UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA Plaintiff v. UNITED TECHNOLOGIES CORPORATION and GOODRICH CORPORATION Defendants	

COMPETITIVE IMPACT STATEMENT

Plaintiff United States of America ("United States"), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 15 U.S.C. § 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

On September 21, 2011, defendants United Technologies Corporation ("UTC") and Goodrich Corporation ("Goodrich") entered into an agreement whereby UTC proposes to acquire Goodrich for approximately $18.4 billion.

The United States filed a civil antitrust Complaint against UTC and Goodrich on July 26, 2012, seeking to enjoin the proposed acquisition. 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.

At the same time the Complaint was filed, the United States filed a Hold Separate Stipulation and Order ("Hold Separate") and proposed Final Judgment, which are designed to eliminate the anticompetitive effects that would have resulted from UTC's acquisition of Goodrich. Under the proposed Final Judgment, which is explained more fully below, 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.[1] Each of the products discussed in the Complaint and the proposed transaction's potential anticompetitive effects on each relevant product market are discussed in turn below.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after 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.

[1] Throughout its investigation of the UTC/Goodrich acquisition, the United States has worked closely with the European Commission and has obtained substantially the same remedies. The United States will continue to cooperate with the European Commission as appropriate in implementing the remedies provided in the proposed Final Judgment.

II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATIONS

A. The Defendants

UTC is incorporated in Delaware and has its headquarters in Hartford, Connecticut. UTC produces a wide range of products for the aerospace and other industries, including, among other products, aircraft generators, aircraft engine control systems and components, aircraft engines, and helicopters. UTC's main aerospace divisions are Pratt & Whitney, Hamilton Sundstrand, and Sikorsky. In 2010, UTC had revenues of approximately $54 billion.

Goodrich is incorporated in New York and has its headquarters in Charlotte, North Carolina. Goodrich manufactures a variety of products for the aerospace industry, including, among other products, aircraft generators, aircraft engine control systems and components, landing gear, and actuation systems. In 2010, Goodrich had revenues of approximately $7.2 billion.

B. The Competitive Effects of the Acquisition in the Market for Large Main Engine Generators

An aircraft electrical generator is a device that converts some of the mechanical energy created by an aircraft engine into electrical power used by communication and navigation equipment, environmental control systems, interior and exterior lighting, and other aircraft systems. As the engine turns, it rotates a shaft connected to the generator, which by electromagnetic induction converts some of the mechanical energy into electrical power. Electricity flows into the primary electrical distribution system, which routes it through the aircraft to the lighting bus, environmental control systems, and other systems requiring electric power.

Aircraft electrical power generation is quite complex. Because aircraft engines change speed according to the rate of acceleration or deceleration, air density, and angle of flight, the shaft connected to the generator will rotate at higher or lower rates. This variability must be taken into account by the generator, which must deliver a steady level of power to the aircraft systems.

Large aircraft (which include commercial aircraft seating 100 or more passengers) generally require much more electrical power than smaller aircraft. Main engine generators for large aircraft generally have power output above approximately 75 thousand volt-amps ("Kva").[2] Main engine generators for large and small aircraft also have substantial differences in terms of rotational speed and cooling system. Moreover, large aircraft almost always use alternating current ("AC") rather than direct current ("DC"), while smaller aircraft use either AC or DC. AC generators can produce variable frequency or constant frequency electrical power.

Designing a large main engine generator is generally more difficult than designing a small main engine generator because of the need to operate large generators efficiently at high rotational speeds. This requires a more complex cooling system to deal with the friction created by a heavier rotor operating at faster speeds. Small generators, generating 30 to 45Kva or less, are cooled sufficiently by air circulated within the generator chamber. Large generators, however, require a system of tubing and gears to deliver mists of oil around the rotor to avoid over-heating. Oil-cooling systems are more complex and challenging to design.

The need for a heavier rotor and a more complex cooling system also makes it difficult to minimize the size and weight of a large main engine generator. Therefore, such generators are

[2] Hereinafter, main engine generators with outputs of 75Kva or more will be referred to

designed to more demanding specifications than small main engine generators. Design engineering staffs must be familiar with the more demanding requirements of large main engine generators.

While multiple smaller generators could produce the same total power output as a single large main engine generator, multiple generators would weigh more, consume more space, require more connections to the electrical distribution system and the gearbox, and be more costly than a single generator. Weight and space, in particular, are important factors in generator selection and likely would dissuade a customer from approving a multiple-generator design.

Generators used in auxiliary power units ("APUs") cannot be used in place of large main engine generators. APU generators are designed to perform a function different from main engine generators and, therefore, differ in mechanical design, electrical design, and cooling technique.

1. Relevant Product Market

Large main engine generators have specific applications, for which other products cannot be employed. An aircraft needs a main engine generator and cannot operate without one. In addition, main engine generators for use on smaller aircraft cannot be used in large aircraft because they do not provide sufficient output to power the aircraft and have other different specifications. Further, generators for other parts of an aircraft, such as the APU, cannot be used on the main engine of a large aircraft because they do not have the same performance characteristics as main engine generators.

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as "large main engine generators."

A small but significant increase in the price of large main engine generators would not cause customers of those generators to substitute a smaller generator, a generator for an APU, or any other product, or to reduce purchases of large main engine generators, in volumes sufficient to make such a price increase unprofitable. Accordingly, the development, manufacture, and sale of large main engine generators is a line of commerce and relevant market within the meaning of Section 7 of the Clayton Act.

2. Relevant Geographic Market

Aircraft manufacturers purchase large main engine generators primarily from companies located in the United States or Europe. However, suppliers typically offer a worldwide organization to support the provision of maintenance and repair services. Customers do not consider transportation costs, a small proportion of the cost of the finished aircraft, to be a significant cost driver. Accordingly, the world is the relevant geographic market within the meaning of Section 7 of the Clayton Act.

3. Anticompetitive Effects

UTC's proposed acquisition of Goodrich likely would lessen competition substantially in the market for the development, manufacture, and sale of large main engine generators. UTC and Goodrich are the only significant competitors for large main engine generators. For the past twelve years, either UTC or Goodrich has won every competition for large main engine generators. Indeed, UTC and Goodrich were the top two bidders in almost every one of those competitions. The firms have been each other's closest competitors based on technical and commercial considerations.

The bidding behaviors of UTC and Goodrich often have been constrained by the possibility of losing sales of large main engine generators to the other. Each firm has often considered the other company's offering when planning bids and research and development activities.

