

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
[PEORIA] DIVISION

UNITED STATES OF AMERICA,)	
)	Civ. No. 94-1026
Plaintiff,)	
)	Filed: JAN 19 1994
v.)	
)	<u>COMPLAINT</u>
ALLIANT TECHSYSTEMS INC. and)	
AEROJET-GENERAL CORPORATION,)	Monetary And Equitable
)	Relief Sought For
Defendants.)	Violation Of Section 1
_____)	Of The Sherman Act

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action against the above-named defendants and complains and alleges as follows:

1. In bringing this antitrust case, the United States seeks to obtain monetary relief and to enjoin continuation of a teaming arrangement that eliminates competition and divides production between defendants Alliant Techsystems Inc. and Aerojet-General Corporation. These defendants have been the only two United States producers of Combined Effects Munition systems. For a 1992 procurement of Combined Effects Munition systems by the United States Army, the defendants' teaming arrangement reduced from two to only one the number of offerors, and increased significantly the proposed price of the resulting single offer. Unless prevented from continuing, the teaming arrangement is likely to result in higher prices and elimination of the benefits of competitive procurement in the future supply of Combined Effects Munition systems for the United States military.

I.

JURISDICTION AND VENUE

2. Plaintiff's claim in this Complaint for monetary relief is brought under Section 4A of the Clayton Act, 15 U.S.C. § 15a, in order to obtain a payment of money as relief for a violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. Plaintiff's claim for equitable relief is brought under Section 4 of the Sherman Act, 15 U.S.C. § 4, in order to prevent and restrain a violation by defendants of Section 1 of the Sherman Act, 15 U.S.C. § 1.

3. Each of the defendants transacts business and is found in the Central District of Illinois, within the meaning of 15 U.S.C. § 22 and 28 U.S.C. § 1391(c).

II.

THE DEFENDANTS

4. Alliant Techsystems Inc. ("Alliant") is made a defendant herein. Alliant is a corporation organized and existing under the laws of the State of Delaware, with its headquarters in Hopkins, Minnesota. Before 1990, the principal business assets of Alliant were organized and operated as a component of Honeywell, Inc., a Delaware corporation with headquarters in Minneapolis, Minnesota.

5. Aerojet-General Corporation ("Aerojet") is made a defendant herein. Aerojet is a corporation organized and existing under the laws of the State of Ohio, with its headquarters in Rancho Cordova, California. Aerojet Ordnance Division is a division of Aerojet. The headquarters of Aerojet Ordnance Division are in Downey, California.

III.

DEFINITIONS

6. "Combined Effects Munition ("CEM") system" means any unguided, air-delivered cluster bomb of the 1000-pound class designated by the United States Department of Defense as CBU-87, including but not limited to CBU-87/B, CBU-87(D-2)/B, CBU-87(T-1)/B, CBU-87(T-2)/B, CBU-87(T-3)/B, CBU-87A/B, CBU-87B/B, and CBU-87C/B. Each CEM system consists of a cluster of 202 anti-armor, anti-personnel and incendiary bomblets that disperse over a discrete area and explode upon impact; a tactical munitions dispenser; a proximity sensor; and a shipping and storage container.

7. "Teaming arrangement" means an arrangement, as provided in Subpart 9.6 of the Federal Acquisition Regulations, in which: (a) two or more companies form a partnership or joint venture to act as a potential prime contractor; or (b) a potential prime contractor agrees with one or more other companies to have them act as its subcontractors under a specified Government contract or acquisition program.

8. "Undefinitized contract action" means a contract action for which the contract terms, specifications or price are not agreed upon before performance is begun under the action, as provided in Section 217.7401(d) of the Defense Federal Acquisition Regulation Supplement.

IV.

TRADE AND COMMERCE

9. The United States Air Force ("Air Force") awarded a contract to Aerojet in May 1974 for the design, development, fabrication, and test of what was to become the CEM bomblet. The Air Force awarded Aerojet a second contract in March 1979 to complete development of the

full CEM system. The Air Force awarded the initial production contract for the CEM system to Aerojet in September 1983.

10. The procurement strategy adopted by the Air Force for the CEM program starting in 1984 provided for having a second CEM supplier. This strategy was continued by the United States Army Armament, Munitions, and Chemical Command ("AMCCOM"), headquartered in Rock Island, Illinois, to which procurement responsibility for the CEM system was transferred in July 1987. The purposes of having a second supplier were to obtain the benefits of competitive bidding in future CEM procurements and to expand the industrial base for CEM production.

11. In 1984, the Air Force solicited competitive offers for the award of a second source contract. Following evaluation of the offers received, the Air Force awarded a second source production contract in November 1984 to Honeywell, Inc., the relevant division of which was later reorganized and spun off as Alliant.

12. Since 1985, defendants Alliant and Aerojet have remained the only two qualified United States producers of CEM systems. Between 1985 and the date of this Complaint, Alliant and Aerojet, in response to formal Government requests for independent proposals, have produced and sold to the United States a combined total of approximately \$1.75 billion in CEM systems.

13. In each of the six years from 1986 through 1991, and in response to annual requests by the Government for independent and competitive proposals, Alliant and Aerojet each submitted and certified the independence of offers for the supply of CEM systems. Each year from 1986 through 1989, the United States acquired CEM systems from both defendants, awarding the majority share to the low offeror and a smaller share to the high offeror, in order to preserve the benefits of having two viable producers on a continuing basis. The low-offer price

for comparable CEM quantities decreased every year between 1986 and 1989, averaging about a 20% decline each year.

