

Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202-205-1810).

Schedule for Symposium

Evaluating APEC Trade Liberalization: Tariff and Nontariff Barriers, September 11-12, 1997, U.S. International Trade Commission, Washington, DC 20436

September 11, 1997—9:00 am—Opening remarks by Chairman Miller

9:15 am

1. Trade Policy Measures

Magnus Blomström, Stockholm University, Regional Integration and Foreign Direct Investment
David Richardson, Syracuse University, Institute for International Economics, Competition Policy

Break 10:30 am

10:45 am

2. Deregulation

Cliff Winston, The Brookings Institution, U.S. Industry Adjustment to Economic Deregulation
Claude Barfield, American Enterprise Institute, Deregulation and Trade

Break 12:00 pm

1:30 pm

3. Case Studies A

Mark Tilton, Purdue University, Japanese Group Boycotts and Closed Government Procurement as Barriers to Trade
Diane Manifold, U.S. International Trade Commission, Japanese Corporate Activities in Asia: Implications for Market Access

2:45 pm

4. Case Studies B

Yu-Shi Mao, Chairman of the Unirule Institute of Econ, China's Nontariff Trade Barriers, and An Inquiry to the Calculation of Consumers' Surplus Under Partial Equilibrium
U.S. International Trade Commission Staff, The Measurement of Non-Tariff Barriers for Selected Sectors in Selected East Asian Countries

Break 3:45 pm

4:00 pm

5. Business Networks

James E. Rauch, University of California, San Diego, The Impact of Overseas Chinese Networks on APEC Trade
Gary Hamilton, University of Washington, Organization of the Taiwanese and South Korean Economies: A Comparative Analysis (with Robert Feenstra)

September 12, 1997—9:15 am

6. Services and Intellectual Property Rights

Walter Park, American University, Patent Policies as Nontariff Barriers to Trade

Malcolm Bosworth, Productivity Commission, Australia, Measuring Trade Barriers on Services within APEC

Break 10:30 am

10:45 am

7. Public Practices

Simon Evenett, University of Michigan Business School, The Effect of Liberalizing Government Procurement Practices on Intra-APEC Trade Flows

Praveen Dixit, Economic Research Service, USDA, State Trading in Agriculture: an Analytical Framework (with Tim Josling)

1:30 pm

8. General Equilibrium Modeling of Trade Liberalization A

Innwon Park, National University of Singapore, Strategic Interest of ASEAN in Regional Trading Groups in the Asia-Pacific Region (with Tan Kong Yam, and Mun Heng Toh)

Philippa Dee, Productivity Commission, Australia, Modeling Services Trade Barriers in APEC

2:45 pm

9. General Equilibrium Modeling of Trade Liberalization B

Shujiro Urata, Waseda University, Japan, The Impact of Deregulation in the Service Sector in Japan: A General Equilibrium Approach (with Hiroki Kawai)

International Trade Commission Staff, Liberalizing Services Trade in APEC

Break 3:45 pm

4:00 pm

10. Dynamic Modeling of Trade Liberalization

Dale Jorgenson, Harvard University, Trade Policy and Economic Growth (with Mun S. Ho)

Warwick McKibbin, The Australian National University, Trade and Financial Effects of APEC Trade Liberalization

Symposium: The symposium will be held on September 11 and 12, 1997 at the U.S. International Trade Commission, 500 E Street, SW., Washington DC. Members of the public may attend the symposium and there will be an opportunity for brief technical comments on the papers from the audience. Those who would like to attend the symposium are requested to indicate their intention by sending a letter or fax to the Office of Economics,

U.S. International Trade Commission (fax no. 202-205-2340) by September 2, 1997.

Issued: July 14, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97-19400 Filed 7-22-97; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Raytheon Company and Texas Instruments Inc.; 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 Order, Hold Separate and Partition Plan Stipulation and Order and Competitive Impact Statement have been filed with the United States District Court in the District of Columbia, Civil No. 1:97CV01515.

