subsequent litigation. The United States, however, deemed it appropriate to avoid the costs and delays associated with litigation by acceding to a consent decree with Penguin that had the same substantive provisions as the consent decree the Court previously approved, including a provision making it clear that the settlement did not constitute a finding of liability that would harm the settling defendant in follow-on private litigation. The Supreme Court has approved such settlements before. *See, e.g., Swift & Co.* v. *United States,* 276 U.S. 311, 327 (1928) (refusing to vacate injunctive relief in consent judgment that contained recitals in which defendants asserted their innocence); *see also United States* v. *Morgan Stanley,* 881 F. Supp. 2d 563, 568–69 (S.D.N.Y. 2012) (observing that defendants are encouraged ''to settle promptly'' by the Tunney Act provision that makes consent decrees entered before testimony is taken not usable ''against a defendant in private litigation'' (citation omitted)). Indeed, the legislative history of the Tunney Act shows that Congress generally assumed that consent decrees will not include admissions of liability, with Senator Tunney noting in his floor statement that ''[e]ssentially the [consent] decree is a device by which the defendant, while refusing to admit guilt, agrees to modify its conduct and in some cases to accept certain remedies designed to correct the violation asserted by the Government.'' 119 Cong. Rec. 3451. *See also* S. Rep. 93–298, 93 Cong., 1st Sess. 6 (1973) at 5–7; H. Rep. No. 1463, 93 Cong., 2nd Sess. (1974) at 6 (''Ordinarily, defendants do not admit to having violated the antitrust or other laws alleged as violated in complaints that are settled.'').

V. Conclusion

The United States continues to believe that the proposed Penguin Final Judgment, as drafted, provides an effective and appropriate remedy for the antitrust violations alleged in the Complaint and that it is therefore in the public interest.

Pursuant to the Court's January 7, 2013 Order (Docket No. 169), the United States will move for entry of the proposed Penguin Final Judgment after this Response to Comments is published in the **Federal Register** (along with the Internet location where the three comments are posted) and by no later than April 19, 2013.

Dated: April 5, 2013.

Respectfully submitted,

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Certificate of Service

I, Stephen T. Fairchild, hereby certify that on April 5, 2013, I caused a copy of the Response of Plaintiff United States to Public Comments on the Proposed Final Judgment as to the Penguin Defendants to be served by the Electronic Case Filing System, which included the individuals listed below.

For Apple:

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Additionally, courtesy copies of this Competitive Impact Statement have been provided to the following:

For the State of Connecticut:

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DEPARTMENT OF JUSTICE

Antitrust Division

United States v. United Technologies Corporation and Goodrich Corporation; Public Comments and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States hereby publishes below the Response of Plaintiff United States to Public Comments on the proposed Final Judgment in *United States* v. *United Technologies Corporation and Goodrich Corporation,* Civil Action No. 1:12-cv-01230–RC, which was filed in the United States District Court for the District of Columbia on February 12, 2013. Copies of the two comments received by the United States from the public were also filed with the court.

Copies of the comments, as redacted to preserve confidential business information, and the response are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street, NW., Suite 1010, Washington, DC 20530 (telephone: (202) 514–2481), on the Department of Justice's Web site at *http://www.justice.gov/atr/cases/f295000/295087.pdf*, and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of any of these materials may also be obtained upon request and payment of a copying fee.

Patricia A. Brink,

Director of Civil Enforcement.

Response of Plaintiff United States to Public Comments on the Proposed Final Judgment

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (''APPA'' or ''Tunney Act''), the United States hereby responds to the public comments

received regarding the Proposed Final Judgment in this case. After careful consideration of the comments submitted, the United States continues to believe that the Proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violations alleged in the Complaint. The United States will move the Court for entry of the Final Judgment after the public comments and this response have been published in the **Federal Register**, pursuant to 15 U.S.C. 16(d).

I. Procedural History

The United States filed a civil antitrust Complaint on July 26, 2012, seeking to enjoin United Technologies Corporation's (''UTC'') proposed acquisition of Goodrich Corporation (''Goodrich''). The Complaint alleged that the proposed acquisition likely would substantially lessen competition in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, in the worldwide markets for the development, manufacture, and sale of large main engine generators, aircraft turbine engines, and engine control systems for large aircraft turbine engines. That loss of competition likely would result in increased prices, less favorable contractual terms, and decreased innovation in the markets for these products.

Simultaneously with the filing of the Complaint, the United States filed a Proposed Final Judgment, which is designed to remedy the expected anticompetitive effects of the acquisition, and a Hold Separate Stipulation and Order signed by the plaintiffs and the defendants, consenting to the entry of the Proposed Final Judgment after compliance with the requirements of the Tunney Act, 15 U.S.C. 16. Pursuant to those requirements, the United States filed its Competitive Impact Statement (''CIS'') with the Court on July 26, 2012; the Proposed Final Judgment and CIS were published in the **Federal Register** on August 2, 2012, *see United States* v. *United Technologies Corp., et al.,* 77 FR 46186; and summaries of the terms of the Proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the Proposed Final Judgment, were published in *The Washington Post* for seven days beginning on July 31, 2012 and ending on August 6, 2012. The sixty-day period for public comment ended on October 5, 2012; two comments were received, as described below and attached hereto.

II. The Investigation and the Proposed Resolution

On September 21, 2011, UTC and Goodrich entered into a purchase agreement pursuant to which UTC would purchase all of the shares of Goodrich, a transaction that was valued at approximately $18.4 billion. Immediately following the announcement of the merger, the United States Department of Justice (the ''Department'') opened an investigation into the likely competitive effects of the transaction that spanned about ten months. As part of this detailed investigation, the Department issued Second Requests to the merging parties and twenty-four Civil Investigative Demands (''CIDs'') to third parties. The Department considered more than half a million documents submitted by the merging parties in response the Second Requests and by third parties in response to CIDs. The Department also took oral testimony from nine executives of the merging parties, and conducted approximately one hundred interviews with customers, competitors, and other market participants. The investigative staff carefully analyzed the information provided and thoroughly considered all of the issues presented.

As part of its investigation, the Department considered the potential competitive effects of the merger on the markets for numerous products and services and on a variety of customer groups. The Department concluded, as explained more fully in the Complaint and CIS, that the acquisition of Goodrich by UTC likely would have substantially lessened competition in the worldwide markets for the development, manufacture and sale of large main engine generators, aircraft turbine engines, and engine control systems for large aircraft turbine engines.

A. Large Main Engine Generators

As explained more fully in the Complaint and CIS, the acquisition of Goodrich by UTC likely would have lessened competition substantially in the market for the development, manufacture, and sale of large main engine generators, because UTC and Goodrich were the only significant competitors for those generators. As a result of the acquisition, customers likely would face higher prices, less favorable contractual terms, and less innovation, in violation of Section 7 of the Clayton Act.

The Proposed Final Judgment will preserve competition by requiring UTC to divest the Electrical Power Divestiture Assets, i.e., all the Goodrich assets used to design, develop, manufacture, market, service, distribute, repair and/or sell aircraft electrical generation and electrical distribution systems. The tangible assets to be divested include Goodrich's facilities in Pitstone, United Kingdom, and Twinsburg, Ohio, as well as other tangible and intangible assets such as manufacturing equipment, fixed and personal property, contracts, and patents, licenses, know-how, trade secrets, designs, and other intellectual property. In addition, the Proposed Final Judgment provides for transition services agreements and supply agreements that will make the divestiture as seamless as possible and enhance the ability of the acquirer of the divestiture assets to operate those assets as a successful and competitive business.