Customers have benefited from the competition between UTC and Goodrich for sales of large main engine generators by receiving lower prices, more favorable contractual terms, more innovative products, and shorter delivery times. The combination of UTC and Goodrich would eliminate this competition and its future benefits to customers. Post-acquisition, UTC likely would have the incentive and the ability profitably to increase prices and reduce innovation.

UTC and Goodrich invest significantly to remain the two leading suppliers of large main engine generators in the future, and customers expect them to maintain these positions. Future product development for large main engine generators would benefit from vigorous innovation competition between UTC and Goodrich.

Other companies that have some capability to develop large main engine generators are not close competitors to UTC and Goodrich. For example, no other company has an installed base of large main engine generators. Any other firm would need substantial time and expense to achieve UTC's or Goodrich's record of experience, flight time, and reliability. UTC's and Goodrich's installed base of large main engine generators also provides them the ability to develop new large main engine generators more efficiently and at a lower cost than other companies.

Companies that manufacture main engine generators for small aircraft do not compete effectively with UTC and Goodrich for large main engine generators because those companies'

experiences with main engine generators for smaller aircraft do not provide them the ability to design and manufacture large main engine generators, which are more complicated products. Similarly, companies that make generators for APUs do not compete effectively with UTC and Goodrich for large main engine generators because those companies' experiences with APU generators do not provide them the ability to design and manufacture large main engine generators, which again are more complicated products.

The proposed acquisition, therefore, likely would substantially lessen competition for the development, manufacture, and sale of large main engine generators. This likely would lead to higher prices, less favorable contractual terms, and less innovation in violation of Section 7 of the Clayton Act.

4. Difficulty of Entry

Sufficient, timely entry of additional competitors into the market for large main engine generators is unlikely. Therefore, entry or the threat of entry into this market would not prevent the harm to competition caused by the elimination of Goodrich as a supplier of these products.

Firms attempting to enter into the market for the development, manufacture, and sale of large main engine generators face several barriers to entry. Main engine generators perform critical functions on the aircraft and likely will be used throughout the life of the aircraft program, which may be twenty or thirty years. As a result, aircraft manufacturers are reluctant to purchase a product from a supplier not already known for its expertise in large main engine generators. A manufacturer must be able to demonstrate that its large main engine generator meets the necessary specifications and need for reliability. While some companies may have

demonstrated experience in other types of generators, such experience is not considered by customers to be as relevant as experience specifically in large main generators.

UTC and Goodrich emphasize to customers their prior experience in large main engine generators to demonstrate reliability. Moreover, this experience allows them to develop a new large main engine generator at an initial development cost lower than that of companies that do not already have similar generators in operation. They also are able to demonstrate the technical and financial ability successfully to manage production, aftermarket service, and warranty work for large main engine generators, which companies trying to enter this market would not be able to do.

Developing a large main engine generator is technically difficult. Manufacturers of main engine generators for smaller aircraft or generators for other parts of the aircraft, such as APUs, face significant technical hurdles in designing and developing large main engine generators. Large main engine generators present unique technical challenges relating to the preservation of power quality at speeds much higher than those reached in main engine generators for smaller aircraft and generators for APUs. Large main engine generators also generate higher current levels than other generators, and require an oil cooling system. Manufacturers of main engine generators for smaller aircraft and APU generators cannot design and produce a large main engine generator simply by making a main engine generator for a smaller aircraft or an APU generator proportionately larger, but must instead completely redesign the generator.

Further, substantial time and significant financial investment would be required for a company to design and develop a large main engine generator. Even companies that already make other types of generators, or that already are attempting to develop a large main engine

generator, would require up to five years or more and an investment of over $50 million to develop a product that is competitive with those offered by UTC and Goodrich.

As a result of these barriers, entry into the market for large main engine generators would not be timely, likely, or sufficient to defeat the substantial lessening of competition that likely would result from UTC's acquisition of Goodrich.

C. The Competitive Effects of the Acquisition in the Market for Aircraft Turbine Engines

Most modern commercial, business, and military aircraft are powered by turbine engines. These engines operate by burning a fuel-and-air mixture in a combustion chamber, with the resulting combustion products turning a propeller blade on a turboprop engine, a rotor shaft on a turboshaft engine, or a fan in front of a turbofan engine. Turbofan engines power most commercial transport aircraft, business jets, and many military aircraft. Generally, large commercial aircraft, regional jets, and military aircraft use the most powerful turbofan engines, while business jets use turbofan engines of lower power. The power delivered by a turbofan engine is measured in terms of pounds of thrust ("pounds thrust"), and such engines are generally categorized by their thrust class. Turboprop engines primarily are used to power smaller aircraft, such as commuter aircraft. Turboshaft engines power helicopters. The power delivered by turboprop and turboshaft engines is measured in terms of shaft horsepower (shp).

Due to their complexity and the degree of expertise and skill required for their development, and production, few companies produce aircraft turbine engines of any kind. Aircraft turbine engines typically continue in service for decades and require regular maintenance, repair, and overhaul. When selecting an engine, customers take into account the difficulty and cost of servicing the engine, including the engine control system ("ECS") on the

engine. Engines that require more frequent servicing or are otherwise more difficult or costly to own and operate are less attractive to customers and therefore less competitive. There are only three main producers of aircraft turbine engines of greater than 10,000 pounds thrust. (Hereinafter the term "large aircraft turbine engines" will refer to engines of this thrust range.) UTC, through its Pratt & Whitney subsidiary, and Rolls-Royce Group plc ("Rolls-Royce") are two of these three producers. UTC manufactures turbine engines of up to 90,000 pounds thrust, while Rolls-Royce manufactures turbine engines of up to 97,000 pounds thrust. There are only a few producers of aircraft turbine engines of 10,000 pounds thrust or less. (Hereinafter the term "small aircraft turbine engines" will refer to engines of this thrust range.) UTC, through its Pratt & Whitney subsidiary, is one of these producers.

It is critical that fuel be fed into aircraft turbine engines in a precise manner, so that the engine responds to the pilot's instructions in the most efficient manner possible. The system that accomplishes this is the ECS. The core of the ECS is a computer, usually called an electronic engine control, or EEC, that receives information from multiple sensors in the engine and from the pilot's controls, and calculates the amount of fuel to be sent to the engine. The ECS also includes the engine's main fuel pump and a fuel metering unit, or FMU, which controls the amount of fuel coming into the engine from the main fuel pump.

In virtually all modern aircraft turbine engines, the EEC within the ECS is a full-authority digital engine control, or FADEC. The FADEC consists of hardware and two types of software: the operating system and the application software. The operating system is provided by the FADEC supplier. The application software contains sensitive performance data relating

to the particular engine and is usually provided by the engine manufacturer, although in some cases the ECS supplier provides this software.