On July 2, 1997, the United States filed a Complaint alleging that the proposed acquisition by Raytheon Company of the Defense Systems and Electronics Unit of Texas Instruments Inc. ("DS&E") would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The complaint further alleges that the acquisition by Raytheon of DS&E would lead to a monopoly in X-band high power amplifier monolithic microwave integrated circuits ("MMICs"). The proposed Final Judgment, filed the same time as the Complaint, requires Raytheon to divest the MMICs business of DS&E.

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, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20530 (telephone: 202/307-0924).

Copies of the Complaint, Stipulation and Order, Hold Separate and Partition Plan Stipulation and Order, Proposed Final Judgment, and Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, N.W., Washington, D.C. 20530, (202) 514-2841. Copies of these

materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations, 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, 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 divestiture 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 divestiture provisions contained therein.

Dated: July 2, 1997.

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 Raytheon Company:
Robert D. Paul, Esquire, (D.C. Bar #416314), Michael S. Shuster, Esquire, White & Case, 601 13th St., N.W., Washington, D.C. 20005-3807, (202) 626-3614.

For Defendant Texas Instruments Inc.:
Kathleen L. Ferrell, Esquire, (D.C. Bar #367971), Paul Bartel, Esquire, Davis, Polk & Wardwell, 450 Lexington Avenue, New York, NY 10017, (212) 450-4760.

It is so ordered by the Court, this _____ day of July, 1997.

_____, United States District Judge.

Parties Entitled to Notice of Entry of Order

United States of America:
Department of Justice Antitrust Division, J. Robert Kramer II, Esq., Willie L. Hudgins, Esq., Suite 3000, 1401 H Street, N.W., Washington, D.C. 20530.
Counsel for Raytheon Company:
Robert D. Paul, Esq., Michael S. Shuster, Esq., White & Case, 601 13th St., N.W., Washington, D.C. 20005-3807.
Counsel for Texas Instruments Incorporated:
Paul W. Bartel, Esq., Thomas P. Ogden, Esq., Kathleen L. Ferrell, Davis, Polk & Wardwell, 450 Lexington Avenue, New York, NY 10017.

Hold Separate and Partition Plan Stipulation and Order

It is hereby stipulated and agreed by and between the undersigned, subject to approval and entry by the Court, that:

I. Definitions

As used in this Hold Separate and Partition Plan Stipulation and Order:

A. "DoD" means the Department of Defense.

B. "DOJ" means the Antitrust Division of the Department of Justice.

C. "GaAs" means gallium arsenide.

D. "MMIC" means a Monolithic Microwave Integrated Circuit.

E. "MMIC Business" means the GaAs foundry and MMIC business of the R/F Microwave Business Unit of TI purchased by Raytheon, including the GaAs Operations Group, Microwave GaAs Products Business Unit, the MMIC component of the Microwave Integrated Circuits Center of Excellence, the MMIC research and development component of the System Components Laboratory, and associated contracting, quality assurance and control personnel located in the North Building and East Building

of TI's Expressway site, all employees listed in attachment A, and all assets, including:

1. all tangible assets purchased by Raytheon used in the operation of the MMIC Business including but not limited to: all real property (owned or leased), including interests in the North Building and East Building, used in the operation of that MMIC Business, including research and development activities; all manufacturing, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site warehouses or storage facilities, and other tangible property or improvements used in the operation of the MMIC Business; all licenses, permits and authorizations issued by any governmental organization relating to that MMIC Business; all contracts, teaming arrangements, agreements, leases, commitments and understandings pertaining to the MMIC Business and its operations; supply agreements; all customer lists and credit records; and other records maintained by TI in connection with the MMIC Business;

2. all intangible assets purchased by Raytheon relating to the MMIC Business, including but not limited to all patents, licenses and sublicenses, intellectual property, maskwork rights, technical information, know-how, trade secrets, drawings, blueprints, designs, design protocols, cell libraries, 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, and all manuals and technical information TI provides to its own employees, customers, suppliers, agents or licensees; and

3. all research data concerning historic and current research and development efforts relating to the MMIC Business, including designs of experiments, and the results of unsuccessful designs and experiments.

