to district boundaries must be approved by the Secretary of the Interior. During studies undertaken to implement the Umatilla Basin Project Act, it became apparent that WID was providing federally supplied water to lands outside of the district boundaries. In 1993, to address this problem, WID requested that Reclamation allow a change in their boundaries so that they may provide irrigation water to lands outside the current boundaries. In the interim Reclamation entered into a series of annual water service contracts with WID so irrigation of lands outside of the district boundaries with federally supplied water could continue while issues surrounding the boundary expansion were resolved.

Reclamation and the National Resources Department of the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) held public meetings on November 4 and December 17, 1993, to gather comments from the public concerning the ''Proposed Boundary Changes for Irrigation Districts in the Umatilla Project, Oregon.'' Key issues identified in the scoping effort included Umatilla River hydrology and passage conditions for anadromous fish, Native American trust resources, and continue viability of irrigated agriculture. Based on the complex and often controversial nature of the issues involved, the high level of public and agency interest, and Reclamation's Native American trust responsibilities, Reclamation concluded that an EIS should be prepared. Since then, a hydrologic model of the Umatilla basin, necessary to complete the assessment of the proposed boundary adjustment, had been developed. Completion of the hydrologic model is anticipated for February 1998.

Four alternatives are proposed, including the no action alternative. Under the no action alternative all deliveries of federally supplied water by WID to lands outside of the current district boundaries would cease. Under the action alternatives some, or all, of these deliveries could continue. The draft EIS is expected to be completed in March of 1999.

At this time, no additional scoping meetings are planned. A summary of scoping issues identified through previous meetings is available upon request. Anyone interested in more information concerning the proposed action or who has information concerning significant environmental issues, should contact Mr. Tiederman as provided under the **FOR FURTHER INFORMATION CONTACT** section.

Dated: November 3, 1997.

John W. Keys, III,

Regional Director, Pacific Northwest Region.

[FR Doc. 97–29448 Filed 11–6–97; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Change in Discount Rate for Water Resources Planning

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of change.

SUMMARY: The Water Resources Planning Act of 1965 and the Water Resources Development Act of 1974 require an annual determination of a discount rate for Federal water resources planning. The discount rate for Federal water resources planning for fiscal year 1998 is 7.125 percent. Discounting is to be used to convert future monetary values to present values.

DATES: This discount rate is to be used for the period October 1, 1997, through and including September 30, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Schluntz, Economist, Reclamation Law, Contracts, and Repayment Office, Bureau of Reclamation, Attention: D–5200, Building 67, Denver Federal Center, Denver CO 80225–0007; telephone: (303) 236–1061, extension 287.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the interest rate to be used by Federal agencies in the formulation and evaluation of plans for water and related land resources is 7.125 percent for fiscal year 1998.

This rate has been computed in accordance with Section 80(a), Pub. L. 93–251 (88 Stat. 34) and 18 CFR 704.39, which: (1) Specify that the rate shall be based upon the average yield during the preceding fiscal year on interest-bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity (average yield is rounded to nearest one-eighth percent); and (2) provide that the rate shall not be raised or lowered more than one-quarter of 1 percent for any year. The Treasury Department calculated the specified average to be 6.91 percent. Rounding this average yield to the nearest one-eighth percent is 6.875 percent, which exceeds the permissible one-quarter of 1 percent change from fiscal year 1997 to 1998. Therefore, the change is limited to one-quarter of 1 percent.

The rate of 7.125 percent shall be used by all Federal agencies in the formulation and evaluation of water and related land resources plans for the purpose of discounting future benefits and computing costs or otherwise converting benefits and costs to a common time basis.

Dated: October 31, 1997.

Wayne O. Deason,

Deputy Director, Program Analysis Office.

[FR Doc. 97–29447 Filed 11–6–97; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Raytheon Company, General Motors Corporation, and HE Holdings, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Order, Hold Separate and Partition Plan Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court in the District of Columbia, Civil No. 1:97CV02397.

On October 16, 1997, the United States filed a Complaint alleging that the proposed acquisition by Raytheon Company of Hughes Aircraft Company, a wholly owned subsidiary of HE Holdings, Inc. and an indirect subsidiary of General Motors Corporation, would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The proposed Final Judgment, filed contemporaneously with the Complaint, requires Raytheon to: (1) Divest the second generation and third generation focal plane array business of Raytheon TI Systems (''RTIS'') and the second generation ground electro-optical business of Hughes Aircraft Company's Sensors and Communications Segment; (2) establish a firewall that prevents the flow of information concerning the Follow-on-to-TOW (''FOTT'') missile program between the RTIS/Lockheed Martin Corp. joint venture FOTT team and the Hughes FOTT team, and between each FOTT team and any other employee of Raytheon; and (3) provide incentives to the RTIS/Lockheed Martin FOTT team to pursue its bid to ensure competition between Raytheon and Hughes in bids for the FOTT missile.

Public comment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and

filed with the Court. Comments should be directed to J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530 (telephone: 202/307–0924).

Copies of the Complaint, Stipulation and Order, Hold Separate and Partition Plan Stipulation and Order, Proposed Final Judgment, and Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW., Washington, DC 20530, (202) 514–2841. Copies of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations, Antitrust Division.

United States District Court for the District of Columbia

[Civil No: 97 2397]

United States of America, Plaintiff, v. Raytheon Company, General Motors Corp., and H E Holdings, Inc., Defendants

Stipulation and Order

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

(1) The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

(2) The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

(3) Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an Order of the Court.

(4) This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

(5) In the event plaintiff withdraws its consent, as provided in paragraph 2 above, or in the event the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

(6) Defendants represent that the divestiture ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

Dated: October 16, 1997.

For Plaintiff United States of America:

Willie L. Hudgins,

Esquire (D.C. Bar #37127), U.S. Department of Justice, Antitrust Division, Litigation II, Suite 3000, Washington, D.C. 20005, (202) 307–0924.

For Defendant Raytheon Company

Robert D. Paul,

Esquire (D.C. Bar #416314), Michael S. Shuster, Esquire, White & Case, 601 13th St., N.W., Washington, D.C. 20005–3807, (202) 626–3614.

For Defendants H E Holdings, Inc. and General Motors Corp.:

Robert C. Odle, Jr.,

Esquire (D.C. Bar #389845), Peter D. Standish, Esquire, Douglas A. Nave, Esquire, Weil, Gotshal & Manges LLP, 767 Fifth Ave., New York, NY 10153–0119.

It is so Ordered by the Court, this _____ day of _____, 1997.

_____

United States District Judge.