The Proposed Final Judgment also requires that UTC divest all of the Goodrich shares in the Aerolec joint venture between Goodrich and Thales Avionics Electrical Systems SA. The Proposed Final Judgment requires that the Electrical Power Divestiture Assets and Goodrich's Aerolec shares be divested to the same acquirer. This provision ensures that the interests of the acquirer of the Aerolec shares are aligned with the interests of the acquirer of the Electrical Power Divestiture Assets, which is necessary because the acquirer of the Electrical Power Divestiture Assets will perform the majority of the work within the Aerolec joint venture. In the view of the United States, the divestiture of the Electrical Power Divestiture Assets and the sale of the Goodrich shares in the Aerolec joint venture is sufficient to remedy the anticompetitive effects in the market for large main engine generators that were alleged in the Complaint.

B. Aircraft Turbine Engines

As described more fully in the Complaint and CIS, the acquisition of Goodrich by UTC likely would have lessened competition substantially in both the large aircraft turbine engine market and the small aircraft turbine engine market.

1. Large Aircraft Turbine Engines

UTC, through its Pratt & Whitney subsidiary, and Rolls-Royce are two of only three primary competitors for the development, manufacture, and sale of large aircraft turbine engines. Goodrich was a partner with Rolls-Royce in a joint venture called Aero Engine Controls (''AEC''), from which Rolls-Royce is required to purchase the engine control systems (''ECSs'') for most of its engines. Thus, after the acquisition of Goodrich,

UTC would have been both a producer of large aircraft turbine engines and the sole-source supplier of ECSs to one of its leading engine competitors. In this position, UTC would have had the ability to adversely affect the delivery and cost of the ECSs for Rolls-Royce, and thus the competitiveness of Rolls-Royce's engines. Moreover, UTC would have had the incentive to do so, as the potential resulting additional engine sales for Pratt & Whitney would have produced much higher revenues and profits for UTC than UTC would have lost from the lower sales of ECSs to Rolls-Royce. In addition, UTC would have had access to Rolls-Royce's competitively sensitive information, which could have been used to advantage UTC when competing against Rolls-Royce. If UTC were to reduce the competitiveness of Rolls-Royce as a supplier of large aircraft turbine engines, customers would have had significantly fewer choices, and competition thus would have been lessened substantially.

The Proposed Final Judgment preserves competition by requiring UTC to divest Goodrich's shares of AEC to Rolls-Royce, thus giving Rolls-Royce complete ownership of AEC and preventing UTC from disadvantaging Rolls-Royce in future competitions for large aircraft turbine engines. The United States believes that the divestiture of Goodrich's AEC shares, along with the other requirements in the Proposed Final Judgment, is sufficient to remedy the anticompetitive effects in the market for large aircraft turbine engines, as alleged in the Complaint.

2. Small Aircraft Turbine Engines

UTC, through its Pratt & Whitney subsidiary, is one of only a few significant competitors in the market for the development, manufacture, and sale of small aircraft turbine engines. Several of UTC's competitors purchased from Goodrich the ECSs for certain of their small aircraft turbine engines. Therefore, after the acquisition, UTC would have been both a producer of small aircraft turbine engines and a supplier of ECSs to its competitors. In that position, UTC would have been able to withhold or delay delivery of ECSs to its small aircraft turbine engine competitors, adversely affecting their competitiveness. Moreover, UTC would have had the incentive to do so, as the potential resulting additional engine sales for Pratt & Whitney would have produced much higher revenues and profits for UTC than it would have lost from the lower sales of ECSs to the other small aircraft turbine engine manufacturers. If UTC were to reduce the competitiveness of its competitors in the supply of large aircraft turbine engines, customers would have had significantly fewer choices, and competition thus would have been lessened substantially.

The Proposed Final Judgment will preserve competition by requiring UTC to divest the Engine Control Divestiture Assets, i.e., all the Goodrich assets that are used to design, develop, and manufacture engine control products for small engines. The assets to be divested include Goodrich's manufacturing facility located in West Hartford, Connecticut, and all tangible and intangible assets used by or located at that facility. The divested assets also include certain assets used or located in Goodrich's Montreal facility, as well as assets related to certain maintenance, repair and overhaul services. In addition, the Proposed Final Judgment provides for transition services agreements and supply agreements that will make the divestiture as seamless as possible and enhance the ability of the acquirer of the Engine Control Divestiture Assets to operate them as a successful and competitive business. The United States believes that the divestiture of the Engine Control Divestiture Assets, along with the other requirements in the Proposed Final Judgment, is sufficient to remedy the anticompetitive effects in the market for small aircraft turbine engines, as alleged in the Complaint.

C. Engine Control Systems for Large Aircraft Turbine Engines

In addition to adversely affecting the competitiveness of Rolls-Royce in the supply of large aircraft turbine engines, UTC's purchase of Goodrich's share in AEC also likely would lessen competition substantially in the market for ECSs for large aircraft turbine engines. UTC and AEC are two of the only three producers of such ECSs, and UTC's purchase of Goodrich would give UTC fifty percent ownership of AEC, one of UTC's two main competitors. Competition would be lessened substantially if UTC were to impede AEC's competing to provide replacement ECSs or to form teams to supply ECSs for new engines. Moreover, competition would be lessened substantially, if, as a result of the acquisition, UTC and Rolls-Royce were to use AEC to combine their ECS intellectual property and research and development results, rather than competing independently to develop innovative and cost-effective ECS solutions. The United States believes that the divestiture of the Goodrich AEC shares is sufficient to remedy the anticompetitive effects in the market for ECSs for large aircraft turbine engines, as alleged in the Complaint.

III. Summary of Public Comments and the Responses of the United States

During the 60-day comment period, the United States received comments from (1) Williams International and (2) Joseph C. Jefferis. The comments are attached to this response. As explained in detail below, after consideration of the two comments, the United States continues to believe that the Proposed Final Judgment is in the public interest.

A. Williams International

1. Summary of the Comment

Williams International (''Williams'') competes with UTC's Pratt & Whitney in the development, manufacture and sale of small aircraft turbine engines, and purchases the ECSs for some of its engines from Goodrich. In its Comment, Williams notes that it had serious concerns regarding the likely impact of the acquisition on both the pricing and continued availability of the full authority digital engine control (''FADEC'') systems of the Engine Control Divestiture Assets. Williams states that the Proposed Final Judgment ''does appear to be a thoughtful, good faith attempt to deal with those concerns,'' but that ''there are still a number of discrete issues that Williams International believes the [Proposed Final Judgment] does not fully and adequately address.'' Williams then describes ''three remaining primary areas of concern.''

First, Williams is concerned that the Proposed Final Judgment does not adequately protect from disclosure to either UTC or potential acquirers the confidential information of customers of the Engine Control Divestiture Assets, such as Williams. For example, Williams considers Section V.A of the Hold Separate Stipulation and Order, which requires UTC to keep competitively sensitive information of the Engine Control Divestiture Assets separate from UTC's, to be ambiguous as to whether it applies to customer information in the possession of the Engine Control Divestiture Assets. Williams also notes that this provision does not appear to apply to the sharing of information with potential purchasers of the engine control assets.

Similarly, Williams finds ''woefully inadequate'' Section IV.B of the Proposed Final Judgment, which requires UTC to provide to prospective purchasers of the Engine Control Divestiture Assets, ''subject to customary confidentiality assurance, all

information and documents relating to [the Engine Control Divestiture Assets] customarily provided in due diligence.'' Williams argues that standard due diligence protections are not sufficient in this matter, because the Proposed Final Judgment could be considered to supersede private nondisclosure agreements.

