Billing Code: 4410-11

DEPARTMENT OF JUSTICE
Antitrust Division

United States v. United Technologies Corporation, et al
Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America v. United Technologies Corporation, et al*, Civil Action No. 1:18-cv-02279. On October 1, 2018, the United States filed a Complaint alleging that United Technologies Corporation's proposed acquisition of Rockwell Collins, Inc. ("Rockwell Collins") would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The proposed Final Judgment, filed at the same time as the Complaint, requires the Defendants to divest Rockwell Collins' ice protection systems business and trimmable horizontal stabilizer business, including Rockwell Collins' pilot controls business.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at http://www.justice.gov/atr and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances,

published in the *Federal Register*. Comments should be directed to Maribeth Petrizzi, Chief, Defense, Industrials, and Aerospace Section, Antitrust Division, Department of Justice, 450 Fifth Street N.W., Suite 8700, Washington, D.C. 20530 (telephone: (202) 307-0924).

Patricia A. Brink,
Director of Civil Enforcement.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA U.S. Department Of Justice Antitrust Division 450 5th Street N.W., Suite 8700 Washington, D.C. 20530 Plaintiff, v. UNITED TECHNOLOGIES CORPORATION 10 Farm Springs Road Farmington, CT 06032 and ROCKWELL COLLINS, INC., 400 Collins Road N.E. Cedar Rapids, IA 52498 Defendants.	Civil Action No: 1:18-cv-02279 Judge: Rudolph Contreras

COMPLAINT

The United States of America ("United States"), acting under the direction of the Attorney General of the United States, brings this civil antitrust action against United Technologies Corporation ("UTC") and Rockwell Collins, Inc. ("Rockwell Collins") to enjoin UTC's proposed acquisition of Rockwell Collins. The United States complains and alleges as follows:

I. NATURE OF THE ACTION

1. Pursuant to an asset purchase agreement dated September 4, 2017, UTC proposes to acquire all the shares of Rockwell Collins. The transaction is valued at

approximately $30 billion. The acquisition would constitute one of the largest aerospace acquisitions in history.

2. UTC and Rockwell Collins are two of three suppliers in the world for pneumatic ice protection systems for fixed-wing aircraft ("aircraft"). Ice protection systems are critical to aircraft safety, as aircraft icing is a major hazard to aviation. The proposed acquisition would eliminate competition between UTC and Rockwell Collins for these systems.

3. UTC and Rockwell Collins are two of the leading suppliers in the worldwide market for trimmable horizontal stabilizer actuators ("THSAs") for large aircraft. THSAs help an aircraft maintain the proper altitude during flight and are critical to the safe operation of the aircraft. The proposed acquisition would eliminate competition between UTC and Rockwell Collins for THSAs for large aircraft.

4. As a result, the proposed acquisition likely would substantially lessen competition in the worldwide markets for the development, manufacture, and sale of pneumatic ice protection systems for aircraft and THSAs for large aircraft in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

II. THE DEFENDANTS

5. UTC is incorporated in Delaware and has its headquarters in Farmington, Connecticut. UTC produces a wide range of products for the aerospace industry and other industries, including pneumatic ice protection systems for aircraft and THSAs for large aircraft. In 2017, UTC had sales of approximately $59.8 billion.

6. Rockwell Collins is incorporated in Delaware and is headquartered in Cedar Rapids, Iowa. Rockwell Collins is a major provider of aerospace and defense

electronics systems. Rockwell Collins produces, among other products, pneumatic ice protection systems for aircraft and THSAs for large aircraft. In fiscal year 2017, Rockwell Collins had sales of approximately $6.8 billion.

III. JURISDICTION AND VENUE

7. The United States brings this action under Section 15 of the Clayton Act, 15 U.S.C. § 25, as amended, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18.

8. Defendants develop, manufacture, and sell pneumatic ice protection systems for aircraft and THSAs for large aircraft in the flow of interstate commerce. Defendants' activities in the development, manufacture, and sale of these products substantially affects interstate commerce. This Court has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. § 25, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

9. Defendants have consented to venue and personal jurisdiction in this judicial district. Venue is therefore proper in this district under Section 12 of the Clayton Act, 15 U.S.C. § 22 and under 28 U.S.C. § 1391(c).

IV. PNEUMATIC ICE PROTECTION SYSTEMS

A. Background

10. During flight, ice can accumulate on an aircraft's leading edge surfaces, such as the part of the aircraft's wings that first contact the air during flight. Such accumulation affects an aircraft's maneuverability, increases drag, and decreases lift. If it remains untreated, surface ice accumulation can lead to a catastrophic flight event.

11. A pneumatic ice protection system is engineered to remove accumulated ice on an aircraft's wings. A pneumatic ice protection system consists of two main elements, a de-icing boot and pneumatic system hardware. A de-icing boot is an inflatable tube made of rubber or a similar material that is physically bonded to the leading edge of the aircraft's wings. The pneumatic system hardware consists of equipment designed to control the flow of air into the de-icing boot. When ice begins to accumulate on the wings, the de-icing boot is inflated. The expansion of the de-icing boot cracks the ice off the leading edge. The de-icing boot may be inflated and deflated manually (by the pilot) or automatically (by a timer).

12. Pneumatic ice protection systems are one form of ice protection technology. Ice protection systems are selected at the aircraft design stage based on the characteristics of the aircraft. The specific design features of an aircraft, such as the availability of electrical power, determines which type of ice protection system will be used on the aircraft. For example, some aircraft use electrothermal systems, but such systems require significant electrical power to heat aircraft surfaces; other aircraft may use engine bleed air systems, but those systems require significant hot air bled from engines to heat aircraft surfaces. Aircraft using pneumatic ice protection systems generally have low availability of electrical power and insufficient bleed air from the aircraft engines, and also generally require lightweight and low-cost systems. This compels manufacturers of aircraft, such as the Gulfstream G150, the Cessna Citation M2, the Beechcraft King Air, and the ATR 42, to use pneumatic ice protection systems. Once an aircraft manufacturer has selected a particular pneumatic ice protection system, that system is certified as an Original Equipment Manufacturer ("OEM") part of the aircraft's

manufacturing design. Aircraft manufacturers generally only certify one supplier for ice protection systems for a particular aircraft model.

13. Pneumatic ice protection systems, and components thereof, are also sold in the aftermarket, as their components require repair or replacement after extended use. Most of the revenues related to pneumatic ice protection systems are derived from aftermarket sales. Aftermarket purchasers include aircraft manufacturers, aircraft operators, and service centers. Although generally only one particular pneumatic ice protection system is certified with the aircraft model as original equipment, pneumatic ice protection system suppliers often procure additional certifications that allow their pneumatic ice protection system components to replace their competitors' OEM pneumatic ice protection components in the aftermarket.

14. Because surface ice accumulation may lead to a catastrophic flight event, pneumatic ice protection systems are considered critical flight components. An aircraft manufacturer or aftermarket purchaser is therefore likely to prefer proven suppliers of pneumatic ice protection systems.

B. Relevant Markets

1. Product Market

15. Pneumatic ice protection systems have numerous attributes (lightweight, low-cost, and low-power requirements) that make them an attractive option for aircraft manufacturers of aircraft with certain design requirements. Certain aircraft models can only use pneumatic ice protection systems. For the customers that produce that model, pneumatic ice protection systems are the best option, as they cannot effectively use other types of ice protection systems such as an electrothermal system, which requires a

significant amount of electrical power, or an engine bleed air system, which requires engines large enough to generate significant excess heat.

16. Once an aircraft is certified, switching the ice protection system on a particular model of aircraft to a different type of ice protection system, even if technologically feasible, would require some re-design of the ice protection portion of the aircraft and recertification of the aircraft, potentially costing millions of dollars, requiring additional flight testing, and consuming years of time. Therefore, a small but significant increase in the price of pneumatic ice protection systems would not cause customers of those ice protection systems to substitute an alternative type of ice protection system for the original aircraft or in the aftermarket in volumes sufficient to make such a price increase unprofitable. Accordingly, pneumatic ice protection systems are a relevant product market and line of commerce under Section 7 of the Clayton Act, 15 U.S.C. § 18.

17. Although the pneumatic ice protection system installed on each model of aircraft may be unique, and each system could therefore be deemed a separate product market, in each such market there are few competitors. The proposed acquisition of Rockwell Collins by UTC would affect competition for each pneumatic ice protection system in the same manner, as the competitive conditions are the same for each pneumatic ice protection system. It is therefore appropriate to aggregate the different systems to one pneumatic ice protection market for purposes of analyzing the effects of the acquisition.