United States District Court for the District Of Columbia

United States of America, Plaintiff. v. Raytheon Company, General Motors Corp., and H E Holdings, Inc., Defendants

Final Judgment

Whereas, plaintiff, the United States of America, filed its Complaint in this action on October 16, 1997, and plaintiff and defendants by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, plaintiff intends defendants to be required to preserve competition by: (1) Promptly divesting the second generation (''2nd Gen.'') and third generation (''3rd Gen.'') focal plane array (''FPA'') business of Raytheon TI Systems (''RTIS'') and the 2nd Gen. ground electro-optical (''EO'') business of Hughes Aircraft Company's Sensors and Communications System Segment; (2) establishing a firewall that prevents the flow of information concerning the Follow-on-to-TOW (''FOTT'') missile program between the RTIS Missile Systems Division (''RTIS Missiles'') of Raytheon and any other part of Raytheon and between Hughes Missile Systems and any other part of Raytheon: and (3) incentivizing RTIS Missiles to pursue its bid through a joint venture with Lockheed Martin Corp. to ensure competition in bids for the FOTT missile;

And whereas, plaintiff requires defendants to make the divestitures for the purpose of establishing a viable competitor in the development, production, and sale of FPAs and ground EO systems, and to construct firewalls and incentivize RTIS Missiles for the purpose of preserving competition in bidding for the FOTT missile program;

And whereas, defendants have represented to the plaintiff that the divestitures ordered herein can and will be made and that the firewalls can be constructed and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture or firewall provisions contained below;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *ordered, adjudged, and decreed* as follows:

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants, as hereinafter defined, under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. Definitions

As used in this Final Judgment:

A. ''A-Kit'' means all components necessary to fit a B-Kit into a particular

ground vehicle, including the optics, electronics, software, visual display, stabilization, and fire control as required.

B. ''B-Kit'' means the common components for 2nd Gen. Forward Looking Infrared Systems (''FLIRs'') designed under the HTI program, including SADA II integrated cooler/dewar detector assemblies, afocal assemblies, and associated electronics.

C. ''DoD'' means the Department of Defense.

D. ''DoJ'' means the Antitrust Division of the Department of Justice.

E. ''EO Business'' means the 2nd Gen. ground EO business of Hughes operated out of the El Segundo, California and La Grange, Georgia facilities that produces A-Kits and B-Kits for ground vehicles and other applications, including the IBAS. M–1 TIS, LRASSS, and HTT programs, and all employees listed in confidential Attachment A, including:

a. All tangible assets used to produce A-Kits and B-Kits; all real property (owned or leased), including interests in the El Segundo, California and La Grange, Georgia facilities used to produce A-Kits and B-Kits, research and development activities, as identified pursuant to the Court's Hold Separate and Partition Plan Stipulation and Order; all manufacturing, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site warehouses or storage facilities, and other tangible property or improvements used in the production of A-Kits and B-Kits; all licenses, permits and authorizations issued by any governmental organization relating to A-Kits and B-Kits; all contracts, teaming arrangements, agreements, leases, commitments and understandings pertaining to A-Kits and B-Kits; supply agreements; all customer lists and credit records; and other records maintained by Hughes in connection with the production of A-Kits and B-Kits;

b. All intangible assets relating to the research, development, and production of A-Kits and B-Kits, including but not limited to a non-exclusive, transferable, royalty-free license to use all patents utilized by Hughes in the EO Business, licenses and sublicenses, intellectual property, technical information, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, and all manuals and technical information Hughes provides to its own employees, customers, suppliers, agents or licensees;

c. All research data concerning historic and current research and development efforts relating to the production of A-Kits and B-Kits, including designs of experiments, and the results of unsuccessful designs and experiments;

d. At the option of the purchasers, a supply contract for computer support services and information and communications services sufficient to support the EO Business over a period of one year; and

e. At the option of the purchaser, at the time of purchase, an option to purchase or lease an additional 10,000 square feet of manufacturing space for the EO Business in addition to the space set aside for the EO Business in the Hold Separate and Partition Plan and Order.

F. ''FOTT Information'' means all information relating to the FOTT Program, including but not limited to, information relating to any and all proposals, technology, cost data, suppliers, designs, plans, test results, specifications, pricing, technical interface with IBAS and ITAS or other sensitive competitive information. FOTT Information shall be stamped as ''Confidential and Competition Sensitive.''

G. ''FOTT Program'' means the Follow-on-to-TOW missile program, for which the Hughes FOTT Team and the TI/Martin Javelin Joint Venture (as defined below) will be competing for the Engineering Manufacturing Developing (''EMD'') contract, scheduled to be awarded by the United States Army in 1998.

H. ''FPA'' means a matrix of detectors or pixels made of material that is sensitive to infrared (''IR'') radiation, which is mated to a silicon processor and used to detect and analyze IR radiation.

L. ''FPA Business'' means the 2nd Gen. and 3rd Gen. scanning and staring IR detector businesses of RTIS operated out of the Semiconductor Building and the Research West Building located at the Expressway site in Dallas, Texas, including all dewar and cryogenic cooler manufacturing and dewar and cryogenic cooler assembly (except for RTIS' uncooled FPA Business), and including all employees listed in confidential Attachment, including:

a. All tangible assets used to produce scanning IR detectors, including SADA detectors, staring detectors, dewars, and cryogenic coolers, including, but not limited to, all real property (owned or leased), including interests in the Dallas facilities, used in the operation of the RTIS FPA Business, including research and development activities, as identified pursuant to the Court's Hold Separate and Partition Plan Stipulation and Order; all manufacturing, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site warehouses or storage facilities, and other tangible property or improvements used in the operation of the RTIS FPA Business; all licenses, permits and authorizations issued by any governmental organization relating to the RTIS FPA Business; all contracts, teaming arrangements, agreements, leases, commitments and understandings pertaining to the RTIS FPA Business and its operations; supply agreements; all customer lists and credit records; and other records maintained by Raytheon in connection with the RTIS FPA Business;

b. All intangible assets relating to the RTIS FPA Business, including but not limited to all patents, licenses and sublicenses, intellectual property, maskwork rights, technical information, know-how, trade secrets, drawings, blueprints, designs, design protocols, cell libraries, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, designed tools and simulation capability, and all manuals and technical information Raytheon provides to its own employees, customers, suppliers, agents or licensees, except that the purchaser shall agree to grant to the seller a non-exclusive, transferable, royalty-free license for any invention disclosed in U.S. Patent No. 5,274,578; and any invention disclosed in U.S. Patent Applications Nos. 08/474,229, 08/097,522, 08/478,570 and 08/487,820 and Provisional Patent Application No. 60/014,812; and

c. All research data concerning historic and current research and development efforts relating to the RTIS FPA Business, including designs of experiments, and the results of unsuccessful designs and experiments.

J. ''HTI'' means the Horizontal Technology Integration program to develop a common B-Kit to be used on different ground vehicle platforms.

K. ''Hughes'' means Hughes Aircraft Company, an indirect subsidiary of General Motors Corp., with its headquarters in Arlington, Virginia, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnership and joint ventures, and directors, officers, managers, agents and employees.

L. ''Hughes FOTT Team'' means all Hughes Missile Systems managers and employees who have been assigned to or

consulted in connection with the FOTT program.

M. ''IBAS'' means the Integrated Bradley Acquisition System, a program to upgrade the sights on a Bradley Fighting Vehicle.