Second, Williams takes issue with the United States having ''sole discretion'' to accept or reject an acquirer of the Engine Control Divestiture Assets. Williams assumes that this means that the United States's evaluation of potential purchasers will be performed without any input from engine manufacturers. Williams also takes issue with the requirement that the purchaser of the assets have ''the intent and capability * * * of competing effectively'' in engine controls, asserting that an acquirer also should demonstrate that it is likely to become a ''suitable long-term business partner'' to the engine manufacturers.

Finally, Williams has concerns about the provisions in the Proposed Final Judgment and Hold Separate Stipulation and Order designed to protect the viability of the divested assets prior to their sale. Williams asserts that the Proposed Final Judgment provides ''virtually nothing'' relating to UTC's obligations to maintain the Engine Control Divestiture Assets prior to their sale, ''particularly with respect to personnel.'' It also argues that the provisions of the Hold Separate Stipulation and Order are inadequate to prevent the movement of personnel away from the divested business. Williams cites as an example of its concerns the appointment of Curtis Reusser, former president of Goodrich's Electronic Systems segment, to the position of president of the Aircraft Systems business within UTC Aerospace Systems, in which capacity he oversees portions of the acquired Goodrich business that are not subject to divestiture. Williams claims that, during his tenure with Goodrich, Mr. Reusser was directly involved in dealings with Williams regarding Goodrich's performance under its contract, and with all details of the parties' business relationship.

3. Response of the United States

Regarding Williams's concerns about the confidentiality of its information in the possession of the Engine Control Divestiture Assets, the United States believes that the protections of the Hold Separate Stipulation and Order and the Proposed Final Judgment are sufficient. Paragraph V.A of the Hold Separate Stipulation and Order requires UTC to operate the Engine Control Divestiture Assets so that the ''management, sales, and operations * * * are held entirely separate, distinct, and apart from those of UTC's other operations.'' This paragraph also specifically requires that sensitive information relating to these products be ''kept separate and apart from other UTC operations.'' To assert that customer information will be accessible by UTC despite these provisions would require a strained interpretation contrary to the plain language of the Hold Separate Stipulation and Order.[1]

As for Williams's assertion that its confidential information might not be properly protected against discovery by potential acquirers of the divestiture assets, the United States sees no reason to provide additional protection for this type of information. In most acquisitions, the purchaser undertakes a ''due diligence'' investigation to confirm the value of the business that is being purchased. This investigation necessarily involves information that is confidential, possibly including information relating to the acquired company's customers.[2] Potential acquirers who wish to review such information generally are required to hold such information confidential, often signing nondisclosure agreements that bar dissemination or use of the information. Williams provides no reason to believe that such information is at greater risk of disclosure or improper use here than in any other asset sale. The additional degree of protection apparently sought by Williams would make the divestiture process unnecessarily burdensome, possibly deterring potential acquirers and thus thwarting the central goal of the Proposed Final Judgment, which is expeditious divestiture to a suitable purchaser.[3] Williams also provides no support for its concern that the ''scrutiny of the DOJ'' will somehow lead to reduced confidentiality protections, or for its view that the Proposed Final Judgment might be held to ''take precedence over private non-disclosure agreements.'' Nothing in either the Proposed Final Judgment or the Hold Separate Stipulation and Order suggests any such counterintuitive outcome. If anything, fear of the ''scrutiny of the DOJ''—and surely that of this court—will lead to more protection of confidential information rather than less.

Williams need have no concern about the scope of the review undertaken by the United States. While the United States has sole discretion to decide whether a divestiture to a particular proposed acquirer meets the objectives of the Proposed Final Judgment, the United States's evaluation includes consideration of information from numerous sources, including affected customers. Information gathered by the United States during its investigation of UTC's proposed acquisition of Goodrich, including conversations with dozens of customers, is taken into account in this evaluation, and new interviews with customers also are undertaken. The United States also considers the financial resources and business plans of the proposed acquirer, to ensure that the divested assets will be maintained as a long-term competitive force in the market. This is no mere cursory review. Indeed, after a thorough evaluation of documentary information, responses to questions, and information provided by potentially affected customers, the United States rejected the first acquirer proposed by the defendants for the Engine Control Divestiture Assets.

Finally, the United States disagrees with Williams's assertion that the Proposed Final Judgment and Hold Separate Stipulation and Order do not adequately protect the viability of the assets pending their sale. As Williams notes, the Hold Separate Stipulation and Order contains provisions requiring the defendants to maintain the viability of the assets. Paragraph V.D requires defendants to use ''all reasonable efforts to maintain and increase the sales and revenues of all products produced by or sold by'' the Engine Control Divestiture Assets, as well as maintaining promotional, sales, technical assistance,

[1] In virtually every lawsuit in which it agrees to a divestiture remedy to resolve the competitive harm from a proposed acquisition, the United States enters into a Hold Separate Stipulation and Order with the merging parties. The language of Paragraph V.A of the Hold Separate Stipulation and Order is routinely included in such documents. The United States is unaware of other instances in which customers of a divested business have expressed similar concerns.

[2] In fact, Paragraph IV.B of the Proposed Final Judgment *requires* the defendants to disclose such information as is ''customarily provided in a due diligence process,'' in part to help ensure that the assets are sold to an acquirer that will maintain them as a competitive force in the market. However, the information so provided is ''subject to customary confidentiality assurances.''

[3] In its Comment, Williams notes that ''[t]he DOJ may respond that requiring customary confidentiality assurances pursuant to the due diligence process is no different than what would generally apply in the case of any private contractor of Williams International being sold to a prospective buyer, and that this level of protection in the [Proposed Final Judgment] should be sufficient.'' Williams Comment, p.6. That is precisely the case. Williams provides no justification for burdening the divestiture process by giving this information additional protection not typically provided in due diligence investigations.

and other forms of support for the business. Paragraph V.E requires UTC to provide sufficient working capital and lines and sources of credit to maintain the Engine Control Divestiture Assets as an economically viable and competitive, ongoing business. Paragraph V.F requires UTC to take ''all steps necessary to ensure that the [Engine Control Divestiture Assets] are fully maintained in operable condition at no less than current capacity and sales.'' The requirements of the Hold Separate Stipulation and Order are sufficient to mandate a level of support from UTC for the Engine Control Divestiture Assets, without being so detailed that the operation of the assets is encumbered rather than maintained at its former level of independence.

As for the concern about the retention of employees of the Engine Control Divestiture Assets, the provisions of the Hold Separate Stipulation and Order are designed to prevent UTC from stripping valuable employees from the Engine Control Divestiture Assets by transferring them, or soliciting or encouraging them to move, within UTC. Section V.J of the Hold Separate Stipulation and Order bars the defendants from transferring or reassigning individuals who have ''primary responsibility'' for the products produced by the assets to be divested. The interests and desires of individual employees must be respected, however, and they cannot be forced to remain with the Engine Control Divestiture Assets against their will.

In the specific case of Mr. Reusser, the United States was aware of the plan for his transfer during the negotiation of the Proposed Final Judgment. Although Mr. Reusser supervised the Goodrich organization responsible for products produced by the Engine Control Divestiture Assets, he was also responsible for other Goodrich divisions producing a wide range of products not at issue in this case, such as sensors, integrated systems, and intelligence, surveillance and reconnaissance systems.[4] Therefore, the products of the divestiture assets were not Mr. Reusser's ''primary responsibility'' as that term is used in Section V.J of the Hold Separate Stipulation and Order, and his transfer thus is not prohibited.

[4] Williams also complains that Alan Oak, the Vice President and General Manager of GPECS, has left the company. Mr. Oak has retired, and the United States does not believe it would be reasonable to require UTC to persuade Mr. Oak not to do so.

