

the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 10, 1997.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. *Bank of Whitman Employee Stock Ownership Plan*, Colfax, Washington; to become a bank holding company by acquiring 30 percent of the voting shares of Whitman Bancorporation, Colfax, Washington, and thereby indirectly acquire Bank of Whitman, Logan, Utah.

Board of Governors of the Federal Reserve System, December 10, 1996.

Jennifer J. Johnson,

*Deputy Secretary of the Board.*

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## FEDERAL TRADE COMMISSION

[File No. 971-0006]

### The Boeing Company; Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this

consent agreement, accepted subject to final Commission approval, settles allegations that the Seattle-based defense and space contractor's acquisition of Rockwell International Corporation's Aerospace and Defense business would violate antitrust laws by reducing competition in two markets: High altitude endurance unmanned air vehicles and space launch vehicles. Boeing and Rockwell are members of the only two teams currently competing to develop high-altitude endurance unmanned air vehicles for the Department of Defense. The agreement would require, among other things, that Boeing deliver to Teledyne Ryan, which heads the team competing against Boeing, all of the assets needed to produce Tier II Plus wings for the Teledyne Ryan team. The proposed acquisition would also make Boeing both a competitor in the market for space launch vehicles and a provider of the space launch vehicle propulsion systems used by Boeing and its space launch vehicle competitors. The agreement prohibits Boeing from making any space launch vehicle manufacturer's non-public information available to Boeing's launch vehicle division, and from using a competitor's proprietary, non-public data in any capacity except as a provider of launch vehicle propulsion systems.

**DATES:** Comments must be received on or before February 14, 1997.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, DC. 20580.

**FOR FURTHER INFORMATION CONTACT:** William J. Baer or George Cary, Federal Trade Commission, H-374, 6th and Pennsylvania Ave., NW, Washington, DC 20580. (202) 326-2932 or (202) 326-3741.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for December 5, 1996), on the World Wide Web, at "http://

www.ftc.gov/os/actions/htm." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, Sixth Street and Pennsylvania Avenue, NW., Washington, DC. 20580, either in person or by calling (202) 326-3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

### Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an agreement containing a proposed Consent Order from The Boeing Company ("Boeing") designed to remedy the anticompetitive effects likely to result from Boeing's proposed acquisition of Rockwell International Corporation's Aerospace and Defense business ("Rockwell Aerospace and Defense"). The proposed Consent Order enables Teledyne Ryan, the prime contractor for the Tier II Plus high altitude endurance unmanned air vehicle ("HAE UAV"), to replace Boeing as its teammate and wing supplier for Tier II Plus, without incurring any significant cost or risk, by requiring Boeing, at Teledyne Ryan's request, to deliver to Teledyne Ryan all of the assets needed to manufacture wings for the Tier II Plus and provide technical assistance to Teledyne Ryan. In addition, the proposed Consent Order prohibits Boeing's space launch vehicle division from gaining access to any non-public information that Boeing's space launch vehicle propulsion system division will receive after the acquisition from competing space launch vehicle providers.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and any comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Order.

On or about July 31, 1996, Boeing agreed to acquire Rockwell Aerospace and Defense for approximately \$3.025 billion. The proposed complaint alleges that the acquisition, if consummated, would violate section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act as amended, 15 U.S.C. 45, in the markets for HAE UAVs and space launch vehicles.

The proposed Consent Order would remedy the alleged violations in each market. First, Boeing and Rockwell are members of the only two teams currently competing in the design and development of HAE UAVs. Boeing and its teammate Lockheed Martin are currently developing the Tier III Minus HAE UAV, and Teledyne Ryan and a team of subcontractors, including Rockwell Aerospace and Defense, are currently developing the Tier II Plus HAE UAV.

HAE UAVs are unmanned aircraft used to perform high-altitude, broad area reconnaissance. These aircraft are controlled from the ground and transmit reconnaissance sensor data on a real time basis. HAE UAVs are being designed to satisfy the Defense Airborne Reconnaissance Office's goal of providing the U.S. military with the ability to obtain responsive and continuous reconnaissance data from anywhere within enemy territory, day or night, as the needs of the warfighter dictate.

Under its teaming agreement with Lockheed Martin, Boeing is responsible for providing, among other things, the wings, launch station and avionics for Tier III Minus. As a subcontractor to Teledyne Ryan for Tier II Plus, Rockwell is responsible for providing only the aircraft's wings. The proposed acquisition therefore would position Boeing as a member of both competing HAE UAV teams while Boeing would stand to earn a far greater share of the revenue from its participation on the Tier III Minus team than it could earn from its role as the wing supplier for the Tier II Plus team.