F. "Raytheon" means Raytheon Company, a Delaware corporation with its headquarters and principal place of business in Lexington, Massachusetts, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, directors officers, managers, agents, and employees.

G. "TI" means defendant Texas Instruments, Inc., a Delaware corporation with its headquarters and principal place of business in Dallas, Texas, and its successors, assigns subsidiaries, divisions, groups, affiliates, partnerships and joint

ventures, and directors, officers, managers, agents and employees.

II. Objectives

The Final Judgment filed in this case is meant to ensure Raytheon's prompt divestiture of the MMIC Business for the purposes of creating a viable competitor in development, production and sale of MMICs used in advance military radars and to remedy the effects that the United States alleges would otherwise result from Raytheon's proposed acquisition of the MMIC Business of TI. This Hold Separate and Partition Plan Stipulation and Order ensures the timely and complete transfer of the MMIC Business and maintains the MMIC Business as an independent, viable competitor until divestiture is complete.

III. Hold Separate Provisions

A. Raytheon and MMIC Business shall expressly undertake to compete in the MMIC market in the exercise of their best judgments and without regard to the merger agreement, as if they were in all respects separate and independent business entities.

B. Raytheon shall preserve, maintain, and operate the MMIC Business purchased by Raytheon from TI as an independent competitor with management, research, development, production, sales and operations held entirely separate, distinct and apart from those of Raytheon. Raytheon shall not coordinate its production, marketing or sale of gallium arsenide products with that of the MMIC Business, except to the limited extent provided in III(D) below. Within fifteen (15) days of the entering of this Order, Raytheon will inform the DOJ and DoD of the steps taken to comply with this provision.

C. Raytheon shall take all steps necessary to ensure that the MMIC Business will be maintained and operated as an independent, ongoing, economically viable and active competitor in the development, production and sale of gallium arsenide products, including MMICs, that the management of the MMIC Business will not be influenced by Raytheon, and that the books, records, competitively sensitive sales, marketing and pricing information, and decision-making associated with the MMIC Business, including the performance and decision-making functions regarding internal research and development, sales and pricing, will be kept separate and apart from the business of Raytheon. Raytheon's influence over the MMIC Business shall be limited to that necessary to carry out Raytheon's obligations under this Order and the

Final Judgment. Nothing in the provision, however, shall prevent Raytheon from obtaining information customarily provided in due diligence to allow Raytheon to determine what technology, intellectual property, and know-how it may desire to license from the purchaser of the MMIC Business and to determine whether to contract with the purchaser of the MMIC Business to produce product for Raytheon.

D. Raytheon shall provide and maintain sufficient working capital to maintain the MMIC Business as a viable, ongoing business, consistent with current business plans.

E. Raytheon shall provide and maintain sufficient lines and sources of credit to maintain the MMIC Business as a viable, ongoing business.

F. Raytheon shall maintain on behalf of the business of the MMIC Business in accordance with sound accounting practices, separate, true and complete financial ledgers, books and records reporting the profit and loss and liabilities of the business on a monthly and quarterly basis.

G. Raytheon shall use all reasonable efforts to maintain and increase sales of the MMIC Business, and shall maintain at 1996 or previously approved levels for 1997, whichever are higher, internal research and development funding, sales, marketing, and support for MMIC and module products produced by the MMIC Business.

H. Raytheon shall not sell, lease, assign, transfer or otherwise dispose of, or pledge as collateral for loans, assets that may be required to be divested pursuant to the Final Judgment.

I. Raytheon shall preserve the assets that may be required to be divested pursuant to the Final Judgment in a state of repair equal to their state of repair as of the date of this Order, ordinary wear and tear excepted.

J. Nothing in this Order shall prohibit Raytheon from contracting with the MMIC Business, pursuant to arm's length negotiations, to have the MMIC Business produce product for Raytheon from any excess capacity at the foundry of the MMIC Business.