N. ''ITAS'' means the Improved Target Acquisition System, a program to improve TOW missile launching capabilities.

O. ''LRASSS'' means the Long-Range Advanced Scout Surveillance System, a future surveillance system to be mounted on light ground vehicles.

P. ''M1–TIS'' means the Thermal Imaging System for the M1 Abrams tank.

Q. ''Raytheon'' means Raytheon Company, a Delaware corporation with its headquarters and principal place of business in Lexington, Massachusetts, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

R. ''RTIS'' means Raytheon TI Systems, Inc.

S. ''RTIS FOTT team'' means Mr. Lawrence Schmidt, all RTIS managers and employees of the TI/Martin Javelin Joint Venture, and all other RTIS employees who have been assigned to or consulted in connection with the FOTT program. One attorney in the General Counsel's Office of Raytheon, to be designated by Raytheon, shall be deemed a member of the RTIS FOTT Team and may be consulted for the purpose of obtaining legal or regulatory advice, but shall not receive FOTT Information concerning pricing or other bid information.

T. ''SADA'' means the Standardized Advanced Dewar Assembly and consists of a scanning FPA mounted in an evacuated dewar. The SADA program is an effort by the United States Army to develop a family of IR detectors that can be used in a variety of battlefield systems.

U. ''TI/Martin Javelin Joint Venture'' means the joint venture between Texas Instruments a/k/a RTIS and Lockheed Martin, which will be a competitor for the FOTT Program.

V. ''Uncooled FPA Business'' means the technology, production equipment, and all tangible and intangible assets used by RTIS solely in the production of uncooled FPAs.

III. Applicability

A. The provisions of this Final Judgment apply to Raytheon, its successor and assigns, their subsidiaries, directors, officers, managers, agents, and employers, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Raytheon shall require, as a condition of the sale or other disposition of all or substantially all of its assets or of a lesser business unit that includes Raytheon's business of developing and producing FPAs and ground EO Systems, that the transferee agree to be bound by the provisions of this Final Judgment.

IV. Divestiture

A. Raytheon is hereby ordered and directed in accordance with the terms of this Final Judgment, within one-hundred and eighty (180) calendar days after October 3, 1997 or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the FPA Business and the EO Business to an acquirer(s) acceptable to DoJ and DoD in their sole discretion.

B. Raytheon shall use its best efforts to accomplish the divestitures as expeditiously and timely as possible. DoJ in its sole determination, in consultation with DoD, may extend the time period for any divestitures for an additional period of time not to exceed thirty (30) calendar days.

C. In accomplishing the divestitures ordered by this Final Judgment, Raytheon, promptly shall make known, by usual and customary means, the availability of the EPA Business and the EO Business described in this Final Judgment. Raytheon shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Raytheon shall also offer to furnish to all bona fide prospective purchasers, subject to customary confidentiality assurances, all information regarding the FPA Business and the EO Business customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. Raytheon shall make available such information to DoJ at the same time that such information is made available to any other person.

D. Raytheon shall permit bona fide prospective purchasers of the FPA Business and the EO Business to have reasonable access to personnel and to make such inspection of the physical facilities of the FPA Business and EO Business and any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. Raytheon shall not take any action that will impede in any way the operation of the FPA Business or the EO Business.

F. Unless both DoJ and DoD otherwise consent in writing, the divestitures pursuant to Section IV, or by trustee appointed pursuant to Section V of this Final Judgment, shall include the entire FPA Business and the entire EO Business, operated in place pursuant to the Hold Separate and Partition Plan Stipulation and Order, and be accomplished by selling or otherwise conveying the FPA Business and the EO Business to a purchaser(s) in such a way as to satisfy DoJ and DoD, in their sole discretion, that the FPA Business and the EO Business can and will be used by the purchaser(s) as part of a viable, ongoing business or businesses engaged in the development, production, and sale of FPAs and ground EO systems. Divestiture of the FPA Business and EO Business may be made to one or more purchasers provided that in each instance it is demonstrated to the sole satisfaction of DoJ and DoD that the FPA Business and EO Business will remain viable. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to a purchaser(s) who it is demonstrated to DoJ's and DoD's sole satisfaction: (1) Has the capability and intent of competing effectively in the development, production and sale of FPAs or ground EO systems as the case may be; (2) has managerial, operational, and financial capability to compete effectively in the development, production and sale of FPAs or ground systems as the case may be; (3) is eligible to receive applicable DoD security clearances; and (4) that none of the terms of any agreement between the purchaser and Raytheon give Raytheon the ability unreasonably to raise the purchaser's costs, to lower the purchaser's efficiency, or otherwise to interfere in the ability of the purchaser to compete effectively.

G. For a period of two years from the filing of the Complaint in this matter, Raytheon and Hughes shall not solicit to hire any individual who, on the date of the filing of the Complaint in this matter, was an employee of the FPA Business or the EO Business. For a period of two years from the filing of the Complaint in this matter, Raytheon and Hughes shall not hire any individual who, on the date of the filing of the Complaint in this matter, was an employee of the FPA Business or the EO Business unless such individual has a written offer of employment from a third party for a like position.

H. Raytheon shall comply with all agreements with DoD regarding the

protection of information related to classified programs.

I. Raytheon shall not charge to DoD any costs directly or indirectly incurred in complying with this Final Judgment.

V. Appointment of Trustee

A. In the event that Raytheon has not divested the FPA Business and the EO Business within the time specified in Section IV of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by DoJ, in consultation with DoD, to effect the divestiture of the FPA Business and the EO Business.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the FPA Business described in Section II(I) and the EO Business described in Section II(E) of this Final Judgment. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV and IX of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section V(C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of Raytheon any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestitures, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestitures at the earliest possible time to a purchaser acceptable to DoJ and DoD, and shall have such other powers as this Court shall deem appropriate. Raytheon shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by Raytheon must be conveyed in writing to DoJ and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VII of this Final Judgment.

C. The trustee shall serve at the cost and expense of Raytheon, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Raytheon and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the divested business and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. Raytheon shall use its best efforts to assist the trustee in accomplishing the required divestitures, including best efforts to effect all necessary regulatory approvals. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the businesses to be divested, and Raytheon shall develop financial or other information relevant to the business to be divested customarily provided in a due dilligence process as the trustee may reasonably request, subject to customary confidentiality assurances. Raytheon shall permit bona fide prospective acquirers of the assets to have reasonable access to personnel and to make such inspection of physical facilities and nay and all financial, operational or other documents and other information as may be relevant to the divestitures required by this Final Judgment.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestitures ordered under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the business to be divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the businesses to be divested.

F. If the trustee has not accomplished such divestitures within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth (1) The trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the trust which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by DoJ.