B. Joseph C. Jefferis

1. Summary of the Comment

Mr. Joseph C. Jefferis identifies himself as a ''former Goodrich Corporation Risk and Control Specialist with Sarbanes-Oxley responsibilities,'' who served in that capacity from September 2003 to June 2007, when he was ''terminated.'' He states that he filed for whistleblower status with the U.S. Department of Labor in August 2006.

In his comment, Mr. Jefferis recounts several incidents that he says he raised with the Department of Labor relating to Goodrich's conduct, including allegations relating to the Foreign Corrupt Practices Act, insider trading, price-fixing and collusion, and accounting irregularities. One allegation that appears to be of particular interest to Mr. Jefferis relates to a ''Community Action Alert'' and ''a series of dormant alternative fuel cell patents.'' Mr. Jefferis expresses concern that ''dormant patent information I obtained during the secretive 'Community Action Alert' scheme that [a Goodrich representative] engaged me in was given to United Technologies unbeknownst to Goodrich Corporation shareholders and the positive outcome of the scientific studies of the patent information I provided resulted in the favorable terms of the merger agreement.'' He further alleges that various financial institutions might have been misled about certain licenses in approving financing for the acquisition, and appears to state that the acquisition of Goodrich by UTC will create a monopoly ''around this technology.'' Mr. Jefferis summarizes his allegations as follows:

> It is my worry and concern that a combined Goodrich Corporation and United Technologies poses significant risks to national security given their history of export compliance violations, the unresolved export compliance issues I raised, the corporate espionage I may have engaged in, the bizarre handling of my reporting accounting concerns to the external audit firm, the perjury of [the Goodrich representative], the secrecy surrounding the Community Action Alert patents, and now the 'reinvention' using the prior art information.

2. Response of the United States

The Proposed Final Judgment is designed to remedy the competitive concerns raised by the acquisition of Goodrich by UTC, as alleged in the Complaint. Most of Mr. Jefferis's complaints do not relate to the likely competitive effect of the acquisition. Mr. Jefferis may be concerned, in part, about a possible monopoly in a certain fuel cell technology. Even so, the United States found no evidence that the acquisition of Goodrich by UTC would have an anticompetitive effect in fuel cells; therefore, the Complaint contains no such allegation. Mr. Jefferis's complaint is thus beyond the purview of this proceeding.

IV. Standard of Judicial Review

The APPA requires that proposed consent judgments in antitrust cases brought 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.'' 15 U.S.C. 16(e)(1). In making that determination in accordance with the statute, the court is required to consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, 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)(1)(A)–(B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *InBev N.V./S.A.,* 2009–2 Trade Cas. (CCH) ¶76,736, No. 08–1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the Final Judgment are clear and manageable'').

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA, a court considers, 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 mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. 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, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held 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 is 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.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[5] In determining whether a proposed settlement is in the public interest, the court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[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.''' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). Therefore, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

In its 2004 amendments to the Tunney Act,[6] Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, stating ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public-interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[7]

IV. Conclusion

The United States continues to believe that the Proposed Final Judgment, as drafted, provides an effective and appropriate remedy for the antitrust violations alleged in the Complaint and that the Proposed Final Judgment therefore is in the public interest.

The United States will move this Court to enter the Proposed Final Judgment after the comments and this response are published in the **Federal Register**.

Dated: February 12, 2013.

Respectfully submitted.

Kevin C. Quin, Esquire,

United States Department of Justice, Antitrust Division, Litigation II Section, 450 5th Street NW., Suite 8700, Washington, DC 20530, Phone: (202) 307–0922, Fax: (202) 514–9033, *kevin.quin@usdoj.gov.*

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[5] *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

[6] The 2004 amendments substituted the word ''shall'' for ''may'' when directing the courts to consider the enumerated factors and amended the list of factors to focus on competitive considerations and address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), *with* 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

[7] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) (''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 determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	
Plaintiff,	
	Case No. 1:12-cv-01230-RC
v.	
	Hon. Rudolph Contreras
UNITED TECHNOLOGIES CORPORATION	
and	
GOODRICH CORPORATION,	
Defendants.	

COMMENTS TO PROPOSED FINAL JUDGMENT
BY INTERESTED THIRD PARTY
WILLIAMS INTERNATIONAL CO., LLC

Pursuant to 15 U.S.C. § 16(b), Williams International Co., LLC ("Williams International" or "Williams")), by and through its undersigned counsel, submits its Comments to the Proposed Final Judgment (PFJ), filed in the above-captioned case on July 26, 2012.

INTRODUCTION

Williams International has been an interested third party throughout the investigative process conducted by the Department of Justice (DOJ) and the European Commission (EC) regarding the proposed acquisition of Goodrich Corporation (Goodrich) by United Technologies Corporation (UTC). Indeed, Williams International was in close contact with both DOJ and the EC and submitted substantial information at the request of those bodies.

Williams International is a manufacturer of small aircraft turbine engines. In 2001, it entered into a Long Term Agreement (LTA) with Goodrich Pump & Engine Control Systems, Inc. (GPECS), a wholly owned subsidiary of Goodrich. The LTA called for Goodrich to design and produce a line of engine control systems, to perform to specifications required by Williams International, for use in various of its small aircraft engines. The specific engine control systems required by Williams International are in the nature of Full Authority Digital Engine Controls (FADEC), comprised of a Fuel Delivery Unit and Electronic Control Unit.

As discussed in DOJ's Complaint and Competitive Impact Statement filed in this case, there are an extremely limited number of companies capable of producing custom FADEC systems of the type required by Williams International. At this point, GPECS may, in fact, be the sole viable source of FADEC systems available to Williams International, at least for the next 3-5 years, which is the amount of time needed to gear up and gain necessary approvals for a new producer. Due to the fact that UTC is a direct competitor to Williams International in the manufacture of small aircraft engines, its proposed acquisition of Goodrich and its GPECS

subsidiary raised serious concerns for Williams International regarding the likely impact of the acquisition on both the pricing and continued availability to Williams International of GPECS FADEC systems.

Initially, Williams International indicated to DOJ and the EC that it was opposed to the proposed merger, based on its concerns that a viable solution to the antitrust concerns raised by the merger could not be adequately addressed and remedied were the merger to be approved. While the PFJ does not completely eliminate Williams International's concerns, it does appear to be a thoughtful, good faith attempt to deal with those concerns. Nonetheless, there are still a number of discrete issues that Williams International believes the PFJ does not fully and adequately address, and as to which Williams International feels the need to comment and submit proposed revisions of the PFJ for DOJ's and the Court's consideration.

Discussed below are the three remaining primary areas of concern. First, is the concern that the PFJ does not appear to fully protect the confidential and proprietary information of some Goodrich customers, such as Williams International, through the process of divestiture of the Engine Control Divestiture Assets (ECDA), which include GPECS.

Second, Williams International is concerned that the process for vetting and approving potential acquirers of the ECDA does not contemplate the input of any of the customers of the Goodrich ECDA, and is left to the sole discretion of DOJ. Clearly, the customers, including engine manufacturers, who rely on GPECS, have the direct experience with the marketplace and the greatest knowledge of the technical aspects of the products involved. Thus, their input is critical to finding an acquirer of the ECDA which is both able and willing to continue the operations at an adequate long-term level.

Finally, Williams International is concerned that GPECS may not be maintained during the divestiture process at a satisfactory level of operations pending its divestiture, as key personnel leave the company – some to transfer to the UTC side of operations – and that UTC has no substantial incentive to invest in maintaining GPECS's performance levels, other than to meet the bare minimums required by the PFJ. These points are discussed in more detail, as follows.

