UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. ALLIED CORPORATION, Defendant.	Civ. No. 85-2475 Filed: 8/2/85

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16(b)-(h)), the United States of America files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry with the consent of Allied Corporation in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

This civil action began on August 2, 1985, when the United States filed a complaint alleging that the proposed merger of Allied Corporation (hereinafter "Allied") and The Signal Companies, Inc. (hereinafter "Signal") violated Section 7 of the Clayton Act (15 U.S.C. § 18). The complaint alleges that the effect of the merger of Allied and Signal may be substantially to lessen competition in the United States in the manufacture and sale of air turbine starters for gas turbine aircraft engines.

The complaint requests that Allied be required to divest its Bendix Fluid Power Division or its air turbine starter business and to continue until divestiture occurs to operate the latter business in active competition with Signal's air turbine starter business.

The United States and Allied have stipulated that the proposed Final Judgment may be entered after compliance with the Antitrust Procedures and Penalties Act. Entry of the proposed Judgment will terminate the action, except that the Court will retain jurisdiction to construe, modify, and enforce the Judgment, and to punish violations of the Judgment.

II. EVENTS GIVING RISE TO THE ALLEGED VIOLATION

On May 15, 1985, Allied and Signal entered into an Agreement and Plan of Reorganization in which they agreed to accomplish the merger of Allied and Signal in several steps. First, pursuant to a cash tender offer, Allied would purchase up to 20 percent of the outstanding common stock of Signal. Second, in an exchange of common stock, each firm would acquire about 15 percent of the other firm's common stock. Finally, Allied and Signal would be merged into a new company, and all outstanding shares of Allied and Signal would be exchanged for shares in the new company on a one-for-one basis. The merger of Allied and Signal is now scheduled to be fully consummated in mid-September.

Allied and Signal are both large, diversified companies. Allied reported 1984 sales of about $10.7 billion. Signal reported 1984 sales of about $6 billion. Both firms currently

manufacture and sell air turbine starters. Signal produces air turbine starters at its Garrett Pneumatic Systems Division based in Phoenix, Arizona. It is the world's largest producer of air turbine starters, having accounted for more than 50 percent of all air turbine starter sales in 1984 in noncommunist countries. Allied produces air turbine starters at its Bendix Fluid Power Division based in Utica, New York. Allied is the world's second largest producer of air turbine starters, with sales in 1984 of about $10 million. Together, Allied and Signal accounted for more than 70 percent of all air turbine starter sales in noncommunist countries in 1984. In that year, total air turbine starter sales were about $52 million in noncommunist countries, of which about $40 million were in the United States.

The complaint alleges that the manufacture and sale of air turbine starters comprises a relevant product market for antitrust purposes and that the combination of the air turbine starter businesses of Allied and Signal pursuant to the proposed merger may be substantially to lessen competition in the United States in that market in violation of Section 7 of the Clayton Act.

Air turbine starters are used to start the large gas turbine engines on all large commercial aircraft as well as many military airplanes and helicopters. An air turbine starter is mounted to each of the aircraft's engines. The air turbine starter starts the engine by rotating the engine's compressor fans and accelerating them to a self-sustaining speed. A fuel-air mixture

in the engine is then ignited, allowing the engine to operate on its own. The energy source for an air turbine starter is high pressure air from another operating engine located either on the aircraft or on a ground cart. Other types of starting mechanisms are not competitive substitutes for the air turbine starters used to start large commercial and many military aircraft due to size, weight, cost, safety, and reliability factors.

An air turbine starter must be approved before it can be used on a particular engine on a particular commercial or military aircraft. In the case of a particular commercial aircraft and engine combination, the starter must meet certain performance criteria established by the aircraft manufacturer and certain safety criteria established by the Federal Aviation Administration of the United States Department of Transportation. Similarly, an air turbine starter may be used on a specific military aircraft only if it meets certain performance and safety criteria established by the aircraft manufacturer and by the military branch that will use the aircraft.