VI. Firewall

A. Members of the RTIS FOTT Team are prohibited from giving or receiving, either directly or indirectly, any FOTT Information to or from the Hughes FOTT Team or any other Raytheon employee. Members of the Hughes FOTT Team are prohibited from giving or receiving, either directly or indirectly, any FOTT Information to or from the RTIS FOTT Team or any other Raytheon employee. To implement this provision, Raytheon is required to construct a firewall within Raytheon that prevents the flow of FOTT Information between the RTIS FOTT Team and any other segment or official of Raytheon. Raytheon is also required to construct a firewall within Raytheon that prevents the flow of any FOTT Information between the Hughes FOTT Team and any other segment or official of Raytheon. These firewalls are intended to ensure competition between RTIS Missiles and Hughes Missile Systems in bidding on the FOTT Program. Raytheon shall, within five (5) business days of its signing the Stipulation and Order consenting to the entry of this Final Judgment, submit to DoJ and DoD a document setting forth in detail its procedures to effect compliance with this provision. DoJ and DoD shall have the sole discretion to approve Raytheon's compliance plan and shall notify Raytheon within three (3) business days whether they approve of or reject Raytheon's compliance plan. In the event that Raytheon's compliance plan is rejected, the reasons for the rejection shall be provided to Raytheon by DoJ and Raytheon shall be given the opportunity to submit, within two (2) business days of receiving the notice of rejection, a revised compliance plan. If the parties cannot agree on a compliance plan within an additional three (3) business days, a plan will be devised by DoD and implemented by Raytheon. All Raytheon employees shall abide by the provisions of the compliance plan. The prohibitions in this paragraph shall remain in effect until final determination of the EMD contract award for the FOTT Program is made by DoD. Raytheon shall use all

reasonable efforts to submit a competitive bid by the RTIS FOTT Team for the FOTT Program.

B. Raytheon shall delegate to Mr. Lawrence Schmidt, Senior Vice President, Missile Systems Division of RTIS, in his sole discretion, the right to review and determine on behalf of Raytheon all matters relating to the TI/Martin Javelin Joint Venture bid, including any best and final offer and responses to any inquiry from DoD, on the FOTT Program; to invest Raytheon's funds in the FOTT Program; and to draw on other resources within RTIS Missiles to compete for the FOTT Program.

C. Raytheon shall provide an economic incentive to the RTIS management personnel of the TI/Martin Javelin Joint Venture to ensure all reasonable efforts will be made by Raytheon to submit a competitive bid by the TI/Martin Javelin Joint Venture for the FOTT Program. As an incentive to win the FOTT Program, Raytheon shall pay, conditioned solely upon the TI/Martin Javelin Joint Venture being awarded the EMD contract for the FOTT Program, bonuses to certain RTIS Missiles employees. Each employee to receive a bonus upon award of the EMD contract for the FOTT Program and the amount of each applicable bonus is listed in confidential Attachment ''C.''

D. Raytheon shall notify and train all RTIS Missiles, Hughes Missile Systems, and other Raytheon employees likely to see FOTT Information regarding the restrictions on FOTT Information and require that all such employees sign a statement acknowledging the restrictions on the FOTT Information. In addition, all RTIS Missiles employees having access to FOTT Information must sign a certification stating that they understand the restrictions of the firewall and agree to adhere to the firewall restrictions.

VII. Notification

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestitures pursuant to Sections IV or V of this Final Judgment. Raytheon or the trustee, whichever is then responsible for effecting the divestitures, shall notify DoJ and DoD of the proposed divestitures. If the trustee is responsible, if shall similarly notify Raytheon. The notice shall set for the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the businesses to be divested that is the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by DoJ and DoD of such notice, DoJ, in consultation with DoD, may request from Raytheon, the proposed purchaser, or any other third party additional information concerning the proposed divestitures and the proposed purchaser. Raytheon and the trustee shall furnish any additional information requested from them within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after DoJ has been provided the additional information requested from Raytheon, the proposed purchaser, and any third party, whichever is later, DoJ and DoD shall each provide written notice to Raytheon and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If DoJ and DoD provide written notice to Raytheon and the trustee that they do not object, then the divestiture may be consummated, subject only to Raytheon's limited right to object to the sale under Section V(B) of this Final Judgment. Absent written notice that NoJ and DoD do not object to the proposed purchaser or upon objection by DoJ or DoD, a divestiture proposed under Section IV or Section V may not be consummated. Upon objection by Raytheon under the provision in Section V(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VIII. Affidavits

A. Within twenty (2) calendar days of the filing of the Complaint in this matter and every thirty (30) calendar days thereafter until the divestiture has been completed whether pursuant to Section IV or Section V of this Final Judgment, Raytheon shall deliver to DoJ and DoD an affidavit as to the fact and manner of compliance with Sections IV or V of this Final Judgment. Each such affidavit shall include, *inter alia*, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the business to be divested, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that Raytheon has taken to solicit a buyer for the relevant assets and to provide required information to prospective purchasers including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by DoJ to information provided by Raytheon, including limitations on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Raytheon shall deliver to DoJ and DoD an affidavit which describes in detail all actions Raytheon has taken and all steps Raytheon has implemented on an on-going basis to comply with the firewall provisions pursuant to Section VI of this Final Judgment and to preserve the FPA Business and the EO Business pursuant to Section IX and this Final Judgment and the Hold Separate and Partition Order entered by the Court. The affidavit also shall describe, but not be limited to, Raytheon's efforts to maintain and operate the FPA Business and the EO Business as an active competitor, maintain the management, staffing, research and development activities, sales, marketing and pricing of the FPA Business and the EO Business, and maintain the FPA Business and the EO Business in operable condition at current capacity configurations. Raytheon shall deliver to DoJ and DoD an affidavit describing any changes to the efforts and actions outlined in Raytheon's earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Until one year after such divestiture has been completed, Raytheon shall preserve all records of all efforts made to preserve the business to be divested and effect the divestitures.

IX. Hold Separate Order

Until the divestitures required by the Final Judgment have been accomplished, Raytheon shall take all steps necessary to comply with the Hold Separate and Partition Plan Stipulation and Order entered by this Court and to preserve the assets of the FPA Business and the EO Business. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

X. Financing

Raytheon is ordered and directed not to finance all or any part of any purchase by an acquirer(s) made pursuant to Sections IV or V of this Final Judgment.

XI. Compliance Inspection

For purposes of determining or securing compliance with the Final

Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Raytheon made to its principal offices, shall be permitted:

1. Access during office hours of Raytheon to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Raytheon, who may have counsel present, relating to the matters contained in this Final Judgment and the Hold Separate Stipulation and Order; and

2. Subject to the reasonable convenience of Raytheon and without restraint or interference from it, to interview, either informally or on the record, its officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to Raytheon's principal offices, Raytheon shall submit such written reports, under oath if requested, with respect to any matter contained in the Final Judgment and the Hold Separate and Partition Order.

C. No information or documents obtained by the means provided in Sections VIII or XI of this Final Judgment shall be divulged by a representative of the plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Raytheon to DoJ or DoD, Raytheon represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Raytheon marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure.'' then ten (10) calendar days notice shall be given by DoJ or DoD to Raytheon prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Raytheon is not a party.