2. Geographic Market

18. The relevant geographic market is worldwide within the meaning of Section 7 of the Clayton Act, 15 U.S.C. § 18. Pneumatic ice protection systems are

marketed internationally and may be sourced economically from suppliers globally, because transportation costs are a small proportion of the cost of the system and thus are not a major factor in supplier selection.

C. Anticompetitive Effects of the Proposed Transaction

19. There are only three competitors in the market for the development, manufacture, and sale of pneumatic ice protection systems. These three firms are the only sources for both OEM systems and aftermarket systems and parts. Based on historical sales results, a combined UTC-Rockwell Collins would control a majority share of OEM and aftermarket sales. Therefore, UTC's acquisition of Rockwell Collins would significantly increase concentration in an already highly concentrated market.

20. UTC and Rockwell Collins compete directly on price. In some cases, one of the companies has replaced the other's pneumatic ice protection system or components thereof on a particular aircraft in the aftermarket. This acquisition threatens to extinguish that competition, likely leading to price increases and significant harm to aircraft manufacturers and aftermarket customers that require pneumatic ice protection systems.

21. Customers have benefited from the competition between UTC and Rockwell Collins for sales of pneumatic ice protection systems by receiving lower prices, more favorable contractual terms, and shorter delivery times. The combination of UTC and Rockwell Collins would eliminate this competition and its future benefits to customers. Post-acquisition, UTC likely would have the incentive and the ability to increase prices profitably and offer less favorable contractual terms.

22. The proposed acquisition, therefore, likely would substantially lessen competition in the development, manufacture, and sale of pneumatic ice protection

systems for aircraft worldwide in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

D. Difficulty of Entry

23. Sufficient, timely entry of additional competitors into the markets for pneumatic ice protection systems is unlikely to prevent the harm to competition that is likely to result if the proposed acquisition is consummated. Entry of a new competitor into the development, manufacture, and sale of a pneumatic ice protection system is unlikely and cannot happen in a time period that would prevent significant competitive harm.

24. Entry is unlikely due to the small size of the pneumatic ice protection system market. In addition, competitions for aircraft suitable for pneumatic ice protection systems are infrequent. Accordingly, there are limited bidding opportunities for OEM sales and less incentive for a new competitor to enter, which means that a supplier would be less likely to enter the market.

25. Pneumatic ice protection systems generally are not built by aircraft manufacturers, in part because pneumatic technology tends to be complicated and technically different from other aircraft systems. Therefore aircraft manufacturers are unlikely to bring production of such systems in-house in response to a price increase.

26. Although aftermarket replacement opportunities for existing pneumatic ice protection system suppliers are available in certain cases, entry is costly due to the associated certification costs. Aircraft manufacturers, operators, and servicers also hesitate to purchase aircraft systems and parts from new suppliers, particularly for critical flight components like ice protection systems.

27. As a result of these barriers, entry into the markets for pneumatic ice protection systems would not be timely, likely, or sufficient to defeat the substantial lessening of competition that is likely to result from UTC's acquisition of Rockwell Collins.

V. TRIMMABLE HORIZONTAL STABILIZER ACTUATORS FOR LARGE AIRCRAFT

A. Background

28. Actuators are responsible for the proper positions of an aircraft by manipulating the "control surfaces" on its wings and tail section. A trimmable horizontal stabilizer actuator ("THSA") helps an aircraft maintain the proper altitude during flight by adjusting ("trimming") the angle of the horizontal stabilizer, the control surface of the aircraft's tail responsible for aircraft pitch. This control surface is critical to the safety and performance of the aircraft, as a loss of control could cause the aircraft to crash. The stabilizer encounters significant aerodynamic loads for extended periods of time, and the THSA must be capable of handling these loads. THSAs thus tend to be the largest and most technically demanding actuators on an aircraft.

29. THSAs vary based on the size and type of the aircraft on which they are used. Because large aircraft encounter significantly higher aerodynamic loads than smaller aircraft, THSAs for large aircraft are considerably larger, more complex, and more expensive than those used on smaller aircraft. Large aircraft primarily include commercial aircraft that seat at least six passengers abreast (such as the Airbus A320 and A350 and the Boeing 737 and 787) and military transport aircraft, but exclude regional jets, business jets, and tactical military aircraft.

B. Relevant Markets

1. Product Market

30. THSAs for large aircraft do not have technical substitutes. Large aircraft manufacturers cannot switch to THSAs for smaller aircraft, or actuators for other aircraft control surfaces, because those products cannot adequately control the lift and manage the load generated by the horizontal stabilizer of a large aircraft. A small but significant increase in the price of THSAs for large aircraft would not cause aircraft manufacturers to substitute THSAs designed for smaller aircraft or actuators for other control surfaces in volumes sufficient to make such a price increase unprofitable. Accordingly, THSAs for large aircraft are a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act, 15 U.S.C. § 18.

2. Geographic Market

31. The relevant geographic market within the meaning of Section 7 of the Clayton Act, 15 U.S.C. § 18 is worldwide. THSAs for large aircraft are marketed internationally and may be sourced from suppliers globally, because transportation costs are a small proportion of the cost of the product and thus are not a major factor in supplier selection.

C. Anticompetitive Effects of the Proposed Acquisition

32. UTC and Rockwell Collins are each other's closest competitors for THSAs for large aircraft. UTC and Rockwell Collins have won two of the most significant recent contract awards for THSAs for large aircraft: the Boeing 777X and the Airbus A350. Boeing and Airbus are the world's largest manufacturers of passenger

aircraft, and these aircraft represent two of only three THSA awards by these manufacturers in this century.

33. While there are other producers of THSAs for large aircraft, those producers tend to concentrate on THSAs for smaller aircraft, such as business jets or regional jets, or to focus on products for other aircraft control surfaces.

34. UTC and Rockwell Collins each view the other firm as the most significant competitive threat for THSAs for large aircraft. The two companies are among the few that have demonstrated expertise in designing and producing THSAs for large aircraft. Each firm considers the other company's offering when planning bids.

35. Customers have benefitted from the competition between UTC and Rockwell Collins for THSAs for large aircraft by receiving lower prices, more favorable contractual terms, more innovative products, and shorter delivery times. The combination of UTC and Rockwell Collins would eliminate this competition and its future benefits to customers. Post-acquisition, UTC likely would have the incentive and the ability to increase prices profitably and offer less favorable contractual terms.

36. UTC and Rockwell Collins also invest significantly to remain leading suppliers of new THSAs for large aircraft, and aircraft manufacturers expect them to remain leading suppliers of new products in the future. The combination of UTC and Rockwell Collins would likely eliminate this competition, depriving large aircraft customers of the benefit of future innovation and product development.

37. The proposed acquisition, therefore, likely would substantially lessen competition for the development, manufacture, and sale of THSAs worldwide for large aircraft in violation of Section 7 of the Clayton Act.

D. Difficulty of Entry

38. Sufficient, timely entry of additional competitors into the market for THSAs for large aircraft is unlikely to prevent the harm to competition that is likely to result if the proposed transaction is consummated.

39. Developing a THSA for large aircraft is technically difficult. Even manufacturers of THSAs for smaller aircraft face significant technical hurdles in designing and developing THSAs for large aircraft. As aerodynamic loads are a major design consideration for THSAs, and such loads are tightly correlated with the size of the aircraft, THSAs for large aircraft present more demanding technical challenges than those for smaller aircraft.

40. Opportunities to enter are limited. Because certification of a THSA is expensive and time-consuming, once a THSA is certified for a particular aircraft type, it is rarely replaced in the aftermarket by a different THSA. Accordingly, competition between suppliers of THSAs generally only occurs when an aircraft manufacturer is designing a new aircraft or an upgraded version of an existing aircraft, which are infrequent occurrences because development costs for such aircraft can be tens of billions of dollars. As a result, several years usually pass between contract awards for THSAs for a new aircraft design.

41. Potential entrants into the production of THSAs for large aircraft face several additional obstacles. First, manufacturers of large aircraft are more likely to purchase THSAs from those firms already supplying THSAs for other large aircraft. The important connection between THSAs and aircraft safety drives aircraft manufacturers toward suppliers experienced with production of THSAs of the relevant type and size.

