

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

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In the Matter of)	
)	Docket No. C-3685
LOCKHEED MARTIN CORPORATION,)	
a corporation.)	
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)	

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that Respondent, Lockheed Martin Corporation ("Lockheed Martin"), a corporation subject to the jurisdiction of the Commission, has agreed to, among other things, acquire all of the outstanding voting stock of Loral Corporation ("Loral"), a corporation subject to the jurisdiction of the Commission, in violation of Section 5 of the Federal Trade Commission Act ("FTC Act"), as amended, 15 U.S.C. § 45, and that such an acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18 and Section 5 of the FTC Act, as amended, 15 U.S.C § 45; and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. DEFINITIONS

1. "SETA Services" means systems engineering, technical assistance services and support services relating to Air Traffic Control Systems provided by Lockheed Martin to the Federal Aviation Administration, pursuant to Paragraphs C.2.2.1.3., C.2.2.1.5., C.2.2.1.12. and C.2.2.4. of Task Area 2 and Paragraphs C.9.1.3., C.9.2.2., C.9.2.3., C.9.2.4., C.9.2.6., C.9.2.7., C.9.2.8. and C.9.2.10. of Task Area 9 of the National Implementation and Support Contract, DTFA01-93-C-00031, that involve the development of technical and other specifications for procurements and programs; the assessment of bid and other proposals; the evaluation, testing or monitoring of any service, equipment or product provided by any company; the modification or change of any performance requirements of any contractor; or the development of financial, cost or budgetary plans, procedures or policies.

2. "Air Traffic Control Systems" means any current or future air traffic control equipment, system or service designed, developed, proposed or provided for the Federal Aviation Administration.

3. "Commercial Low Earth Orbit Satellite" means an unmanned machine that is launched from the Earth's surface and designed to orbit approximately 100 miles to 300 miles above the Earth's surface in low earth orbit for the purpose of transmitting data back to Earth, which is sold to any customer other than the U.S. government.

4. "Commercial Geosynchronous Earth Orbit Satellite" means an unmanned machine that is launched from the Earth's surface and designed to orbit approximately 22,300 miles above the Earth's surface in geosynchronous earth orbit for the purpose of transmitting data back to Earth, which is sold to any customer other than the U.S. government.

5. "Military Aircraft" means fixed-wing aircraft manufactured for sale to the United States or foreign governments.

6. "NITE Hawk Systems" means any airborne forward-looking infrared targeting system researched, developed, designed, manufactured or sold by Loral for use on the F/A-18 series of Military Aircraft.

7. "Simulation and Training Systems" means the operational and weapons systems trainers designed, developed, manufactured or sold by Loral that simulate Military Aircraft.

8. "Electronic Countermeasures" means systems designed, developed, manufactured or sold by Loral, including, but not limited to, the ALR-56A and ALR-56C, that detect, jam and deceive hostile radars and radar and infrared guided weapons for use on Military Aircraft.

9. "Mission Computers" means any computer designed, developed, manufactured or sold by Loral, including, but not limited to, the AP1, AAAP1R and CP1075A/B/C, that control, monitor or manage the operations and electronics of any Military Aircraft.

10. "Unmanned Aerial Vehicle" means any unmanned aircraft used for tactical or strategic reconnaissance missions manufactured for sale to the United States or foreign governments.

11. "Integrated Communications Systems" means systems designed, developed, manufactured or sold by Loral, including, but not limited to, the 367-6000-59-R-012 and the 367-6000-59-R-013, that are capable of both wideband satellite and line-of-sight data link communications and command and control data links for use on Unmanned Aerial Vehicles.

12. "Merger Agreement" means the Agreement and Plan of Merger, dated as of January 7, 1996, by and among Loral

Corporation, Lockheed Martin Corporation and LAC Acquisition Corporation.

13. "Restructuring Agreement" means the Restructuring, Financing and Distribution Agreement, dated as of January 7, 1996, by and among Loral Corporation, Loral Aerospace Holdings, Inc., Loral Aerospace Corp., Loral General Partner, Inc., Loral Globalstar, L.P., Loral Globalstar Limited, Loral Telecommunications Acquisition, Inc. (to be renamed Loral Space & Communications Ltd.) and Lockheed Martin Corporation.

14. "Lockheed Martin/Loral Space Technical Services Agreement" means the technical services agreement between Lockheed Martin and Loral Space, as described by Article VI, Section 6.7, Paragraph (d), of the Restructuring Agreement.