XII. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XIII. Termination

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the day of its entry.

XIV. Public Interest

Entry of this Final Judgment is in the public interest.

Dated _____, 1998.

_____

United States District Judge.

United States District Court for the District of Columbia

[Civil No. 1:97CV02397]

United States of America, Plaintiff, v. Raytheon Company, General Motors Corporation, and He Holdings, Inc., Defendants

United States District Judge Emmet G. Sullivan

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. § 16(b)–(h), files this Competivie Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On October 16, 1997, the United States filed a civil antitrust Complaint alleging that the proposed acquisition by Raytheon Company (''Raytheon'') of Hughes Aircraft Co. (''Hughes'') would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that Raytheon and Hughes are the only two firms that design, develop, and produce second generation (''2nd Gen.'') electro-optical (''EO'') systems for Department of Defense (''DoD'') ground applications. It alleges that Raytheon and Hughes are also the only two firms that design, develop, and produce critical infared (''IR'') detectors, called ''SADA II'' detectors, used in ground EO systems, and are the leading firms that develop and produce staring IR detectors used for sensors in missile seeker heads and aircraft and missile warning system applications. The Complaint further alleges that Raytheon, through its majority ownership in a joint venture with Lockheed Martin Corporation (''Lockheed Martin''), and Hughes are competitors for the Follow-On-To-TOW (''FOTT'') new advanced antitank missile program that will replace the current inventory of TOW antitank missiles.

The prayer for relief in the Complaint seeks: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act; and (2) a permanent injunction preventing Raytheon from acquiring Hughes.

When the Complaint was filed, the United States also filed a proposed settlement that would permit Raytheon to complete its acquisition of Hughes, but require a divestiture and other terms that will preserve competition in the relevant markets. This settlement consists of a Stipulation and Order, Hold Separate and Partition Plan Stipulation and Order, and a proposed Final Judgment.

The proposed Final Judgment orders Raytheon to divest, within one-hundred and eighty (180) calendar days after October 3, 1997 or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later, the FPA Business (as defined in the Final Judgment) of Raytheon TI Systems (''RTIS''), and the EO Business (as defined in the Final Judgment) of Hughes, to an acquirer(s) acceptable to the Antitrust Division of the Department of Justice (''DoJ'') and DoD. RTIS's FPA Business includes the 2nd Gen. scanning and third generation (''3rd Gen.'') staring IR detector businesses (operated out of the Semiconductor Building and the Research West Building, located at the Expressway site in Dallas, Texas), all tangible and intangible assets used in producing those detectors, including production facilities, research and development activities, and all dewar and cryogenic cooler manufacturing assembly.

Hughes' EO Business includes the 2nd Gen. ground EO business operated out of the El Segundo, California and La Grange, Georgia facilities, which produce A-kits and B-kits for ground vehicles and other applications, including the Integrated Bradley Acquisition System (''IBAS''), Thermal Imaging System for the M1 Abrams tank (''M–1 TIS''), Long-Range Advanced Scout Surveillance System (''LRASSS''), and Horizontal Technology Integration Program (''HTI'') programs, all tangible and intangible assets used in producing A-kits and B-kits, production facilities, and research development activities. In addition, Raytheon is required to

provide, at the option of the purchaser, a contract for computer support services and information and communications services sufficient to support the EO Business over a period of one year, and, at the option of the purchaser, an option to purchase or lease manufacturing space in addition to that currently set aside for the EO Business.

Until such divestitures are completed, the terms of the Hold Separate and Partition Plan Stipulation and Order entered into by the parties apply to ensure that the FPA Business and the EO Business shall be maintained as an independent competitor from Raytheon.

In addition to the divestitures, the proposed Final Judgment requires that Raytheon establish firewalls to preserve the independence of the Hughes team competing for the FOTT program (''Hughes ROTT Team'') from the RTIS/Lockheed Martin FOTT joint venture (RTIS FOTT Team). The firewall provisions prohibit the flow of information between the two teams and between either team and any other employee of Raytheon. The Proposed Final Judgment requires Raytheon to delegate to the head of RTIS Missile Systems Division the sole discretion to determine all matters relating to RTIS FOTT Team's bid and to create economic incentives for the RTIS FOTT Team members to ensure all reasonable efforts will be made to submit a competitive bid for the FOTT Program.

The plaintiff and defendants have stipulated that the proposed Final Judgment may be entered after compliance with APPA. Entry of the proposed Final Judgment would terminate the action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Raytheon is a Delaware corporation headquartered in Lexington, Massachusetts. Raytheon produces heavy construction equipment; refrigerators and freezers; radio and TV broadcasting and communications equipment; semiconductors and related devices; aircraft; guided missiles and space vehicles; search, detection and navigation systems; and engineering services. RTIS, a division of Raytheon, produces ground EO systems at a facility in McKinney, Texas and IR detectors at its Expressway facility in Dallas, Texas. Amber, a separate unit of Raytheon, produces detectors at a facility in Goleta, California. In 1996, Raytheon reported total sales of about $12 billion.

General Motors Corporation (''General Motors'') is a Delaware corporation headquartered in Detroit, Michigan. Hughes, a missle and defense electronics company, is an indirect subsidiary of General Motors. Hughes produces ground EO systems at facilities in El Segundo, California and LaGrange, Georgia. Hughes operates the industry's premier detector facility, Santa Barbara Research Center (''SBRC''), in Santa Barbara, California. In 1996, Hughes reported total sales of approximately $6 billion.

HE Holdings, Inc. (''HE Holdings'') is a Delaware corporation headquartered in Detroit, Michigan. Hughes is a direct subsidiary of HE Holdings.

On January 16, 1997, Raytheon entered into an agreement with General Motors to purchase HE Holdings, the parent of Hughes. This transaction, which would, in part, take place in the highly concentrated SADA II detector, staring FPA, ground EO systems, and FOTT missile markets, precipitated the government's suit.

B. The Relevant Markets

SADA II Detectors

IR detectors are sensing devices that convert IR radiation into an electrical signal. The devices detect the differences in that heat emissions between an object and its surroundings, and can therefore produce a thermal image of objects in the device's field of view. The detector consists of linear or mosaic arrays of individual diodes made from semiconductor materials such as mercury cadmium telluride (''MCT'') or indium antimonide ''(InSb''). The detector is attached to a silicon chip or ''readout'' device that contains the circuitry which stores the energy captured by the detector and converts this energy to a voltage signal. When mated to the readout circuit, the detector is often called a focal plane array (''FPA''). The FPA is typically housed in an evacuated cooler dewar assembly which isolates the FPA and cools it to cryogenic temperatures.

The combination of FPA cooler dewar assembly, optics, electronics, software, and a visual display is commonly called a FLIR (Forward Looking Infrared). FLIRs are used for surveillance and weapons fire control purposes in ground and airborne EO systems. FPAs are also used in heat-seeking missile guidance systems and missile warning systems, applications for which no pictorial image is required. Since the Gulf War, great strides have been made in IR technology, and the military is switching from older first generation (''1st Gen.'') lower performance technology to more advanced 2nd Gen. technology in a variety of applications.