While some companies may have demonstrated experience in THSAs for smaller aircraft, such experience is not considered by customers to be as relevant as experience in THSAs for large aircraft. A new entrant would face significant costs and time to be considered a potential alternative to the existing suppliers.

42. Substantial time and significant financial investment would be required for a company to design and develop a THSA for large aircraft. Even companies that already make other types of THSAs would require years of effort and an investment of many millions of dollars to develop a product that is competitive with those offered by existing large aircraft THSA suppliers.

43. As a result of these barriers, entry into the market for THSAs for large aircraft would not be timely, likely, or sufficient to defeat the substantial lessening of competition that would likely result from UTC's acquisition of Rockwell Collins.

VI. VIOLATIONS ALLEGED

44. UTC's acquisition of Rockwell Collins likely would lessen competition substantially in the development, manufacture, and sale of pneumatic ice protection systems for aircraft and THSAs for large aircraft, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

45. Unless enjoined, the acquisition likely would have the following anticompetitive effects, among others, relating to pneumatic ice protection systems for aircraft:

(a) actual and potential competition between UTC and Rockwell Collins would be eliminated;

(b) competition likely would be substantially lessened; and

(c) prices likely would increase and contractual terms likely would be less favorable to the customers.

46. Unless enjoined, the proposed acquisition likely would have the following anticompetitive effects relating to THSAs for large aircraft, among others:

(a) actual and potential competition between UTC and Rockwell Collins would be eliminated;

(b) competition likely would be substantially lessened;

(c) prices would likely increase, contractual terms likely would be less favorable to the customers, and innovation likely would decrease.

VII. REQUEST FOR RELIEF

47. The United States requests that this Court:

(a) adjudge and decree that UTC's acquisition of Rockwell Collins would be unlawful and violate Section 7 of the Clayton Act, 15 U.S.C. § 18;

(b) preliminarily and permanently enjoin and restrain Defendants and all persons acting on their behalf from consummating the proposed acquisition of Rockwell Collins by UTC, or from entering into or carrying out any other contract, agreement, plan, or understanding, the effect of which would be to combine UTC with Rockwell Collins;

(c) award the United States its costs for this action; and

(d) award the United States such other and further relief as the Court deems just and proper.

Dated: October 1, 2018

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

MAKAN DELRAHIM (DC Bar #457795)
Assistant Attorney General
Antitrust Division

MARIBETH PETRIZZI (DC Bar #435204)
Chief
Defense, Industrials, and Aerospace Section
Antitrust Division

ANDREW C. FINCH (DC Bar #494992)
Principal Deputy Assistant Attorney General
Antitrust Division

STEPHANIE A. FLEMING
Assistant Chief
Defense, Industrials, and Aerospace Section
Antitrust Division

PATRICIA A. BRINK
Director of Civil Enforcement

SOYOUNG CHOE*
SIDDHARTH DADHICH
KEVIN QUIN (D.C. Bar #415268)
Defense, Industrials, and Aerospace Section
Antitrust Division
450 Fifth Street N.W., Suite 8700
Washington, D.C. 20530
Telephone: (202) 598-2436
Facsimile: (202) 514-9033
soyoung.choe@usdoj.gov

*LEAD ATTORNEY TO BE NOTICED

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. UNITED TECHNOLOGIES CORPORATION and ROCKWELL COLLINS, INC., Defendants.	Civil Action No: 1:18-cv-02279 Judge: Rudolph Contreras

PROPOSED FINAL JUDGMENT

WHEREAS, Plaintiff, United States of America, filed its Complaint on October 1, 2018, the United States and Defendants, United Technologies Corporation ("UTC") and Rockwell Collins, Inc. ("Rockwell Collins"), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by Defendants to assure that competition is not substantially lessened;

AND WHEREAS, the United States requires Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, Defendants have represented to the United States that the divestitures required below can and will be made and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION

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

II. DEFINITIONS

As used in this Final Judgment:

A. "Acquirer" or "Acquirers" means the entity or entities to whom Defendants divest any of the Divestiture Assets.

B. "Acquirer of the Ice Protection Divestiture Assets" means the entity to which Defendants divest the Ice Protection Divestiture Assets.

C. "Acquirer of the THSA Divestiture Assets" means Safran S.A. or the entity to which Defendants divest the THSA Divestiture Assets.

D. "UTC" means defendant United Technologies Corporation, a Delaware

corporation with its headquarters in Farmington, Connecticut, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

E. "Rockwell Collins" means defendant Rockwell Collins, Inc., a Delaware corporation with its headquarters in Cedar Rapids, Iowa, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

F. "Ice Protection Business" means Rockwell Collins' SMR Technologies division, including Rockwell's business in the development, manufacture, and sale of pneumatic ice protection systems and other ice protection products.

G. "WEMAC Product Line" means the Rockwell Collins products sold under the WEMAC name, including air gasper valves and interior signage components.

H. "Ice Protection Divestiture Assets" means Rockwell Collins' Ice Protection Business, including:

1. The facility located at 93 Nettie-Fenwick Road, Fenwick, West Virginia ("Fenwick Facility");

2. All tangible assets primarily related to the Ice Protection Business, with the exception of those used exclusively in the WEMAC Product Line, including but not limited to research and development activities; all manufacturing equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property; all licenses, permits, certifications, and authorizations issued by any governmental organization relating to the Ice Protection Business; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and

understandings, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records and all other records relating to the Ice Protection Business;

3. All intangible assets primarily related to the Ice Protection Business, with the exception of those used exclusively in the WEMAC Product Line, including, but not limited to, all patents; licenses and sublicenses; intellectual property; copyrights; trademarks; trade names; service marks; service names; technical information; computer software and related documentation; know-how; trade secrets; drawings; blueprints; designs; design protocols; specifications for materials; specifications for parts and devices; safety procedures for the handling of materials and substances; quality assurance and control procedures; design tools and simulation capability; all manuals and technical information Defendants provide to their own employees, customers, suppliers, agents, or licensees; and all research data concerning historic and current research and development efforts relating to the Ice Protection Business, including, but not limited to, designs of experiments and the results of successful and unsuccessful designs and experiments.

I. "THSA Divestiture Business" means Rockwell Collins' business in the design, development, manufacture, sale, service, or distribution of: (i) trimmable horizontal stabilizer actuators ("THSAs"), legacy flap actuation, and nose wheel steering gear boxes; and (ii) pilot control systems, including center yokes, rudder brake pedal units, throttle quadrant assemblies, auto-throttles, and control stand modules.

J. "THSA Divestiture Assets" means, subject to the terms of Paragraph V(D) of this Final Judgment:

1. The facilities located at 1833 Alton Parkway, Irvine, California ("Building 518") and Ave. Sierra San Agustin #2498, Col. El Porvenir C.P. 21185, Mexicali, Mexico ("Building 1");

2. At the option of the Acquirer of the THSA Divestiture Assets, the facilities located at 1733 Alton Parkway, Irvine, California ("Building 517"), 1100 W. Hibiscus Boulevard, Melbourne, Florida ("Building 213"), and Ave. Sierra San Agustin #2498, Col. El Porvenir C.P. 21185, Mexicali, Mexico ("Building 2");

3. All tangible assets primarily related to or necessary for the operation of the THSA Divestiture Business, including but not limited to research and development activities, all manufacturing equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property; all licenses, permits, certifications, and authorizations issued by any governmental organization relating to the THSA Divestiture Business; all contracts; all teaming arrangements, agreements, leases, commitments, certifications, and understandings, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records and all other records relating to the THSA Divestiture Business;

4. All intangible assets primarily related to or necessary for the operation of the THSA Divestiture Business, including, but not limited to, all patents; licenses and sublicenses; intellectual property; copyrights; trademarks; trade names; service marks; service names; technical information; computer software and related documentation; know-how; trade secrets; drawings; blueprints; designs; design protocols; specifications for materials; specifications for parts and devices; safety procedures for the

handling of materials and substances; quality assurance and control procedures; design tools and simulation capability; all manuals and technical information Defendants provide to their own employees, customers, suppliers, agents, or licensees; and all research data concerning historic and current research and development efforts relating to the THSA Divestiture Business, including, but not limited to, designs of experiments and the results of successful and unsuccessful designs and experiments.