The acquisition is likely to lead to anticompetitive effects in the HAE UAV market. Because the proposed acquisition would cause Boeing to be a member of the only two competing HAE UAV teams, Boeing would be in a position to raise price and/or reduce quality on one or both teams. Boeing would not only have the opportunity to diminish competition, but would also have the incentive to cause the Tier II Plus team to become non-competitive because Boeing stands to earn significantly more revenue from its participation in the Tier III Minus program than it would earn as a supplier of wings to the Tier II Plus team. Moreover, if the Tier II Plus system became non-competitive, or simply less competitive, Boeing would then be in a position to also raise the price of the Tier III Minus system.

The proposed consent agreement resolves the likely anticompetitive effects of the acquisition in the HAE UAV market by enabling Teledyne Ryan

to replace Rockwell Aerospace and Defense, which would be owned by Boeing after the acquisition, as the Tier II Plus wing supplier without incurring any significant costs or risk. As a result, Boeing will either agree to supply Tier II Plus wings in a competitive manner after the acquisition or be replaced by Teledyne Ryan.

Specifically, under the terms of the Order, Boeing is required to deliver, upon request from Teledyne Ryan, to business locations in the United States designated by Teledyne Ryan, at no cost to Teledyne Ryan, all of the assets needed to produce Tier II Plus wings, including the special tooling, special test equipment, engineering data and design data. Teledyne Ryan can request that Boeing deliver such assets at anytime prior to six months from the date the Order becomes final, provided Teledyne Ryan and Boeing have not agreed to a new contract for Boeing to supply wings for Tier II Plus. This ensures that Boeing will have the incentive to compete vigorously to remain a supplier of wings for Tier II Plus. In addition, Boeing is prohibited from asserting or enforcing any proprietary rights in such equipment or data, or holding Teledyne Ryan liable for any damages or costs resulting from the replacement of Boeing as the Tier II plus wing supplier.

In order to ensure a smooth transition of the wing manufacturing to a new supplier and to offset any lost learning curve efficiencies, the proposed Order requires Boeing to provide technical assistance, not to exceed four man years over a one year period, at no cost to Teledyne Ryan. Because Teledyne Ryan may need Boeing's assistance in resolving any technical issues that arise during the upcoming Tier II Plus flight tests, the Order requires Boeing to provide additional technical assistance through the duration of such tests. Finally, in order to prevent the anticompetitive flow of competitively sensitive information, the order establishes a "firewall" between Boeing's Tier III Minus business and the Rockwell North American Aircraft Division that is currently providing Tier II Plus wings.

Boeing is also a significant competitor in the research, development, manufacture and sale of space launch vehicles, and is expected to bid for the upcoming Department of Defense ("DoD") Evolved Expendable Launch Vehicle ("EELV") program. The EELV competition is expected to produce the next generation of launch vehicles to replace all current medium to heavy launchers—Lockheed Martin's Atlas, Titan II and Titan IV series, and

McDonnell Douglas's Delta series—with a single family of vehicles capable of launching medium and heavy payloads into orbit at a significantly lower cost. The EELV will handle the bulk of the U.S. government's launch requirements after the year 2000 and is also expected to be used for commercial applications. Boeing, McDonnell Douglas, Lockheed Martin and Alliant Techsystems are currently facing a down-selection from four to two contractors in the next phase of the EELV program.

Rockwell, through its Rocketdyne Division ("Rocketdyne"), is one of the world's leading manufacturers of space launch vehicle propulsion systems. Currently, Boeing and McDonnell Douglas are planning to use Rocketdyne propulsion systems as part of their EELV proposals. Thus, the proposed acquisition would vertically integrate Boeing as an EELV bidder and a launch vehicle propulsion systems provider.

Because an EELV manufacturer that is using a Rockwell propulsion system must work very closely with Rockwell in order to integrate that system into its EELV, Boeing and McDonnell Douglas have provided, and will continue to provide, a wide range of competitively sensitive proprietary design, performance, cost-related, marketing and business strategy information to Rockwell.

If DoD selects the Boeing and McDonnell Douglas teams as the finalists for the EELV competition, Boeing's launch vehicle division could gain access to the proprietary information that McDonnell Douglas has provided to Rockwell's launch vehicle propulsion business, which could affect the prices and services that Boeing would offer. Thus, the proposed acquisition increases the likelihood that competition between the participants in the EELV program would decrease.