Second generation scanning FPAs consist of individual detector elements arranged in two dimensions varying in size from 240×2 to 480×4. The detector is scanned mechanically with mirrors across a field of view. Second generation scanning FPAs differ from 1st. Gen. scanning FPAs in that the readout circuit is mounted directly to the detector material. For this reason, 2nd Gen. FPAs are photovoltaic, while 1st. Gen. FPAs are photo conductive. Scanning FPAs are preferred on ground vehicles because of their wide field of view.

FPAs are distinguished by the spectrum of the electromagnetic wavelength they detect—longwave (''LW''), midwave (''MW'') or shortwave (''SW''). LW is visible in the 8 to 12 micron range, MW in the 3 to 5 micron range, and SW in the 1 to 2 micron range. Short wave is not typically used for tactical applications. InSb is the primary material used for detecting MW IR radiation, and it is only used in staring arrays. MCT, the leading material for detecting LW IR radiation, is used in virtually all scanned arrays, but is also used in staring FPAs.

In the late 1960s, DoD started to develop an IR detector common across all the services. This effort resulted in the 1st Gen. ''common module'' detectors, which were placed in the field in approximately 1970. Since the common module detector is not mounted directly to an integrated readout circuit, fewer detector elements can be placed on the array. Because it has fewer detector elements, the sensitivity and resolution of 1st Gen. FPAs are not as good as that of 2nd Gen. FPAs. First generation detectors were used in Desert Storm, and it was discovered that U.S. weaponry could fire further than the FLIR systems could detect. The desire for EO systems with a range closer to that of the weapon systems motivated the development of 2nd Gen. devices. First generation FPAs are still in use today, although in the early 1990s, the U.S. military stopped placing new 1st Gen FLIRs in the field.

In the late 1980s, the Army's Night Vision Laboratory began development of 2nd Gen. detectors under the Standardized Advanced Dewar Assembly (''SADA'') program. SADA assemblies use a two dimensional MCT array sensitive to LW IR radiation. SADA detectors include four different configurations: SADA I, SADA II, SADA

III A and SADA III B. Each type has different specifications so that one does not substitute for another.

The Army uses a SADA II for ground vehicles. As part of a broader effort undertaken in 1992 to insert a common 2nd Gen. FLIR system into various battlefield platforms, the Army decided to use SADA II detectors in the M1A2 Abrams Tank, the M2A3 Bradley Fighting Vehicle, and the LRASSS. The SADA II is also used in the FLIR for the Improved Targeting Acquisition System (''ITAS'') for the High Mobility Motorized Wheeled Vehicle (''HMMWV'').

Because they do not match the field of view achievable with SADA II detectors, staring FPAs are not viable substitutes for a SADA II detector. Staring FPAs of a size needed to match the field of view obtainable from a scanning FPA are not yet available in LW MCT, which is the only material that meets the Army's needs to see through battlefield smoke, dust, and clutter.

Even if large format LW MCT arrays became available in the future, a switch to such arrays would not be economically justified in response to a small but significant and nontransitory price increase in the SADA II detectors, because of the substantial configuration changes and consequent costs required to replace SADA II detectors in ground vehicles with staring detectors.

Raytheon and Hughes are the only two firms that have sold SADA II detectors to DoD. Hughes qualified as a SADA II supplier in mid-1996, and Raytheon was permitted to bid for 1997 purchases based on its demonstrated success toward completing the qualification process. Raytheon is expected to be fully qualified by the end of 1997. In 1997, about 103 SADA II detectors having a total dollar value of about $6.6 million were purchased, of which 70 percent were supplied by Hughes and 30 percent by Raytheon. DoD projects purchases of 2,945 SADA II detectors through the year 2002, having a total dollar value of about $138.8 million.

Raytheon's acquisition of Hughes would eliminate all competition in the development, production, and sale of SADA II detectors. The proposed acquisition will result in a single supplier with the incentive and ability to raise prices and little or no incentive to minimize cost.

Successful entry into the production and sale of SADA II detectors is difficult, time consuming, and costly. A potential entrant would have to design and develop a product, establish production processes, and complete a rigorous qualification process. A new facility capable of producing SADA II detectors could cost over $20 million. Only one other firm, Sofradir of France, is trying to qualify under the SADA II program. Sofradir, which is partially owned by the French government, is beginning the qualification process. It is unrealistic to expect sufficient new entry in a timely fashion to protect competition in upcoming SADA II purchases.

Staring FPAs

Staring or third generation (''3rd Gen.'') FPAs consist of a mosaic of diodes typically square or rectangular in shape. Since they contain no scanning mechanism, staring FPAs provide an image by staring at the scene and rapidly updating changes in the scene. Staring FPAs are lighter weight than scanning, and they can be more economical to use. Staring FPAs are produced in sizes ranging from 64×64 to 1024×1024. The largest size currently produced for tactical applications, however, is 640×480. Staring FPAs provide greater sensitivity and resolution than scanning FPAs, because they have a larger number of detectors. However, staring FPAs are more difficult to produce than scanning FPAs because of the difficulty in producing large InSb or MCT wafers. Due to their smaller physical size and lighter weight, staring FPAs are used in missile seeker heads and airborne applications where small size and light weight are a premium. Staring FPAs are also the detector of choice for missile warning systems.

Staring FPAs have primarily been made of InSb because it was the first technology capable of producing staring FPAs and the material itself is easier to work with. Staring FPAs are now available using MCT technology.

Raytheon and Hughes are the two leading suppliers of staring FPAs for military programs. Raytheon produces staring FPAs at its RTIS facility in Dallas, Texas and its Amber facility, in Goleta, California. Hughes operates SBRC, the industry's premier staring FPA facility, in Santa Barbara, California. Hughes and Raytheon have supplied or are contracted to supply the staring FPAs on most DoD missile and aircraft programs. DoD projects purchases of about 14,000 staring FPAs over the next five years having a value of about $35 million.

Raytheon's acquisition of Hughes would combine the two leading suppliers of staring FPAs with over 90 percent of the market. The acquisition would create a clear dominant supplier with the incentive and ability to raise prices and little or no incentive to minimize cost.

Boeing Company (''Boeing'') and Lockheed Martin make staring FPAs for military applications, but neither is a major supplier in the tactical market. Boeing has focused on space applications, where the FPA must meet more rigid durability and quality standards. Consequently, FPAs for space applications cost significantly more than FPAs for tactical applications. Lockheed Martin operates a very small, research-oriented staring FPA operation. Boeing would need to refocus its staring FPA business from the higher price space applications and Lockheed Martin would need to invest in a production-oriented facility in order for either to be a more significant supplier in the tactical market.