1. ***Protection of Customer Confidential Information and Trade Secrets***

The DOJ expressly acknowledges in its Competitive Impact Statement (CIS) at 12:

> An ECS, including the FADEC, is designed and developed to meet the specific performance requirements of the particular engine on which it will be installed. As a result, the ECS supplier has insight into the design and cost of not only its ECS, but also the customer's engine. ECS suppliers that provide the application software also have access to competitively sensitive confidential business information about the fuel efficiency and performance principle around which the customer's engine is designed.

Recognizing the highly sensitive and confidential nature of customer information possessed by the ECS supplier, one would have expected that the PFJ would include substantial provisions to protect such information from being divulged in any manner by Goodrich to either (1) UTC or (2) a potential Acquirer of the divestiture assets to whom a given customer of Goodrich may not want its proprietary information divulged. The reason for the first safeguard is obvious, at least in the case of Williams International. UTC is a direct competitor of Williams and must be prevented from obtaining any confidential Williams information. The second safeguard is justified by the fact that an ECS customer, such as Williams, has no way of knowing which companies may be seeking to acquire the divestiture assets, nor, of course, which company will ultimately acquire them.

It cannot be left to the discretion of the DOJ, Goodrich, or anyone else, to determine to whom Williams International's confidential information is to be given. The potential and/or actual acquirers may include companies that Williams perceives as actual or potential competitors in some respect, or simply as companies that could ever be capable of meeting Williams International's needs. Further, the actual Acquirer may be a company with which Williams International (or another ECS customer) may decide, for whatever reason, that it does not wish to do business. Therefore, there needs to be an unbreachable firewall around customer confidential information that will prevent it from reaching UTC or any potential acquirer, absent the express written authorization of Williams International (or other similarly situated ECS customers).

The documents promulgated by DOJ do not appear to provide for that level of protection. The Hold Separate Stipulation and Order, as it relates to the Engine Control Divestiture Assets, states only, as relevant to protection of confidential information:

> UTC shall take all steps necessary to ensure that . . . (3) the books, records, competitively sensitive sales, marketing, and pricing information, and decision-making concerning design, development, manufacture, servicing, distribution, repair and sales of Engine Control Products will be kept separate and apart from UTC's other operations.

Hold Separate Stipulation and Order at 11. This provision does not make clear that it relates to information other than Goodrich's own information. Neither does it specifically include information relating to the customer's specifications, designs, plans, etc. relating to their engines other than, possibly, relating to Goodrich's "**decision-making** concerning, design, development, [etc.] of Engine Control Products." Documents relating to Goodrich's decision making may not comprise the same set of documents as those subsuming a customer's confidential information. This section provides little comfort that Williams International's confidential information would

not reach the hands of UTC. Moreover, it in no way specifically limits the divulging of information to any third parties other than UTC, such as potential acquirers of the divestiture assets.

The PFJ fares little better in protecting sensitive customer information. First, the PFJ makes clear that the Engine Control Divestiture Assets to be provided to the Acquirer include intangible assets such as all "contractual rights"; "technical information"; "blueprints'; "designs"; "design protocols"; "specifications for materials . . parts and devices"; "research data concerning historic and current research and development efforts"; etc. This would appear to subsume confidential customer information falling within these and other relevant categories. *See* PFJ, Definition M, at 4.

The PFJ further provides that:

> Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the [ECDA] customarily provided in a due diligence process except such information or documents subject to the attorney-client privilege or work-product doctrine.

See PJF IV.B. at 11.

First, it is unclear that this section refers to information other than Goodrich confidential information. Moreover, even if it were interpreted to apply to customer confidential information, the generic reference to "customary confidentiality assurances" is woefully inadequate. There appears to be no other reference to confidentiality concerns in the PFJ.

The DOJ may respond that requiring customary confidentiality assurances pursuant to the due diligence process is no different than what would generally apply in the case of any private contractor of Williams International being sold to a prospective buyer, and that this level of protection in the PFJ should be sufficient. The divestiture in this case, however, is not a simple,

private, free market transaction. The divestiture will be governed by the PFJ, and subject to the direct scrutiny of the DOJ, as the body with power to approve or object to any proposed divestiture. Due to the authority of the Final Judgment, which may take precedence over private non-disclosure agreements, as well as the power of the DOJ with regard to all proposed acquisitions, the PFJ should contain a belt and suspenders provision that clearly, in its own right, provides substantial safeguards against the divulging of customer confidential information.

Given the critical sensitivity of the type of information that would comprise customer confidential information in the context of aircraft turbine engines and components thereof, including ECS, and recognizing that once that horse is let out of the barn it is too late to close the gate, utmost care must be taken to ensure that each customer has the absolute ability to determine the extent to which any of its confidential information is divulged, and to whom.

Proposed Revision: The PFJ should clearly state that no customer confidential information is to be provided to (1) UTC or (2) any potential or actual acquirer of the ECDA, without the express written consent of the customer (to be obtained, in the case of (2), after the customer is informed of the identity of the potential or actual acquirer to whom the confidential information is proposed to be divulged).

2. ***Selection of an Appropriate Acquirer***

The PFJ provides for Defendants to seek out potential acquirers of the ECDA that are "acceptable to the United States, in its sole discretion." *See, e.g.,* PFJ sec. IV.A. at 10. The PFJ also provides the protocol for approval of an Acquirer, by which UTC will provide notice to DOJ, along with material information, and DOJ will then either approve or object to the divestiture. Only DOJ, or UTC (under limited circumstances where a Divestiture Trustee has

designated an Acquirer), has the right to object to consummation of the divestiture. *See* PFJ sec. VIII at 33-34.

The DOJ has recognized, however, that the market for the production of Engine Control Systems is an extremely limited one. As observed in the CIS, there are only three producers of ECS for large aircraft turbine engines. *See* CIS at 20. Although not explicitly stated in the CIS, the number of producers of ECS for small aircraft turbine engines is also extremely small, approximately four in number, including Goodrich (and one of which is owned by UTC and is therefore a non-viable source for Williams International).

It is also well established that ECS are an essential component of all aircraft turbine engines. It is therefore critical to select an Acquirer of the ECDA that will remain a committed manufacturer of ECS and will maintain GPECS as a fully viable producer of ECS, at the very least over the years that would be required for Williams to gear up an alternate source of ECS.

Under these circumstances, to place the decision as to the identity of the Acquirer of the ECDA solely in the hands of DOJ, with no input from the engine manufacturers who will critically rely upon the products and services of the Acquirer, seems to be taking unwarranted risks as to the ongoing stability and viability of the market for production of ECS.

The PFJ states that the DOJ will seek an Acquirer that "in the United States's sole judgment, has the intent and capability . . . of competing effectively . . ." in the Engine Control Products market. PFJ at 17. Mere intent and capability, however, do not necessarily translate into an actual long-term commitment to the market. There appears to be nothing in the PFJ that establishes any parameters for the DOJ to ascertain the actual likelihood of the proposed Acquirer becoming a suitable long-term business partner of the few engine manufacturers who will be directly affected by the acquisition.

Given the depth of knowledge of the aircraft engine manufacturers – both as to their own needs and the science of aircraft engine design and production in general – it seems imprudent to exclude them entirely from the process of vetting a prospective acquirer of the ECDA, who will in all likelihood become their *de facto* future supplier of ECS, given the lack of elasticity in the market.