An ECS, including the FADEC, is designed and developed to meet the specific performance requirements of the particular engine on which it will be installed. As a result, the ECS supplier has insight into the design and cost of not only its ECS, but also the customer's engine. ECS suppliers that provide the application software also have access to competitively sensitive confidential business information about the fuel efficiency and performance principles around which the customer's engine is designed.

In 2008, Goodrich and Rolls-Royce formed Aero Engine Controls ("AEC"), a joint venture to produce ECSs. The AEC joint venture agreement requires Rolls-Royce to purchase all of its ECSs for engines of over 4000 pounds thrust or 2000 shp from AEC. Therefore, there are no alternative suppliers of ECSs for Rolls-Royce large aircraft turbine engines.

The AEC joint venture agreement gives Goodrich the exclusive right to provide replacement parts and undertake maintenance, repair, and overhaul of ECSs for Rolls-Royce large aircraft turbine engines. Because the volume of commerce for aftermarket service of any given ECS is quite small, there are no secondary suppliers for ECS replacement parts or service. Aftermarket parts and service for ECSs must be provided by the original ECS manufacturer or a reseller designated by that manufacturer. Therefore, it would not be possible for purchasers of these Rolls-Royce engines to obtain parts or service for these ECSs from any supplier other than Goodrich.

1. Relevant Product Markets

a. Aircraft Turbine Engines

To a large extent, each aircraft platform is limited in the type and size of engine with which it may be powered. The choice of a turbofan, turboprop, or turboshaft engine is dictated by aircraft type, range and speed, and is specified by the manufacturer. The engine must provide the amount of power needed for that particular aircraft to perform properly and safely, while at the same time being as light as possible. Thus, only a limited range of engine sizes is considered for any particular aircraft.

For any given aircraft, a small but significant increase in the price of an aircraft turbine engine of the required type and thrust would not cause sufficient purchases of such engines to be shifted to engines of a different type or significantly higher or lower thrust so as to make such a price increase unprofitable. Accordingly, the development, manufacture, and sale of the turbine engine required for each type of aircraft is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

Although the engine required for each such aircraft thus may be deemed a separate product market, in each such market there are few competitors. The proposed acquisition of Goodrich by UTC would affect competition in each large aircraft turbine engine market in the same manner. It is therefore appropriate to aggregate large aircraft turbine engine markets for purposes of analyzing the effects of the acquisition. Similarly, the proposed acquisition of Goodrich by UTC would affect competition in each small aircraft turbine engine market in the same manner. It is therefore also appropriate to aggregate small aircraft turbine engine markets for purposes of analyzing the effects of the acquisition.

b. ECSs for Aircraft Turbine Engines

All aircraft turbine engines require an ECS in order to operate properly. No aircraft engine can be sold or operated without an ECS. There are no other products that perform the functions of an ECS in receiving and analyzing data from sensors and pilot controls, calculating the optimal flow rate of fuel into the engine combustion chamber, and feeding the proper amount of fuel into the engine combustion chamber.

Each ECS is designed to work on a specific engine, and one ECS cannot be substituted for an ECS on another engine. Therefore, a small but significant increase in the price of the ECS designed for a particular engine would not cause enough purchases to be shifted to a different ECS so as to make such a price increase unprofitable. Accordingly, the development, manufacture, sale, and aftermarket service of the ECS for each aircraft turbine engine is a line of commerce and relevant product market within the meaning of Section 7 of the Clayton Act.

Although the ECS required for each particular engine thus may be deemed a separate product market, the AEC joint venture agreement requires Rolls-Royce to purchase all ECSs for large aircraft turbine engines from AEC and grants exclusive aftermarket rights to such ECSs to Goodrich. Thus the proposed acquisition would affect competition in each such market in the same manner. It is therefore appropriate to aggregate the markets for ECSs for large aircraft turbine engines for purposes of analyzing the effects of the acquisition.

The proposed acquisition would have the same effect in each market for ECSs for small aircraft turbine engines. It is therefore appropriate to aggregate the markets for ECSs for small aircraft turbine engines for purposes of analyzing the effects of the acquisition.

2. Relevant Geographic Market

Aircraft manufacturers purchase aircraft turbine engines and the ECSs for those engines primarily from companies located in the United States or Europe. However, suppliers typically offer a worldwide organization to support the provision of maintenance and repair services. Customers do not consider transportation costs, a small proportion of the cost of the finished aircraft, to be a significant cost driver. Accordingly, the world is the relevant geographic market within the meaning of Section 7 of the Clayton Act.

3. Anticompetitive Effects

a. Large Aircraft Turbine Engines

As discussed above, there are only three primary competitors in the markets for the development, manufacture, and sale of large aircraft turbine engines. UTC, through its Pratt & Whitney subsidiary, and Rolls-Royce are two of those competitors. Goodrich is a partner in AEC, from which Rolls-Royce must obtain its ECSs for most such engines. If UTC were to purchase Goodrich, and thus Goodrich's share of AEC, UTC would be both a producer of large aircraft turbine engines and the sole-source supplier of ECSs to one of its leading engine competitors.

After the acquisition UTC, through its position as a partner in the AEC joint venture, would have the incentive and ability to cause AEC to withhold or delay delivery of ECSs to its competitor Rolls-Royce, resulting in the inability of Rolls-Royce to deliver engines on the schedule required by customers. In addition, after the acquisition UTC, through its position as the exclusive supplier of aftermarket parts and services for ECSs on Rolls-Royce large aircraft turbine engines, would have the incentive and ability to raise the costs of such parts and services,

or to reduce the availability of such parts and services, making Rolls-Royce a less reliable supplier of large aircraft turbine engines. Such strategies to raise Rolls-Royce's costs and reduce its reliability would be profitable to UTC post-merger because the sale of large aircraft turbine engines provides much more revenue and profit than the sale of ECSs or the aftermarket service of ECSs for those engines. Therefore, if UTC were able to gain additional engine sales by causing AEC to withhold or delay delivery of ECSs for Rolls-Royce engines, or by increasing the cost or difficulty of obtaining aftermarket service on such ECSs, the additional engine sales would result in considerably more revenue and profit to UTC than the revenue and profit lost from any decrease in sales of or aftermarket service on such ECSs. These actions by UTC likely would harm purchasers of large aircraft turbine engines because UTC and Rolls-Royce have been, and likely will continue to be, in some competitions the two best-positioned suppliers of large aircraft turbine engines. By making Rolls-Royce unable to deliver engines or by raising its costs, UTC may substantially affect competition and gain the ability to raise prices or reduce quality.