In almost all situations, only one or two air turbine starters are approved for use on a specific aircraft and engine combination. When two competing makers of air turbine starters are approved to supply an air turbine starter on a specific aircraft, a purchaser of starters for that aircraft may select the approved starter of either supplier.

The complaint alleges that Allied and Signal are the only approved suppliers of air turbine starters on a number of the same commercial and military aircraft and engine combinations. The complaint also alleges that Allied is in a preferred position to obtain approval to supply its air turbine starters for certain aircraft and engine combinations for which Signal is currently the only approved air turbine starter supplier and that Signal is in a preferred position to obtain approval to supply its air turbine starters for certain aircraft and engine combinations for which Allied is currently the only approved air turbine starter supplier.

The primary purchasers of air turbine starters are the military, aircraft manufacturers, airline companies, and gas turbine engine manufacturers. Only one firm in addition to Signal and Allied currently supplies air turbine starters to the United States military, Sundstrand Corporation (hereinafter "Sundstrand"), and only one firm in addition to Signal and Allied currently supplies air turbine starters for commercial aircraft manufactured in the United States, the Hamilton-Standard Division of United Technologies Corporation (hereinafter "Hamilton-Standard").

The complaint alleges that the production and sale of air turbine starters is highly concentrated. In 1984, the four largest air turbine starter manufacturers -- Signal, Allied, Hamilton-Standard, and Sundstrand -- accounted for about

90 percent of total air turbine starter sales in noncommunist countries, and the Herfindahl-Hirschman Index ("HHI"), a measure of market concentration, in the market for air turbine starters was about 3335. The merger of Allied and Signal would increase the combined market share of the four largest air turbine starter suppliers to about 96 percent and increase the HHI by about 1975 to 5310.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT AND ITS ANTICIPATED EFFECTS ON COMPETITION

The United States brought this action because the effect of the merger between Allied and Signal may be substantially to lessen competition in violation of Section 7 of the Clayton Act in the manufacture and sale of air turbine starters. The only anticompetitive effects associated with the merger would be eliminated if Allied's air turbine starter business could be sold to a purchaser that would operate the business as an active and independent competitor in the manufacture and sale of air turbine starters.

To this end, Section IV of the proposed Final Judgment would require Allied to sell its air turbine starter business by the end of 1985 to a purchaser that has the intent and capability to compete effectively in the manufacture and sale of such starters. Any purchaser of the business must be approved by the United States.

If Allied is unable to divest its air turbine starter business by the end of 1985, Section V of the proposed Final Judgment would require Allied to sell its entire Bendix Fluid

Power Division (hereinafter "FPD") by March 31, 1986. Allied's air turbine starter business is a part of FPD, which had total sales of about $50 million in 1984. The possibility that Allied may be required to divest the entire FPD should provide a powerful inducement for Allied to locate a buyer for its air turbine starter business that is acceptable to the United States. If FPD is divested, the purchaser must have the intent and capabilty to compete effectively in the manufacture and sale of air turbine starters.

In addition, Section IX of the proposed Final Judgment would require Allied, until its FPD is divested, to hold FPD separate from its other business operations and to take all steps necessary to assure that none of FPD's proprietary technology or other proprietary business information becomes known or available to Signal or used by Allied or Signal to compete with any business to be divested.

If Allied is unable to divest FPD by March 31, 1986, under Section VI of the proposed Final Judgment, the Court would, at the request of the United States, appoint a trustee to sell FPD. Section VI would provide a mechanism that should permit a trustee to be selected and appointed by March 31, 1986. Once a trustee has been appointed, only the trustee, and not Allied, would have the right to sell FPD. Further, if a trustee is appointed, Allied would be required to pay all of the trustee's expenses in selling FPD, and the trustee's commission would be structured to provide an incentive for it to complete the sale promptly.