Successful entry into the production and sale of staring FPAs is difficult, time consuming, and costly. A potential entrant would have to design and develop a product and establish production processes. A new facility capable of producing staring FPAs could cost over $20 million. It is unrealistic to expect new entry in a timely fashion to protect competition in upcoming staring FPA purchases.

The acquisition also likely will result in lessening of competition in the market for missile systems. Raytheon and Hughes are not only suppliers of staring FPAs, but are also major suppliers of the missile systems of which these devices are critical components. With the acquisition of Hughes, Raytheon will control access to virtually all currently viable staring FPAs for tactical applications. Raytheon will have an incentive to refuse to sell, or to sell on disadvantageous terms, its state-of-the-art staring FPAs to its missile competitors. Without access to the latest staring FPAs, a missile manufacturer is at a serious competitive disadvantage.

2nd Gen. Ground EO Systems

A ground EO system is an integrated system with a thermal imager (usually a FLIR), including an integrated cooler dewar assembly with detector, afocal assemblies, and associated electronics. It might also include the optics, electronics, software, visual displays, fire control and stabilization necessary to adapt the system to a particular platform.

Targeting and navigation are the two major types of ground infrared EO systems. Targeting systems, sometimes called ''fire control systems,'' acquire the target and direct the missile or gun round to the target. These systems are much more complex than those used for

navigation, which only need to permit the operator to see the general area.

A ground EO system operating in or on a ground combat vehicle, in the dust, heat and smoke of a battlefield, faces risks and demands that are different from those faced by an EO system on a fighter aircraft or a helicopter operating substantially above the battlefield. Many problems that are unique to designing EO systems for the ground combat environment are not faced in designing and EO system for airborne applications. Among these is the requirement that any FLIR on a tank be able to absorb the tremendous shock of a direct hit and keep functioning. In addition, the shock of the recoil of the gun and the extreme vibrations that constantly accompany the operation of a ground combat vehicle must also be accounted for in designing and producing a group EO system. An EO system operating on the ground may also have to see through several miles of battlefield smoke and debris. For these reasons, the Army spent over $90 million in the early 1990s to specifically develop an EO system for its ground vehicles.

Raytheon and Hughes are the only two firms that develop and produce 2nd Gen. EO systems for ground vehicles. Raytheon's RTIS and Hughes are the only two firms that have established the developmental capacity and low-cost production processes needed to economically produce 2nd Gen. ground EO system.

During the next five years, DoD expects to spend about $200 million a year for 2nd Gen. ground EO systems to be purchased for the following programs: the Improved Target Acquisition System for the HMMWV; the Improved Bradley Acquisition System for the Bradley Fighting Vehicle; the Commander's Independent Thermal Viewer for the M1 Abrams tank; the Thermal Independent Sight for the M1 Abrams tank; the Commander's Independent Viewer for the Bradley Fighting Vehicle; and the Long Range Advanced Scout Surveillance System. Raytheon and Hughes are the only sources for these ground EO systems.

Raytheon's acquisition of Hughes would eliminate all competition in the development, production, and sale of 2nd Gen. ground EO systems for military applications. The proposed acquisition would result in a single supplier with the incentive and ability to raise prices and little or no incentive to minimize cost.

Sucessful entry into the production and sale of 2nd Gen. ground DoD is difficult, time consuming, and costly, Entry requires advanced technology, skilled engineers and specialized equipment. A potential entrant would have to engage in difficult, expensive, and time consuming research to develop and produce 2nd Gen. ground EO systems. It is unrealistic to expect new entry in a timely fashion to protect competition in upcoming 2nd Gen. ground EO systems purchases.

FOTT Program

FOTT is a U.S. Army engineering, manufacturing, and development (''EMD'') program for an advanced missile to replace the current inventory of TOW anti-tank missiles. The program started on March 30, 1995 when the Army issued a Request for Information. An initial draft Request for Proposal was issued on May 15, 1996, a second draft Request for Proposal was issued on February 12, 1997, and a third draft Request for Proposal was issued on August 8, 1997. The Army currently anticipates issuing a formal Request for Proposal for the FOTT program at the end of 1997 or early 1998. A contract for EMD is expected to be awarded in the first half of 1998. Hughes and a joint venture between RTIS and Lockheed Martin, in which RTIS owns a 60 percent interest, are competing for the FOTT program.

The U.S. Army has determined that development of an advanced anti-tank missile is necessary and that no other missile system meets the mission objectives set for the FOTT program.

If Raytheon acquires Hughes, it will control the Hughes FOTT proposal and it will control a 60 percent interest in the RTIS/Lockheed Martin joint venture FOTT proposal. In such a situation, Raytheon has a strong economic incentive to favor its Hughes proposal, where it stands to win 100 percent of the program, over the team in which it has only a 60 percent interest. Raytheon's acquisition of Hughes will eliminate the aggressive competition that would otherwise exist between these independent teams. FOTT is a potential $8 billion to $10 billion program.

It would be very difficult for another firm to successfully enter the FOTT competition at this stage. The Hughes and RTIS/Lockheed Martin Joint venture teams have completed the validation and demonstration stage and have each spent over $20 million during the last three years developing a missile to demonstrate during the EMD selection. Selection of a contractor for the EMD contract is expected during the first half of 1998.

C. Harm to Competition as a Consequence of the Acquisition

Raytheon's acquisition of Hughes would eliminate competition in the research, development, and production of SADA II detectors and ground EO systems, both necessary to ground military weapons systems in the United States. It would combine the two leading suppliers of staring FPAs with over 90 percent of the market. In addition, Raytheon's acquisition of Hughes would eliminate the aggressive competition that would otherwise exist between Hughes and the RTIS/Lockheed Martin joint venture for the FOTT antitank missile. Entry by a new company would not be timely, likely or sufficient to prevent harm to competition in any of these product areas.

The Complaint alleges that the transaction would have the following effects, among others: competition generally in the innovation, development, production, and sale of SADA II detectors, staring FPAs, ground EO systems, and the FOTT missile in the United States would be lessened substantially; actual and future competition between Raytheon and Hughes in the development, production and sale of SADA II detectors, staring FPAs, ground EO systems, and the FOTT missile in the United States will be eliminated; and prices for SADA II detectors, staring FPAs, ground EO systems, and the FOTT missile in the United States would likely increase.

III. Explanation of the Proposed Final Judgment

The provisions of the proposed Final Judgment are designed to eliminate the anticompetitive effects of the acquisition of Hughes by Raytheon.

The proposed Final Judgment provides that Raytheon must divest, within one hundred eighty (180) calendar days after October 3, 1997, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later, the FPA Business of RTIS and the EO Business of Hughes to an acquirer(s) acceptable to the DoJ and DoD. In addition, Raytheon is required to provide, at the option of the purchaser, a contract for computer support services and information and communications services sufficient to support the EO Business over a period of one year, and, at the option of the purchaser, an option to purchase or lease manufacturing space in addition to that currently set aside for the EO Business.