14. In 1990, based on an expectation that CEM procurement for the United States military was nearing completion, the defendants anticipated that the annual CEM procurement would be awarded as a "competitive downselect," that is, a single, 100% award to the low offeror. In response to the 1990 request for proposals, both defendants submitted offers significantly lower than ever before. The United States awarded the entire 1990 production requirement as a competitive downselect to Honeywell, Inc. (later Alliant), the low offeror.

15. Owing to depletion of CEM inventories resulting from Operation Desert Storm, funding was allotted in 1991 and 1992 for additional CEM procurement, which had not been previously anticipated. Accordingly, AMCCOM solicited two competitive offers from Alliant and Aerojet in both 1991 and 1992.

16. Specifically, in 1991, each defendant submitted an offer to supply CEM systems. After evaluating the offers, AMCCOM awarded CEM production requirements to both Alliant and Aerojet.

17. On or about July 31, 1992, AMCCOM distributed a draft request for independent and competitive proposals from the defendants for the procurement of approximately 10,000 CEM systems. On or about August 28, 1992, AMCCOM distributed the formal request for proposals. Anticipating another competitive downselect, Alliant and Aerojet entered into an arrangement to submit only a single offer in response to the 1992 request for competitive proposals.

18. The activities of the defendants, as hereinafter described, have been within the flow of and have substantially affected interstate trade and commerce.

V.

VIOLATION ALLEGED

19. Beginning in or about August 1992 and continuing until the filing of this Complaint, the exact dates being unknown to the plaintiff, the defendants have engaged in a continuing agreement, combination and conspiracy to suppress and eliminate competition in the production and sale of CEM systems to the United States, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

20. In furtherance of this agreement, combination and conspiracy, the defendants did the following things, among others:

(a) On or about September 3, 1992, Alliant and Aerojet entered into a written teaming arrangement, which provided among other things that Alliant would act as prime contractor for the purpose of submitting offers on all future CEM procurements by the United States, that Aerojet would decline to submit offers as prime contractor on all future CEM procurements by the United States, and that in consideration of Aerojet's not submitting offers, Alliant would award subcontracts to Aerojet for certain designated components of CEM systems, thereby suppressing and eliminating competition and dividing the revenue and profit from the supply of CEM systems between Alliant and Aerojet as nearly equally as possible;

(b) Alliant and Aerojet further agreed between themselves on the price to be offered by Alliant on the 1992 CEM procurement; and

(c) On or about September 11, 1992, Alliant submitted an offer in the amount of approximately \$133.6 million. By a letter dated September 8, 1992, Aerojet declined to submit an independent offer.

VI.

EFFECTS

21. The aforesaid agreement, combination and conspiracy had the following effects, among others:

- (a) it suppressed, restrained, and eliminated competition in the sale of CEM systems to the United States;
- (b) it reduced the number of independent offerors on the 1992 procurement of CEM systems from two to one;
- (c) it substantially raised the price of the low offer received by AMCCOM on the 1992 CEM procurement;
- (d) it caused the AMCCOM purchase contract officer, although not approving or accepting the defendants' teaming arrangement, but faced with an urgent national security need to continue CEM production, to nevertheless award the 1992 CEM procurement to Alliant as an undefinitized contract action, obligating the United States to pay Alliant a fair and reasonable price, not to exceed \$133.6 million, with the exact amount to be determined later; and
- (e) it increased the costs and profits proposed by Alliant as fair and reasonable for the 1992 CEM procurement to levels significantly in excess of historical costs and profits.

VII.

CLAIM FOR MONETARY RELIEF

22. As a result of the illegal agreement, combination and conspiracy alleged in this Complaint, the plaintiff, United States of America, has been injured and financially harmed by the defendants.

VIII.

CLAIM FOR EQUITABLE RELIEF

23. The illegal agreement, combination and conspiracy alleged in this Complaint is likely to continue or recur unless the injunctive relief prayed for herein is granted.

IX.

PRAYER FOR RELIEF

24. WHEREFORE, plaintiff prays:

(a) that the Court adjudge and decree that the defendants have agreed, combined and conspired to restrain the aforesaid interstate trade and commerce in violation of Section 1 of the Sherman Act;

(b) that a monetary judgment be entered against the defendants as a refund to the appropriations of the United States due to an overpayment to the defendants by the United States that resulted from the defendants' violation of Section 1 of the Sherman Act, as provided for in Section 4A of the Clayton Act, 15 U.S.C. § 15a, together with such interest thereon as is permitted by law;

(c) that the Court issue an injunction prohibiting the defendants, absent prior approval of the Department of Justice or this Court, from adhering to, carrying out,

enforcing, or entering into any agreement, contract, combination, or conspiracy, including but not limited to any teaming arrangement, the purpose or effect of which is to eliminate or suppress competition between the defendants in response to a request or invitation by the United States, or any agency thereof, for independent or competitive offers, quotations, bids or proposals for the supply of CEM systems; and

(d) that the plaintiff have such other and further relief as the Court may deem just and proper.

Dated:

_____/s/_____
ANNE K. BINGAMAN
Assistant Attorney General

_____/s/_____
HOWARD J. PARKER
Lead Counsel

_____/s/_____
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_____/s/_____
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