UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA **Plaintiff** **v.** **UNITED TECHNOLOGIES CORPORATION** **and** **GOODRICH CORPORATION** **Defendants**	**CASE NO. 1:12-CV-01230-RC**

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
OF MOTION OF THE UNITED STATES TO APPOINT MONITORING TRUSTEE

Pursuant to the Hold Separate Stipulation and Order entered by the Court on July 26, 2012, and the Proposed Final Judgment filed with the Court on the same date, the United States seeks the Court's approval to appoint ING Financial Markets LLC ("ING") as Monitoring Trustee, with Mr. Philip Comerford as project manager. ING has been appointed as monitoring trustee in parallel proceedings before the European Commission, and it possesses the resources required to carry out its duties as Monitoring Trustee in the present matter. Mr. Comerford is employed by ING as Managing Director, Corporate Finance, and has the expertise necessary to manage ING's fulfillment of its obligations as Monitoring Trustee.

The United States filed a civil antitrust Complaint on July 26, 2012, seeking to enjoin the acquisition of Goodrich Corporation ("Goodrich") by United Technologies Corporation ("UTC").

The Complaint alleged that the proposed acquisition likely would substantially lessen competition in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, in the worldwide markets for the development, manufacture, and sale of large main engine generators, aircraft turbine engines, and engine control systems for large aircraft turbine engines. That loss of competition likely would result in increased prices, less favorable contractual terms, and decreased innovation in the markets for these products.

Filed together with the Complaint were a Hold Separate Stipulation and Order ("Hold Separate") and a Proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition. The Court entered the Hold Separate on July 26, 2012. Under the Proposed Final Judgment, UTC is required to divest assets relating to Goodrich's main engine generator business and Goodrich's engine controls business. UTC is also required to divest Goodrich's shares in a joint venture related to engine controls, and extend until December 31, 2023 the option of a third party to purchase a portion of the Goodrich engine controls business related to that joint venture. Until the divestitures take place, the Hold Separate requires UTC to preserve and continue to operate the assets to be divested as independent, ongoing, and economically viable businesses that are held entirely separate, distinct, and apart from UTC's assets and the other assets UTC acquires from Goodrich. During this period, UTC also is prohibited from coordinating the production, marketing, or terms of sale of the assets to be divested with any of its own assets or the other assets it acquires from Goodrich. Pursuant to Section IV.C of the Hold Separate, "Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the entry of the Final Judgment by the Court . . . and shall . . . comply with all the terms

and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court."

Section XI of the Proposed Final Judgment provides for the appointment of a Monitoring Trustee with the power and authority to monitor Defendants' compliance with the terms of the Hold Separate and the Proposed Final Judgment. Pursuant to Section XI.A, "the United States may, in its sole discretion, appoint a Monitoring Trustee . . . subject to approval by the Court."

In proceedings before the European Commission in connection with the proposed acquisition, UTC has appointed ING, with the Commission's approval, to serve as monitoring trustee for UTC's commitments to the Commission. Following further discussions with the Defendants and ING, the United States has agreed to the appointment of ING as Monitoring Trustee in this matter.

ING has served as a monitoring trustee to various competition authorities over the last ten years, during which it has monitored the divestiture and hold separate commitments of over forty businesses, two of which involved acquisitions under consideration by the U.S. Federal Trade Commission. ING's monitoring trustee business is managed from its New York office, with support from branches in Europe and Asia. ING has no conflicts of interest that would disqualify it from fulfilling its role as Monitoring Trustee. While ING has provided some credit facilities to UTC, the total amount is small and directed toward UTC subsidiaries with little, if any, involvement in the products at issue in this case. ING holds only very small amounts of UTC stock (0.03 percent of outstanding shares) and Goodrich stock (0.01 percent of outstanding shares). ING has no ongoing investment banking assignments with UTC or Goodrich.

Mr. Comerford is the head of ING's mergers and acquisitions practice in the United States, and also provides monitoring trustee services in connection with antitrust matters. He led ING's monitoring trustee team for the U.S. Federal Trade Commission on one matter and is currently working on the monitoring trustee team in another matter. He has over twenty years of advisory experience in mergers and acquisitions, and has been involved in over sixty transactions.

For the foregoing reasons, the United States respectfully requests this Court to approve the appointment of ING as Monitoring Trustee pursuant to Section XI of the Proposed Final Judgment.

Dated: August 16, 2012

Respectfully submitted,

/s/ Kevin C. Quin

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