

**ANALYSIS OF PROPOSED AGREEMENT CONTAINING CONSENT ORDER  
TO AID PUBLIC COMMENT**

*In the Matter of Northrop Grumman Corporation and Orbital ATK, Inc., File No. 181-0005*

**I. Introduction**

The Federal Trade Commission (“Commission”) has accepted an Agreement Containing Consent Order (“Consent Agreement”) designed to remedy the anticompetitive effects resulting from Northrop Grumman Corporation’s (“Northrop”) proposed acquisition of Orbital ATK, Inc. (“Orbital ATK”). Under the terms of the Consent Agreement, Northrop would be required to (1) continue to act as a non-discriminatory merchant supplier of Orbital ATK’s solid rocket motors (“SRMs”) rather than favor its now-vertically integrated missile system business, and (2) protect SRM and missile system competitors’ competitively sensitive information from improper use or disclosure.

The Consent Agreement has been placed on the public record for thirty days for receipt of comments by interested persons. Given that the acquisition could impact a current ongoing missile system competition, the Commission issued the accompanying Decision and Order (“Order”) as final prior to seeking public comment, as provided in Section 2.34(c) of the Commission’s Rules. This will allow the Commission to enforce the Order if there are any violations of its provisions during the public comment period. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the Consent Agreement or modify the accompanying Order.

Pursuant to an Agreement and Plan of Merger dated September 17, 2017, Northrop agreed to acquire 100 percent of the issued and outstanding voting securities of Orbital ATK for approximately \$7.8 billion (the “Acquisition”). The Commission’s Complaint alleges that the Acquisition is in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and 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 FTC Act, as amended, 15 U.S.C. § 45, by lessening the competition in the United States market for missile systems. The Acquisition would provide Northrop with the ability and incentive to withhold its SRMs from competing missile system prime contractors, or only offer its SRMs at disadvantageous terms, thereby raising rivals’ costs or otherwise undermining their ability to compete on future missile system bids. The Consent Agreement will remedy the alleged violations by prohibiting Northrop from discriminating against competing missile prime customers in supplying SRMs.

**II. The Parties**

Northrop is a Delaware corporation with its principal place of business in Falls Church, Virginia. Northrop is a global aerospace and defense company that acts as a prime contractor or preferred supplier on many high-priority programs for the United States Department of Defense (“DOD”) and other United States Government agencies. Northrop is one of only a few companies capable of acting as a prime contractor for tactical, missile defense, and strategic missile systems for DOD [the United States Government]. From 1997 to 2013, Northrop was the prime contractor responsible for maintaining, sustaining, and modernizing the Minuteman III

strategic missile system. Northrop is currently competing to develop the nation's next intercontinental ballistic missile system, the Ground Based Strategic Deterrent. Northrop has also successfully competed for United States Government research and development contracts for tactical missiles and missile defense interceptors.

Orbital ATK is a Delaware corporation with its principal place of business in Dulles, Virginia. The company is a prime contractor and merchant supplier of space, defense, and aviation-related systems to customers around the world. Orbital ATK is the nation's leading producer of SRMs for both defense and commercial applications. For defense programs, Orbital ATK produces strategic-grade SRMs for the Trident II D-5 and Minuteman III and the Missile Defense Agency's Ground-based Midcourse Defense interceptor. In addition, Orbital ATK is a leading producer of SRMs for air-, sea- and land-based tactical missiles and missile defense interceptors. Orbital ATK supplies these SRMs to prime contractors for use in their missile systems.

### **III. The Products and Structure of the Markets**

Northrop is one of only four companies capable of supplying missile systems to the United States Government. Missile systems provide essential national defense capabilities for the United States Government. The United States Armed Forces employ multiple types of missile systems, including short-range tactical missiles, longer-range strategic missiles, and missile defense interceptors designed to defeat ballistic missile threats. Each type of missile system purchased by DOD has unique capabilities and is designed specifically to perform its given mission(s).

Orbital ATK is one of only two viable suppliers of SRMs for U.S. Government missile systems and the dominant supplier of large SRMs used for long-range strategic missiles. SRMs are used to propel tactical, missile defense, and strategic missiles to their intended targets. SRMs are used for virtually all missile systems purchased by the United States Government because they offer numerous advantages over all other existing propulsion technologies.

The relevant geographic market in which to analyze the effects of the proposed transaction is the United States. The missile systems that are the subject of the Complaint are solely purchased by the United States Government, which also typically funds their development. National security considerations and other factors limit DOD's ability to procure its missile systems from foreign suppliers. Federal law, national security, and other considerations similarly drive missile system prime contractors to procure SRMs from domestic suppliers.

### **IV. Entry**

Entry into the relevant markets would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the Acquisition. There are significant barriers to entry into the development, manufacture, and sale of both SRMs and missile systems in the United States. The relevant products are high technology, defense-specific products that require specialized expertise and facilities to develop, test, and

manufacture. It would be extremely difficult and costly for a new entrant to establish the technological expertise and specialized facilities necessary to compete successfully in either of these markets.

## **V. Effects of the Acquisition**

Following the Acquisition, Northrop, will be one of only two viable suppliers of SRMs for U.S. Government missile systems. The choice of SRM can have a significant impact on the final determination of a missile system prime competition because the propulsion system is a critical element of the overall missile design. SRMs comprise a large portion of the cost of the integrated missile and their performance affects the range, accuracy, and payload capacity of the missile. Absent the protections of the Consent Agreement, Northrop would have the ability to disadvantage competitors for future missile prime contracts by denying or limiting their access to Northrop's SRM products and technologies, which would lessen the ability of Northrop's missile system competitors to compete successfully for a given missile system prime contract. The Acquisition would also give Northrop access, through the former Orbital ATK SRM business, to the proprietary information that rival missile prime contractors must share with its SRM vendor. Similarly, the Acquisition creates a risk that the proprietary, competitively sensitive information of a rival SRM supplier supporting Northrop's missile system business could be transferred to Northrop's vertically integrated SRM business.

## **VI. The Consent Agreement**

The Consent Agreement remedies the acquisition's likely anticompetitive effects by requiring, whenever Northrop competes for a missile system prime contract, that Northrop must make its SRM products and related services available on a non-discriminatory basis to all other third-party competing prime contractors that wish to purchase them. The non-discrimination prohibitions of the Consent Agreement are comprehensive and apply to any potential discriminatory conduct affecting price, schedule, quality, data, personnel, investment, technology, innovation, design, or risk.

The Consent Agreement requires Northrop to establish firewalls to ensure that Northrop does not transfer or use any proprietary information that it receives from competing missile prime contractors or SRM suppliers in a manner that harms competition. These firewall provisions require that Northrop maintain separate firewalled teams to support offers of SRMs to different third-party missile prime contractors and to maintain these firewalled teams separate from the team supporting Northrop's missile prime contractor activities. The firewall provisions also prohibit Northrop's missile business from sharing proprietary information it may receive from third-party SRM suppliers with Northrop's SRM business.

The Consent Agreement also provides that the DOD's Under Secretary of Defense for Acquisition and Sustainment shall appoint a compliance officer to oversee Northrop's compliance with the Order. The compliance officer will have all the necessary investigative powers to perform his or her duties, including the right to interview respondent's personnel, inspect respondent's facilities, and require respondents to provide documents, data, and other information. The compliance officer has the authority to retain third-party advisors, at the

expense of Northrop, as appropriate to perform his or her duties. Access to these extensive resources will ensure that the compliance officer is fully capable of overseeing the implementation of, and compliance with, the Order.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Consent Agreement or to modify its terms in any way.