thirty, thirty, twenty, and twenty percent, the HHI is 2600 ($30^2+30^2+20^2+20^2=2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be concentrated. Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the Horizontal Merger Guidelines issued by the U.S. Department of Justice and the Federal Trade Commission. See Merger Guidelines § 1.51.

Certificate of Service

I hereby certify that, on this 30th day of March 1998, I caused to be served via hand delivery a copy of the foregoing Competitive Impact Statement upon the following:

Edward P. Henneberry, Esq., Roxann E. Henry, Esq., Howrey & Simon, 1299 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

Howard Adler, Jr., Esq., David J. Laing, Esq., Baker & McKenzie, 815 Connecticut Avenue, N.W., Washington, D.C. 20006.

Seth E. Bloom.

[FR Doc. 98–9373 Filed 4–8–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Lehman Brothers Holdings Inc. and L–3 Communications Holdings, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. sections 16(b)–(h), that a Complaint, proposed Final Judgment, Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia, in *United States* v. *Lehman Brothers Holdings Inc.* and L–3 Communications Holdings, Inc., Civil Action No. 1:98CV00796.

On March 27, 1998, the United States filed a Complaint seeking an injunction enjoining L–3 Communications Holdings, Inc. and its parent Lehman Brothers Holdings Inc. from acquiring AlliedSignal Inc.'s Ocean Systems and ELAC Nautik GmbH sonar business, or from entering into or carrying out any agreement, understanding or plan, the effect of which would be to combine the sonar business of AlliedSignal Inc. (''AlliedSignal'') and L–3 Communications Corp. (''L–3 Communications''), a wholly owned subsidiary of L–3 Communications Holdings, Inc. The Complaint alleges that because Lockheed Martin Corporation (''Lockheed Martin'') owns 34.0 percent of the common stock of L–3 Communications and controls three seats on the L–3 Communications Board of Directors, the acquisition by L–3 Communications of the sonar business of AlliedSignal would lessen competition substantially in the production and sale of towed sonar arrays to the U.S. Department of Defense (''DoD'') in violation of Section 7 of the Clayton Act, 15 U.S.C. Section 18. Under the proposed Final Judgment, filed the same day as the Complaint, L–3 Communications has agreed to: (1) Maintain a ''firewall'' whereby it prevents the sharing of non-public information relating to the sonar businesses of L–3 Communications and Lockheed Martin, and (2) not enter into any joint bidding or teaming agreements with Lockheed Martin to bid on DoD contracts relating to towed sonar arrays.

Public comment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to J. Robert Kramer, II, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20530 [telephone: (202) 307–0924].

Constance K. Robinson,

Director of Operations & Merger Enforcement Antitrust Division.

Stipulation and Order

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

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

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

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

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

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

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

Dated: March 26, 1998.

For Plaintiff United States of America:

Willie L. Hudgins, Esquire,

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

For Defendant Lehman Brothers Holdings Inc.

Karen Muller,

Vice President, Lehman Brothers Holdings Inc., 3 World Financial Center, New York, NY 10285, (212) 526–2728.

For Defendant L–3 Communications Holdings, Inc.

Christopher C. Cambria,

Vice President, Secretary and General Counsel, L–3 Communications Corporation, 600 Third Avenue, New York, NY 10016, (212) 805–5634.

IT IS SO ORDERED by the Court, this _____ day of March, 1998.

United States District Judge

Final Judgment

Whereas, plaintiff, the United States of America, filed its Complaint in this action on March 27, 1998, and plaintiff and defendants by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

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

And Whereas, plaintiff intends to require defendants to preserve competition by: (1) Preventing employees, officers or directors of Lockheed Martin who serve on the Board of Directors of L–3 Communications, or those nominated by Lockheed Martin to the Board of Directors of L–3 Communications, from influencing, directly or indirectly, the operation of the Ocean Systems and ELAC assets being acquired by L–3 Communications from Allied Signal, and (2) prohibiting the disclosure of non-public information between L–3 Communications and Lockheed Martin relating to the Ocean Systems and ELAC businesses and Lockheed Martin's sonar and mine warfare businesses;

And Whereas, defendants have represented to the plaintiff that they will not enter into any joint bidding or teaming agreements with Lockheed Martin to bid on DoD contracts relating to towed arrays, but that they will be permitted to enter into contracts or subcontracts with Lockheed Martin which relate to towed arrays after DoD has awarded a contract;