Proposed Revision: **The PFJ should be modified to provide for input from the aircraft engine manufacturers into the process for approving an Acquirer of the ECDA, to help ensure the selection of an Acquirer that will be an acceptable long-term supplier and business partner of the aircraft engine manufacturers.**

3. ***Maintaining the Quality and Viability of the ECDA (GPECS) Pending Divestiture***

As discussed in the previous section, and as noted repeatedly by the DOJ, it is essential to maintain the ongoing viability of the ECDA, and its ability to operate at least at the same level as it did pre-merger, so as not to deprive the aircraft turbine engine manufacturers of the ability to obtain ECS in the coming years, at least until alternate sources can be established. The PFJ, while, including many provisions related to UTC providing assistance and transition services to the ultimate Acquirer, contains virtually nothing relating to the level at which UTC must maintain the ECDA prior to the divestiture, particularly with respect to personnel.

The Hold Separate Stipulation and Order provides some very general requirements for UTC to maintain the quality of the ECDA. These include Sections V.(D) and V.(F), which require respectively that UTC "use all reasonable efforts to maintain and increase the sales and revenues of all products produced by or sold by the [ECDA]" . . . including the maintenance of current support levels in various areas (Sec. V.(D)) and that "UTC shall take all steps necessary

to ensure that the [ECDA] are fully maintained in operable condition at no less that current capacity and sales . . . ." (Sec. V. (F))

Whereas these provisions are extremely general and susceptible of subjective interpretation, with regard to employees and personnel of the ECDA the Hold Separate Order is more detailed, providing in Section V.(J):

> Defendants' employees with primary responsibility for the design, development, manufacture, marketing, servicing, distribution, repair and/or sale of any of the products produced with the [ECDA] . . . shall not be transferred or reassigned to other areas within Goodrich or UTC, except for transfer bids initiated by employees pursuant to Defendants' regular, established job-posting policy. Defendants shall provide the United States with ten calendar days' notice of such transfer. . . .

Despite the seeming protections this section affords against the transfer of key GPECS personnel within UTC, Williams International recently learned that Curtis Reusser, the President of GPECS (*see* **Exhibit A**, printout from Connecticut Secretary of State database) has been transferred within UTC to become President of UTC's Aircraft Systems Group. (*See* **Exhibit B**, article showing organizational hierarchy of UTC.)

This being the case, it clearly suggests that both UTC and DOJ (if it was given the 10 days' notice provided for in Section V.(J)) do not consider the transfer of the individual who is the President of both GPECS and of the Goodrich Segment subsuming GPECS to fall within the purview of the restrictions of Section V.(J). This is a highly problematic interpretation of Section V.(J), particularly considering that Curtis Reusser was directly involved in communications and discussions with Williams International regarding alleged failures of GPECS to perform satisfactorily under the parties' Contract, as well as with all details of the parties' business relationship, including commercial and technical issues. This is precisely the type of individual that the Hold Separate Order and the PFJ should be concerned about moving

into a leadership position in UTC's Aircraft Systems Group. It raises the obvious concern that UTC's porting over personnel – including the highest level personnel – from the Goodrich side to the UTC side of operations will increase the likelihood of customer confidential information and trade secrets being divulged to UTC. Apparently, however, the DOJ does not read that concern into those documents.

The illusory nature of the protections of Section V.(J) are further amplified by the carve-out to the proscription regarding transfer of key personnel; specifically, the exemption for "transfer bids initiated by employees pursuant to Defendants' regular, established job-posting policy." This clause is an invitation to UTC to evade provisions of Section V.(J) simply by posting jobs on the UTC side of operations internally, and then having Goodrich personnel put in transfer bids for those jobs. It is a gaping loophole that completely eviscerates the presumed protections of Section V.(J), and which would permit UTC to raid the GPECS employee roster and deplete it of its critical personnel. This would not only render GPECS non-viable, but would also port over to UTC employees with intimate knowledge of the Williams International projects and products being worked on by GPECS. This cannot be the intended consequences under the PFJ and Hold Separate Order, but it clearly appears to be the unintended consequences.

Finally, neither the PFJ nor the Hold Separate Order impose any obligations whatsoever upon UTC or GPECS to attempt to retain personnel who might be inclined to leave the company during the period pending divestiture. For example, Williams International has learned that Alan Oak, the Vice President and General Manager of GPECS, is leaving his position with the company. No information is known to Williams International as to whether the Defendants made any attempt, including the use of economic incentives, to retain Mr. Oak. The depopulating of the Goodrich organizational chart at the highest levels may be in UTC's interest,

but it is clearly not in the interest of maintaining GPECS as a viable producer of engine control systems going forward. A sale of the physical assets of the ECDA without the necessary personnel to effectively run the company will not protect the market, other than in the most illusory sense.

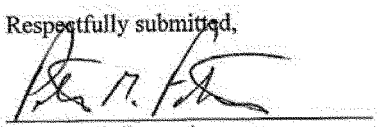
Proposed Revision: First, the PFJ and Hold Separate Order should be modified to strictly prohibit UTC from transferring Goodrich personnel to the UTC side of operations prior to the divestiture of the ECDA. Second, UTC should be required to use all commercially reasonable efforts, including economic incentives, to retain the Goodrich ECDA staff, particularly in the critical administrative and technical areas, pending divestiture.

CONCLUSION

While the Proposed Final Judgment has the potential to effectively address most of the issues with which the DOJ was concerned, as regards the UTC/Goodrich merger, the PFJ (and documents ancillary thereto) leave a number of issues inadequately addressed and remedied. For all the reasons stated above, the Court should require the Proposed Final Judgment to be amended in accordance with the three Proposed Revisions recommended herein by Williams International.

Date: September 12, 2012

Respectfully submitted,

By: 

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I CERTIFY that on September 12, 2012, I served a copy of the foregoing document on the following, by depositing a copy with Federal Express for overnight delivery to:

Maribeth Petrizzi
Chief, Litigation II Section, Antitrust Division
U.S. Department of Justice
Suite 8700
450 Fifth St., N.W.
Washington, D.C. 20530

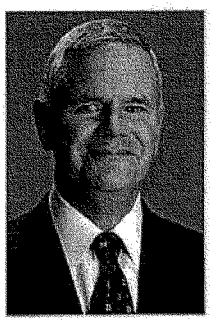
Date: September 12, 2012

By: Jacqueline DeLevie
Jacqueline DeLevie

Exhibit A

About UTC > Executive Leadership

Curtis Reusser, President, UTC Aerospace Systems – Aircraft Systems



Curtis Reusser became president of the Aircraft Systems business segment of UTC Aerospace Systems on July 26, 2012, reporting to Alain Bellemare, President & CEO of UTC Propulsion and Aerospace Systems. The Aircraft Systems business segment has seven business segments: Actuation Systems, Aerostructures, Air Management Systems, Interiors, Landing Gear, Propeller Systems and Wheels & Brakes.

Prior to this role, he was president of the Electronic Systems strategic business unit at the Goodrich Corporation. Reusser joined Goodrich in 1988 when it acquired TRAMCO, where he was manager of Engineering. He held roles of increasing responsibility in Goodrich's Maintenance, Repair and Overhaul (MRO) operations before being appointed general manager of Goodrich MRO Europe based in the UK. He returned to the U.S. as vice president and general manager, Product and Process Definition at the company's Aerostructures division in 1999.

He was appointed president of the Aerostructures division in 2002, and was named president, Electronic Systems in December 2007. Prior to joining Goodrich, Reusser worked in engineering roles at General Dynamics and Heath Tecna.

Reusser holds a bachelor's degree in industrial engineering degree from the University of Washington and a certificate in business management from the University of San Diego, California.

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BACK

Welcome to UTC Aerospace Systems! Page 1 of 2

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Dear valued customer

I am pleased to announce that United Technologies Corp. has completed its acquisition of Goodrich Corp. and combined it with Hamilton Sundstrand to create UTC Aerospace Systems. We will provide innovative solutions, the highest-quality systems and services, and ensure everything we deliver is backed by global, world-class customer support. At the heart of our new organization is a deep commitment to putting customers first. Here is a high level view of our new organization.