15. "Loral Space" means Loral Space & Communications Ltd., a company organized under the laws of the Islands of Bermuda, with its principal office and place of business located at 600 Third Avenue, New York, New York 10016. Loral Space, through its 33% ownership interest in Space Systems/Loral, is engaged in, among other things, the research, development, manufacture and sale of Commercial Low Earth Orbit Satellites and Commercial Geosynchronous Earth Orbit Satellites.

16. "Space Systems/Loral" means Space Systems/Loral, Inc., a Delaware corporation, with its principal office and place of business located at 3825 Fabian Way, Palo Alto, California 94303. Space Systems/Loral is engaged in, among other things, the research, development, manufacture and sale of Commercial Low Earth Orbit Satellites and Commercial Geosynchronous Earth Orbit Satellites.

II. RESPONDENT

17. Respondent Lockheed Martin is a corporation organized and existing under and by virtue of the laws of the state of Maryland, with its office and principal place of business located at 6801 Rockledge Drive, Bethesda, Maryland 20817. Respondent Lockheed Martin is engaged in, among other things, the provision of SETA Services and the research, development, manufacture and sale of Commercial Low Earth Orbit Satellites, Commercial Geosynchronous Earth Orbit Satellites, Military Aircraft and Unmanned Aerial Vehicles.

18. For purposes of this proceeding, Respondent is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

III. ACQUIRED COMPANY

19. Loral is a corporation organized and existing under and by virtue of the laws of the state of New York, with its principal office and place of business located at 600 Third Avenue, New York, New York 10016. Loral is engaged in, among other things, the research, development, manufacture and sale of Air Traffic Control Systems, NITE Hawk Systems, Simulation and Training Systems, Electronic Countermeasures, Mission Computers and Integrated Communications Systems. Loral, through its 33% ownership interest in Space Systems/Loral, is also engaged in the research, development, manufacture and sale of Commercial Low Earth Orbit Satellites and Commercial Geosynchronous Earth Orbit Satellites.

20. Loral is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

IV. THE ACQUISITION

21. On or about January 7, 1996, Lockheed Martin entered into a Merger Agreement and Restructuring Agreement, whereby Lockheed Martin would engage in a series of related transactions and acts, including, but not limited to: (1) the acquisition of all of the outstanding voting common stock of Loral; (2) the transfer of the space and telecommunications businesses of Loral and its subsidiaries to Loral Space; (3) the acquisition of a 20% convertible preferred stock interest in Loral Space, which in turn owns a 33% interest in Space Systems/Loral; (4) the Lockheed Martin/Loral Space Technical Services Agreement; and (5) the appointment of Mr. Bernard Schwartz, Chairman of the Board of Directors and Chief Executive Officer of Loral Space, to the position of Vice Chairman of the Board of Directors of Lockheed Martin.

V. THE RELEVANT MARKETS

22. For purposes of this Complaint, the relevant lines of commerce in which to analyze the effects of the Acquisition are:

- a. the research, development, manufacture and sale of Air Traffic Control Systems;
- b. the provision of SETA Services;
- c. the research, development, manufacture and sale of Commercial Low Earth Orbit Satellites;
- d. the research, development, manufacture and sale of Commercial Geosynchronous Earth Orbit Satellites;

e. the research, development, manufacture and sale of Military Aircraft;

f. the research, development, manufacture and sale of NITE Hawk Systems;

g. the research, development, manufacture and sale of Simulation and Training Systems;

h. the research, development, manufacture and sale of Electronic Countermeasures;

i. the research, development, manufacture and sale of Mission Computers;

j. the research, development, manufacture and sale of Unmanned Aerial Vehicles; and

k. the research, development, manufacture and sale of Integrated Communications Systems.

23. For purposes of this Complaint, the United States is the relevant geographic area in which to analyze the effects of the Acquisition in all the relevant lines of commerce.

VI. STRUCTURE OF THE MARKETS

24. The market for the provision of SETA Services in the United States is highly concentrated as measured by the Herfindahl-Hirschman Index ("HHI") or the two-firm and four-firm concentration ratios ("concentration ratios"). Respondent has been the only provider of SETA Services since 1993.

25. Respondent, through the Acquisition, would be engaged in both the research, development, manufacture and sale of Air Traffic Control Systems and the provision of SETA Services.

26. The markets for the research, development, manufacture and sale of Commercial Low Earth Orbit Satellites and Commercial Geosynchronous Earth Orbit Satellites in the United States are highly concentrated as measured by the HHI or concentration ratios.

27. Respondent and Loral, through its 33% ownership interest in Space Systems/Loral, are actual significant competitors in the relevant markets for the research, development, manufacture and sale of Commercial Low Earth Orbit Satellites and Commercial Geosynchronous Earth Orbit Satellites.