And Whereas, defendants have represented to the plaintiff that they can effectuate the preservation of competition by constructing and enforcing a firewall and agreeing not to enter into joint bidding or teaming agreements with Lockheed Martin to bid on DoD contracts relating to towed arrays and that defendants will later raise no claims to hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below;

Now, Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *Ordered, Adjudged, and Decreed* as follows:

I. Jurisdiction

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

II. Definitions

As used in this Final Judgment:

A. ''AlliedSignal'' means AlliedSignal, Inc.

B. ''L–3 Communications'' means L–3 Communications Corporation and L–3 Communications Holdings, Inc., and their directors, employees, agents, representatives, predecessors, successors and assigns.

C. ''Lockheed Martin'' means Lockheed Martin Corporation, its directors, officers, employees, agents, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by Lockheed Martin Corporation; businesses Lockheed Martin Corporation acquires or merges with; and the respective directors, officers, employees, agents, predecessors, successors and assigns of each.

D. ''Limited Officer or Director'' means (1) any employee, officer or director of Lockheed Martin, who is also a member of the Board of Directors of, or an officer of, L–3 Communications, or (2) any member of the Board of Directors of L–3 Communications nominated by Lockheed Martin.

E. ''Ocean Systems'' means the business units and assets of AlliedSignal to be acquired by L–3 Communications through operation of the Purchase Agreement dated December 22, 1997, including AlliedSignal Ocean Systems business unit and AlliedSignal ELAC Nautik GmbH.

F. (1) ''Non-Public Ocean Systems Information'' means any information relating to the business of Oceans Systems not in the public domain, including, but not limited to, Ocean Systems' plans concerning current and future DoD contracts.

(2) Non-Public Ocean Systems Information shall not include: (a) Information that, subsequent to the time L–3 Communications signs the Stipulation and Order in this matter, falls within the public domain through no violation of this order by L–3 Communications; or (b) information that, subsequent to the time L–3 Communications signs the Stipulation and Order in this matter, becomes known to Lockheed Martin from a third party not known by L–3 Communications or Lockheed Martin to be in breach of a confidential disclosure agreement.

G. (1) ''Non-Public Lockheed Martin Information'' means any information not in the public domain relating to sonar and mine warfare products of Lockheed Martin, including, but not limited to, Lockheed Martin's plans concerning current and future DoD contracts.

(2) Non-Public Lockheed Martin Information shall not include: (a) Information that, subsequent to the time L–3 Communications signs the Stipulation and Order in this matter, falls within the public domain through no violation of this order by L–3 Communications; or (b) information that, subsequent to the time L–3 Communications signs the Stipulation and Order in this matter, becomes known to L–3 Communications from a third party not known by L–3 Communications to be in breach of a confidential disclosure agreement.

H. DoD means U.S. Department of Defense.

III. Firewall

A. L–3 Communications shall not discuss, provide, disclose, or otherwise make available, directly or indirectly, to any Limited Officer or Director any Non-Public Ocean Systems Information.

B. L–3 Communications shall require each Limited Officer or Director to refrain from discussing, providing, disclosing or otherwise making available, directly or indirectly, any Non-Public Lockheed Martin Information to any employee or officer of L–3 Communications or to any member of the Board of Directors of L–3 Communications, except any other Limited Officer or Director.

C. The restrictions set forth in Paragraphs III.A and III.B of this Order

shall not prohibit the otherwise lawful exchange by L–3 Communications and Lockheed Martin of such Non-Public Ocean Systems Information or such Non-Public Lockheed Martin Information that may be necessary (1) to obtain or perform any contract or subcontract between L–3 Communications and Lockheed Martin, with the exception of the prohibitions set forth in Section IV, or (2) to obtain or perform any related contracts or subcontracts between or among L–3 Communications, Lockheed Martin and any third party (including any governmental agency).

D. L–3 Communications shall conduct all business relating to Ocean Systems without the vote, concurrence, attendance or other participation of any kind whatsoever of any Limited Officer or Director.

E. Limited Officers or Directors shall not be counted for purposes of establishing a quorum in connection with any matter relating to Ocean Systems.

F. L–3 Communications shall not provide any Limited Officer or Director with any type of compensation that is based in whole or in part on the profitability or performance of Ocean Systems; provided, however, that any Limited Officer or Director may receive as compensation for his or her serving on the L–3 Communications Board of Directors such compensation as is provided generally to other members of the L–3 Communications Board of Directors in accordance with L–3 Communications' ordinary practice, or compensation that is based on the overall profitability or performance of L–3 Communications.