K. Except in the ordinary course of business or as is otherwise consistent with this Order, defendants shall not transfer or terminate, or alter, to the detriment of any employee, any current employment or salary agreements for any MMIC Business employee who, on the date of entry of this Order, works for the MMIC Business. Defendants shall not solicit to hire any individual who, on the date of entry of this Order, was an employee of the MMIC Business. Defendants shall not hire any individual who, on the date of entry of this Order,

was an employee of the MMIC Business, unless such individual has a written offer of employment from a third party for a like position.

L. Until such time as this Order is terminated, the MMIC Business shall be managed by Thomas Cordner. Mr. Cordner shall have complete managerial responsibility for the MMIC Business, subject to the provisions of this Order and the Final Judgment. In the event that Mr. Cordner is unable to perform his duties, Raytheon shall appoint from the current management of the MMIC Business, subject to the DOJ's approval, a replacement within ten (10) working days. Should Raytheon fail to appoint a replacement acceptable to the DOJ within ten (10) working days, the DOJ, after consultation with DoD, shall appoint a replacement.

M. Raytheon shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestiture pursuant to the Final Judgment to a suitable purchaser.

N. This Order shall remain in effect until the divestiture required by the Final Judgment is complete, or until further Order of the Court.

IV. Partition Plan

A. Defendants are hereby ordered and directed to present a plan to partition the facilities of the MMIC Business from the facilities of Raytheon and TI to the DoD and DOJ, within twenty-eight (28) days of the entry of this Order. In the event the parties are unable to agree on a partition plan within twenty-eight (28) days of the entry of this Order, DOJ, in consultation with DoD, may appoint an expert to devise such a partition plan. The expert shall have the right, in its sole discretion, to allocate space and equipment between Raytheon, TI and the MMIC Business. Defendants shall not object to the partitioning plan devised by the expert on any grounds other than the expert's malfeasance. The expert shall serve at the cost and expense of Raytheon. Raytheon shall take no action to interfere with or impede the expert's partition plan.

B. Raytheon shall ensure to the satisfaction of DoD that the operations of the MMIC Business, including its support of DoD programs, not be disrupted.

Dated: July 2, 1997.

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 Raytheon Company:
Robert D. Paul, Esquire, (D.C. Bar # 416314), Michael S. Shuster, Esquire, White

& Case, 601 13th St., N.W., Washington, D.C. 20005-3807, (202) 626-3614.

For Defendant Texas Instruments Inc.:

Kathleen L. Ferrell, Esquire, (D.C. Bar # 367971), Paul Bartel, Esquire, Davis, Polk & Wardwell, 450 Lexington Avenue, New York, NY 10017, (212) 450-4760.

It is so ordered by the Court, this _____ day of July, 1997.

_____, United States District Judge.

Parties Entitled to Notice of Entry of Order

United States of America:

Department of Justice Antitrust Division, J. Robert Kramer II, Esq., Willie L. Hudgins, Esq., Suite 3000, 1401 H Street, N.W., Washington, DC 20530.

Counsel for Raytheon Company:

Robert D. Paul, Esq., Michael S. Shuster, Esq., White & Case, 601 13th St., N.W., Washington, DC 20005-3807.

Counsel for Texas Instruments

Incorporated:

Paul W. Bartel, Esq., Thomas P. Ogden, Esq., Kathleen L. Ferrell, Davis, Polk & Wardwell, 450 Lexington Ave., New York, NY 10017.

Final Judgment

Whereas, plaintiff, the United States of America, and defendants Raytheon Company ("Raytheon") and Texas Instruments, Inc. ("TI"), 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, the essence of this Final Judgment is the prompt and certain divestiture of the gallium arsenide foundry and MMIC business of TI to assure that competition is not substantially lessened;

And whereas, plaintiff requires defendants to make certain divestitures for the purpose of establishing a viable competitor in the development, production and sale of X-band high power amplifier MMICs;

And whereas, defendants have represented to the plaintiff that the divestitures ordered herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture 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. "DoD" means the Department of Defense.

