

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA
U.S. Department of Justice
Antitrust Division
450 Fifth Street N.W., Suite 8700
Washington, D.C. 20530,

Plaintiff,

v.

HARRIS CORPORATION
1025 West NASA Boulevard
Melbourne, FL 32919

and

L3 TECHNOLOGIES, INC.
600 Third Avenue
New York, NY 10016,

Defendants.

COMPLAINT

The United States of America (“United States”), acting under the direction of the Attorney General of the United States, brings this civil antitrust action against Defendants Harris Corporation (“Harris”) and L3 Technologies, Inc. (“L3”) to enjoin the proposed merger of Harris and L3. The United States complains and alleges as follows:

I. NATURE OF THE ACTION

1. Pursuant to an agreement and plan of merger dated October 12, 2018, Harris and L3 propose to merge in a transaction that would create the sixth-largest defense contractor in the United States.

2. Harris and L3 are the only suppliers of image intensifier tubes for use by the United States military. Image intensifier tubes are the key component in night vision devices such as goggles and weapon sights, which are purchased by the U.S. Department of Defense (“DoD”). Night vision devices amplify visible light and allow soldiers and aircrews to see their surroundings in dark conditions. The proposed merger would eliminate competition between Harris and L3 and create a monopoly for image intensifier tubes for night vision devices purchased by DoD (hereinafter “U.S. military-grade image intensifier tubes”).

3. As a result, the proposed transaction likely would substantially lessen competition in the market for the design, development, manufacture, sale, service, and distribution of U.S. military-grade image intensifier tubes in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

II. THE DEFENDANTS

4. Harris is incorporated in Delaware and has its headquarters in Melbourne, Florida. Harris provides night vision devices and image intensifier tubes, tactical communications solutions, electronic warfare solutions, and space and intelligence systems. In 2018, Harris had sales of approximately \$6.2 billion.

5. L3 is incorporated in Delaware and is headquartered in New York, New York. L3 provides night vision devices and image intensifier tubes; intelligence, surveillance, and reconnaissance systems; aircraft sustainment, simulation, and training; and security and detection systems. In 2018, L3 had sales of approximately \$10.2 billion.

III. JURISDICTION AND VENUE

6. The United States brings this action under Section 15 of the Clayton Act, 15 U.S.C. § 25, as amended, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18.

7. Defendants design, develop, manufacture, sell, service, and distribute U.S. military-grade image intensifier tubes. Defendants' activities in the design, development, manufacture, sale, service, and distribution of these products substantially affects interstate commerce. This Court has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. § 25, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

8. Defendants have consented to venue and personal jurisdiction in this judicial district. Venue is therefore proper in this district under Section 12 of the Clayton Act, 15 U.S.C. § 22, and under 28 U.S.C. § 1391(c).

IV. U.S. MILITARY-GRADE IMAGE INTENSIFIER TUBES

A. Background

9. Image intensifier tubes amplify visible light and are integrated into night vision devices produced by Harris, L3, and other companies. Night vision devices allow the user to see in dark conditions, increasing the situational awareness, threat detection, and mission performance of soldiers and aircrews operating in low-light environments. Night vision devices come in the form of goggles, binoculars, and monoculars and can be handheld or mounted to objects like helmets or weapons. There are over half a million such devices in use today, and DoD expects to purchase at least one hundred thousand additional devices over the next few years.

10. DoD also purchases significant quantities of image intensifier tubes as replacement parts for night vision devices currently in the field. In addition, as L3 and Harris innovate and develop improved image intensifier tubes with greater resolution and light amplification, DoD purchases these more advanced image intensifier tubes to upgrade existing night vision devices. DoD is likely to purchase half a million image intensifier tubes for replacements or upgrades over the next few years.

B. Relevant Markets

1. Product Market

11. The quality and usefulness of an image intensifier tube is defined by several characteristics, the most important of which are size, weight, power consumption, and especially sensitivity, which relates to the ability of the tube to amplify low levels of visible light without producing excessive distortion in the resulting image. DoD requires highly capable image intensifier tubes, as the lives of soldiers and aircrews depend on the performance of the night vision devices incorporating these tubes. Less capable image intensifier tubes are therefore not a substitute for the highly capable image intensifier tubes that DoD views as U.S. military grade.