UTC Propulsion & Aerospace Systems
Alain Bellemare
President & COO

Power, Controls & Sensing Systems	Aircraft Systems	UTC Aerospace Systems	UTC Aerospace Systems
Mike Dumais	Curtis Reusser	Customer Service	OE Aerospace Customers &
President	President	Cindy Egnotovich	Business Development
		President	Jack Carmola
			President
Electric Systems	Aerostructures		
Engine Components	Actuation Systems		
Engine & Control Systems	Air Management Systems		
Fire Protection Systems	Interiors		
ISR Systems	Landing Gear		
Sensors & Integrated Systems	Propellers		
Space Systems	Wheels & Brakes		

UTC Aerospace Systems operates through two business segments: Aircraft Systems and Power, Controls & Sensing Systems. The Aircraft Systems segment is led by Curtis Reusser and the Power, Controls & Sensing Systems segment is led by Mike Dumais. Customers in both segments are supported by a global, 24/7 Customer Service organization, led by Cindy Egnotovich. Each segment will have a Customer Service leader with responsibility for overall performance and execution - Paul Snyder for Aircraft Systems and Jim Patrick for Power, Controls & Sensing Systems. Relationships with OE customers will be handled by an Aerospace Customers & Business Development team led by Jack Carmola.

As we transition to a combined organization, our goal is to provide world-class support and also ensure that our customers experience no disruption. With this in mind, you will not see any immediate change to your existing points of contact.

What does this mean to you?

Presently, the Customer Response Center will remain the focal point for all AOG and technical support inquiries for Hamilton Sundstrand products and services,

while the Goodrich 24-7 service will remain the focal point for AOG exchange and critical spares requirements for Goodrich products and services.

Customers should continue to use the myHS and Goodrich Customer Portal systems to search for parts and check order status.

Your current Goodrich and Hamilton Sundstrand customer support teams will be working with you throughout the transition to answer your questions.

We look forward to building upon our partnership with you and hope you share our enthusiasm about the company's exciting future. For more information we invite you to visit www.utcaerospacesystems.com

Thank you for your business and we look forward to continuing to offer you the best quality products and the highest level of service in our industry.

Sincerely,

Cindy Egnotovich

Cindy Egnotovich
President
Customer Service
UTC Aerospace Systems

Please rate this communication.

UTC Aerospace Systems
4 Coliseum Centre
2730 W. Tyvola Rd.
Charlotte, NC 28217

Exhibit B

Business Inquiry

HOME HELP

Business Inquiry Details

Business Name:	**GOODRICH PUMP & ENGINE CONTROL SYSTEMS, INC.**	Business Id:	**0782174**
Business Address:	**CHARTER OAK BOULEVARD, WEST HARTFORD, CT, 06110**	Mailing Address:	**C/O GOODRICH CORPORATION, 2730 WEST TYVOLA ROAD, CHARLOTTE, NC, 28217**
Citizenship/State Inc:	**Foreign/DE**	Last Report Year:	**2011**
Business Type:	**Stock**	Business Status:	**Active**
Date Inc/Register:	**Apr 22, 2004**	Name in State of INC:	GOODRICH PUMP & ENGINE CONTROL SYSTEMS, INC.
Commence Business Date:	**Apr 22, 2004**		

Principals

Name/Title:	Business Address:	Residence Address:
KIM R. DELLINGER ASSISTANT SECRETARY	2730 W. TYVOLA ROAD, CHARLOTTE, NC, 28217	2730 W. TYVOLA RD., CHARLOTTE, NC, 28217
MICHAEL G. MCAULEY VICE PRESIDENT AND TREASURER	2730 W. TYVOLA RD., CHARLOTTE, NC, 28217	2730 W. TYVOLA RD., CHARLOTTE, NC, 28217
CURTIS C. REUSSER PRESIDENT	2730 W. TYVOLA RD., NONE, NONE, CHARLOTTE, NC, 28217	2730 W. TYVOLA RD., NONE, NONE, CHARLOTTE, NC, 28217

Business Summary

Agent Name:	**C T CORPORATION SYSTEM**
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September 18, 2012

Maribeth Petrizzi

Chief, Litigation II Section

Anti Trust Division

US Department of Justice

450 East Fifth Street N.W., Suite 8700

Washington, D.C. 20530

RE: Public Interest: Case No. 1:12-CV-01230-RC United Technologies & Goodrich Corporation Merger

Submission with appendices sent certified mail 9/18/12 #7011 1570 0000 6445 7426

Please consider the facts and inside information presented in this comment letter as you evaluate the appropriateness of the merger between Goodrich Corporation and United Technologies Corporation. You and your colleagues have performed extensive work and must be congratulated for the efforts you have put into protecting the public thus far in the process. Hopefully, the information in this letter and the submissions of others will provide you with the information you need to protect the interests of USA citizens.

You may not have had access to all the current activities, inside information, immediate concerns, and risks which this newly combined global military industrial complex company creates. I have a unique "insider" perspective as a former Goodrich Corporation Risk and Control Specialist with Sarbanes-Oxley compliance responsibilities and as a citizen concerned who is active in the community and willing to take action when alerted. From my perspective this merger creates an issue of national security and presents potential troubles safeguarding the assets and intellectual property of the United States government. This letter will detail my actions over the past several years as I attempt to bring some disturbing facts into the disinfectant of USA daylight for evaluation. The information in this letter and its appendices may give you new information regarding the existence of certain disruptive technologies which may create additional new, immediate, and pressing anti-competitive circumstances.

Background and Details

Goodrich Corporation entered into a consent agreement with the US Department of State Bureau of Political-Military Affairs in March 2006 for violating International Traffic in Arms Regulations (ITAR). In June 2012 United Technologies pleaded guilty to crimes related to the export of software U.S. Department of State Bureau of Political-Military Affairs says was used by China to develop China's first modern military attack helicopter. These two lapses in judgment related to national security issues should be weighed in addition to the new information related to my experiences during my employment at Goodrich Corporation and the present circumstance. (Appendix Eleven and Twelve)

The two lapses in security and poor executive decision making events demonstrate risk and clear violations of public trust. What this letter will communicate and the purpose of this letter is to convey to you my grave concerns regarding national security which I believe this combined corporation creates. I will offer what may be new information to the Anti-Trust Division relevant to Large Engine Generator section of the DOJ complaint and share insight into new technology announced by the United States Department of Energy in April 2011. These two known and well documented lapses in judgment related to national security issues should be weighed in addition to the new information related to my insiders information experiences during my employment at Goodrich Corporation which you may not have been fully informed.

Goodrich Corporation employed me as a Risk and Compliance Specialist with Sarbanes-Oxley compliance responsibilities from September 2003 until June 2007. In August 2006 I filed for whistle blower protection status with the US Department of Labor. In response to the Goodrich Corporation State Department Consent Agreement, Marshall Larsen, CEO of Goodrich Corporation, put out a webcast which was mandatory for all Goodrich employees to watch. In that webcast Mr. Larsen asked employees to raise any concerns they may have regarding potential export compliance issues. Mr. Larsen assured employees that no retaliatory actions would be taken against employees willing to raise potential concerns with the internal export compliance reviewer positions that were being created throughout the company. My work experiences were awful from that point forward.