B. "DOI" means the Antitrust Division of the Department of Justice.

C. "GaAs" means gallium arsenide.

D. "MMIC" means a Monolithic Microwave Integrated Circuit.

E. "MMIC Business" means the GaAs foundry and MMIC business of the R/F Microwave Business Unit of TI purchased by Raytheon, including the GaAs Operations Group, Microwave GaAs Products Business Unit, the MMIC component of the Microwave Integrated Circuits Center of Excellence, the MMIC research and development component of the System Components Laboratory and associated contracting, quality assurance and control personnel located in the North Building and East Building of TI's Expressway site, all employees listed in attachment A, and all assets, including:

1. all tangible assets purchased by Raytheon used in the operation of the MMIC Business including but not limited to: all real property (owned or leased), including interests in the North Building and East building, used in the operation of that MMIC Business, including research and development activities, as identified pursuant to the Court's Hold Separate and Partition Plan Stipulation and Order; all manufacturing, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site warehouses or storage facilities, and other tangible property or improvements used in the operation of the MMIC Business; all licenses, permits and authorizations issued by any governmental organization relating to that MMIC Business; all contracts, teaming arrangements, agreements, leases, commitments and understandings pertaining to the MMIC Business and its operations; supply agreements; all customer lists and credit records; and other records maintained by TI in connection with the MMIC Business;

2. all intangible assets purchased by Raytheon relating to the MMIC Business, including but not limited to all patents, licenses and sublicenses,

intellectual property, maskwork rights, technical information, know-how, trade secrets, drawings, blueprints, designs, design protocols, cell libraries, 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, and all manuals and technical information TI provides to its own employees, customers, suppliers, agents or licensee; and

3. all research data concerning historic and current research and development efforts relating to the MMIC Business, including designs of experiments, and the results of unsuccessful designs and experiments.

F. "Module Business" means the transmit and receive module business of the R/F Microwave Business Unit of TI purchased by Raytheon, including the R/F Microwave Manufacturing Group, Microwave Module & Subsystems Center for Excellence Microwave Packaging Center for Excellence, Microwave Laboratories and Support Systems Center for Excellence, Technology Programs Customer Product Team, module component of the Microwave Integrated Circuits Center for Excellence, and associated contracting, quality assurance and control personnel located in the North Building of TI's Expressway site, and all assets, including:

1. all tangible assets purchased by Raytheon used in the operation of the Module Business including but not limited to: all real property (owned or leased), including interests in the North Building, used in the operation of that Module Business, including research and development activities; all manufacturing, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site warehouses or storage facilities, and other tangible property or improvements used in the operation of the Module Business; all licenses, permits and authorizations issued by any governmental organization relating to that Module Business; all contracts, teaming arrangements, agreements, leases, commitments and understandings pertaining to the Module Business and its operations; supply agreements; all customer lists and credit records; and other records maintained by TI in connection with the Module Business;

2. all intangible assets purchased by Raytheon relating to the Module Business, excluding information relating to TI's MMIC Business, and otherwise including but not limited to all patents,

licenses and sublicenses, intellectual property, technical information, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of material and substances, quality assurance and control procedures, design tools and simulation capability, and all manuals and technical information TI provides to its own employees, customers, suppliers agents or licensee; and

3. all research data concerning historic and current research and development efforts relating to the Module Business, including design of experiments, and the results of unsuccessful designs and experiments.

G. "Raytheon" means Raytheon Company, a Delaware corporation with its headquarters and principal place of business in Lexington, Massachusetts, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

H. "TI" means defendant Texas Instruments, Inc., a Delaware corporation with its headquarters and principal place of business in Dallas, Texas, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents and employees.

III. Applicability

A. The provisions of this Final Judgment apply to Raytheon, its successors and assigns, their subsidiaries, directors, officers, managers, agents, and employees, and 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.

