

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Julie Brill
Maureen K. Ohlhausen
Joshua D. Wright

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In the Matter of))
General Electric Company,)	Docket No. C-)
a corporation.))
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DECISION AND ORDER
[Public Record Version]

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by the General Electric Company (hereinafter referred to as “GE” or “Respondent”) of the aviation business of Avio S.p.A. (hereinafter referred to as “Avio NewCo”), and Respondent having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Acts and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and issues the following Decision and Order (“Order”):

1. Respondent General Electric Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its executive office and principal place of business located at 3135 Easton Turnpike, Fairfield, Connecticut 06828.
2. The Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “General Electric,” “GE” or “Respondent” means General Electric Company, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by General Electric Company, and the respective directors, officers, employees, agents, representatives, successors and assigns of each; after the Acquisition, “General Electric,” “GE” or “Respondent” also includes Avio NewCo.
- B. “GE Aviation” means, for purposes of this Order, GE *with the exception of and expressly excluding* Avio NewCo.
- C. “Avio” means Avio S.p.A., a company organized and incorporated under the laws of Italy, whose registered office is at Via I Maggio, 99, 10040, Rivalta Di Torino, Torino, Italy.
- D. “Avio NewCo” means the Aviation Business acquired by GE pursuant to the Acquisition (regardless of how that acquired business is organized or structured under GE ownership in the future), and includes its employees, agents and representatives, successors and assigns, and any joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Avio NewCo.

- E. “Accessory Gear Box” or “AGB” means the accessory gearbox being developed and produced for the PW1100G series engine pursuant to, and as defined in, the Avio/PW Agreement.
- F. “Acquisition” means the acquisition by GE of the Aviation Business of Avio S.p.A. pursuant to the purchase agreement dated December 21, 2012.
- G. “Agreements” means the Avio/PW Agreement and the CAA, each as defined herein.
- H. “Aviation Business” means the aviation business of Avio, as that term is defined in the purchase agreement dated December 21, 2012.
- I. “Avio/PW Agreement” means the Long Term Agreement between United Technologies Corporation acting through its Pratt & Whitney Division and Avio S.p.A., dated February 1, 2012 (attached as Confidential Exhibit A), to the extent it relates to Development and Production, and as amended by the CAA.
- J. “Commercial Assurances Agreement” or “CAA” means the Commercial Assurances Agreement among United Technologies Corporation (acting through its Pratt & Whitney Division), Pratt & Whitney Canada Corp., Pratt & Whitney Aero Engines International GmbH, Avio S.p.A., GE Avio S.R.L., Nuovo Pignone Holding S.p.A., and General Electric Company (acting through its GE Aviation business unit) dated June 19, 2013 (attached as Confidential Exhibit B) to the extent it relates to Development and Production, including but not limited to Sections 3.02, 8.01 – 8.07, 8.09 – 8.11, and 9.11.
- K. “Commission” means the Federal Trade Commission.
- L. “Core Employees” means the employees, agents or consultants other than Key Employees, comprising the core technical / engineering team responsible for Development and Production, as described in Exhibit 9.11(a) of the CAA.
- M. “Customer Representative” means the P&W customer representative as provided for in Section 8.10 of the CAA.
- N. “Design and Certification” means product design for the PW1100G sufficient to cause the granting of a certificate of airworthiness by an airworthiness authority, as described more fully in the Agreements.
- O. “Development and Production” means the research, development, design, certification, engineering, testing, re-design, re-development, production, supply and all related work relating to the AGB and Oil Tank for the Pure Power® PW1100G Engine for the A320NEO, as described more fully in the Avio/PW Agreement.