In addition, because AEC produces the ECSs for Rolls-Royce engines, AEC has accurate information concerning the cost of the ECS and each of the ECS components used on each Rolls-Royce engine covered by the AEC agreement. Moreover, because AEC provides the application software for the FADECs for these Rolls-Royce engines, it has access to competitively-sensitive confidential business information concerning the engine itself, including the fuel efficiency and performance principles around which each engine is designed. Following the acquisition of Goodrich and its share of AEC, UTC would have the incentive and ability to use this information to its advantage in bidding on large aircraft turbine engines. For example, such information

would reveal to UTC when it could offer higher pricing or less innovative solutions without risk of losing a large aircraft turbine engine sale.

Therefore, UTC's acquisition of Goodrich would give UTC both the ability and the incentive to reduce the competitiveness of Rolls-Royce in the supply of large aircraft turbine engines. If UTC were to reduce the competitiveness of Rolls-Royce in the markets for these engines, customers for those engines would have significantly fewer choices, and competition thus would be lessened substantially.

b. Small Aircraft Turbine Engines

As discussed above, UTC, through its Pratt & Whitney subsidiary, is one of a small number of significant competitors in the markets for the development, manufacture, and sale of small aircraft turbine engines. Several of UTC's competitors purchase the ECSs for certain of their small aircraft turbine engines from Goodrich. Therefore, if UTC were to purchase Goodrich, UTC would be both a producer of small aircraft turbine engines and a supplier of ECSs to its competitors.

At least three years are required to design and develop an ECS for a small aircraft turbine engine. Therefore, if an engine manufacturer must replace the supplier of the ECS on a specific engine, at least three years will pass before the engine manufacturer can deliver an engine with a replacement ECS. Aircraft manufacturers often demand delivery of an engine in less than three years.

If, after the acquisition, UTC were to withhold or delay delivery of Goodrich ECSs to companies that compete with UTC for the development, manufacture, and sale of small aircraft turbine engines, those companies might be unable to deliver engines on the schedule required by

their customers. Such customers likely would have to turn to a different engine supplier. In such circumstances, UTC might be the best-positioned alternative engine supplier. As a result, customers that would otherwise choose a competing engine could be forced to purchase an engine from UTC.

The sale of small aircraft turbine engines provides much more revenue and profit than the sale of ECSs for those engines. Therefore, if UTC were able to gain additional engine sales by withholding or delaying delivery of ECSs to its engine competitors, the additional engine sales would result in considerably more revenue and profit to UTC than the revenue and profit lost from any decrease in sales of such ECSs.

UTC's acquisition of Goodrich therefore would give UTC both the ability and the incentive to make its competitors unable to compete effectively to supply small aircraft turbine engines. If UTC were to make its competitors unable to compete effectively in the development, manufacture, and sale of small aircraft turbine engines, customers for those engines would have significantly fewer choices, and competition would be lessened substantially.

4. Difficulty of Entry

Sufficient, timely entry of additional competitors into the markets for aircraft turbine engines is unlikely to prevent the harm to competition in the markets for aircraft turbine engines that is likely to occur as a result of the proposed acquisition. Entry of any new competitor into the manufacture and sale of aircraft turbine engines is unlikely and cannot happen in a time period that would prevent significant competitive harm. The primary purchasers of aircraft turbine engines are aircraft manufacturers, of which there are very few in the world. Aircraft manufacturers are extremely hesitant to purchase components from unproven sources,

particularly such major components as engines. A firm seeking to enter this business would need many years and an enormous financial investment to design and develop a new aircraft turbine engine. No firm has successfully entered this business in decades.

Such entry is unlikely to occur in a timeframe sufficient to prevent competitive harm. Engine purchasers typically expect delivery of the first engine for a new aircraft from one to five years after contract award. A new entrant into any market for aircraft turbine engines, even a firm already manufacturing other aircraft turbine engines, would require much more time to develop and market a new engine.

As a result of these barriers, entry into the markets for aircraft turbine engines would not be timely, likely, or sufficient to defeat the substantial lessening of competition that is likely to result from UTC's acquisition of Goodrich.

D. The Competitive Effects of the Acquisition in the Market for Engine Control Systems for Large Aircraft Turbine Engines

The ECS in a large aircraft turbine engine is a major determinant of key engine performance parameters including fuel economy, safe operation, and thrust in different situations. In order to maximize engine performance, the ECS must be closely integrated with the engine during both the design stage and the assembly process. Changes in an engine design can necessitate changes in an ECS design, and vice versa. As a result, large aircraft turbine engines and the ECSs for those engines are not sold separately to engine purchasers. It would not be practical for even the most sophisticated engine purchasers to integrate an ECS and an engine. All large aircraft turbine engines are sold with an ECS installed by the ECS producer and the engine manufacturer.

In large part because of the highly integrated nature of engines and ECSs, each of the three major producers of large aircraft turbine engines has a preferred supplier for the ECSs used on its engines. Each engine manufacturer purchases the great majority of the ECSs used on its engines from its preferred supplier.

Because of these preferred supplier relationships, there are only three significant suppliers of ECSs for large aircraft turbine engines, one for each engine producer. UTC and AEC, the Goodrich-Rolls-Royce joint venture, are two of the three suppliers. UTC, through its Hamilton Sundstrand subsidiary, supplies the ECSs used on most of its own engines. AEC supplies the ECSs used on most Rolls-Royce engines.

1. Relevant Product Market

As discussed in Paragraph II(C)(1)(a) of this Competitive Impact Statement, the development, manufacture, sale, and aftermarket service of the ECS for large aircraft turbine engines is a line of commerce and relevant product market within the meaning of Section 7 of the Clayton Act.

2. Relevant Geographic Market

Aircraft manufacturers purchase ECSs for large aircraft turbine engines primarily from companies located in the United States or Europe. However, suppliers typically offer a worldwide organization to support the provision of maintenance and repair services. ECS customers do not consider transportation costs, a small proportion of the cost of the finished aircraft, to be a significant cost driver. Accordingly, the world is the relevant geographic market within the meaning of Section 7 of the Clayton Act.

3. Anticompetitive Effects

UTC's proposed acquisition of Goodrich likely would lessen competition substantially in the market for ECSs for large aircraft turbine engines. UTC and AEC are two of the three producers of such ECSs. If UTC were to purchase Goodrich and thus Goodrich's share of AEC, UTC would control fifty percent of one of its two leading competitors for such ECSs.

