

ANALYSIS OF PROPOSED AGREEMENT CONTAINING CONSENT ORDERS TO AID PUBLIC COMMENT

*In the Matter of The Boeing Company and Spirit AeroSystems Holdings, Inc.,
File No. 241-0098, Docket No. C-4826*

I. Introduction

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) designed to remedy the anticompetitive effects resulting from The Boeing Company’s (“Boeing”) proposed acquisition of Spirit AeroSystems Holdings, Inc. (“Spirit”). Pursuant to an Agreement and Plan of Merger, dated June 30, 2024, Boeing will acquire all the outstanding voting shares of Spirit in exchange for shares of Boeing common stock representing an equity value of approximately \$4.7 billion (the “Acquisition”). The total value of the Acquisition is approximately \$8.3 billion, including the assumption of Spirit’s debt.

The Commission’s Complaint alleges that the 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, by substantially lessening competition in: (1) the worldwide market for large commercial aircraft and (2) the United States market for military aircraft. In each relevant market, the Acquisition would provide Boeing with the ability and incentive to limit competing aircraft manufacturers’ access to critically important Spirit-supplied aerostructures.

The proposed Decision and Order (“Order”) will remedy the Acquisition’s likely anticompetitive effects in the large commercial aircraft market by requiring Boeing and Spirit (collectively, the “Respondents”) to divest (1) Spirit’s business operations primarily relating to supplying Airbus SE (“Airbus”) with aerostructures, wherever located (the “Airbus Assets”), to Airbus, and (2) Spirit’s Subang, Malaysia aerostructures business that currently supplies aerostructures to, among others, Boeing and Airbus, to Composites Technology Research Malaysia Sdn. Bhd. (“CTRM”) (the “CTRM Assets”).

The Order will remedy the alleged violations in the military aircraft market by requiring Boeing to (1) act as a non-discriminatory merchant supplier of Spirit aerostructures rather than favor its own military aircraft business by both continuing to support Spirit’s current non-Boeing defense customers and by offering to supply Spirit aerostructures to rival military aircraft manufacturers for future military aircraft, and (2) protect competitors’ competitively sensitive information from improper use or disclosure.

The Consent Agreement has been placed on the public record for 30 days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again evaluate the Consent Agreement, along with the comments received, to make a final decision as to whether it should withdraw from the Consent Agreement, modify it, or make final the Order.

II. The Respondents

Boeing is a Delaware corporation with its principal place of business in Arlington, Virginia. Boeing is a leading global aerospace and defense company that designs, develops, manufactures, sells, and services commercial jetliners, as well as numerous high-priority

programs for the United States Department of War (“DoW”) and other U. S. Government agencies, including military aircraft, weapon systems, spacecraft, space launch systems, and human space flight systems.

Spirit is a Delaware corporation with its principal place of business in Wichita, Kansas. Spirit is the largest independent supplier of aerostructures in the world. The company designs, develops, and manufactures large complex aerostructures, including fuselages and integrated fuselage sections, wings and wing components, nacelles, and pylons. Spirit supplies these aerostructures, which are custom designed for specific aircraft, to manufacturers of large commercial aircraft, military aircraft, and business/regional jets. Spirit primarily supplies aerostructures for large commercial aircraft. It currently supplies products for Boeing’s 737, 767, 777, and 787 as well as Airbus’ A220, A320/321, and A350 families of large commercial aircraft. Spirit also designs and builds aerostructures for military aircraft, including Boeing’s KC-46A, P-8A Poseidon, and B-52 bomber, Lockheed Martin’s CH-53K King Stallion, and Northrop Grumman’s B-21 Raider, as well as multiple classified development programs.

III. The Products and Structure of the Markets

Boeing and its chief rival, Airbus, are the only two significant suppliers of large commercial aircraft in the world. Large commercial aircraft are jet engine-powered airplanes used to transport passengers and/or cargo over long distances. These aircraft are designed to carry 100 or more passengers for distances of more than 2,000 nautical miles. Customers, including commercial airlines, air cargo carriers, and aircraft leasing companies, do not have any close substitute for large commercial aircraft. Boeing and Airbus together account for over 95 percent of large commercial aircraft delivered annually worldwide.

Military aircraft have specialized, high-performance designs and employ advanced military-specific technologies that enable these aircraft to perform specialized functions and unique missions that no other aircraft can perform. The DoW relies on multiple types of military aircraft for essential national defense capabilities, including fighters, bombers, attack aircraft, support aircraft, and reconnaissance and surveillance aircraft. Each type of military aircraft purchased by DoW has unique capabilities and is designed specifically to perform its given mission(s).

Boeing is one of only three U.S. companies with the relevant design, development, and manufacturing experience and capability to provide most types of military aircraft, and national security considerations and other factors limit DoW’s ability to procure military aircraft from foreign suppliers. Boeing is developing, supplying or supporting multiple U.S. military aircraft, including the F-47, F/A-18EF Super Hornet, F-15EX, B-1, B-52, P-8A Poseidon, KC-46A Pegasus, VC-25, T-7A Red Hawk, C-17 Globemaster, MQ-25, MQ-28, CH-47 Chinook, MH-139A Grey Wolf, AH-64E Apache, and AH-6 Little Bird.