IV. Prohibitions on Certain Joint Bidding and Teaming Agreements

A. L–3 Communications shall not enter into any joint bidding or teaming agreements with Lockheed Martin to bid on DoD contracts relating to towed arrays. L–3 Communications shall not provide any Non-Public Ocean Systems Information nor receive any Non-Public Lockheed Martin Information for the purpose of entering into any joint bidding or teaming agreements with Lockheed Martin for the purpose of bidding on DoD contracts relating to towed arrays. These prohibitions do not restrict L–3 Communications from entering into any contract or subcontract with Lockheed Martin which relates to towed arrays, after DoD has awarded a contract.

V. Affidavits

A. Within sixty (60) calendar days after the filing of the Complaint in this matter, L–3 Communications, shall certify to the Plaintiff whether it has complied with Sections III and IV above.

B. For each year during the term of this Final Judgment, L–3 Communications shall file with the Plaintiff, on or before the anniversary date of the filing of the Complaint, an affidavit as to the fact and manner of its compliance with the provisions of Sections III and IV above.

C. Until such time that this Final Judgment shall expire, L–3 Communications shall preserve all records of all efforts to comply with the Final Judgment.

VI. Compliance Inspection

For purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice (''DOJ''), upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to L–3 Communications made to its principal offices, shall be permitted:

1. Access during office hours of L–3 Communications to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of L–3 Communications, who may have counsel present, relating to the matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of L–3 Communications and without restraint or interference from it, to interview, either informally or on the record, its officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to L–3 Communication's principal offices, L–3 Communications shall submit written reports, under oath if requested, with respect to any matter relating to the Final Judgment.

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

D. If at the time information or documents are furnished by L–3 Communications to DOJ, L–3 Communications represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and L–3 Communications marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then ten (10) calendar days notice shall be given by DOJ to L–3 Communications prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which L–3 Communications is not a party.

VII. Applicability

This Final Judgment applies to defendants; to each of their officers, directors, agents, employees, successors, assigns, subsidiaries, divisions, and any other organizational units of any kind; and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

VIII. Retention of Jurisdiction

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

IX. Termination

This Final Judgment shall continue in force until such time as Lockheed Martin owns less than five percent of the voting securities of L–3 Communications and there are no Limited Officers or Directors on the L–3 Communications Board of Directors.

IX. Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____, 1998.

_____

United States District Judge

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final

Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On March 27, 1998, the United States filed a civil antitrust Complaint alleging that the proposed acquisition by L–3 Communications Corporation (''L–3 Communications''), a wholly owned subsidiary of L–3 Communications Holdings, Inc., of the AlliedSignal Ocean Systems business unit (''Ocean Systems''), a wholly owned business unit of AlliedSignal Inc. (''AlliedSignal''), and AlliedSignal ELAC Nautik GmbH (''ELAC''), a wholly owned subsidiary of AlliedSignal Deutschland GmbH, which is a wholly owned subsidiary of AlliedSignal, would violate Section 7 of the Clayton Act, 15 U.S.C. 18.

The Complaint alleges that the acquisition would violate Section 7 of the Clayton Act because Lockheed Martin Corporation (''Lockheed Martin'') owns 34.0% of the common stock of L–3 Communications and controls three of ten seats on the L–3 Communications Board of Directors, and Lockheed Martin and Ocean Systems are the two leading competitors in the design, development, manufacture and sale of towed sonar arrays (''towed arrays'') to the U.S. Department of Defense (''DoD''). If L–3 Communications were to acquire Ocean Systems, L–3 Communications and Lockheed Martin would become competitors. Towed arrays are sonar systems consisting of very long hose-like structures that are towed behind surface ships and submarines for the purpose of detecting submarines or torpedoes, depending on the type of array. The arrays are linked to electronic signal processing equipment on board the ship or submarine towing the array. This equipment processes the sounds picked-up by the arrays to determine the source of the sound.

As described in the Complaint, since towed arrays are sold to DoD and there are no foreign producers to which DoD or its U.S. prime contractors could reasonably turn to purchase these arrays, the relevant geographic market is the United States.

The prayer for relief in the Complaint seeks: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act; and (2) a permanent injunction preventing L–3 Communications from acquiring Ocean Systems and ELAC.

