UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
U.S. Department of Justice
Antitrust Division
1401 H Street, NW
Suite 3000
Washington, DC 20530-2199

Plaintiff,

v.

NORTHROP GRUMMAN CORPORATION,
1840 Century Park East
Los Angeles, CA 90067,

and

TRW INC.,
1900 Richmond Rd.
Cleveland, OH 44124-2760,

Defendants.

Case No. 1:02CV02432

JUDGE: Gladys Kessler

DECK TYPE: ANTITRUST

DATE: May 27, 2003

UNITED STATES' UNCONTESTED MOTION FOR ENTRY OF FINAL JUDGMENT

Pursuant to Section 2 of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) ("APPA"), the United States moves for entry of the proposed Final Judgment filed on December 11, 2002 in this civil antitrust proceeding. As set forth in the Stipulation and Order, also filed December 11, the Court may enter the Final Judgment any time after compliance with the APPA, if the Court finds that the Final Judgment would be in the public interest.

The United States' Certificate of Compliance with Provisions of the APPA, filed today, describes the steps the parties have taken to comply with applicable provisions of the APPA, certifies that the statutory waiting period has now expired, and points out that this matter is now ripe for the Court to make a public interest determination. The United States' Competitive

Impact Statement, filed on December 23, 2003, explains why entry of the proposed Final Judgment would be in the public interest.

I. BACKGROUND

On December 11, 2002, the United States filed a civil antitrust Complaint alleging that Northrop Grumman Corporation's proposed acquisition of TRW Inc. would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, by combining Northrop, one of the only two suppliers of radar, electro-optical, and infrared payloads for reconnaissance satellite systems sold to the United States Government, with TRW, one of the few companies able to act as prime contractor on United States reconnaissance satellite programs that use such payloads. The Complaint alleges that as a result of this combination, Northrop would have the incentive and ability to lessen competition by favoring its own payload or prime contractor capabilities, or both, to the detriment or foreclosure of competitors. Such a lessening of competition would harm the United States Government by posing an immediate danger to competition in two current or future United States programs, the Space-Based Radar program and the Space Based Infrared System-Low program (the latter now called the Space Tracking and Surveillance System).

Simultaneously with the filing of its Complaint, the United States filed a proposed Final Judgment and a Stipulation and Order, and on December 23, 2002 filed a Competitive Impact Statement. Because the acquisition of TRW by Northrop offers benefits to the United States that could not be realized if structural relief were imposed, the United States consented under the unique circumstances of this case to the entry of a Final Judgment that contains strict behavioral remedies. At the heart of these remedies is the requirement that Northrop keep its payload and prime contractor businesses separate, and make its payload and prime contractor capabilities available to competitors on a non-discriminatory basis, thus preventing the foreclosure of

competing prime contractors or payload providers. To help ensure that Northrop honors its obligations to operate in a non-discriminatory manner, the Final Judgment establishes that Northrop's activities will be monitored by a Compliance Officer, chosen by the Secretary of the Air Force, and in certain circumstances disputes regarding Northrop's actions may be decided by the Compliance Officer or, ultimately, by the Secretary.

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court any time after the parties' compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the Final Judgment and to punish violations thereof.

II. COMPLIANCE WITH THE APPA

The APPA establishes a sixty-day period for the submission of public comments on any proposed judgment in a government antitrust case. 15 U.S.C. § 16(b). In this case, the sixty-day comment period expired on March 17, 2003**.** The United States received four comments on the proposed Final Judgment, and published the comments and the United States's responses in the *Federal Register*. Since all applicable requirements of the APPA have been met, it is now appropriate for the Court to determine whether entry of the Final Judgment would be in the public interest. 15 U.S.C. § 16(e).

III. STANDARD OF JUDICIAL REVIEW

Before entering the proposed Final Judgment, the Court must determine whether the Final Judgment "is in the public interest," 15 U.S.C. § 16(e). In making that determination, the Court may consider:

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e).

In its Competitive Impact Statement previously filed with the Court, the United States has explained the meaning and proper application of the public interest standard under the APPA and incorporates those statements here by reference.

The public, including affected competitors and customers, has had an opportunity to comment on the proposed Final Judgment as required by law. The United States received four comments and carefully reviewed and responded to each. None, however, raised concerns of sufficient magnitude to warrant the Court's rejection of the proposed Final Judgment. No one has alleged or proved that the proposed settlement constitutes an abuse of the United States' broad prosecutorial discretion or that the relief contained in the proposed decree, when measured against the allegations of the government's initial antitrust complaint, does not fall well "within the reaches" of the public interest. (*United States v. Bechtel Corp., Inc.* 648 F.2d 660, 666 (9th Cir.), *cert. denied,* 454 U.S. 1083 (1981).

IV. CONCLUSION

For the reasons set forth in this Motion and in the Competitive Impact Statement, the Court should conclude that the proposed Final Judgment is in the public interest, and enter the Final Judgment promptly without further hearings. (For the Court's convenience, the United

States has attached to this pleading (Exhibit A) an identical version of the proposed Final Judgment, originally filed with the Court on December 11, 2002.)

Dated: May 27, 2003

Respectfully submitted,

/s/

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Attorney for Plaintiff

CERTIFICATE OF SERVICE

I, Robert W. Wilder, hereby certify that on May 27, 2003, I caused copies of the foregoing United States' Certificate of Compliance with the Antitrust Procedures and Penalties Act and United States' Uncontested Motion for Entry of Final Judgment to be served on defendant Northrop Grumman Corporation by facsimile and by mailing these documents first-class, postage prepaid, to duly authorized legal representatives of that party, as follows:

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Dated: May 27, 2003

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