K. "Divestiture Assets" means the Ice Protection Divestiture Assets and the THSA Divestiture Assets.

L. "Required Regulatory Approvals" means (1) clearance pursuant to any Committee on Foreign Investment in the United States ("CFIUS") filing or similar foreign investment filing, if any, made by the Defendants and/or any Acquirer of the Divestiture Assets; and (2) any approvals or clearances required under antitrust or competition laws.

III. APPLICABILITY

A. This Final Judgment applies to UTC and Rockwell Collins, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Section IV, Section V, and Section VI of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, Defendants shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the Acquirers of the assets divested pursuant to this Final Judgment.

IV. DIVESTITURE OF THE ICE PROTECTION DIVESTITURE ASSETS

A. Defendants are ordered and directed, within the later of (1) five (5) calendar days after notice of entry of this Final Judgment by the Court or (2) fifteen (15) calendar days after Required Regulatory Approvals have been received to divest the Ice Protection Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the Ice Protection Divestiture Assets as expeditiously as possible.

B. In accomplishing the divestiture of the Ice Protection Divestiture Assets ordered by this Final Judgment, Defendants promptly shall make known, by usual and customary means, the availability of the Ice Protection Divestiture Assets. Defendants shall inform any person making an inquiry regarding a possible purchase of the Ice Protection Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Ice Protection Divestiture Assets customarily provided in a due diligence process, except information or documents subject to the attorney-client privilege or work-product doctrine. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide the Acquirer of the Ice Protection Divestiture Assets and the United States information relating to the personnel involved in the design, development, production, distribution, sale, or service of products by or under any of the Ice Protection Divestiture Assets to enable the Acquirer of the Ice Protection Divestiture Assets to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer of the Ice Protection Divestiture Assets to employ any Defendant employee whose primary responsibility is the design, development, production, distribution, sale, or service of products by or under any of the Ice Protection Divestiture Assets.

D. Defendants shall permit prospective Acquirers of the Ice Protection Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities to be divested; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. Defendants shall warrant to the Acquirer of the Ice Protection Divestiture Assets that each asset will be operational on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Ice Protection Divestiture Assets.

G. Defendants shall warrant to the Acquirer of the Ice Protection Divestiture Assets (1) that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of the Ice Protection Divestiture Assets, and (2) that following the sale of the Ice Protection Divestiture Assets, Defendants will not undertake, directly

or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Ice Protection Divestiture Assets.

H. At the option of the Acquirer of the Ice Protection Divestiture Assets, Defendants shall enter into a transition services agreement with the Acquirer of the Ice Protection Divestiture Assets to provide back office and information technology services and support for the Ice Protection Divestiture Assets for a period of up to twelve (12) months. The United States, in its sole discretion, may approve one or more extensions of this agreement for a total of up to an additional twelve (12) months. If the Acquirer of the Ice Protection Divestiture Assets seeks an extension of the term of this transition services agreement, it shall so notify the United States in writing at least three (3) months prior to the date the transition services contract expires. If the United States approves such an extension, it shall so notify the Acquirer of the Ice Protection Divestiture Assets in writing at least two (2) months prior to the date the transition services contract expires. The terms and conditions of any contractual arrangement intended to satisfy this provision must be reasonably related to the market value of the expertise of the personnel providing any needed assistance. The UTC employee(s) tasked with providing these transition services may not share any competitively sensitive information of the Acquirer of the Ice Protection Divestiture Assets with any other UTC employee.

I. Defendants shall remove from the Fenwick Facility the assets used exclusively with the WEMAC Product Line within nine (9) months of the divestiture of the Ice Protection Divestiture Assets. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed three (3) months in total.

J. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by Divestiture Trustee appointed pursuant to Section VI, of this Final Judgment, shall include the entire Ice Protection Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Ice Protection Divestiture Assets can and will be used by the Acquirer of the Ice Protection Divestiture Assets as part of a viable, ongoing business of the development, manufacture, sale, service, or distribution of pneumatic ice protection systems. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment,

(1) shall be made to an Acquirer of the Ice Protection Divestiture Assets that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the business of the development, manufacture, and sale of pneumatic ice protection systems; and

(2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer of the Ice Protection Divestiture Assets and Defendants give Defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. DIVESTITURE OF THE THSA DIVESTITURE ASSETS

A. Defendants are ordered and directed, within the later of (1) five (5) calendar days after notice of entry of this Final Judgment or (2) fifteen (15) calendar days after Required Regulatory Approvals have been received, to divest the THSA Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States, in its sole discretion. At the option of the Acquirer of the THSA Divestiture Assets, and subject to the review and approval by the United States, Building 518 may be transferred via a sublease in lieu of a divestiture. The United States, in its

sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the Divestiture Assets as expeditiously as possible.

B. In the event Defendants are attempting to divest the THSA Divestiture Assets to an Acquirer other than Safran S.A., Defendants promptly shall make known, by usual and customary means, the availability of the THSA Divestiture Assets. Defendants shall inform any person making an inquiry regarding a possible purchase of the THSA Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the THSA Divestiture Assets customarily provided in a due diligence process except information or documents subject to the attorney-client privilege or work-product doctrine. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide the Acquirer of the THSA Divestiture Assets and the United States information relating to the personnel involved in the design, development, production, distribution, sale, or service of products by or under any of the THSA Divestiture Assets to enable the Acquirer of the THSA Divestiture Assets to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer of the THSA Divestiture Assets to employ any Defendant employee whose

primary responsibility is the design, development, production, distribution, sale, or service of products by or under any of the THSA Divestiture Assets.

D. Defendants shall use reasonable best efforts to obtain any approvals required from United States government customers for the transfer of proprietary contracts to the Acquirer of the THSA Divestiture Assets. If such approvals cannot be obtained, notwithstanding anything to the contrary in this Final Judgment, Defendants may:

1. Retain the proprietary contracts and those portions thereof that cannot be subcontracted to the Acquirer of the THSA Divestiture Assets; and

2 Retain those tangible and intangible assets that have been used exclusively in the performance of the proprietary contracts.

E. Defendants shall permit prospective Acquirers of the THSA Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities to be divested; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

F. Defendants shall warrant to the Acquirer of the THSA Divestiture Assets that each asset will be operational on the date of sale.

G. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the THSA Divestiture Assets.

H. Defendants shall warrant to the Acquirer of the THSA Divestiture Assets (1) that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of the THSA Divestiture Assets, and (2) that following the

sale of the THSA Divestiture Assets, Defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the THSA Divestiture Assets.

I. At the option of the Acquirer of the THSA Divestiture Assets, Defendants shall enter into a transition services agreement with the Acquirer of the THSA Divestiture Assets to provide services related to facility management and upkeep, facility and asset transition, government compliance, accounting and finance, information technology and human resources for the THSA Divestiture Assets for a period of up to twelve (12) months. The United States, in its sole discretion, may approve one or more extensions of this agreement for a total of up to an additional twelve (12) months. If the Acquirer of the THSA Divestiture Assets seeks an extension of the term of this transition services agreement, it shall so notify the United States in writing at least three (3) months prior to the date the transition services contract expires. If the United States approves such an extension, it shall so notify the Acquirer of the THSA Divestiture Assets in writing at least two (2) months prior to the date the transition services contract expires. The terms and conditions of any contractual arrangement intended to satisfy this provision must be reasonably related to the market value of the expertise of the personnel providing any needed assistance. The UTC employee(s) tasked with providing these transition services may not share any competitively sensitive information of the Acquirer of the THSA Divestiture Assets with any other UTC employee.

J. During the term of the transition services agreement in Paragraph V(I), Defendants shall use their best efforts to assist the Acquirer of the THSA Divestiture Assets with the transition of the THSA Divestiture Assets to locations chosen by the

Acquirer of the THSA Divestiture Assets and the Defendants shall not impede this transition of the THSA Divestiture Assets.

K. At the option of the Acquirer of the THSA Divestiture Assets, Defendants shall enter into a supply agreement to provide services related to the manufacture of THSAs in Building 213 and Rockwell Collins' Iowa C Ave Complex facility located at 400 Collins Road NE, Cedar Rapids, Iowa sufficient to meet all or part of the needs of the Acquirer of the THSA Assets for a period of up to twelve months. The United States, in its sole discretion, may approve one or more extensions of this agreement for a total of up to an additional twelve (12) months. If the Acquirer of the THSA Divestiture Assets seeks an extension of the term of this agreement, it shall so notify the United States in writing at least three (3) months prior to the date the contract expires. If the United States approves such an extension, it shall so notify the Acquirer of the THSA Divestiture Assets in writing at least two (2) months prior to the date the agreement expires. The terms and conditions of any contractual arrangement meant to satisfy this provision must be reasonably related to market conditions for such services.