Although an ECS for a large aircraft turbine engine is generally purchased by an engine builder from its preferred supplier, independent source selections can and do take place. For example, an aircraft manufacturer may purchase a replacement ECS from an ECS manufacturer other than its preferred supplier to upgrade the ECS on an engine already in service. This occurs when an existing ECS becomes difficult to repair due to parts obsolescence issues. In addition, engine manufacturers occasionally form teams to compete for new large aircraft turbine engine projects. In either of these situations, an ECS supplier may be selected by competition rather than on the basis of an existing preferred supplier arrangement. After the acquisition UTC, through its position as a partner in the AEC joint venture, would have the incentive and ability to impede AEC's pursuit of such projects in competition with UTC. Competition for ECSs for large aircraft turbine engines would thus be lessened substantially.

Competition also could be substantially lessened in other ways. UTC, through its Pratt & Whitney subsidiary, and Rolls-Royce are two of the world's three primary manufacturers of large aircraft turbine engines. The companies conduct independent work into the research, development and design of new ECSs for such engines, UTC through its Hamilton Sundstrand subsidiary and Rolls-Royce through AEC. After UTC acquires Goodrich, UTC and Rolls-Royce would share control of AEC, and UTC has explored using AEC as a vehicle to combine its ECS

business with that of Rolls-Royce, to share intellectual property and research and development results, and to eliminate some product lines, rather than competing with Rolls-Royce to independently develop innovative and cost-effective ECS solutions. Competition for ECSs for large aircraft turbine engines thus would be lessened substantially, as engine customers would be offered two engines from UTC and Rolls-Royce, but only a single ECS. This loss of competition would result in less innovative and cost-effective ECSs for large aircraft turbine engines.

4. Difficulty of Entry

Sufficient, timely entry of additional competitors into the market for ECSs for large aircraft turbine engines is unlikely. Therefore, entry or the threat of entry into this market would not prevent the harm to competition caused by UTC's acquisition of Goodrich and its share of AEC.

A firm seeking to enter this market would need substantial time and a significant financial investment to design and develop a new ECS for a large aircraft turbine engine. Even those firms that produce ECSs for smaller engines would need at least five years and an investment of $50 million or more to develop an ECS for a large aircraft turbine engine that is competitive with those produced today by UTC and AEC.

Moreover, a firm attempting to enter this market would be unlikely to obtain sufficient sales to be economically viable. Because most of these products are purchased by the three primary engine manufacturers from their existing preferred suppliers, a new entrant would have few opportunities to recover the considerable investment required to develop a new ECS for large aircraft turbine engines. Independent competitions are unlikely to occur with sufficient frequency to permit an entrant to recover its costs.

As a result of these barriers, entry into the market for ECSs for large aircraft turbine engines would not be timely, likely, or sufficient to defeat the substantial lessening of competition that likely would result from UTC's acquisition of Goodrich.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The divestitures required by the proposed Final Judgment will eliminate the anticompetitive effects that likely would result from UTC's acquisition of Goodrich. These divestitures will preserve the current state of competition in the development, manufacture, and sale of large main engine generators, aircraft turbine engines, and engine control systems for large aircraft turbine engines.

A. Divestitures

1. Engine Controls

a. Divestiture Assets

The proposed Final Judgment requires UTC to divest all of the Goodrich assets that are used to design, develop, and manufacture engine control products for small engines, such as electronic engine controls, fuel metering units, and main fuel pumps (hereinafter, the "Engine Controls Divestiture Assets," defined in Section II(M) of the proposed Final Judgment).[3] The assets to be divested include Goodrich's manufacturing facility located in West Hartford, Connecticut, and all tangible and intangible assets used by or located in that facility. The assets to be divested also include the assets used by or located in Goodrich's facility in Montreal,

[3] The divestiture assets also include ancillary engine control products such as engine actuators and various pumps and valves that are currently manufactured at the facilities being divested. The divestiture of these product lines is necessary to ensure the continued viability of the West Hartford facility and the overall viability of the assets.

Canada, for engine control products for small engines.[4] The divestiture assets include all assets used for maintenance, repair, and overhaul ("MRO") services that are performed at the West Hartford facility and the assets used for MRO services for small engines that are performed at the Goodrich Montreal facility.[5] The divestiture assets exclude assets relating to MRO services at other Goodrich facilities that are not being divested.[6] The divestiture of the Engine Controls Divestiture Assets will provide the acquirer with all the assets it needs to successfully develop, manufacture, and sell engine control products.

In addition, to address intellectual property that Goodrich is unable to transfer outright, Paragraphs II(M)(5) and (6) include as a part of the Engine Controls Divestiture Assets an exclusive, irrevocable, royalty-free license for Goodrich intellectual property that is used exclusively for engine control products and a similar, but non-exclusive, license for such intellectual property that is used primarily, but not exclusively, for engine control products. These licenses will further ensure that the acquirer has the assets it needs to be a viable competitor in the engine controls systems business.

[4] Goodrich is in the process of closing its Montreal facility and transitioning the assets to various other Goodrich facilities. Goodrich is transitioning the assets relating to engine control products for small engines to the West Hartford facility and those assets are included in the divestiture assets.

[5] The divestiture assets specifically exclude those assets relating to MRO services for several large engines currently performed at the Montreal facility because those services are not related to the small engine control products being divested.

[6] The assets relating to MRO services performed at Goodrich facilities that are not being divested are excluded because most of the MRO services for engine control products for small engines are performed at the West Hartford facility. In addition, as discussed more fully below, a transition services agreement will provide the acquirer any MRO services it needs for a period

b. Divestiture Timing

In antitrust cases involving mergers in which the United States seeks a divestiture remedy, the United States generally requires that divestitures take place within the shortest time period reasonable under the circumstances. A quick divestiture has the benefits of restoring competition lost because of the acquisition and reducing the possibility of dissipation of the value of the assets. Paragraph IV(A) requires UTC to divest the Engine Control Divestiture Assets as a viable ongoing business within one hundred eighty days after the Complaint is filed, or five days after notice of the entry of the Final Judgment by the Court.

This divestiture period is longer than those often found in antitrust consent decrees, but is warranted in this case. The Engine Control Divestiture Assets do not currently comprise a separate, stand-alone business, making their separation from the remainder of Goodrich more difficult than would otherwise be the case. Also, the Engine Controls Divestiture Assets include assets that are currently in the process of being relocated from Goodrich's facility in Montreal to the West Hartford facility, which will take a few months to complete. In addition, in the particular circumstances of this case and given the large number of complex and critical products produced by the divested business, due diligence by the acquirer of the divestiture assets is likely to be a lengthy process. The proposed Final Judgment allows this divestiture period to be extended until ten calendar days after the receipt of any governmental approvals, including those from authorities outside the United States, that are required by the acquirer as a condition of closing. UTC and Goodrich must use their best efforts to seek all necessary approvals as expeditiously as possible.