12. Other night vision technologies such as thermal imaging devices and digital light amplification systems are not substitutes for U.S. military-grade image intensifier tubes. Thermal imaging devices, such as microbolometers and infrared focal plane arrays, detect infrared radiation emitted by warm objects rather than amplifying visible light. Thermal imaging devices also differ from image intensifier tubes in range and sensitivity to environmental factors such as humidity and dust. Night vision equipment incorporating thermal imaging devices tends to be larger, heavier, and substantially more expensive than similar equipment incorporating image intensifier tubes. Although some night vision devices incorporate both image intensifier

tubes and thermal imaging devices to combine the benefits of the two and create a “fused” image, thermal imaging devices cannot replicate the performance of image intensifier tubes or replace them in night vision devices.

13. Digital light amplification systems based on charge-coupled device (“CCD”) or complementary metal oxide semiconductor (“CMOS”) detectors are also not adequate substitutes for U.S. military-grade image intensifier tubes. CCD- and CMOS-based devices tend to be heavier, consume more power, and cost significantly more than devices incorporating image intensifier tubes. Moreover, because such devices are digital, and therefore require a certain amount of signal processing, the images produced also tend to lag behind the actual scene being viewed, potentially creating disorientation in the user.

14. For the foregoing reasons, DoD will not substitute less-capable image intensifier tubes, thermal imaging devices, or CCD- or CMOS-based digital light amplification systems for U.S. military-grade image intensifier tubes in response to a small but significant and non-transitory increase in the price of U.S. military-grade image intensifier tubes. Accordingly, U.S. military-grade image intensifier tubes are a relevant product market and line of commerce under Section 7 of the Clayton Act, 15 U.S.C. § 18.

2. Geographic Market

15. For national security reasons, DoD only considers domestic producers of U.S. military-grade image intensifier tubes. DoD is unlikely to turn to any foreign producers in the face of a small but significant and non-transitory price increase by domestic producers of U.S. military-grade image intensifier tubes.

16. The United States is a relevant geographic market within the meaning of Section 7 of the Clayton Act, 15 U.S.C. § 18.

C. Anticompetitive Effects of the Proposed Transaction

17. Harris and L3 are currently the only firms that develop, manufacture, and sell U.S. military-grade image intensifier tubes. The merger would therefore give the combined firm a monopoly in this product market, leaving DoD without a competitive alternative for this critical component of night vision devices.

18. Harris and L3 compete for sales of U.S. military-grade image intensifier tubes on the basis of quality, price, and contractual terms such as delivery times. This competition has resulted in higher quality, lower prices, and shorter delivery times, and has fostered innovation, leading to U.S. military-grade image intensifier tubes with higher sensitivity and resolution. The combination of Harris and L3 would eliminate this competition and its future benefits to DoD customers. Post-transaction, the merged firm likely would have the incentive and ability to reduce research and development efforts that lead to innovative and high-quality products and to increase prices and offer less favorable contractual terms.

19. The proposed merger, therefore, likely would substantially lessen competition in the design, development, manufacture, sale, service, and distribution of U.S. military-grade image intensifier tubes in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

D. Difficulty of Entry

20. Sufficient, timely entry of additional competitors into the market for U.S. military-grade image intensifier tubes is unlikely. Production facilities for U.S. military-grade image intensifier tubes require a substantial investment in both capital equipment and human resources. A new entrant would need to set up a foundry to produce electronic components, establish production lines capable of manufacturing fiber optic subcomponents, and build

assembly lines and testing facilities. Engineering and research personnel would need to be assigned to develop, test, and troubleshoot the detailed manufacturing process, involving hundreds of steps, that is necessary to produce U.S. military-grade image intensifier tubes. Any new products would require extensive testing and qualification before they could be used in night vision devices for the U.S. military. As a result, entry would be costly and time-consuming.