- P. "Entry Into Service Date" means the date the first A320NEO aircraft equipped with PW1100G engines is delivered by Airbus S.A.S. to a customer.
- Q. "Firewall Excluded Information" means any and all information (i) which at the time of disclosure to Respondent is already in the public domain; (ii) which after disclosure is published or otherwise becomes part of the public domain through no act or fault of Respondent; (iii) that is independently developed by Respondent without the use of or access to the information of P&W and without violating any applicable law or this Order; or (iv) which becomes known to Respondent from a third party not in breach of applicable law or a confidentiality obligation with respect to the information; *provided, however*, that "Firewall Excluded Information" shall not include any "Related Information," as that term is described in the CAA.
- R. "Firewalled Information" means any Proprietary Information of P&W provided pursuant to the Agreements, including but not limited to information contained in any documents, models, business cases, details of fleet incentives, specifications, software, programs, computer disks, visual presentations, photographs, drawings, magnetic or digital form and any other media; *provided, however*, that "Firewalled Information" shall not include any Firewall Excluded Information.
- S. "IPRs" means any and all rights in inventions, patents, utility models, registered design rights, copyrights, moral rights, database rights, trade secrets and other Proprietary Information, and all other intellectual property rights of any kind, any and all categories of intellectual property rights set forth in the Agreements, including all registrations of (or other equivalent national rights), applications to register, and the right to apply for registration of any of the foregoing rights, each for their full term (including, without limitation, any extensions or renewals thereof), *provided that* "IPRs" shall not include trademarks, trade and business names, or any goodwill associated with any trademarks or trade or business names.
- T. "Key Employees" means the Program Manager, Technical Leader and Systems Leaders, as those employees and positions are described in Exhibit 9.11(a) of the CAA.
- U. "Monitor" means the person appointed by the Commission pursuant to Paragraph VI of this Order.
- V. "New Engine Development Staffing Plan" means the staffing plan described at Section 9.11 of the CAA.
- W. "Oil Tank" means the oil tank being developed and produced for the PW1100G series engine pursuant to, and as defined in, the Avio/PW Agreement.

- X. “Pratt & Whitney” or “P&W” means the Pratt & Whitney division of United Technologies Corporation, with its principal place of business at 400 Main Street, East Hartford, Connecticut 06108.
- Y. “Proprietary Information” means all confidential and proprietary non-public information, know-how, specifications, drawings, sketches, models, samples, data, test results, computer programs, proprietary processes, documentation and other technical, financial, economic and business information contained, received or transmitted in any form or format (e.g., physically, orally, visually, by document, email, computer disks, magnetic tape, photograph, handwritten notes, drafts, drawings or any other type of media).
- Z. “PW1100G” means the P&W Pure Power® PW1100G Engine for the A320NEO, as described in the Avio/PW Agreement.
- AA. “Technical Representative” means the P&W technical representative as provided for in Section 8.09 of the CAA.

II.

IT IS FURTHER ORDERED that:

- A. The Agreements shall be incorporated by reference into this Order and made a part hereof.
- B. Respondent shall comply with the terms of the Agreements, and any breach by Respondent of any term of the Agreements shall constitute a failure to comply with this Order. If any term of either of the Agreements varies from the terms of this Order (“Order Term”), then to the extent that Respondent cannot fully comply with both terms, the Order Term shall determine the obligations under this Order.
- C. The Agreements shall not limit or contradict, or be construed to limit or contradict, the terms of this Order, and nothing in this Order shall be construed to reduce any obligations of Respondent under the Agreements.
- D. Respondent shall not modify the terms of either of the Agreements without the prior approval of the Commission, except as otherwise provided in Rule 2.41(f)(5) of the Commission’s Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(5).

III.

IT IS FURTHER ORDERED that:

A. GE Aviation shall:

1. Take all actions necessary to perform its obligations under the CAA and shall perform its obligations under the CAA using a degree of care, professionalism and diligence that is no less than the same degree of care, professionalism and diligence demanded or required by GE Aviation from its commercial suppliers.
2. Take no actions, and shall not direct Avio NewCo to take any actions, that are likely to, or that would, limit, impair, hinder, reduce or degrade, directly or indirectly, Avio NewCo's performance under the Agreements. In furtherance of, and not in limitation to, the foregoing:
 - a. For a period extending through the second (2nd) anniversary of the Entry Into Service Date, GE Aviation shall not (unless otherwise provided in this Paragraph or the Agreements, or unless undertaken with the prior consent of the Monitor in consultation with Commission staff), participate in, direct, interfere with, or otherwise influence Avio NewCo's staffing decisions under the Agreements. In furtherance of, and not in limitation to, this sub-paragraph:
 - (1) GE Aviation shall not transfer or cause to be transferred, directly or indirectly, Key Employees or Core Employees to other GE Aviation or Avio NewCo businesses or projects, nor induce or provide incentives for Key Employees or Core Employees to transfer from, or terminate employment with, Avio NewCo, where doing so would cause GE to fail to comply with the New Engine Development Staffing Plan;
 - (2) GE Aviation shall not terminate any Key Employees or Core Employees, except for serious or gross misconduct that would warrant dismissal, where doing so would cause GE to fail to comply with the New Engine Development Staffing Plan; in the event of such termination, GE Aviation shall:

- (a) Notify the Monitor and P&W prior to such termination, and
 - (b) Not interfere with the prompt replacement of any terminated Key Employee or Core Employee with a qualified employee approved by the Monitor;
- (3) GE Aviation shall not take any actions that have, are intended to have, or are reasonably expected to have, an adverse impact on any of the Key Employees or Core Employees, *provided, however*, that this Paragraph shall not prohibit Respondent from taking actions generally applicable to Avio NewCo employees, such as changes to benefits or retirement programs;
- (4) GE Aviation may, with the agreement and consent of P&W or with the consent of the Monitor (in consultation with Commission staff), make available staffing and financial resources for Development and Production under the Agreements that are in addition to the staffing and financial resources decided upon by Avio NewCo;
- b. For a period extending through the fourth (4th) anniversary of the Entry Into Service Date, GE Aviation shall, in consultation with the Monitor, provide sufficient additional financial, technical or engineering resources as may be requested by Avio NewCo to address any issues or delays arising with respect to Development and Production under the Agreements; and
- c. GE Aviation shall not interfere, directly or indirectly, with P&W's ability to have at least one Technical Representative and at least one Customer Representative onsite at Avio NewCo's facility in Rivalta Di Torino, Italy, as provided for under Sections 8.09 and 8.10 of the CAA.

B. Avio NewCo shall:

- 1. Take all actions necessary to perform, and shall perform, its obligations under the Avio/PW Agreement and the CAA in a manner consistent with the terms of those Agreements and using a degree of care, professionalism, and diligence that is no less than the same degree of care, professionalism, and diligence used by, or expected to be used by, Avio NewCo when engaged in similar activities prior to, or but for, the Acquisition.

2. Take all necessary actions to prevent, and shall prevent, any reduction, impairment, or deterioration of its performance, service level, degree of care, or diligence under the Agreements following the Acquisition. In furtherance of, and not in limitation to, the foregoing, Avio NewCo shall:
 - a. Provide sufficient staffing and financial resources to perform its obligations under the Agreements;
 - b. Continue making staffing decisions relating to its performance under the Avio/PW Agreement independent of GE Aviation, at a level at least consistent with past practice and the New Engine Development Staffing Plan, unless otherwise agreed to by P&W after consultation with the Monitor;
 - c. Not terminate any Key Employees or Core Employees, except for serious or gross misconduct that would warrant dismissal, where doing so would cause GE to fail to comply with the New Engine Development Staffing Plan; in the event of such termination, through the second (2nd) anniversary of the Entry Into Service Date, Avio NewCo shall:
 - (1) Notify the Monitor and P&W prior to such termination, and
 - (2) Promptly replace any terminated Key Employee or Core Employee with a qualified employee approved by the Monitor;
 - d. As provided in the Agreements, provide an incentive bonus program to all Key Employees and Core Employees to remain with Avio NewCo and to achieve the timely completion of the AGB and Oil Tank development for Design and Certification under the terms of the Agreements, including a program whereby each such employee shall be eligible to earn a bonus up to the value of the employee's annual gross salary;
 - e. Permit P&W to maintain at least one on-site Customer Representative at the site in Rivalta Di Torino, Italy, and permit the P&W Customer Representative(s) reasonable access to facilities where work relating to the Agreements is being performed as provided for under Section 8.10 of the CAA; and
 - f. Permit P&W to have at least one Technical Representative onsite at the site in Rivalta Di Torino, Italy, to monitor the status and progress of the PW1100G engine program as provided for under Section 8.09 of the CAA.