IV. Entry

New entry into the two markets at issue would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the Acquisition. There are significant barriers to entry into the development, manufacture, certification, and sale of both large commercial and military aircraft. It would be extremely

difficult and costly for a new entrant to establish the technological expertise and specialized facilities necessary to compete successfully in either of these markets.

V. Effects of the Acquisition

The Acquisition would give Boeing the ability and incentive to raise the cost or otherwise degrade rivals' access to competitively significant inputs for their competing aircraft. Spirit currently supplies essential aerostructures to multiple competitors of Boeing, including Airbus, Northrop Grumman, and Lockheed Martin. Aerostructures are critical inputs for all aircraft, as their design and manufacture impact the performance and overall cost of the aircraft. Depending on the significance of the structure provided, it can also account for a material proportion of the total production cost of the aircraft. Once an aircraft manufacturer has selected a supplier to design and build a large or complex aerostructure, switching suppliers would be extremely time-consuming, impose significant costs, and create significant risks. Moreover, Spirit is differentiated from most other potential suppliers of aerostructures, especially other U.S. suppliers of classified defense aerostructures, in terms of its scale, experience, and capabilities.

Absent the protections of the Consent Agreement, after the Acquisition, Boeing would have the ability and incentive to disadvantage competing aircraft manufacturers by denying or limiting their access to Spirit's aerostructure products and technologies, which would lessen the ability of Boeing's rivals to compete successfully. Boeing could also gain access to proprietary competitively sensitive information relating to its competitors and exploit it to its own advantage.

VI. The Order and the Order to Maintain Assets

The Order and the Order to Maintain Assets effectively remedy the competitive concerns raised by the Acquisition in both markets at issue.

A. Large Commercial Aircraft

Pursuant to the Order, the Respondents are required to divest to Airbus the Airbus Assets, which, except for specified Excluded Assets (including certain retained intellectual property ("IP") and certain real property), include all property and assets that Airbus requires to manufacture the products that Spirit currently supplies to Airbus, including (1) Spirit's Kinston business, (2) Spirit's St. Nazaire business, (3) Spirit's Morocco business, (4) Spirit's Prestwick business, (5) Spirit's A220 pylon production line, and (6) the Airbus portion of Spirit's Belfast business. Furthermore, the Order requires the Respondents to divest Spirit's assets relating to its Subang, Malaysia operations, which currently supplies Airbus and Boeing with aerostructures, to CTRM.

Both Airbus and CTRM have extensive experience and knowledge relating to the respective businesses they will acquire and possess the requisite financial resources, expertise, and capabilities to seamlessly transfer and operate the divested assets in a competitive manner. The Respondents must accomplish these divestitures no later than ten days after the Acquisition is consummated. The Order further allows the Commission to appoint a divestiture trustee in the event the parties fail to divest the Airbus Assets or the CTRM Assets.

The Order contains several provisions to help ensure that the divestitures are successful. The Order requires Boeing to provide required transitional services to Airbus and CTRM to assist them in manufacturing various products during the transitional period. Also, under the

Order and the Order to Maintain Assets, the Commission has appointed ALCIS Advisers GmbH (“ALCIS”) as the Monitor to oversee these divestitures and to ensure that the Respondents comply with all the provisions of the Order relating to commercial aerostructures. ALCIS has significant experience acting as a monitor in other complex transactions in the United States and Europe. The Commission issued an Order to Maintain Assets that requires Respondents to operate and maintain the Airbus Assets in the normal course of business for the brief transition period until the Commission approves the final Order.

B. Military Aircraft

The Order will remedy the alleged violations in the military aircraft market by requiring: (1) Boeing to provide continued support to non-Boeing military aircraft prime contractors that Spirit is currently supplying with Defense Aerostructures; (2) Spirit Defense Aerostructure Business to respond to any commercially reasonable requests for follow-on work related to current Spirit third-party prime contractor programs; (3) Boeing, whenever it has taken steps to compete to be the prime contractor for a competitive military aircraft program, to make Spirit’s Defense Aerostructure Services available on a non-discriminatory basis to third-party competing prime contractors on commercially fair and reasonable price terms; (4) Boeing to maintain the financial viability and competitiveness of Spirit’s non-Boeing Defense Aerostructure Business; and (5) Boeing to establish firewalls to ensure that any confidential information that Spirit’s Defense Aerostructure Business receives from third-party military aircraft prime contractors is not shared in a manner that harms competition.

The Order also provides that the Under Secretary of War for Acquisition and Sustainment shall appoint a compliance officer to oversee Boeing’s compliance with the military aircraft-related aspects of the Order. The compliance officer will have all the necessary investigative powers to perform his or her duties, including the right to interview Respondents’ personnel, inspect Respondents’ facilities, and require Respondents to provide documents, data, and other information. The compliance officer has the authority to retain third-party advisors, at Respondents’ expense, as appropriate to perform his or her duties. Access to these resources will ensure that the compliance officer is fully capable of overseeing the implementation of, and compliance with, the Order. The Order also requires Boeing to establish and operate a compliance program and develop written procedures and protocols to comply with the requirements of the Order and requires that the Respondents shall bear all the costs of monitoring, complying, and enforcing the Consent Order. Finally, the Order specifies that it will terminate ten years from the date it is issued.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Consent Agreement or to modify its terms in any way.