In addition, Boeing also competes in the commercial market for space launch vehicles and Rockwell also supplies space launch propulsion systems to Boeing's commercial space launch vehicle competitors. As a result, the proposed acquisition may result in similar anticompetitive effects in future commercial space launch vehicle procurements. In addition to causing higher prices, the proposed acquisition may also reduce innovation in the commercial space launch vehicle market, as Boeing's competitors who use Rockwell propulsion systems will be less willing to invest in new space launch vehicle developments for fear that Boeing will be able to "free-ride" off their technological developments.

To remedy the proposed acquisition's likely anticompetitive effects in the

space launch vehicle market, the proposed Consent Order preserves the confidentiality of space launch vehicle suppliers' proprietary information by prohibiting Boeing's division that provides space launch vehicle propulsion systems from making any proprietary information from competing space launch vehicle manufacturers available to Boeing's space launch vehicle division. Under the proposed Consent Order, Boeing may only use such information in its capacity as a provider of space launch vehicle propulsion systems. Non-public information in this context includes any information not in the public domain that is designated as proprietary information by any space launch vehicle manufacturer that provides such information to Boeing as well as information not in the public domain provided by any space launch vehicle manufacturer to Rockwell prior to the acquisition. The purpose of the proposed Consent Order is to preserve the opportunity for full competition in the market for the research, development, manufacture and sale of space launch vehicles. The Commission has issued similar orders limiting potentially anticompetitive information transfers following mergers or acquisitions, including *Lockheed Martin*, (C-3685) (September 20, 1996); *Raytheon Company*, (C-3681) (September 10, 1996); *Lockheed Corporation/Martin Marietta Corporation*, (C-3576) (May 9, 1995); *Alliant Techsystems Inc.*, (C-3567) (April 7, 1995); *Martin Marietta*, (C-3500) (June 28, 1994).

Under the provisions of the proposed Consent Order, Boeing is required to deliver a copy of the Order to any space launch vehicle manufacturer prior to obtaining any information from such manufacturer that is outside of the public domain. The Order also requires Boeing to provide the Commission a report of compliance with the provisions of the Order within (60) days of the date the Order becomes final, and annually for the next (10) years on the anniversary of the date the Order becomes final.

In order to preserve competition in the relevant markets during the period prior to the final acceptance of the proposed Consent Order (after the 60-day public notice period), Boeing has entered into an Interim Agreement with the Commission in which it has agreed to be bound by the proposed Consent Order as of the date the Commission accepts the proposed Consent Order subject to final approval.

The purpose of this analysis is to facilitate public comment on the

proposed Consent Order, and it is not intended to constitute an official interpretation of the agreement and proposed Consent Order or to modify in any way their terms.

Donald S. Clark,  
Secretary.

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BILLING CODE 6750-01-P

**[File No. 962-3047]**

**Comtrad Industries, Inc.; Analysis To Aid Public Comment**

**AGENCY:** Federal Trade Commission.  
**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the Midlothian, Virginia-based company from misrepresenting, in connection with any product for use in the storage of food, the product's comparative or absolute ability to refrigerate or cool food items or medicines or to maintain proper cold storage temperatures; the product's comparative or absolute ability to heat or warm food items; the product's comparative or absolute ability to hold its cooling capacity after being unplugged from a power source; or the effect of operating the product off a car battery when the car is not running. The agreement settles allegations stemming from advertisements for Comtrad's "Koolatron" thermo-electric cooler.

**DATES:** Comments must be received on or before February 14, 1997.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:**

Phoebe D. Morse, Federal Trade Commission, Boston Regional Office, 101 Merrimac Street, Suite 810, Boston, MA 02114-4719. (617) 424-5960

John T. Dugan, Federal Trade Commission, Boston Regional Office, 101 Merrimac Street, Suite 810, Boston, MA 02114-4719. (617) 424-5960

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent

order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for December 9, 1996), on the World Wide Web, at "http://www.ftc.gov/os/actions/htm." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

**Analysis of Proposed Consent Order To Aid Public Comment**

The Federal Trade Commission has accepted an agreement to a proposed consent order from Comtrad Industries, Inc. The proposed respondent is a marketer of "Koolatron," a portable electronic food cooler that doubles as a food warmer.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

The Commission's complaint charges that the proposed respondent made the following false and unsubstantiated representations about Koolatron: (1) Koolatron is as effective at cooling food items and medicines as a home refrigerator; (2) Koolatron will effectively cool down warm items and heat up cold items; (3) once unplugged from a power source, Koolatron will hold its cooling capacity for 24 hours; and (4) operating Koolatron off a car battery when the car is not running will result in only a minimal drain off the car's battery. The complaint also charges that the proposed respondents represented that Koolatron is effective, useful, or appropriate for cooling or heating food items, but failed to disclose that in some circumstances Koolatron