- C. The purpose of this Paragraph III is to ensure that Avio NewCo continues to perform its obligations under the Avio/PW Agreement independent of GE Aviation (unless otherwise provided under the terms of this Order or the Agreements), and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

IV.

IT IS FURTHER ORDERED that:

- A. In the event the Avio/PW Agreement is terminated pursuant to Section 8.04(a) of the CAA, Respondent shall cooperate with P&W in taking any and all actions necessary to assign or transfer the relevant Avio NewCo obligations under the Avio/PW Agreement, including but not limited to licensing of any and all necessary IPRs, and shall provide, at P&W's option, any and all necessary support or transition services, so as to prevent disruption to Development and Production under the Avio/PW Agreement. Such cooperation, support, and transition services shall include, but not be limited to, the following:
1. At P&W's option, Avio NewCo shall continue to perform under the Agreements, on a non-exclusive basis and in a manner consistent with its obligations under the Agreements and this Order, for a period up to thirty (30) months following termination, consistent with the terms of Section 8.04(c) of the CAA;
 2. Respondent shall provide to P&W any and all technical support, assistance, materials or know-how as may be necessary to assign or transfer Avio NewCo's obligations under the Avio/PW Agreement;
 3. P&W shall have the right, without restriction, to procure from third parties the same or similar services provided by Avio NewCo under the Avio/PW Agreement;
 4. Respondent shall cooperate with P&W in taking any and all actions necessary to assign or transfer the relevant Avio NewCo obligations to third parties;
 5. P&W shall have the right to acquire from Avio NewCo, on reimbursement of reasonable costs and without delay, all documentation, tools, jigs, dies, patterns and other equipment owned or possessed by Avio NewCo and used solely to perform its obligations under the Avio/PW Agreement. For any documentation, tools, jigs, dies, patterns and other equipment owned or possessed by Avio NewCo that are necessary, but not used solely, to perform obligation under the Avio/PW Agreement, Avio NewCo shall permit P&W to make copies or reproductions, and provide all rights to use the same;

6. Respondent shall grant to P&W non-exclusive, royalty-free, fully-paid, worldwide, non-terminable, perpetual, non-sublicensable (except as expressly set forth below) and irrevocable licenses for Avio IPRs so far as are necessary for P&W and/or a subcontractor or agent on behalf of P&W to perform the obligations of Avio NewCo under the Avio/PW Agreement, including the right to sub-license third parties to carry out the relevant activities for P&W which were the obligations of Avio NewCo under the Avio/PW Agreement. Avio/NewCo will allow P&W full, immediate access to, and shall deliver to P&W, copies of all relevant documentation in support of such licenses. For those IPRs which Avio NewCo does not have the power to grant licenses, Avio NewCo shall identify all IPRs and provide reasonable assistance to P&W to acquire rights to such IPRs from their owners; and
7. Respondent shall immediately return, or certify the destruction of, all previously furnished Firewalled Information, Related Information or other P&W Proprietary Information related to the Avio/PW Agreement.

V.

IT IS FURTHER ORDERED that:

- A. GE Aviation shall not request, receive, solicit, access, use, disclose, provide, discuss, exchange, circulate or convey, directly or indirectly, any Firewalled Information or Related Information, unless specifically allowed or required to do so under the CAA or as necessary to comply with the terms of this Order.
- B. Respondent shall prevent access to, and disclosure of, Firewalled Information and Related Information by or to any persons not authorized to access, receive, or use such information pursuant to the Agreements or the terms of this Order.
- C. Respondent shall develop and implement procedures with respect to Firewalled Information and Related Information, with the advice and assistance of the Monitor, to comply with the requirements of this Order and the provisions as outlined in Section 8.01 of the CAA.
 1. Such procedures shall assure, without limitation, that such information is:
 - a. Accessible to, and accessed by, only authorized persons or entities pursuant to the terms of the Agreements and this Order;
 - b. Not accessible by, or disclosed to, any persons or entities not authorized to have access to such materials pursuant to the terms of the Agreements and this Order;