When the Complaint was filed, the United States also filed a proposed settlement that would permit L–3 Communications to complete its acquisition of Ocean Systems and ELAC, and preserve competition in the relevant market, by requiring L–3 Communications to establish and maintain a ''firewall'' whereby it would refrain from discussing with or disclosing to any employee, officer or director of Lockheed Martin, or person nominated by Lockheed Martin, who is also a member of the Board of Directors of, or an officer of, L–3 Communications any non-public information relating to the Ocean Systems and ELAC businesses. The firewall also requires that these same individuals not share with L–3 Communications any non-public information of Lockheed Martin relating to Lockheed Martin's sonar and mine warfare products. Additionally, the settlement prohibits L–3 Communications from entering into joint bidding or teaming agreements with Lockheed Martin for the purpose of bidding on DoD contracts for towed arrays. The settlement does not however, bar L–3 Communications from entering into a contract or subcontract with Lockheed Martin which relates to towed arrays, after DoD has awarded a contract. The settlement is embodied in a Stipulation and Order and a proposed Final Judgment.

The proposed Final Judgment requires L–3 Communications to implement the firewall and begin adding by the prohibitions on entering into joint bidding or teaming agreements with Lockheed Martin or DoD contracts for towed arrays immediately upon the filing of the proposed Final Judgment and the Complaint in this matter. L–3 Communications must maintain the firewall and abide by the prohibitions on certain joint bidding and teaming agreements for the duration of the proposed Final Judgment. The proposed Final Judgment continues in force until such time as Lockheed Martin owns less than five percent of the voting securities of L–3 Communications and there are no employees, officers or directors of Lockheed Martin, or persons nominated by Lockheed Martin, on the L–3 Communications Board of Directors. L–3 Communications must certify to DOJ sixty (60) calendar days after the filing of the Complaint in this matter and annually thereafter the steps it has taken to comply with the provisions set forth in the proposed Final Judgment.

The terms of the Stipulation and Order entered into by the parties apply to ensure that the Ocean Systems and ELAC businesses to be acquired by L–3 Communications shall be maintained as independent competitors of Lockheed Martin.

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

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

A. The Defendants and the Proposed Transaction

Lehman Brothers Holdings, Inc. is a Delaware corporation headquartered in New York, New York. Its business activities are in financial services and merchant and investment banking. In 1997, Lehman Brothers Holdings, Inc. had net revenues of $3.8 billion.

L–3 Communications Holdings, Inc. is a Delaware corporation headquartered in New York, New York. L–3 Communications is a leading provider of sophisticated secure communication systems and specialized communication products including high data-rate communications systems, microwave components, avionics, and telemetry and instrumentation products. In 1997, L–3 Communications had sales of approximately $700 million.

On December 22, 1997, L–3 Communications and AlliedSignal entered into a Purchase Agreement, whereby L–3 Communications would acquire from AlliedSignal its Ocean Systems and ELAC businesses. This transaction, which would give Lockheed Martin, through its ownership interest in L–3 Communications, influence over, and access to non-public information of, the other leading competitor in the design, development, manufacture and sale of towed arrays to DoD, precipitated the government's suit.

B. Towed Arrays Market

Towed arrays are sonar systems designed to be towed by a submarine or a surface vessel. Towed arrays deployed by submarines are designed to detect other submarines. The arrays are long, hose-like structures measuring up to a thousand feet or longer that contain specially designed acoustic sensors, called hydrophones, which pick up sound. The arrays include electronics that convert the acoustical waves from analog to digital form and transmit that data to electronic processors on board the submarine. Processing the data involves such functions as distinguishing the sounds generated by submarines from the sounds made by other sources, such as whales. The construction of the hose-like structure containing the hydrophones and

electronics requires specialized skills which few companies possess. Towed arrays deployed by submarines must be designed to withstand the extreme environmental stresses of operation in the ocean depths.

Towed arrays deployed by surface combat vessels are designed to detect submarines and torpedoes. They have different mechanisms for deploying, reeling in and storing the arrays and face different environmental stresses than those deployed by submarines. Towed arrays used by surface combat vessels are towed at much greater speed than those towed by submarines or non-combat ships and require engineering solutions to deal with the ''noise'' generated by dragging the array through the water. Towed arrays deployed by non-combat surface ships are designed to detect submarines, but not torpedoes. Only about ten percent of towed arrays for surface ships are those designed for non-combat ships.