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of up to two years.

2. Aircraft Electrical Generation

a. Divestiture Assets

The proposed Final Judgment requires UTC to divest the Goodrich assets used to design, develop, manufacture, market, service, distribute, repair and/or sell aircraft electrical generation and electrical distribution systems (hereinafter, the "Electrical Power Divestiture Assets," defined in Section II(Q) of the proposed Final Judgment). The tangible assets to be divested include Goodrich's facilities in Pitstone, Buckinghamshire in the United Kingdom[7] and in Twinsburg, Ohio. The tangible assets to be divested also include manufacturing equipment, tooling, fixed assets, personal property, inventory, materials, licenses, permits, authorizations, agreements, contracts, customer lists, and repair, performance and other records. The intangible assets to be divested include patents, licenses, sublicenses, technical information, intellectual property, know-how, trade secrets, designs, design protocols, research data concerning historic and current research and development efforts, design tools, and simulation capability.[8] This divestiture will provide the acquirer with the assets it needs to successfully develop,

[7] The Pitstone facility also houses Goodrich's motor drives business. The motor drives are unrelated to electrical power generation and distribution and are not complementary products. In addition, the inclusion of the motor drives business is not necessary to ensure the viability of the Pitstone facility and the electrical power divestiture assets. The physical assets associated with the motor drives business are minimal and easily removed from the Pitstone facility. Further, any equipment shared by the two businesses will remain at the Pitstone facility. Therefore, the motor drives business is not included in the divestiture assets and is required to be removed from the Pitstone facility prior to the divestiture of the Electrical Power Divestiture Assets.

[8] The Electrical Power Divestiture Assets also include Goodrich's obligations to provide warranty services to BAE Systems on a torpedo program and all assets necessary to fulfill those obligations. This program is not related to electrical generation and distribution systems. However, this program has been manufactured and serviced from the Pitstone facility for several years and it would be disruptive to remove the services from the Pitstone facility.

manufacture, and sell aircraft electrical generation and electrical distribution systems.[9]

In addition, the proposed Final Judgment requires that UTC divest all of its shares in the Aerolec joint venture, as defined in Paragraph II(T). The acquirer of the Aerolec shares and the acquirer of the Electrical Power Divestiture Assets must be the same, unless Thales acquires the Aerolec shares. This provision is necessary to avoid a situation in which the interests of the acquirer of the Aerolec shares potentially are not aligned with the interests of the acquirer of the Electrical Power Divestiture Assets, especially because the acquirer of the Electrical Power Divestiture Assets would be performing the majority of the work within the Aerolec joint venture.

Further, Paragraph II(Q)(5) ensures that any rights to intellectual property and know-how that Goodrich has pursuant to a certain agreement with Thales relating to the Aerolec joint venture will be divested to the acquirer of the Engine Control Divestiture Assets and will not remain with Goodrich.

b. Divestiture Timing

Paragraph V(A) of the proposed Final Judgment requires UTC to divest the Electrical Power Divestiture Assets within one hundred eighty days after the Complaint is filed, or five days after notice of the entry of the Final Judgment by the Court. This divestiture period is warranted by the specific circumstances related to these assets. The divestiture of the Electrical

[9] The Electrical Power Divestiture Assets exclude Goodrich's assets in and personnel operating out of Goodrich's development center in Bengaluru, India, and Goodrich's facilities that provide customer support for Goodrich's aircraft electrical generation systems and electrical distribution systems products, other than the facilities in Pitstone and Twinsburg. These facilities provide some services to the divested business. However, these services are minor and can be replicated by the acquirer of the divested assets. In addition, as discussed more fully below, a transition services agreement will provide the acquirer any engineering or maintenance,

Power Divestiture Assets is likely to take up to six months because Defendants must move the motor drives business from the Pitstone facility prior to the divestiture. In addition to the time necessary to locate suitable space near the Pitstone facility and to transition the business, it is necessary to replace one piece of testing equipment at the Pitstone facility that currently is shared between the motor drives business and the Electrical Power Divestiture Assets. Although this equipment will remain at the Pitstone facility, the motor drives business will need new equipment once the business is removed from the Pitstone facility. The proposed Final Judgment allows the divestiture period to be extended until ten calendar days after the receipt of any governmental approvals that are required by the acquirer as a condition of closing. UTC and Goodrich must use their best efforts to seek all necessary approvals as expeditiously as possible.

Pursuant to Paragraph V(S), UTC must divest the Aerolec shares either to the acquirer of the Electrical Power Divestiture Assets or to Thales, which has various rights to purchase the shares pursuant to the Aerolec shareholders agreement between Thales and Goodrich. Due to Thales's rights and the time periods permitted for Thales to exercise these rights in the Aerolec shareholders agreement, Defendants may be unable to divest the Aerolec shares at the same time as the Electrical Power Divestiture Assets. In particular, Thales has two options by which it may purchase the Aerolec shares—a change of control option, which would allow Thales to purchase the Aerolec shares once the UTC/Goodrich merger is consummated, and a transfer option, by which Thales has the right to purchase the Aerolec shares once Goodrich has selected a potential third-party acquirer and agreed on a price.

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repair, and overhaul services it needs for a period of up to two years.

The timing of the divestiture of the Aerolec shares will vary depending on whether Thales exercises these options. The divestiture periods for the Aerolec shares, provided in Paragraphs V(C), (D), and (E), are designed to require the divestiture of the Aerolec shares as soon as possible while taking into account the contractually permitted time periods for Thales to exercise its various rights. When Goodrich is required to select a potential third-party acquirer of the Aerolec shares prior to Thales exercising its rights, the divestiture period includes time for UTC to reach a deal with the acquirer of the Electrical Power Divestiture Assets and have the acquirer approved by the United States. Paragraph V(E) addresses the situation where Thales does not exercise any of its options to purchase the Aerolec shares. The proposed Final Judgment provides time for Defendants to comply with additional procedures required by the Aerolec shareholders agreement relating to the sale of the shares to a third party.

3. AEC Shares

Paragraph VI(A) of the proposed Final Judgment requires the divestiture to Rolls-Royce of Goodrich's shares in the AEC joint venture, defined in Paragraph II(Y), within one hundred eighty days after the filing of the Complaint, or five days after the notice of entry of the Final Judgment. The divestiture of Goodrich's AEC shares will prevent UTC from jointly developing engine control systems with Rolls-Royce through the AEC joint venture or from disadvantaging Rolls-Royce in future competitions for large aircraft turbine engines. The one hundred eighty-day divestiture period provides sufficient time for Rolls-Royce to complete the process of acquiring Goodrich's shares under the procedures established in the AEC joint venture agreement, including time to determine the price of the AEC shares. The proposed Final Judgment allows the divestiture period to be extended until ten calendar days after the receipt of

any governmental approvals that are required by Rolls-Royce as a condition of closing. UTC and Goodrich must use their best efforts to seek all necessary approvals as expeditiously as possible.

