

acquisition of TRW, it will be able to compete as both a prime contractor and the supplier of the payloads for the program. Copies of the Complaint, the proposed Final Judgment, and Competitive Impact Statement are available for inspection at the U.S. Department of Justice, Antitrust Division, Suite 215 North, 325 7th Street, NW., Washington, DC 20004 (telephone: 202-514-2692), and at the Clerk's Office of the U.S. Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001.

Public comment is invited within 60-days of the date of this notice. 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, U.S. Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530 (telephone: (202) 307-0924).

Constance K. Robinson,
Director of Operations.

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 Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On December 11, 2002, the United States filed a civil antitrust Complaint alleging that the proposed acquisition by Northrop Grumman Corporation ("Northrop") of TRW Inc. ("TRW") would violate section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that Northrop is one of two companies that can supply certain payloads used in reconnaissance satellite systems sold to the U.S. Government, and that TRW is one of only a few companies with the capability to act as a prime contractor on U.S. reconnaissance satellite programs that use these payloads. The payloads at issue include radar sensors, which detect objects through radio waves, and electro-optical/infrared ("EO/IR") sensors, which detect radiation emitted or reflected from objects within the electromagnetic spectrum from far infrared through far ultraviolet. The Complaint alleges that Northrop's acquisition of TRW will give Northrop the incentive and ability to lessen competition by favoring its in-house payload and/or prime contractor capabilities to the detriment or foreclosure of its competitors, and/or by refusing to sell, or selling only at disadvantageous terms, its in-house capabilities to its competitors. It further alleges that the acquisition will harm the U.S. Government because it will pose an immediate danger to competition in two current or future programs, the Space Based Radar and the Space Based InfraRed System-Low programs.

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 any contract, agreement, understanding, or plan the effect of which would be to combine Northrop and TRW.

When the Complaint was filed, the United States also filed a proposed settlement that would permit Northrop to complete its acquisition of TRW, but require that Northrop submit to strict oversight by the U.S. Department of Defense ("DoD") to ensure that Northrop does not use its position as a combined reconnaissance satellite system prime contractor and reconnaissance satellite payload provider to harm competition for or in reconnaissance satellite system programs.

The proposed Final Judgment requires that, when Northrop: (1) Is the prime contractor for a U.S. Government satellite program; (2) has the responsibility to select a radar or EO/IR payload; and (3) has the opportunity to select its own payload, Northrop will select the payload on a competitive and non-discriminatory basis. It also requires that Northrop act in a non-discriminatory manner in providing information to its own in-house team and to its payload competitors, and in making personnel, resource allocation, and satellite system design decisions. These non-discrimination provisions would apply, for example, to Northrop's post-merger selection of a payload provider for the SBIRS-Low program, for which TRW has already been selected as the prime contractor. To ensure that these provisions of the Final Judgment are enforced, the decree requires that the Secretary of Defense appoint a Compliance Officer to oversee Northrop's selection process, and provides for the Secretary of the Air Force to resolve any disputes.

The proposed Final Judgment also requires that, when Northrop is a competitor or a potential competitor to be the prime contractor on a U.S. Government reconnaissance satellite system program in which Northrop has the opportunity to select its own radar or EO/IR payload, Northrop will supply other prime contractors with the Northrop payload in a manner that does not favor Northrop's in-house team. It further requires that Northrop negotiate and enter into non-exclusive teaming agreements with other prime contractors that desire to use the Northrop payloads, which agreements may not favor Northrop's in-house team. To ensure that these goals are achieved, the proposed Final Judgment provides for direct oversight of Northrop's teaming decisions by the Compliance Officer and ultimately by the Secretary of the Air Force.

The proposed final Judgment further requires that Northrop maintain its payload and satellite prime businesses as separate entities, establish firewalls, and take other actions to protect the information provided by other payload providers or prime contractors. Northrop's actions in this regard again would be subject to review by the Compliance Officer.

In addition to the continuing oversight of the Compliance Office and DoD generally, the parties to the proposed Final Judgment shall be subject to the continuing supervisory jurisdiction of the Court over the Final Judgment and the independent authority of the Antitrust Division to ensure compliance

with, and seek enforcement of, all provisions of the Judgment. The Antitrust Division to ensure compliance with, and seek enforcement of all provisions of the Judgment. The Antitrust Division is authorized to seek from Northrop a civil penalty of up to \$10 million for each violation of the proposed Final Judgment.

The plaintiff and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the 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 punish violations thereof.

II. Description of Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Northrop is a Delaware corporation with its principal place of business in Los Angeles, California. Northrop is one of two leading suppliers of radar and EO/IR payloads for reconnaissance satellite systems. Northrop's primary radar and EO/IR operations are in its Electronic Systems Sector facilities in Baltimore, Maryland and Azusa, California. In 2001, Northrop represented net sales of approximately \$13.6 billion, including \$4.7 billion in sales by its Electronic Systems Sector.

TRW is an Ohio corporation with its principal place of business in Cleveland, Ohio. The company's offices are located in California, Ohio, Georgia, and Florida. Its Space & Electronics and System divisions produce sophisticated satellite systems. In fact, TRW is one of the few companies with the ability to serve as a prime contractor for reconnaissance satellite system. In 2001, TRW has sales of roughly \$16.4 billion, including \$5.2 billion from the Space & Electronics and Systems divisions.

On June 30, 2002, Northrop and TRW entered into an agreement pursuant to which Northrop would acquire TRW in a transaction valued at approximately \$7.8 billion. The parties closed the transaction on December 11, 2002.

B. The Relevant Markets

Reconnaissance systems are electronic systems that gather and transmit information that maybe useful to the United States' military and intelligence forces. These systems may be located on a number of types of platforms, including aircraft and, most relevant for the purposes of this case satellites. Reconnaissance systems may gather information using various types of sensors, but the most relevant types for purposes of this proceeding are radar and EO/IR.

Reconnaissance satellite systems have advantages, and face challenges, that are not applicable to airborne or other types of reconnaissance systems. Reconnaissance satellite systems can gather information about a given geographic area for a much longer time than any other system, and can provide surveillance over geographic areas that aircraft or other platforms cannot reach. Because they operate at such great distances