of Northrop information, except those restrictions are lifted by Section V.E. in the transition services environment and replaced only by the Transition Services Agreement's confidentiality provisions, which today we see, do not appear to cover Northrop confidential information.

Given that Northrop's confidential and competitively sensitive information is acknowledged to be at risk here, we are therefore compelled to ask how it will be protected? The documentation made public thus far does not answer this question, nor does the Analysis to Aid Public Comment.

Additionally, Northrop has not been provided with a current version of the Boeing-Lockheed Martin Master Agreement, as amended. We have been told that some schedules, and perhaps other parts of the document, have changed since it was made a part of the SEC's public record. Again, given all that is at stake, we respectfully request that the final version of that document, and its interim iterations, be made public.

Northrop appreciates the difficulty of the task that has confronted the Department of Defense and the Federal Trade Commission. And, Northrop is grateful for the significant amount of time and attention that has been given to addressing the vulnerability that the ULA monopoly creates for Northrop and for competition in the space vehicle segment. But despite, or perhaps because of, all that has been done thus far, and all that is at risk, it seems imperative that Northrop be entitled to inspect the current and final versions of the Boeing-Lockheed Martin Master Agreement, as amended, and that it be provided with either the relevant documentation or an explanation of how Northrop's confidential information will be protected in the transition

services environment where Boeing and Lockheed employees, who may be working on directly competitive projects, come to possess Northrop's sensitive information.

Thank you very much for the consideration given to these comments and the requests contained herein.

Respectfully submitted,

Stephen D. Yslas
Vice President and Deputy General Counsel
Northrop Grumman Corporation

cc: Michael R. Moiseyev
Randall Long
Kathy A. Brown

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