In the unlikely event that Goodrich's shares in AEC are not divested to Rolls-Royce, Paragraph VI(B) of the proposed Final Judgment requires the divestiture of the shares to another acquirer within one hundred eighty days after the date that Rolls-Royce waives its option to acquire the shares or its option expires. While it is unlikely that Rolls-Royce will not purchase Goodrich's AEC shares,[10] this provision ensures that Goodrich's AEC shares will be divested even if the sale to Rolls-Royce does not go through. The one hundred eighty-day divestiture period provides sufficient time for operation of the procedures established by the AEC joint venture agreement for the sale of Goodrich's shares to a third party.

B. Other Provisions

1. Transition Services Agreements

Because the acquirer will be purchasing equipment and other assets that must be integrated into its existing operations, it may need the assistance of the former Goodrich employees to enable the acquirer to supply the divested engine controls systems, aircraft electrical generation and electrical distribution systems, and other products produced with the divested assets as seamlessly as possible. Therefore, Paragraphs IV(H) and V(L) of the proposed Final Judgment require that, at the option of the acquirer, UTC enter into transition services agreements by which UTC will provide technical and engineering assistance, and maintenance,

[10] Rolls-Royce has entered into agreements with Defendants to exercise its option to purchase the AEC shares.

repair, and overhaul services to the acquirer for up to one year, with the possibility of a one-year extension upon approval by the United States.

These transition services agreements do not raise competitive concerns under the circumstances of this particular case. The agreements are limited in duration to one year, plus the opportunity for a one-year extension. Also, the supply of these services from UTC to the acquirer is unlikely to provide UTC any competitive insight into the operations of the acquirer, and therefore will not harm competition.

2. Supply Agreements

The proposed Final Judgment provides for several supply agreements between UTC and the acquirers of the divestiture assets, at the option of the party receiving the supplied product, to allow the acquirers and UTC to fulfill current contractual obligations. These supply arrangements are necessary because some contractual obligations that will be divested to the acquirer require the supply of products and services from parts of Goodrich that are not being divested, while other contractual obligations that will not be divested require the supply of products and services from the divested businesses.

Paragraphs IV(I) and V(M) require that UTC provide each acquirer, at the option of the acquirer, with any components that the acquirer may need to operate the divested assets for up to one year, with the possibility of an extension of up to one additional year upon approval by the United States. These general components agreements guarantee the acquirer a source for components that currently are provided from parts of Goodrich that are not being divested, and give the acquirer time to identify alternative sources of supply or to manufacture the products on its own.

Paragraphs IV(J), IV(K), V(N), and V(O) provide for specific supply agreements to each acquirer that require UTC, at the option of the acquirer, to supply certain parts, engineering expertise, and/or maintenance service necessary to allow the acquirer to fulfill contractual obligations it will acquire from Goodrich as a part of the divestiture. These supply arrangements and their terms are tailored to the particular contracts that make them necessary. Accordingly, the lengths of the supply agreements in Paragraphs IV(J) and (K) in practice will amount to the life of the program for which the products and services are necessary.[11] The supply agreement in Paragraph V(N) will last for the life of the program for one product and for one year for another product, with the option of a one-year extension upon approval by the United States.[12] The supply agreement in Paragraph V(O) will last until the underlying contract expires in December 2013.

The proposed Final Judgment also provides for supply agreements, at UTC's option, whereby the acquirers of the divestiture assets will provide UTC with certain parts and/or services for specified programs to enable UTC to fulfill certain Goodrich contractual obligations that will not be divested. These supply agreements, described in Paragraphs IV(L) and V(P), are

[11] As an alternative to the agreement in Paragraph IV(K), UTC is required, at the acquirer's option, to provide a non-exclusive, irrevocable, royalty-free license to manufacture the parts necessary for the acquirer to fulfill its relevant contractual obligations. This license may be used only to manufacture the parts necessary to fulfill the acquirer's relevant contractual obligations, and the acquirer is prohibited from transferring this license, except as a part of the sale of the divestiture assets. This option allows the acquirer to determine whether it is more attractive to manufacture the parts on its own rather than to buy the parts from UTC.

[12] The agreement in Paragraph V(N) is limited to a one-year term with the option of an extension for one product (machined housings) because that product is a simple component that can be made by the acquirer relatively quickly and easily. Paragraph V(N) also provides an alternative similar to that provided in Paragraph IV(K), except that it allows for UTC to provide the acquirer with manufacturing know-how sufficient to enable the acquirer to manufacture the parts, as opposed to a license, because the products provided for by Paragraph V(N) require only

limited to specified engines and/or engine control systems. Like the other supply agreements, each agreement is tailored to the particular contract that makes it necessary, and accordingly its length in practice amounts to the life of the program for which the parts and/or services are required.

These supply agreements do not raise competitive concerns under the circumstances of this particular case, as the supply agreements are not likely to provide UTC or the acquirers with any competitive insight into the other's business. While some of these supply agreements will be longer than a typical supply agreement in the divestiture context, the contracts for the particular products being supplied have already been awarded and there is no ability to affect future competitions based on the supply of components for these previously awarded contracts.

Finally, Paragraphs IV(M) and V(Q) require that, at UTC's option, the acquirers provide UTC a non-exclusive license for intellectual property that currently is used both for the products being divested and for other Goodrich products that UTC will retain. Under these provisions, UTC may not use these licenses for engine control products, systems, or services or for aircraft electrical generation and electrical distribution systems, respectively. UTC also would be prohibited from transferring the license, except as a part of a sale of the business in which the license is used. These provisions are necessary to ensure that UTC has access to intellectual property required to run other portions of Goodrich, but prevents UTC from using these licenses to compete against the acquirers in the respective divested businesses.

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know-how to manufacture.

3. Contract Extensions

Paragraph IV(N) requires UTC to offer to extend any contracts between the divested engine controls business and manufacturers of aircraft turbine engines that are scheduled to expire prior to the divestiture, unless the contracts have been renegotiated in the meantime. Such contracts will be extended until thirty days after the divestiture of the Engine Control Divestiture Assets. This extension will ensure that UTC's turbine engine competitors have access to the necessary engine control system components prior to the divestiture of the Engine Controls Divestiture Assets.