L. Unless the United States otherwise consents in writing, the divestiture pursuant to Section V, or by Divestiture Trustee appointed pursuant to Section VI, of this Final Judgment, shall include the entire THSA Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the THSA Divestiture Assets can and will be used by the Acquirer of the THSA Divestiture Assets as part of a viable, ongoing business of the development, manufacture, and sale of THSAs. The divestiture, whether pursuant to Section V or Section VI of this Final Judgment,

(1) shall be made to an Acquirer of the THSA Divestiture Assets that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the business of the development, manufacture, and sale of THSAs; and

(2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer of the THSA Divestiture Assets and Defendants give Defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

VI. APPOINTMENT OF DIVESTITURE TRUSTEE

A. If Defendants have not divested all of the Divestiture Assets within the time periods specified in Paragraphs IV(A) and V(A), Defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a Divestiture Trustee selected by the United States and approved by the Court to effect the divestiture(s) of any of the Divestiture Assets that have not been sold during the time periods specified in Paragraphs IV(A) and V(A).

B. After the appointment of a Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell those Divestiture Assets that the Divestiture Trustee has been appointed to sell. The Divestiture Trustee shall have the power and authority to accomplish the divestiture(s) to an Acquirer(s) acceptable to the United States, in its sole discretion at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of Sections IV, V, VI, and VII of this Final Judgment, and shall have such other powers as the Court deems appropriate. Subject to Paragraph VI(D) of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of Defendants any agents, investment bankers, attorneys, accountants, or consultants, who shall be solely accountable to the Divestiture

Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture(s). Any such agents or consultants shall serve on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications.

C. Defendants shall not object to a sale by the Divestiture Trustee on any ground other than the Divestiture Trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the Divestiture Trustee within ten (10) calendar days after the Divestiture Trustee has provided the notice required under Section VII.

D. The Divestiture Trustee shall serve at the cost and expense of Defendants pursuant to a written agreement, on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications. The Divestiture Trustee shall account for all monies derived from the sale of the assets sold by the Divestiture Trustee and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for any of its services yet unpaid and those of any professionals and agents retained by the Divestiture Trustee, all remaining money shall be paid to Defendants and the trust shall then be terminated. The compensation of the Divestiture Trustee and any professionals and agents retained by the Divestiture Trustee shall be reasonable in light of the value of the Divestiture Assets that are being sold by the Divestiture Trustee and based on a fee arrangement that provides the Divestiture Trustee with incentives based on the price and terms of the divestiture and the speed with which it is accomplished, but the timeliness of the divestiture(s) is paramount. If the Divestiture Trustee and Defendants are unable to reach

agreement on the Divestiture Trustee's or any agents' or consultants' compensation or other terms and conditions of engagement within fourteen (14) calendar days of the appointment of the Divestiture Trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court. The Divestiture Trustee shall, within three (3) business days of hiring any other agents or consultants, provide written notice of such hiring and the rate of compensation to Defendants and the United States.

E. Defendants shall use their best efforts to assist the Divestiture Trustee in accomplishing the required divestiture(s). The Divestiture Trustee and any agents or consultants retained by the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Defendants shall provide or develop financial and other information relevant to such business as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secrets or other confidential research, development, or commercial information or any applicable privileges. Defendants shall take no action to interfere with or to impede the Divestiture Trustee's accomplishment of the divestiture(s).

F. After its appointment, the Divestiture Trustee shall file monthly reports with the United States and, as appropriate, the Court setting forth the Divestiture Trustee's efforts to accomplish the divestiture(s) ordered under this Final Judgment. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring,

entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The Divestiture Trustee shall maintain full records of all efforts made to divest any of the Divestiture Assets.

G. If the Divestiture Trustee has not accomplished the divestitures ordered under this Final Judgment within six months after its appointment, the Divestiture Trustee shall promptly file with the Court a report setting forth (1) the Divestiture Trustee's efforts to accomplish the required divestiture, (2) the reasons, in the Divestiture Trustee's judgment, why the required divestiture has not been accomplished, and (3) the Divestiture Trustee's recommendations. To the extent such report~~s~~ contain information that the Divestiture Trustee deems confidential, such report~~s~~ shall not be filed in the public docket of the Court. The Divestiture Trustee shall at the same time furnish such report to the United States which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the Divestiture Trustee's appointment by a period requested by the United States.

H. If the United States determines that the Divestiture Trustee has ceased to act or failed to act diligently or in a reasonably cost-effective manner, the United States may recommend the Court appoint a substitute Divestiture Trustee.

VII. NOTICE OF PROPOSED DIVESTITURE

A. Within two (2) business days following execution of a definitive divestiture agreement, Defendants or the Divestiture Trustee, whichever is then

responsible for effecting the divestitures required herein, shall notify the United States of any proposed divestiture required by Sections IV, V or VI of this Final Judgment. If the Divestiture Trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed divestiture(s) and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Defendants, the proposed Acquirer(s), any other third party, or the Divestiture Trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer(s), and any other potential Acquirer. Defendants and the Divestiture Trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer(s), any third party, and the Divestiture Trustee, whichever is later, the United States shall provide written notice to Defendants and the Divestiture Trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Paragraph VI(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer(s) or upon objection by the United

States, a divestiture proposed under Sections IV, V, or VI shall not be consummated. Upon objection by Defendants under Paragraph VI(C), a divestiture proposed under Section VI shall not be consummated unless approved by the Court.

VIII. FINANCING

Defendants shall not finance all or any part of any purchase made pursuant to Section IV, Section V, or Section VI of this Final Judgment.

IX. HOLD SEPARATE

Until the divestitures required by this Final Judgment have been accomplished, Defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by the Court. Defendants shall take no action that would jeopardize the divestitures ordered by the Court.

X. AFFIDAVITS

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestitures have been completed under Sections IV, V, or VI, Defendants shall deliver to the United States an affidavit, signed by UTC's Executive Vice President, Operations & Strategy and General Counsel, and Rockwell Collins' Chief Financial Officer and General Counsel, which shall describe the fact and manner of Defendants' compliance with Sections IV, V or VI of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during

that period. Each such affidavit shall also include a description of the efforts Defendants have taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section IX of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

XI. COMPLIANCE INSPECTION

A. For the purposes of determining or securing compliance with this Final Judgment, or of any related orders such as any Hold Separate Stipulation and Order, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally-recognized privilege, from time to time authorized representatives of the United States, including agents and consultants retained by the United States, shall, upon

written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

(1) access during Defendants' office hours to inspect and copy or, at the option of the United States, to require Defendants to provide electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

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

D. If at the time that Defendants furnish information or documents to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the

Federal Rules of Civil Procedure," then the United States shall give Defendants ten (10) calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XII. NOTIFICATION

A. Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a (the "HSR Act"), Defendants, without providing advance notification to the United States, shall not directly or indirectly acquire any assets of or any interest in, including any financial, security, loan, equity, or management interest, any business in the global pneumatic ice protection market valued over $25 million during the term of this Final Judgment.

B. Such notification shall be provided to the United States in the same format as, and per the instructions relating to, the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5 through 8 of the instructions must be provided only about pneumatic ice protection systems. Notification shall be provided at least thirty (30) calendar days prior to acquiring any such interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the 30-day period after notification, representatives of the United States make a written request for additional information, Defendants shall not consummate the proposed transaction or agreement until thirty (30) calendar days after submitting all such additional information. Early

termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. Section XII shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under Section XII shall be resolved in favor of filing notice.

XIII. NO REACQUISITION

Defendants may not reacquire any part of the Divestiture Assets during the term of this Final Judgment. The Acquirer of the Ice Protection Divestiture Assets may not acquire from Defendants during the term of this Final Judgment any assets or businesses that compete with the Ice Protection Divestiture Assets. The Acquirer of the THSA Divestiture Assets may not acquire from Defendants during the term of this Final Judgment any assets or businesses that compete with the THSA Divestiture Assets.

XIV. RETENTION OF JURISDICTION

The Court retains jurisdiction to enable any party to this Final Judgment to apply to the Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XV. ENFORCEMENT OF FINAL JUDGMENT

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including the right to seek an order of contempt from the Court. Defendants agree that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of this Final Judgment, the United States may establish a violation of the decree and the

appropriateness of any remedy therefor by a preponderance of the evidence, and Defendants waive any argument that a different standard of proof should apply.