- c. Used solely for purposes of Development and Production, unless otherwise agreed by P&W, or allowed under the Agreements or this Order; and
 - d. Maintained confidentially and securely;
- 2. Such procedures shall include, without limitation:
 - a. Monitoring compliance;
 - b. Requiring and enforcing compliance with appropriate remedial action in the event of non-compliant use or disclosure;
 - c. Distributing information and providing training regarding the procedures to all relevant GE Aviation and Avio NewCo employees, at least annually; and
 - d. Instituting all necessary information technology procedures, authorizations and protocols, and any other controls necessary to comply with this Paragraph.

VI.

IT IS FURTHER ORDERED that:

- A. At any time after Respondent signs the Consent Agreement in this matter, the Commission may appoint Thomas Hoehn of CompetitionRx as a monitor (“Monitor”) to assure that Respondent complies with all obligations and performs all responsibilities required by this Order and the Agreements.
- B. The Commission shall select the Monitor, subject to the consent of Respondent, which consent shall not be unreasonably withheld. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed Monitor, Respondent shall be deemed to have consented to the selection of the proposed Monitor.
- C. Not later than ten (10) days after the appointment of the Monitor, Respondent shall execute an agreement that, subject to the prior approval of the Commission, confers upon the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondent’s compliance with the requirements of this Order and the Agreements.

- D. If a Monitor is appointed by the Commission, Respondent shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
1. The Monitor shall have the power and authority to monitor Respondent's compliance with the requirements of this Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the underlying purpose of this Order and in consultation with the Commission or Commission staff.
 2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.
 3. The Monitor shall serve until five (5) years after the Entry Into Service Date; *provided, however*, that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purpose of this Order.
 4. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondent's personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondent's compliance with its obligations under this Order. Respondent shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondent's compliance with this Order and the Agreements.
 5. The Monitor shall serve, without bond or other security, at the expense of Respondent, on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of Respondent, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities.
 6. Respondent shall indemnify the Monitor and hold the Monitor harmless against all losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Monitor.

7. Respondent may require the Monitor and each of the Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Monitor (and its representatives) from providing any information to, or receiving information from, the Commission.
8. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.
9. In the event the Commission determines that the Monitor is no longer willing or able to perform his/her duties under this Order, or has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor in the same manner as provided in this Paragraph.
10. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.

VII.

IT IS FURTHER ORDERED that Respondent shall file a verified written report with the Commission within thirty (30) days from the date this Order is issued, annually on that date through the fifth (5th) Anniversary of the Entry Into Service Date, and at such other times as the Commission may require, setting forth in detail the manner and form in which it has complied, and is complying, and will comply with this Order.

VIII.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of Respondent;
- B. Any proposed sale, acquisition, merger, consolidation or restructuring of Respondent;
or
- C. Any other change in Respondent, including but not limited to, assignment, and the creation or dissolution of subsidiaries, if such change may affect compliance obligations arising out of this Order.

IX.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to Respondent made to its principal United States offices, registered office of its United States subsidiary, or headquarters address, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondent related to compliance with this Order, which copying services shall be provided by Respondent at the request of the authorized representative(s) of the Commission and at the expense of Respondent.
- B. The opportunity to interview officers, directors, or employees of Respondent, who may have counsel present, related to compliance with this Order.

X.

IT IS FURTHER ORDERED that this Order shall terminate ten (10) years from the date this Order is issued.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED:

CONFIDENTIAL EXHIBIT A

[Redacted From the Public Record Version, But Incorporated By Reference]

CONFIDENTIAL EXHIBIT B

[Redacted From the Public Record Version, But Incorporated By Reference]