21. Moreover, a new entrant is unlikely to recover these costs. Although CMOS-based night vision devices currently are not suitable for DoD uses and thus are not reasonable substitutes for night vision devices based on U.S. military-grade image intensifier tubes, research and development on these devices is progressing. Industry observers expect these devices to begin replacing night vision devices based on U.S. military-grade image intensifier tubes at some point in the next five to ten years. Because the market for U.S. military-grade image intensifier tubes will likely decline as this transition takes place, an entrant is unlikely to produce sufficient revenue to recover its costs of entry. The prospect of a declining market for U.S. military-grade image intensifier tubes thus would discourage new companies from entering.

22. As a result of these barriers, entry into the market for U.S. military-grade image intensifier tubes would not be timely, likely, or sufficient to defeat the anticompetitive effects likely to result from the merger of Harris and L3.

V. VIOLATIONS ALLEGED

23. The merger of Harris and L3 likely would lessen competition substantially in the design, development, manufacture, sale, service, and distribution of U.S. military-grade image intensifier tubes in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

24. Unless enjoined, the merger likely would have the following anticompetitive effects, among others, related to U.S. military-grade image intensifier tubes:

- (a) actual and potential competition between Harris and L3 would be eliminated;
- (b) competition likely would be substantially lessened; and
- (c) prices likely would increase, innovation would decrease, and contractual terms likely would be less favorable to customers.

VI. REQUEST FOR RELIEF

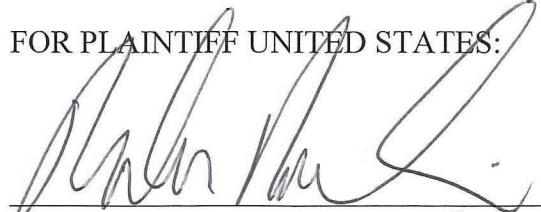
25. The United States requests that this Court:

- (a) adjudge and decree that Harris's merger with L3 would be unlawful and violate Section 7 of the Clayton Act, 15 U.S.C. § 18;
- (b) preliminarily and permanently enjoin and restrain Defendants and all persons acting on their behalf from consummating the proposed merger of L3 and Harris, or from entering into or carrying out any other contract, agreement, plan, or understanding, the effect of which would be to combine Harris with L3;
- (c) award the United States its costs for this action; and
- (d) award the United States such other and further relief as the Court deems just and proper.

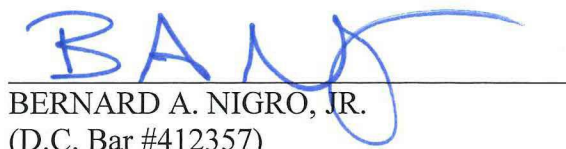
Dated: June 20, 2019

Respectfully submitted,


FOR PLAINTIFF UNITED STATES:



MAKAN DELRAHIM (D.C. Bar #457795)
Assistant Attorney General
Antitrust Division



ANDREW C. FINCH (D.C. Bar #494992)
Principal Deputy Assistant Attorney General
Antitrust Division


BERNARD A. NIGRO, JR.
(D.C. Bar #412357)
Deputy Assistant Attorney General
Antitrust Division


PATRICIA A. BRINK
Director of Civil Enforcement
Antitrust Division


MARIBETH PETRIZZI (D.C. Bar #435204)
Chief
Defense, Industrials, and Aerospace Section
Antitrust Division


DAVID E. ALTSCHULER
(D.C. Bar #983023)
Assistant Chief
Defense, Industrials, and Aerospace Section
Antitrust Division


KEVIN QUIN* (D.C. Bar #415268)
GABRIELLA MOSKOWITZ
(D.C. Bar #1044309)
THOMAS P. DEMATTEO
Defense, Industrials, and Aerospace Section
Antitrust Division
450 Fifth Street N.W., Suite 8700
Washington, D.C. 20530
Telephone: (202) 307-0922
Facsimile: (202) 514-9033
Email: kevin.quin@usdoj.gov

*LEAD ATTORNEY TO BE NOTICED