4. Extension of the AEC Aftermarket Option

Paragraph VI(C) of the proposed Final Judgment requires that UTC offer Rolls-Royce a new option for an additional period of time to purchase assets relating to the Goodrich aftermarket business, which services AEC products. The new option extends until the earlier of: (1) December 31, 2023 (when the exclusivity period of the aftermarket agreement between AEC and Goodrich expires); or (2) the date on which UTC no longer owns or controls substantially all of the Goodrich aftermarket business. This provision is necessary to eliminate any risk that UTC could disadvantage Rolls-Royce in its sale of engine control products for large aircraft turbine engines by making it difficult for customers to obtain parts or services for those engines. This new period does not affect any prior agreements between either of the Defendants and Rolls-Royce and does not affect UTC's ability to sell the Goodrich aftermarket business to a third party. However, this provision provides a specific procedure to be followed by UTC relating to its potential sale of the Goodrich aftermarket business. This procedure provides Rolls-Royce the

ability to purchase the aftermarket business, but provides some limitations to ensure that UTC effectively retains the ability to sell the Goodrich aftermarket business to a third party.

5. Use of Divestiture Trustee

In the event that Defendants do not accomplish the divestitures within the period allotted, Section VII of the proposed Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestiture. This requirement to appoint a divestiture trustee, if necessary, will encourage quick, effective divestitures in this matter. If a trustee is appointed, the proposed Final Judgment provides that UTC will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price and terms obtained and the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture. At the end of the six months, if the divestiture has not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as are appropriate to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

6. Use of Monitoring Trustee

Section XI provides that the United States may appoint a Monitoring Trustee for the Electrical Power Divestiture Assets and the Aerolec shares and/or the AEC shares. The Monitoring Trustee would have the power and authority to monitor the parties' compliance with the terms of the Final Judgment during the pendency of the divestiture. The Monitoring Trustee would also exercise control over the Aerolec shares and/or the AEC shares under the Hold

Separate. The Monitoring Trustee would not have any responsibility or obligation for the operation of the parties' businesses. The proposed Final Judgment provides for a Monitoring Trustee because of the complexities of the divestiture, including the need to carve out the motor drives business from the Pitstone facility and the need for an independent individual to exercise control over Goodrich's shares in Aerolec and in AEC until they are divested. The Monitoring Trustee will serve at the Defendants' expense and on such terms and conditions as the United States approves, and the Defendants must assist the trustee in fulfilling its obligations. The Monitoring Trustee will file monthly reports and will serve until the divestitures are complete.

IV. HOLD SEPARATE STIPULATION AND ORDER

The Hold Separate ensures the viability of the assets being divested during the divestiture periods. Until the divestitures take place, the Hold Separate requires UTC to preserve and continue to operate the Engine Control Divestiture Assets and the Electrical Power Divestiture Assets 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 the divestiture period, UTC also is prohibited from coordinating the production, marketing, or terms of sale of the divested assets with any of its own assets or the other assets it acquires from Goodrich. To oversee UTC's compliance with its obligations under the Hold Separate, UTC is required to appoint, subject to the approval of the United States, a Hold Separate Manager for the Engine Control Divestiture Assets and a Hold Separate Manager for the Electrical Power Divestiture Assets. Duties of the latter include, until the motor drives business is removed from the Pitstone facility, ultimate responsibility for resolving conflicting demands for shared resources between the motor drives business and the business of the

Electrical Power Divestiture Assets. This provision will limit UTC's involvement with the Pitstone facility during the period before the motor drives business is removed.

Regarding the Aerolec and AEC shares, the Hold Separate ensures that the Aerolec and AEC joint ventures remain viable, independent, competitive businesses. This includes requiring Defendants to keep the books, records, competitively-sensitive sales, marketing, or pricing information, and decision-making concerning both Aerolec and AEC separate, distinct, and apart from UTC's other operations. The Hold Separate also requires Defendants to assign control of the Aerolec shares and the AEC shares to the Monitoring Trustee within thirty days of the entry of the Hold Separate to ensure that the shares are held and managed separate and apart from UTC. During the thirty-day period before control is assigned to the Monitoring Trustee, Defendants may not exercise any rights or interests deriving from ownership of the Aerolec shares or AEC shares.

V. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against Defendants.

VI. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the Federal Register, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet website, and, under certain circumstances, published in the Federal Register. Written comments should be submitted to:

Maribeth Petrizzi
Chief, Litigation II Section
Antitrust Division
United States Department of Justice
450 Fifth Street, N.W., Suite 8700
Washington, D.C. 20530

The proposed Final Judgment provides that the Court retains jurisdiction over this action and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VII. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions preventing UTC's acquisition of Goodrich. The United States is satisfied, however, that the divestiture of the assets described in the proposed Final Judgment will preserve competition for the development, manufacture, and sale of large main engine generators, aircraft turbine engines, and engine control systems for large aircraft turbine engines in the United States. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but would avoid the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VIII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. § 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court

> deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, 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)(1)(A) & (B).

In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States v. SBC Commc'ns, Inc.*, 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States v. InBev N.V./S.A.*, 2009-2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, No. 08-1965 (JR), at *3, (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.").[13]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree

[13] The 2004 amendments substituted "shall" for "may" in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. § 16(e) (2004), *with* 15 U.S.C. § 16(e)(1) (2006); *see also SBC Commc'ns*, 489 F. Supp. 2d at 11 (concluding that the

may positively harm third parties. *See Microsoft*, 56 F.3d at 1458-62. With respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460-62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest*." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[14] In determining whether a proposed settlement is in the public interest, a district court "must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations." *SBC Commc'ns*, 489 F. Supp. 2d at 17; *see also Microsoft*, 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the

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2004 amendments "effected minimal changes" to Tunney Act review).

[14] *Cf. BNS*, 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"). *See generally Microsoft*, 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'").

United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" *United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983); *see also United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns*, 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459; see also *InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 ("the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged") (citations omitted). Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively

redraft the complaint" to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459-60. As this Court recently confirmed in *SBC Communications*, courts "cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power." *SBC Commc'ns*, 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. § 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." *SBC Commc'ns*, 489 F. Supp. 2d at 11.[15]

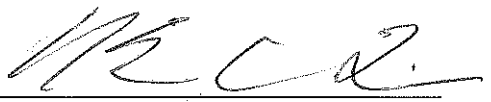
[15] *See United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); *United States v. Mid-Am. Dairymen, Inc.*, 1977-1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) ("Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances."); S. Rep. No. 93-298, 93d Cong., 1st Sess., at 6 (1973) ("Where the public interest can be meaningfully evaluated simply on the basis

IX. DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: July 26, 2012

Respectfully submitted,



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of briefs and oral arguments, that is the approach that should be utilized.").