There are no substitutes for towed arrays and therefore no other products to which DoD or U.S. prime contractors could turn in the face of a small but significant and non-transitory price increase by suppliers of towed arrays.

C. Harm to Competition as a Consequence of the Acquisition

Ocean Systems and Lockheed Martin are the two leading firms in the design and production of towed arrays. Over ninety percent of the towed arrays deployed by submarines have been designed and built by Lockheed Martin and Ocean Systems. Over eighty percent of the towed arrays deployed by surface combat ships were built by Ocean Systems and Lockheed Martin (and companies it acquired). The other company that previously built towed arrays for surface combat ships has not won a DoD contract for towed arrays in over a decade. Because of their prior experience and repeated success in winning DoD towed array contracts, Lockheed Martin and Ocean Systems are likely to be the primary providers of towed arrays purchased by DoD in the future.

In 1998, DoD is expected to conduct a competition, known as the Omnibus Competition, for the next generation of towed arrays to be deployed by submarines and surface combat and non-combat vessels. The award of this contract is expected to cover both design and production. This contract will likely be awarded on the basis of ''best value'' which considers a bidder's price and the quality of its technical proposal. The evaluation of the technical proposal generally includes an assessment of the riskiness of the proposal and the bidder's prior experience. Given their long history in designing and producing towed arrays for DoD, Ocean Systems and Lockheed Martin likely will be the leading contenders for the Omnibus contract, as well as for any future DoD towed array contracts. Other potential competitors do not have the experience of these two companies in the design and production of towed arrays.

L–3 Communications' acquisition of Ocean Systems is likely significantly to lessen competition for towed array contracts awarded by DoD. Because Lockheed Martin sits on the Board of Directors of L–3 Communications, the acquisition could result in the two leading providers of towed arrays to DoD having access to each other's business plans, costs, pricing data and decisions, and other internal and competitively sensitive information. The exchange of such information could significantly decrease the willingness and ability of L–3 Communications and Lockheed Martin to engage in vigorous competition for DoD contracts for towed arrays. Access to information revealing each other's costs, pricing and technical efforts would provide them with information that could decrease their incentive to bid aggressively on DoD contracts and therefore could lead to higher prices paid by DoD. Access to such information could also decrease their incentive to minimize costs or to innovate in the design or manufacture of towed arrays.

Successful entry into the production and sale of towed arrays is difficult, and costly. Entry requires advanced technology, skilled engineers, specialized know-how and costly customized equipment and facilities. A potential entrant would have to engage in difficult, expensive, and time consuming research to develop designs and production processes that can economically and reliably produce towed arrays. These designs and production processes must be perfected before an entrant can successfully bid for a DoD towed array contract. It is unrealistic to expect new entry in a timely fashion to protect competition in upcoming DoD towed array competitions.

The Armed Forces of the United States rely on the ongoing, vigorous competition between Ocean Systems and Lockheed Martin for the development and production of towed arrays. The proposed acquisition will lessen this competition, and will result in an increase in prices paid by the United States and a decrease in innovation for towed arrays and will, therefore, violate Section 7 of the Clayton Act.

The Complaint alleges that the transaction would have the following effects, among others: competition generally in the innovation, development, production and sale of towed arrays for military purposes in the United States would be lessened substantially; actual and future competition between Ocean Systems and Lockheed Martin in the innovation, development, production and sale of towed arrays for military purposes in the United States would be lessened substantially; and prices for towed arrays for military purposes in the United States would likely increase.

III. Explanation of the Proposed Final Judgment

The provisions of the proposed Final Judgment are designed to eliminate the anticompetitive effects of the acquisition of Ocean Systems by L–3 Communications.

The proposed Final Judgment requires L–3 Communications to implement a firewall immediately upon the filing of the Complaint in this matter and to certify with sixty (60) calendar days after the filing of the Complaint that it has implemented the firewall provisions set forth in the proposed Final Judgment. The firewall provisions require that L–3 Communications shall not discuss, provide, disclose or otherwise make available, directly or indirectly, any non-public information relating to the Ocean Systems and ELAC businesses, to (1) any employee, officer or director of Lockheed Martin, who is also a member of the Board of Directors of, or an officer of, L–3 Communications, or (2) any member of the Board of Directors of L–3 Communications nominated by Lockheed Martin. Additionally, L–3 Communications must require that any member of the Board of Directors of L–3 Communications who was either nominated by Lockheed Martin or who is an employee, officer or director of Lockheed Martin refrain from discussing, providing, disclosing or otherwise making available, directly or indirectly, any non-public information of Lockheed Martin relating to its sonar or mine warfare products. The firewall provisions also require that L–3 Communications shall conduct all business relating to Ocean Systems and ELAC without the vote, concurrence, attendance or other participation of any individuals serving on the L–3 Communications Board of Directors who is an employee, officer or director of Lockheed Martin or who was nominated by Lockheed Martin. Finally,