Until the divestiture required by the proposed Final Judgment is completed, Allied would be required to continue to operate its air turbine starter business in active competition with Signal. Moreover, Allied would be required to take all steps necessary to assure that proprietary technology and other proprietary business information relating to Allied's air turbine starter business or FPD's other business operations is not transferred to Signal or used by Allied or Signal to compete with any of FPD's businesses.

Section VII of the proposed Final Judgment would provide the United States with an opportunity to review any proposed divestiture before it occurs. Under Section VII, if the United States were to request information to assess a proposed divestiture, Allied could not consummate the divestiture until 15 days after it supplied the information. If the United States were to object to a divestiture of Allied's air turbine starter business proposed under Section IV of the proposed Final Judgment, the divestiture could not be completed. If the United States were to object to a divestiture of FPD proposed under Sections V or VI, the divestiture could not be completed unless approved by the Court.

Section VIII of the proposed Final Judgment would require Allied to provide the United States with periodic reports concerning the fact and manner of its compliance with the proposed Final Judgment, and Section X would allow the United States to obtain additional information and documents relating to Allied's compliance with the proposed Final Judgment.

Finally, Section XII would provide that the Final Judgment would expire on the third anniversary of Allied's completion of the required divestiture.

IV. 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 attorney fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage actions. Under provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), entry of the proposed Final Judgment would have no prima facie effect in any subsequent private lawsuit that may be brought against the defendant.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

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

The Act provides a period of at least sixty (60) 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 wants to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to:

P. Terry Lubeck, Chief
Intellectual Property Section
Antitrust Division (700 Safeway)
U.S. Department of Justice
Washington, D.C. 20530

Under Section XI of the proposed Final Judgment the Court would retain jurisdiction over this matter for the purpose of enabling the United States or Allied to apply to the Court for such further orders or directions as may be necessary or appropriate for the construction, implementation, modification, or enforcement of compliance with the Judgment, or for the punishment of any violations of the Judgment.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment would provide all of the relief requested by the United States in its complaint in this civil action. The proposed Final Judgment would require Allied to

divest its air turbine starter business by the end of 1985 or, failing that, its FPD by March 31, 1986. It also would assure that Allied's air turbine starter business would remain a viable business separate from Signal and an active competitor to Signal in the air turbine starter market.

Compliance by Allied with the proposed Final Judgment and the completion of the divestiture required by the Judgment would resolve fully all of the competitive concerns raised by the proposed merger of Allied and Signal. The United States could have obtained no better relief after a full trial on the merits. The only alternative considered to settling this action pursuant to the proposed Final Judgement was for the United States to file suit and seek a preliminary injunction to enjoin Allied's merger with Signal until Allied had completely divested itself of its air turbine starter business. The United States rejected this alternative because substantial risk existed that a court might be reluctant to halt the entire merger because of a competitive problem posed by a very small part of the entire business operations of the two companies. The court's reluctance to grant a preliminary injunction likely would have been substantially increased because of Allied's willingness to divest its air turbine starter business and its entire FPD if necessary.

Under the circumstances, while the government believes that sound responses to these arguments exist, it determined that the public interest in preserving competition in the air turbine

starter market would be served best by obtaining Allied's consent to an enforceable decree requiring it to divest its air turbine starter business and by filing the decree with the Court prior to the consummation of any part of the proposed merger. Although the proposed Final Judgment may not be entered until the criteria established by the Antitrust Procedures and Penalties Act (15 U.S.C. § 16(b)-(h)) have been satisfied, the public will benefit immediately from the safeguards in the proposed Final Judgment because Allied has stipulated to comply with the terms of the Judgment pending its entry by the Court. The United States believes that the overriding public interest in having these enforceable safeguards in effect prior to consummation of any part of the proposed merger required that it not attempt to seek a preliminary injunction, and thereby avoid the risk that the merger might be permitted to go forward without any enforceable safeguards in effect.

VII. DETERMINATIVE DOCUMENTS

There were no documents determinative in the formulation of the proposed Final Judgment. Consequently, the United States has not attached any such documents to the proposed Final Judgment.

Dated: August 2, 1985

Respectfully submitted,

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