If defendants fail to divest these businesses, a trustee (selected by DoJ in

consultation with DoD) will be appointed by the Court. The trustee will be authorized to sell the FPA Business and the EO Business. The Final Judgment provides that Raytheon will pay all costs and expenses of the trustee. After his or her appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the parties will make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

Divestiture of the FPA Business, the EO Business and the options preserves competition because it will restore the SADA II, staring FPA, and the ground EO systems markets to structures that existed prior to the acquisition and will preserve the existence of independent competitors. Divestiture will keep at least two producers of SADA II detectors and ground EO systems in the market competing for upcoming contracts, which will preserve and encourage ongoing competition in product innovation and development, production, and sales. Divestiture will also maintain at least two major competitors for staring FPAs and prevent missile system manufacturers from being foreclosed from a critical input. The divestiture thus will preserve competition in upcoming programs.

In addition to the divestitures, the Final Judgment requires that Raytheon establish procedures to assure that the current Hughes and the RTIS/Lockheed Martin joint venture remain independent competitors for the FOTT program. The firewall provisions required by the Final Judgment prevent the flow information between Hughes' FOTT team and the RTIS FOTT team and between either team and any other Raytheon employee. Raytheon is required to delegate to the head of its RTIS Missile Systems Division the sole discretion to determine all matters relating to the RTIS FOTT bid to create economic incentives for the RTIS FOTT team members to ensure all reasonable efforts will be made to submit a competitive bid for the FOTT program.

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 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.

V. 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 60 days proceeding 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 (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to entry. The comment 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: J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, N.W., Suite 3000, 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.

VI. 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 Raytheon and General Motors. The United States could have brought suit and sought preliminary and permanent injunctions against Raytheon's acquisition of Hughes.

The United States is satisfied that the divestive of the described assets and the other terms specified in the proposed Final Judgment will encourage viable competition in the research, development, and production of SADA II detectors, staring FPAs, ground EO systems, and the FOTT program. The United States is satisfied that the proposed relief will prevent the acquisition from having anticompetitive effects in these markets. The divestiture of the FPA Business and the EO Business and the other proposed terms will restore the SADA II, staring FPA, ground EO systems, and FOTT missile markets to structures that existed prior to the acquisition and will preserve the existence of independent competitors in those markets.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases 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.'' In making that determination, the court *may* consider—

> (1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing the adequacy of such judgment;
>
> (2) The impact of entry of such judgment 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) (emphasis added). As the Court of Appeals for the District of Columbia Circuit recently held, the APPA permits a court to consider, 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 mechanism are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft,* 56 F.3d 1448 (D.C. Cir. 1995).

In conducting this inquiry. ''the Court is nowhere compelled to go to trail or to engage in extended proceedings which might have a effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' [1] Rather.

[1] 119 Cong. Rec. 24598 (1973). *See also United States* v. *Gillette Co.,* 406 F. Supp. 713, 715 (D.

Continued

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 determining whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, 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, (9th Cir. 1988), *quoting United States* v. *Bechtel Corp.*, 648 F.2d 660,666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981); *see also, Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995). Precedent requires 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 in 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.[2]

The proposed Final Judgment, therefore should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[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.' (citations omitted).''[3]

VIII. 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.

For Plaintiff United States of America:

Dated: October 22, 1997.

J. Robert Kramer II,

Chief, Litigation II Section, PA Bar #23963.

Willie L. Hudgins,

Assistant Chief, Litigation II Section, DC Bar #37127.

and

Janet Adams Nash,

Kevin C. Quin,

Stacy Nelson,

Laura M. Scott,

Nancy Olson,

Tara M. Higgins,

Charles R. Schwidde,

Robert W. Wilder,

Melanie Sabo,

Trial Attorneys, U.S. Department of Justice, Antitrust Division, 1401 H St., NW., Suite 3000, Washington, DC 20530, 202–307–0924, 202–307–6283 (Facsimile).

Certificate of Service

I hereby certify under penalty of perjury that on this 22nd day of October, 1997, I caused copies of the foregoing competitive impact statement to be served via hand-delivery upon the following:

Counsel for Raytheon Company.

Robert D. Paul, Esq.,

Michael S. Shuster, Esq.,

White & Case, 601 13th St., NW., Washington, DC 20005–3807.

Counsel for HE Holdings, Inc., and General Motors Corp.

Robert C. Odle, Esq.,

Peter D. Standish, Esq.,

Douglas A. Nave, Esq.,

Weil, Gotshal & Manges LLP, 767 Fifth Ave., New York, NY 10153–0119.

Willie L. Hudgins, Esq.,

Assistant Chief, Litigation II Section, U.S. Department of Justice, Antitrust Division, 1401 H Street, NW., Suite 3000, Washington, DC 20530, (202) 307–0924.

[FR Doc. 97–29474 Filed 11–6–97; 8:45 am]

BILLING CODE 4410–11–M

Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. 93–1463, 93rd Cong. 2d Sess. 8–9, reprinted in (1974) U.S. Code Cong. & Ad. News 6535, 6538.

[2] *United States* v. *Bechtel*, 648 F.2d at 666 (internal citations omitted) (emphasis added); *see United States* v. *BNS, Inc.*, 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.*, 406 F. Supp. at 716. *See also United States* v. *American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983).

[3] *United States* v. *American Tel. and Tel Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983), *quoting United States* v. *Gillette Co.*, supra, 406 F. Supp. at 716; *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky 1985).

DEPARTMENT OF LABOR

Bureau of International Labor Affairs; U.S. National Administrative Office; National Advisory Committee for the North American Agreement on Labor Cooperation; Notice of Meeting Open to the Public

AGENCY: Office of the Secretary, Labor.

ACTION: Notice meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 94–463), the U.S. National Administrative Office (NAO) gives notice of a meeting of the National Advisory Committee for the North American Agreement on Labor Cooperation (NAALC), which was established by the Secretary of Labor.

The Committee was established to provide advice to the U.S. Department of Labor on matters pertaining to the implementation and further elaboration of the NAALC, the labor side accord to the North American Free Trade Agreement (NAFTA). The Committee is authorized under Article 17 of the NAALC.

The Committee consists of 12 independent representatives drawn from among labor organizations, business and industry, and educational institutions.

DATES: The Committee will meet on December 5, 1997 from 9:00 a.m. to 4:00 p.m.

ADDRESSES: University of Maryland, School of Law, 519 West Fayette St., Room 200, Baltimore, Maryland. The meeting is open to the public on a first-come, first served basis.

FOR FURTHER INFORMATION CONTACT: Irasema Garza, designated Federal Officer, U.S. NAO, U.S. Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room C–4327, Washington, D.C. 20210. Telephone 202–501–6653 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: Please refer to the notice published in the **Federal Register** on December 15, 1994 (59 FR 64713) for supplementary information.

Signed at Washington, D.C. on November 3, 1997.

Irasema T. Garza,

Secretary, U.S. National Administrative Office.

[FR Doc. 97–29486 Filed 11–6–97; 8:45 am]

BILLING CODE 4510–28–M