B. The Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore all competition harmed by the challenged conduct. Defendants agree that they may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

C. In any enforcement proceeding in which the Court finds that Defendants have violated this Final Judgment, the United States may apply to the Court for a one-time extension of this Final Judgment, together with such other relief as may be appropriate. In connection with any successful effort by the United States to enforce this Final Judgment against a Defendant, whether litigated or resolved prior to litigation, that Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as any other costs including experts' fees, incurred in connection with that enforcement effort, including in the investigation of the potential violation.

XVI. EXPIRATION OF FINAL JUDGMENT

Unless the Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry, except that after five (5) years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court and

Defendants that the divestitures have been completed and that the continuation of the Final Judgment no longer is necessary or in the public interest.

XVII. PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, any comments thereon, and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and responses to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16:

_____

United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. UNITED TECHNOLOGIES CORPORATION and ROCKWELL COLLINS, INC., Defendants.	Case No.: 1:18-cv-02279-RC JUDGE: Rudolph Contreras Deck Type: Antitrust

COMPETITIVE IMPACT STATEMENT

Plaintiff United States of America ("United States"), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 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 September 4, 2017, Defendants United Technologies Corporation ("UTC") and Rockwell Collins, Inc. ("Rockwell Collins") entered into an agreement whereby UTC proposes to acquire Rockwell Collins for approximately $30 billion. The United States filed a civil antitrust Complaint against UTC and Rockwell Collins on October 1, 2018, seeking to enjoin the proposed acquisition. The Complaint alleges 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 pneumatic ice protection systems for fixed-wing aircraft

("aircraft") and trimmable horizontal stabilizer actuators ("THSAs") for large aircraft. That loss of competition likely would result in increased prices, less favorable contractual terms, and decreased innovation in the markets for these products.

Concurrent with the filing of the Complaint, the United States filed a Hold Separate Stipulation and Order ("Hold Separate") and proposed Final Judgment, which are designed to eliminate the anticompetitive effects that would have resulted from UTC's acquisition of Rockwell Collins. Under the proposed Final Judgment, which is explained more fully below, Defendants are required to divest assets relating to Rockwell Collins' pneumatic ice protection systems business and its THSA business. Under the Hold Separate, Defendants will take certain steps to ensure that the businesses will operate as competitively independent, economically viable and ongoing business concerns, that will remain independent and uninfluenced by the consummation of the acquisition, and that competition is maintained during the pendency of the ordered divestiture.

The United States 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 this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the Final Judgment and to punish violations thereof.

II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATIONS

A. The Defendants

UTC is incorporated in Delaware and has its headquarters in Farmington, Connecticut. UTC produces a wide range of products for the aerospace industry and

other industries, including, among other products, pneumatic ice protection systems for aircraft and THSAs for large aircraft. In 2017, UTC had sales of approximately $59.8 billion.

Rockwell Collins is incorporated in Delaware and is headquartered in Cedar Rapids, Iowa. Rockwell Collins is a major provider of aerospace and defense electronics systems. Rockwell Collins produces, among other products, pneumatic ice protection systems for aircraft and THSAs for large aircraft. In fiscal year 2017, Rockwell Collins had sales of approximately $6.8 billion.

B. Pneumatic Ice Protection Systems for Aircraft

1. Background

During flight, ice can accumulate on an aircraft's leading edge surfaces, such as the part of the aircraft's wings that first contact the air during flight. Surface ice accumulation affects an aircraft's maneuverability, increases drag, and decreases lift. If it remains untreated, surface ice accumulation can lead to a catastrophic flight event.

A pneumatic ice protection system is engineered to remove accumulated ice on an aircraft's wings. Such a system consists of two main elements, a de-icing boot, which is inflated to crack ice off an aircraft leading edge, and pneumatic system hardware. The pneumatic system hardware consists of equipment designed to control the flow of air into the de-icing boot.

Pneumatic ice protection systems are one form of ice protection technology. The specific design features of an aircraft, such as the availability of electrical power, determine which type of ice protection system will be used on the aircraft. Once an aircraft manufacturer has selected a particular pneumatic ice protection system, that

system is certified as an Original Equipment Manufacturer ("OEM") part for flight worthiness as a part of the aircraft's manufacturing design. Aircraft manufacturers generally only certify one supplier for ice protection systems for a particular aircraft model.

Pneumatic ice protection systems, and components thereof, are also sold in the aftermarket, as their components require repair or replacement after significant use. Most of the revenues related to pneumatic ice protection systems are derived from aftermarket sales. Although generally only one particular pneumatic ice protection system is certified with the aircraft model as original equipment, pneumatic ice protection system suppliers often procure additional certifications that allow their pneumatic ice protection system components to replace their competitors' OEM pneumatic ice protection system in the aftermarket.

Because surface ice accumulation may lead to a catastrophic flight event, pneumatic ice protection systems are considered critical flight components. An aircraft manufacturer or aftermarket purchaser is therefore likely to prefer proven suppliers of pneumatic ice protection systems.

2. Relevant Markets

Pneumatic ice protection systems for aircraft are a relevant product market and line of commerce under Section 7 of the Clayton Act. Ice protection systems are selected at the aircraft design stage based on the characteristics of the aircraft. Pneumatic ice protection systems have numerous attributes (light weight, low cost, and low power requirements) that make them an attractive option for aircraft manufacturers of aircraft with certain design requirements. Certain aircraft models can use only pneumatic ice

protection systems. For these customers that produce those models, pneumatic ice protection systems are the best option, as such customers cannot effectively use other types of ice protection systems such as an electrothermal or bleed air ice protection system.

Once an aircraft is certified, switching the ice protection system on a particular model of aircraft to a different type of ice protection system, even if technologically feasible, would require some re-design of the ice protection portion of the aircraft and recertification of the aircraft. Such re-design and recertification may cost millions of dollars, require additional flight testing, and consume multiple years of time. Therefore, a small but significant increase in the price of pneumatic ice protection systems would not cause customers of those ice protection systems to substitute an alternative type of ice protection system for the original aircraft or in the aftermarket in volumes sufficient to make such a price increase unprofitable.

Although the pneumatic ice protection system installed on each type of aircraft may be deemed a separate product market, in each such market there are few competitors. The proposed acquisition of Rockwell Collins by UTC would affect competition for each aircraft pneumatic ice protection system in the same manner. It is therefore appropriate to aggregate pneumatic ice protection markets for purposes of analyzing the effects of the acquisition.

The relevant geographic market for pneumatic ice protection systems for aircraft is worldwide. Pneumatic ice protection systems are marketed internationally and may be sourced economically from suppliers globally. Transportation costs are a small

proportion of the cost of the finished product and thus are not a major factor in supplier selection.

3. Anticompetitive Effects

There are only three competitors in the market for the development, manufacture, and sale of pneumatic ice protection systems for aircraft. These three firms are the only sources for both OEM systems and aftermarket systems and parts. Based on historical sales results, a combined UTC-Rockwell Collins would control a majority share of OEM and aftermarket sales. Therefore, UTC's acquisition of Rockwell Collins would significantly increase concentration in an already highly concentrated market.

UTC and Rockwell Collins compete directly on price. In some cases, one of the companies has replaced the other's pneumatic ice protection system or components thereof on a particular aircraft.

Customers have benefited from the competition between UTC and Rockwell Collins for sales of pneumatic ice protection systems by receiving lower prices, more favorable contractual terms, and shorter delivery times. The combination of UTC and Rockwell Collins would eliminate this competition and its future benefits to customers. Therefore, post-acquisition, UTC likely would have the incentive and the ability to increase prices profitably and offer less favorable contractual terms, resulting in significant harm to aircraft manufacturers and aftermarket customers that require pneumatic ice protection systems.

4. Difficulty of Entry

Sufficient, timely entry of additional competitors into the markets for pneumatic ice protection systems is unlikely to prevent the harm to competition that is likely to

result if the proposed acquisition is consummated. The small size of the market makes it difficult for new entrants to recover the cost of entry, which is high in part due to the costs of obtaining certification for new equipment. In addition, opportunities to enter are rare, as new aircraft designs are themselves quite infrequent. Moreover, aircraft manufacturers, operators, and servicers are hesitant to purchase aircraft components from newer suppliers, particularly for critical flight components like ice protection systems.