There was a specific transaction that had appearances of an export compliance issue or a potential violation of the Foreign Corrupt Practices Act. I brought my concerns to the attention of the export compliance manager, Mr. Dave Heffner, for the Troy, Ohio Goodrich facility soon after Mr. Larsen's webcast in March 2006. When I requested an update from Mr. Heffner six weeks later, he claimed to have no recollection of the January 2005 [redacted] wire transfer to [redacted] **(Appendix One)**. The underlying invoice referenced a series of technical specifications which were being exported in addition to the cash wire transfer. I had no way to verify if the technical specifications were for controlled products or not. I resubmitted the paperwork and requested Mr. Heffner complete his review. This transaction may also have criminal Third Party Intermediary Foreign Corrupt Practices Act implications.

Upon the second submission to Mr. Dave Heffner my isolation, harassment, & discrimination started. By August 2006, I had little choice but to seek whistle blower protection from the US Department of Labor. The outcome of my whistle blower case was summarized in the book – *Whistle Blowers and the Law of*

Retaliatory Discharge **(Appendix Two).** Insider trading activities among senior Goodrich employees, the Goodrich investment club, was one of the items which I wanted investigated in addition to the specific export compliance issue/transaction. Based on the Administrative Law Judge's May 2008 dismissal, serious doubts linger as to whether the export compliance issue I raised was ever fully reviewed by the appropriate authorities - U.S.Department of State Bureau of Political-Military Affairs.

Another issue which I hoped that the US Department of Labor would investigate had to do with price-fixing, collusion, potential violations with Federal Acquisition Regulations with regard to a [redacted] dollar government contract in which Goodrich Corporation acted as a sub-contractor to [redacted] **(Appendix Three).**

Another issue I raised with the Department of Labor investigators had to do with a $9.3 million dollar accounting irregularity associated with the same Goodrich location as the [redacted] dollar contract pricing issue. After my employment with Goodrich Corporation was terminated in June 2007, I reported details and specifics related to the $9.3 million dollar accounting irregularity to the external auditors at Ernst & Young in addition to submitting a tip to the E&Y ethicpoint website. The outcome of the E&Y ethicpoint submission was very disappointing as Mr. Ron Hauben, E&Y Compliance Attorney, claimed a bogus "accountant-client privilege" **(Appendix Four).**

One final concern which you should be made aware is the claim I make against the Goodrich VP of Finance, Mr. Michael DeBolt. When my attorney was questioning Mr. Michael DeBolt during the discovery phase of my OSHA Sarbanes-Oxley Complain in April 2008 I allege that Mr. DeBolt clearly committed perjury by lying about my informing him about a series of dormant alternative fuel cell patents in response to what Mr. Michael DeBolt referred to as a "Community Action Alert". When I turned the patent list and information over to Mr. DeBolt, he insisted that I never speak of the exchange and made other suspicious declarations, directives, and instructions **(Appendix Five)** Appendix Five is the complete telephonic deposition of Michael W. DeBolt taking during Case No. 2007-SOX-0075 on April 10, 2008. (Insiders of Goordrich Corporation, CEO Marshall Larsen in particular, carried out a series of unplanned sales of Goodrich Common Staock soon thereafter).

As a concerned citizen, I wrote to Senator George Voinovich about my role in the Community Action Alert patent exchange. Senator Voinovich had the US Department of Energy review the patent list and in September 2006 I received startling information **(Appendix Six).** This information directly contradicted Mr. DeBolt's declarations, directives, and instructions which put me in a very difficult ethical and legal dilemma.

I wrote various scientific organizations around the nation offering the secretive prior art patent information for study and encouraging further study and development of the prior art patented technologies. The owner of the patents was deceased and the attorney or legal custodian working on the estate agreed to stop paying the annual patent renewal fees and let the patents fall into the public domain at my urging and request. Having the patents public domain opened the doors for the scientific community to study without fear of infringing on the intellectual property rights of others.

In April 2011 the US DOE issued a press release which announced a discovery and claims very similar to those contained on the patents I surrendered to Mr. DeBolt (**Appendix Seven**). It is my worry and concern that while employed at Goodrich Corporation I engaged in a form of corporate espionage and may have inadvertently aided enemies to the USA. The credibility of these scientific discoveries (or rediscoveries as the case may be) was recognized by the Journal of American Chemical Society in May 2011 (**Appendix Eight**).

United Technologies touts its leadership in catalysts and hydrogen fuel cells on its www.UTCPOWER.com website. United Technologies also brags about have a close relationship with the US Department of Energy on its website. My worry and concern is that dormant patent information I obtained during the secretive "Community Action Alert" scheme that Goodrich's Mr. Michael DeBolt engaged me in was given to United Technologies unbeknownst to Goodrich Corporation shareholders and the positive outcome of the scientific studies of the patent information I provided resulted in the favorable terms of the merger agreement. The existence of a "Community Action Alert" was subsequently validated by my local police department, City of Oakwood, Ohio.

JP Morgan Chase Bank, as Administrative Agent and J.P. Morgan Securities LLC, HSBC Securities (USA) Inc. and Merrill Lynch Pierce Fenner & Smith Incorporated as Join Lead Arrangers and Joint Bookrunners along with Bank of America, HSBC Bank USA, Citibank, Deutche Bank Securities Inc., BNP Paribas, Goldman Sachs Bank USA & the Royal Bank of Scotland PLC may have been mislead when they approved the Bridge Credit Agreement on November 8, 2011 which put this merger into motion. These financial institutions may have been lead to believe that the combined corporation would retain the exclusive field of use license currently being negotiated and per Licensing Agent may conclude by the end of September 2012 (**Appendix Nine**)

The technology is disruptive and has been disruptive to my life. Denying my role via perjury should be unacceptable to the United States Department of Justice Anti-Trust Division authorities. I cannot stand by and let a monopoly be created around this technology. A monopoly may become irreversible and may deny the commercialization of this technology in favor of the status quo.

It is my worry and concern that a combined Goodrich Corporation and United Technologies poses significant risks to national security given their history of export compliance violations, the unresolved export compliance issues I raised, the corporate espionage I may have engaged in, the bizarre handling of my reporting accounting concerns to the external audit firm, the perjury of Mr. DeBolt, the secrecy surrounding the Community Action Alert patents, and now the "reinvention" using the prior art information.

Recent correspondence with the US Department of Energy's Technology Transfer Office is attached for your reference (**Appendix Ten**). You will note the timing of public comment period for this anti-trust plan's approval and the expiration of the existing field of use license happen concurrently. While I cannot prove who the existing field of use licensee is, I suspect it to be either Goodrich Corporation or United Technologies or an affiliate of one or the other or the financial institutions which support them.

Conclusion

My experiences as a whistle blower attempting to expose corrupt practices at Goodrich should give you and the Anti-Trust Department reason to postpone approval of the terms of this merger agreement until such time that a thorough and complete review of all the allegations of criminal behaviors is completed (~~Appendix Eleven, Appendix Twelve, &~~ Appendix Thirteen)

I am in current communication with the US Department of Energy regarding the status of the innovative approach to hydrogen fuel manufacture and hydrogen fuel cells. Perhaps your office should contact the USDOE officials with whom I have been communicating to ascertain whether in fact, Goodrich Corporation or United Technologies are currently negotiating for control of the technology –to create a monopoly. Monopoly control of this new technology is not in the best interest of the United States. My fear is that the exclusivity may allow the technology to be shelved and never commercialized for the benefit of the USA citizens.

Marshall Larsen seems to be the center of all these issues. Marshall Larsen has gained financially as he coordinated a diabolical scheme for which the citizens of the USA are collective victims. Both companies have a well documented history of non-compliance with exporting technology to enemies of the USA.

It is not too late for the truth about all this to be made public. It is not too late for the Anti-Trust Division to perform a thorough examination of the facts and prosecute the wrong doers. It is not too late to protect the intelligence, assets, and intellectual property of many.

Sincerely,

Joseph C. Jefferis
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