the proposed Final Judgment prohibits L–3 Communications from entering into joint bidding or teaming agreements with Lockheed Martin for the purpose of bidding on DoD contracts for towed arrays. This prohibition does not bar L–3 Communications from entering into a contract or subcontract with Lockheed Martin after DoD has awarded a towed array contract.

The provisions of the Final Judgment preserve competition because they will ensure that any business decisions made by L–3 Communications concerning the Ocean Systems and ELAC businesses it is acquiring from AlliedSignal will be made without sharing any non-public information with Lockheed Martin or receiving any non-public information from Lockheed Martin and because L–3 Communications and Lockheed Martin will be required to compete separately for DoD towed array contracts.

IV. Remedies Available To Potential Private Litigants

Section 4 of 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 cost and reasonable attorney's 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 *primi facie* effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

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

The APPA provides a period of at least 60 days 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 publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**. Written comments should be submitted to: J. Robert Krammer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW, Suite 3000, Washington, D.C. 20530.

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

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants Lehman Brothers Holdings Inc. and L–3 Communications Holdings, Inc. The United States could have brought suit and sought preliminary and permanent injunctions against L–3 Communications' acquisition.

The United States is satisfied that the provisions set forth in the proposed Final Judgment will encourage viable competition in the research, development, and production of towed arrays. The United States is satisfied that the proposed relief will prevent the acquisition from having anticompetitive effects in this market. The provisions of the Final Judgment will restore the towed array market to the competitive conditions that existed prior to the acquisition.

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

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.'' In making that determination, the court *may* consider—

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, in any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e) (emphasis added). As the Court of Appeals for the District of Columbia Circuit recently held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995).

In conducting this inquiry, ''the Court is nowhere compelled to go to 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.'' [1] Rather,

absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest findings, 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.

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

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), *quoting United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981); *see also, Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995). Precedent requires that

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest 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

[1] 119 Cong. Rec. 24598 (1973). *See also United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. 93–1463, 93rd Cong. 2d Sess. 8–9, reprinted in (1974) U.S. Code Cong. & News 6535, 6538.

whether the settlement is '*within the reaches of the public interest.*' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[2]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted).'' [3]

VIII. Determinative Documents

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

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Dated: March 31, 1998.

Certificate of Service

I hereby certify under penalty of perjury that on this 1st day of April, 1998, I caused copies of the foregoing COMPETITIVE IMPACT STATEMENT to be served by first-class mail postage prepaid, upon the following:

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

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

DEPARTMENT OF LABOR

Employment and Training Administration

ETA 207, Nonmonetary Determination Activities Report

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension collection of the ETA 207, Nonmonetary Determinations Report.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before June 8, 1998.

The Department of Labor is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Diann Lowery, U.S. Department of Labor, Employment and Training Administration, Unemployment Insurance Service, 200 Constitution Avenue NW, Frances Perkins Bldg. Room S–4516, Washington, D.C. 20210. Telephone number 202–219–5340x179 (this is not a toll-free number). Fax number 202–219–8506.

SUPPLEMENTARY INFORMATION:

I. Background

The ETA 207 Report, Nonmonetary Determinations, contains State data on the number and types of issues that arise and data on the denials of benefits that may result due to reasons associated with a claimants reason for separation from work such as voluntary leaving, or questions of continuing eligibility such as refusal of suitable work. These data are used by the Unemployment Insurance Service (UIS) to determine workload counts, to enable the UIS to evaluate the adequacy and effectiveness of nonmonetary determination procedures, and to evaluate the impact of State and Federal legislation with respect to disqualifications.

II. Current Actions

The continued collection of the information contained on the ETA 207 report is necessary to enable the national office to continue evaluating State performance in the nonmonetary determination area and to continue using the data as a key input to the administrative funding process.

Type of Review: Extension without change.

Agency: Employment and Training Administration (ETA).