Pneumatic ice protection systems generally are not built by aircraft manufacturers, in part because pneumatic technology tends to be complicated and technically different from other aircraft systems. As a result, aircraft manufacturers are unlikely to move production of such systems in-house in response to a price increase.

C. Trimmable Horizontal Stabilizer Actuators for Large Aircraft

1. Background

Actuators are responsible for the proper in-flight positions of an aircraft by manipulating the "control surfaces" on its wings and tail section. A trimmable horizontal stabilizer actuator ("THSA") helps an aircraft maintain the proper altitude during flight by adjusting ("trimming") the angle of the horizontal stabilizer, the control surface of the aircraft's tail responsible for aircraft pitch.

THSAs vary based on the size and type of the aircraft on which they are used. Because large aircraft encounter significantly higher aerodynamic loads than smaller aircraft, THSAs for large aircraft are considerably larger, more complex, and more expensive than those used on smaller aircraft. Large aircraft primarily include commercial aircraft that seat at least six passengers abreast, such as the Airbus A320 and A350 and the Boeing 737 and 787, and military transport aircraft.

2. Relevant Markets

THSAs for large aircraft do not have technical substitutes. Large aircraft manufacturers cannot switch to THSAs for smaller aircraft, or actuators for other aircraft control surfaces, because those products cannot adequately control the lift and manage the load encountered by the horizontal stabilizer of a large aircraft. A small but significant increase in the price of THSAs for large aircraft would not cause aircraft manufacturers to substitute THSAs designed for smaller aircraft or actuators for other control surfaces in volumes sufficient to make such a price increase unprofitable. Accordingly, THSAs for large aircraft are a relevant product market and line of commerce under Section 7 of the Clayton Act.

The relevant geographic market for THSAs for large aircraft is worldwide. THSAs for large aircraft are marketed internationally and may be sourced economically from suppliers globally. Transportation costs are a small proportion of the cost of the finished product and thus are not a major factor in supplier selection.

3. Anticompetitive Effects

UTC and Rockwell Collins are each other's closest competitors for THSAs for large aircraft. UTC and Rockwell Collins have won two of the most significant recent contract awards for THSAs for large aircraft: the Boeing 777X and the Airbus A350. Boeing and Airbus are the world's largest manufacturers of passenger aircraft, and these aircraft represent two of the only three THSA awards by these manufacturers in this century. While there are other producers of THSAs for large aircraft, those firms tend to concentrate most of their THSA business on smaller aircraft, such as business jets or regional jets, or focus on products for other aircraft control surfaces.

UTC and Rockwell Collins each view the other firm as the most significant competitive threat for THSAs for large aircraft. The two companies are among the few that have demonstrated experience in designing and producing THSAs for large aircraft. Each firm considers the other company's offering when planning bids.

Customers have benefitted from the competition between UTC and Rockwell Collins for sales of THSAs for large aircraft by receiving lower prices, more favorable contractual terms, more innovative products, and shorter delivery times. The combination of UTC and Rockwell Collins would eliminate this competition and its future benefits to customers. Post-acquisition, UTC likely would have the incentive and the ability to increase prices profitably and offer less favorable contractual terms.

UTC and Rockwell Collins also invest significantly to remain leading suppliers of new THSAs for large aircraft, and customers expect them to remain leading suppliers of new products in the future. The combination of UTC and Rockwell Collins would likely eliminate this competition, depriving large aircraft customers of the benefit of future innovation and product development.

4. Difficulty of Entry

Sufficient, timely entry of additional competitors into the market for THSAs for large aircraft is unlikely to prevent the harm to competition that is likely to result if the proposed transaction is consummated. Opportunities to enter are limited. Because certification of a THSA is expensive and time-consuming, once a THSA is certified for a particular aircraft type it is rarely replaced in the aftermarket by a different THSA. Accordingly, competition between suppliers of THSAs generally occurs only when an aircraft manufacturer is designing a new aircraft or an upgraded version of an existing

aircraft. New designs for large aircraft are infrequent, as development costs for such aircraft can amount to tens of billions of dollars. As a result, several years usually pass between contract awards for THSAs for a new aircraft design.

Potential entrants face several additional obstacles. First, manufacturers of large aircraft are more likely to purchase THSAs from those firms already supplying THSAs for other large aircraft. The important connection between THSAs and aircraft safety drives aircraft manufacturers toward suppliers experienced with production of THSAs of the relevant type and size. While some companies may have demonstrated experience in THSAs for smaller aircraft or in other actuators, such experience is not considered by customers to be as relevant as experience in THSAs for large aircraft. A new entrant would face significant costs and time to be considered as a potential alternative to the existing suppliers.

Developing a THSA for large aircraft is technically difficult. Manufacturers of THSAs for smaller aircraft face significant technical hurdles in designing and developing THSAs for large aircraft. As aerodynamic loads are a major design consideration for THSAs, and such loads are tightly correlated with the size of the aircraft, THSAs for large aircraft present more demanding technical challenges than those for smaller aircraft.

Substantial time and significant financial investment would be required for a company to design and develop a THSA for large aircraft. Companies that already make other types of THSAs would require years of effort and an investment of many millions of dollars to develop a product that is competitive with those offered by existing large aircraft THSA suppliers.

As a result of these barriers, entry into the market for THSAs for large aircraft would not be timely, likely, or sufficient to defeat the substantial lessening of competition that likely would result from UTC's acquisition of Rockwell Collins.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The divestitures required by the proposed Final Judgment will eliminate the anticompetitive effects that likely would result from UTC's acquisition of Rockwell Collins. The assets must be divested in such a way as to satisfy the United States in its sole discretion that the assets can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the relevant market. Defendants must take all reasonable steps necessary to accomplish the divestitures quickly and shall cooperate with prospective purchasers.

A. Divestitures

1. Pneumatic Ice Protection Systems for Aircraft

a. The Divestiture

The proposed Final Judgment requires Defendants to divest Rockwell Collins' SMR Technologies division, including Rockwell Collins' business in the development, manufacture, and sale of pneumatic ice protection systems and other ice protection products (the "Ice Protection Divestiture Assets") to an Acquirer acceptable to the United States, in its sole discretion.[1] The assets to be divested include Rockwell Collins' facility located in Fenwick, West Virginia, and all tangible and intangible assets primarily related to the ice protection business. The divestiture of the ice protection business will provide the Acquirer with all the assets it needs to successfully

[1] In addition to pneumatic ice protection systems, the Ice Protection Divestiture Assets include other ice protection products, fueling systems and other industrial products, hovercraft skirts, composites, and commercial aviation products.

develop, manufacture, and sell pneumatic ice protection systems for aircraft.

Paragraph IV(A) of the proposed Final Judgment requires Defendants to divest the Ice Protection Divestiture Assets as a viable ongoing business within the later of five (5) calendar days after notice of entry of this Final Judgment by the Court or fifteen (15) calendar days after Required Regulatory Approvals have been received.

b. Transition Services Agreement

To facilitate the Acquirer's immediate use of the Ice Protection Divestiture Assets, the proposed Final Judgment provides the Acquirer with the option to enter into a transition services agreement with Defendants to obtain back office and information technology services and support for the Ice Protection Divestiture Assets for a period of up to twelve (12) months. The United States, in its sole discretion, may approve one or more extensions of this agreement for a total of up to an additional twelve (12) months.

2. THSAs for Large Aircraft

a. The Divestiture

The proposed Final Judgment requires Defendants to divest Rockwell Collins' business in the design, development, manufacture, sale, service, or distribution of THSAs (the "THSA Divestiture Assets") to an Acquirer acceptable to the United States, in its sole discretion.[2] Because the assets are distributed among multiple sites in two countries, the United States required an upfront buyer to provide additional certainty that the transition can be accomplished without disruption to the business. The United States has approved Safran S.A. as the Acquirer. Safran S.A. is an established aerospace industry supplier.

[2] In addition to THSAs for large aircraft, the THSA Divestiture Assets also include legacy flap actuation, nose wheel steering gear boxes, and pilot control systems, including center yokes, rudder brake pedal units, throttle quadrant assemblies, auto-throttles, and control stand modules.