28. Respondent and Loral Space, through its 33% ownership interest in Space Systems/Loral, will be actual significant competitors in the relevant markets for the research, development, manufacture and sale of Commercial Low Earth Orbit Satellites and Commercial Geosynchronous Earth Orbit Satellites.

29. The markets for the research, development, manufacture and sale of NITE Hawk Systems, Simulation and Training Systems, Electronic Countermeasures, Mission Computers and Integrated Communications Systems in the United States are highly concentrated as measured by the HHI or concentration ratios.

30. Respondent, through the Acquisition, would be engaged in the research, development, manufacture and sale of Military Aircraft, as well as the research, development, manufacture and sale of NITE Hawk Systems, Electronic Countermeasures and Mission Computers, all of which are used in Military Aircraft.

31. Respondent, through the Acquisition, would be engaged in the research, development, manufacture and sale of both Military Aircraft and Simulation and Training Systems, which are used to simulate Military Aircraft.

32. Respondent, through the Acquisition, would be engaged in the research, development, manufacture and sale of both Unmanned Aerial Vehicles and Integrated Communications Systems, which are used in Unmanned Aerial Vehicles.

VII. BARRIERS TO ENTRY

33. Entry into the market for the provision of SETA Services would not occur in a timely manner to deter or counteract the adverse competitive effects described in Paragraph 36 because of, among other things, the time required to develop the experience and expertise necessary to effectively provide these services.

34. Entry into the markets for the research, development, manufacture and sale of Commercial Low Earth Orbit Satellites and Commercial Geosynchronous Earth Orbit Satellites is difficult, unlikely and would not occur in a timely manner to deter or counteract the adverse competitive effects described in Paragraph 36 because of, among other things, the time and expense required to establish manufacturing facilities, develop the technology needed to produce these products and establish a reputation for high quality products among customers in these markets.

35. Entry into the markets for the research, development, manufacture and sale of NITE Hawk Systems, Simulation and Training Systems, Electronic Countermeasures, Mission Computers and Integrated Communications Systems is difficult, unlikely and would not occur in a timely manner to deter or counteract the adverse competitive effects described in Paragraph 36 because of, among other things, the time and expense required to develop the technology needed to produce these products.

VIII. EFFECTS OF THE ACQUISITION

36. The effects of the Acquisition may be substantially to lessen competition and to tend to create a monopoly in the

relevant markets set forth above in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, in the following ways, among others:

a. Respondent may gain access to competitively sensitive non-public information concerning other Air Traffic Control Systems contractors, whereby:

(1) actual competition between Respondent and Air Traffic Control Systems contractors would be reduced; and

(2) advancements in Air Traffic Control Systems research, development, innovation and quality would be reduced;

b. Respondent may be in a position to disadvantage or raise the costs of competing Air Traffic Control Systems contractors, whereby actual competition between Respondent and Air Traffic Control Systems contractors would be reduced;

c. By eliminating direct actual competition between Respondent and Loral Space in the markets for the research, development, manufacture and sale of Commercial Low Earth Orbit Satellites and Commercial Geosynchronous Earth Orbit Satellites;

d. By enhancing the likelihood of collusion or coordinated interaction between or among the firms in the markets for the research, development, manufacture and sale of Commercial Low Earth Orbit Satellites and Commercial Geosynchronous Earth Orbit Satellites;

e. By increasing the likelihood that quality and technological innovation in the Commercial Low Earth Orbit Satellite and Commercial Geosynchronous Earth Orbit Satellite markets would be reduced;

f. By increasing the likelihood that consumers in the United States would be forced to pay higher prices for Commercial Low Earth Orbit Satellites and Commercial Geosynchronous Earth Orbit Satellites;

g. Respondent may gain access to competitively sensitive non-public information concerning other Military Aircraft manufacturers, whereby:

(1) actual competition between Respondent and Military Aircraft manufacturers would be reduced; and

(2) advancements in Military Aircraft research, development, innovation and quality would be reduced; and

h. Respondent may gain access to competitively sensitive non-public information concerning other Unmanned Aerial Vehicle manufacturers, whereby:

(1) actual competition between Respondent and Unmanned Aerial Vehicle manufacturers would be reduced; and

(2) advancements in Unmanned Aerial Vehicle research, development, innovation and quality would be reduced.

IX. VIOLATIONS CHARGED

37. The Acquisition described in Paragraph 21 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

38. The Acquisition described in Paragraph 21, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this Complaint to be signed by the Secretary and its official seal to be affixed, at Washington, D.C. this nineteenth day of September, 1996.

By the Commission.

Donald S. Clark
Secretary

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