The assets to be divested include two Rockwell Collins' facilities (Building 518 in Irvine, California and Building 1 in Mexicali, Mexico), and, at the option of the Acquirer, three additional facilities (Building 517 in Irvine, Building 2 in Mexicali, and Building 213 in Melbourne, Florida). The option of acquiring the latter three facilities is designed to allow the Acquirer to consolidate facilities if needed. The THSA Divestiture Assets also include all tangible and intangible assets primarily related to or necessary for the operation of the THSA business. Regardless of whether particular assets have been primarily used for the THSA business, all assets necessary to successfully develop, manufacture, and sell THSAs must be conveyed with the divestiture.

The proposed Final Judgment provides that, at the option of the Acquirer of the THSA Divestiture Assets, and subject to the review and approval of the United States, Building 518 may be transferred via a sublease in lieu of a divestiture. Rockwell Collins currently holds a single lease on Buildings 517 and 518, and this provision allows the Acquirer to use Building 518 without assuming responsibility for both properties.

In addition, Defendants are required to use reasonable best efforts to obtain approvals required from United States government customers for the transfer of certain proprietary contracts. If the necessary approvals cannot be obtained, Defendants may retain those contracts and portions thereof that cannot be subcontracted to the Acquirer, as well as those tangible and intangible assets that have been used exclusively in the performance of those contracts.

Paragraph V(A) of the proposed Final Judgment requires Defendants to divest the THSA Divestiture Assets as a viable ongoing business within the later of five (5) calendar days after notice of entry of this Final Judgment by the Court or fifteen (15)

calendar days after Required Regulatory Approvals have been received.

b. Transition Services Agreement and Transition Obligation

To facilitate the transfer of the divestiture assets between facilities without a supply interruption, the proposed Final Judgment provides the Acquirer of the THSA Divestiture Assets with the option to enter into a transition services agreement with Defendants to obtain services related to facility management and upkeep, facility and asset transition, government compliance, accounting and finance, information technology and human resources for the THSA Divestiture Assets for a period of up to twelve (12) months. The United States, in its sole discretion, may approve one or more extensions of this agreement for a total of up to an additional twelve (12) months. Defendants must use their best efforts to assist the Acquirer with the transition of the THSA Divestiture Assets to locations of the Acquirer's choosing and to not impede that transition.

c. Supply Agreement

Under the proposed Final Judgment, the Acquirer of the THSA Divestiture Assets has the option to obtain a supply agreement from Defendants to provide services related to the manufacture of THSA components in Melbourne, Florida and Cedar Rapids, Iowa sufficient to meet all or part of the Acquirer's needs for a period of up to twelve months. The United States, in its sole discretion, may approve one or more extensions of this agreement for a total of up to an additional twelve (12) months. This supply agreement may be necessary to permit the Acquirer to fill existing orders during the time period that manufacturing is being transitioned to other facilities. This is necessary due to the extended manufacturing process and the long lead time required for

many components, and acceptable given that these assets will be dedicated to filling existing contracts that are unlikely to be subject to competition during the pendency of this supply agreement.

B. Other Provisions

1. Use of Divestiture Trustee

In the event that Defendants do not accomplish the divestitures within the specified time periods, Section VI of the proposed Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestiture. If a trustee is appointed, the proposed Final Judgment provides that Defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as are appropriate to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

2. Prohibition on Reacquisition

Section XIII of the proposed Final Judgment prohibits Defendants from reacquiring any part of the Divestiture Assets during the term of the Final Judgment. In addition, this section prohibits an Acquirer from acquiring from Defendants during the term of the Final Judgment any assets or businesses that compete with the assets

acquired by that Acquirer.

3. Notification

Section XII of the proposed Final Judgment requires Defendants to provide notification to the Antitrust Division of certain proposed acquisitions not otherwise subject to filing under the Hart-Scott-Rodino Act, 15 U.S.C. 18a (the "HSR Act") in the format and pursuant to the instructions provided under that statute for notification. The notification requirement applies in the case of any direct or indirect acquisitions of any assets of or interest in any entity engaged in the development, manufacture, or sale of pneumatic ice protection systems valued over $25 million. Section XII further provides for waiting periods and opportunities for the United States to obtain additional information similar to the provisions of the HSR Act before such acquisitions can be consummated.

4. Compliance and Enforcement Provisions

The proposed Final Judgment also contains provisions designed to promote compliance and make the enforcement of Division consent decrees as effective as possible. Paragraph XV(A) provides that the United States retains and reserves all rights to enforce the provisions of the proposed Final Judgment, including its rights to seek an order of contempt from the Court. Under the terms of this paragraph, Defendants have agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of the Final Judgment, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that Defendants have waived any argument that a different standard of proof should apply. This provision aligns the standard for

compliance obligations with the standard of proof that applies to the underlying offense that the compliance commitments address.

Paragraph XV(B) provides additional clarification regarding the interpretation of the provisions of the proposed Final Judgment. The proposed Final Judgment was drafted to restore all competition that would otherwise be harmed by the merger. Defendants agree that they will abide by the proposed Final Judgment, and that they may be held in contempt of this Court for failing to comply with any provision of the proposed Final Judgment that is stated specifically and in reasonable detail, as interpreted in light of this procompetitive purpose.

Paragraph XV(C) further provides that should the Court find in an enforcement proceeding that Defendants have violated the Final Judgment, the United States may apply to the Court for a one-time extension of the Final Judgment, together with such other relief as may be appropriate. In addition, in order to compensate American taxpayers for any costs associated with the investigation and enforcement of violations of the proposed Final Judgment, in any successful effort by the United States to enforce the Final Judgment against a Defendant, whether litigated or resolved prior to litigation, that Defendant agrees to reimburse the United States for attorneys' fees, experts' fees, or costs incurred in connection with any enforcement effort, including the investigation of the potential violation.

Finally, Section XVI provides that the Final Judgment shall expire ten years from the date of its entry, except that after five years from the date of its entry, the Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestitures have been completed and that the continuation of the

Final Judgment is no longer necessary or in the public interest.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against Defendants.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States

Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet website, and, under certain circumstances, published in the Federal Register.

Written comments should be submitted to:

Maribeth Petrizzi
Chief, Defense, Industrials, and Aerospace Section
Antitrust Division
United States Department of Justice
450 Fifth Street, N.W., Suite 8700
Washington, D.C. 20530

The proposed Final Judgment provides that the Court retains jurisdiction over this action and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions preventing UTC's acquisition of Rockwell Collins. The United States is satisfied, however, that the divestiture of the assets described in the proposed Final Judgment will preserve competition for the development, manufacture, and sale of pneumatic ice protection systems for aircraft and THSAs for large aircraft. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by 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, the court, in accordance with the statute as amended in 2004, 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. U.S. Airways Group, Inc.*, 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (noting the court has broad discretion of the adequacy of the relief at issue); *United States v. InBev N.V./S.A.*, No. 08-1965 (JR), 2009-2 Trade Cas. (CCH) ¶

76,736, 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 mechanism to enforce the final judgment are clear and manageable.").[3]

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) (quoting *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

[3] The 2004 amendments substituted "shall" for "may" in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to 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).

> 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).[4] In determining whether a proposed settlement is in the public interest, a district 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 U.S. Airways*, 38 F. Supp. 3d at 75 (noting that a court should not reject the proposed remedies because it believes others are preferable); *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 U.S. Airways*, 38 F. Supp. 3d at 74 (noting that room must be

[4] *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'").

made for the government to grant concessions in the negotiation process for settlements (citing *Microsoft*, 56 F.3d at 1461)); *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). To meet this standard, 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.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459; *see also U.S. Airways*, 38 F. Supp. 3d at 74 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable; *InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 ("the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged"). Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459-60. As this Court recently confirmed in *SBC Communications*, courts "cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power." *SBC Commc'ns*, 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that "[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); *see also U.S. Airways*, 38 F. Supp. 3d at 75 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). 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 Sen. 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.[5] A court can make its public interest determination based on the competitive impact statement and response to public comments alone. *U.S. Airways*, 38 F. Supp. 3d at 75.

VIII. DETERMINATIVE DOCUMENTS

[5] *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.*, No. 73-CV-681-W-1, 1977-1 Trade Cas. (CCH) ¶ 61,508, at 71,980, *22 (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, 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.").

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: October 10, 2018

Respectfully submitted,

SOYOUNG CHOE*
Defense, Industrials, and Aerospace Section
Antitrust Division
450 Fifth Street N.W., Suite 8700
Washington, D.C. 20530
Telephone: (202) 598-2436
Facsimile: (202) 514-9033
soyoung.choe@usdoj.gov
* Attorney of Record

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