B. Raytheon shall require, as a condition of the sale or other disposition of all or substantially all of its assets or of a lesser business unit that includes Raytheon's business of developing and producing MMICs, that the transferee agree to be bound by the provisions of this Final Judgment.

IV. Divestiture

A. Raytheon is hereby ordered and directed in accordance with the terms of this Final Judgment, within one hundred and eighty (180) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the MMIC Business to an acquirer

acceptable to DOJ and DoD in their sole discretion.

B. Raytheon shall use its best efforts to accomplish the divestiture as expeditiously and timely as possible. DOJ in its sole determination, in consultation with DoD, may extend the time period for any divestiture an additional period of time not to exceed thirty (30) calendar days.

C. In accomplishing the divestiture ordered by this Final Judgment, Raytheon promptly shall make known, by usual and customary means, the availability of the MMIC Business described in this Final Judgment. Raytheon shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Raytheon shall also offer to furnish to all bona fide prospective purchasers, subject to customary confidentially assurances, all information regarding the MMIC Business customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work product privilege Raytheon shall make available such information to the DOJ at the same time that such information is made available to any other person.

D. Raytheon shall permit prospective purchasers of the MMIC Business to have reasonable access to personnel and to make such inspection of the physical facilities of the MMIC Business and any and all Financial, Operational, or other documents and information customarily provided as part of a due diligence process.

E. Raytheon shall not take any action that will impede in any way the operation of the MMIC Business.

F. Unless both DOJ and DoD otherwise consent in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V of this Final Judgment, shall include the entire MMIC Business, operated in place pursuant to the Hold Separate and Partition Plan Stipulation and Order, and be accomplished by selling or otherwise conveying the MMIC Business to a purchaser in such a way as to satisfy DOJ and DoD, in their sole discretion, that the MMIC Business can and will be used by the purchaser as part of a viable, ongoing business or businesses engaged in the development, production and sale of MMICs. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to a purchaser for whom it is demonstrated to DOJ and DoD sole satisfaction: (1) Has the capability and intent of competing effectively in the

development, production and sale of MMICs for advanced DoD radar systems; (2) has the managerial, operational, and financial capability to complete effectively in the development, production and sale of MMICs for advanced DoD radar systems; (3) is eligible to receive applicable DoD security clearances; and (4) that none of the terms of any agreement between the purchaser and Raytheon give Raytheon the ability unreasonably to raise the purchasers costs, to lower the purchasers' efficiency, or otherwise to interfere in the ability of the purchaser to complete effectively. Subject to these provisions, nothing in this Final Judgment shall prohibit TI from seeking to re-acquire the MMIC Business from Raytheon.

G. Nothing in this Final Judgment shall prevent Raytheon and the purchaser of the MMIC Business from entering into a contract under which the purchaser would produce product for Raytheon using any capacity of the MMIC Business not required to support DoD programs. In addition, nothing in this Final Judgment shall prevent Raytheon from licensing technology or know-how from the purchaser.

H. For a period two years from the filing of the Complaint in this matter, defendants shall not solicit to hire any individual who, on the date of the filing of the Complaint in this matter, with an employee of the MMIC Business, For a period of two years from the filing of the Complaint in this matter, defendants shall not hire any individual who, on the date of the filing of the Complaint in this matter, was an employee of the MMIC business unless such individual has a written offer of employment from a third party for alike position.

I. Raytheon shall comply with all agreements with DoD regarding the protection of information related to classified programs.

J. Raytheon shall not charge to DoD any costs directly or indirectly incurred in complying with this Final Judgment.

V. Appointment of Trustee

A. In the event that Raytheon has not divested the MMIC Business within the time specified in Section IV of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by DOJ, in consultation with DoD, to effect the-divestiture of the MMIC Business.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the MMIC Business described in Section II(E) of this Final Judgment. The trustee shall have the power and authority to accomplish the divestiture at the best price then

obtainable upon a reasonable effort by the trustee, subject to the provision of sections IV and VIII of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. The trustee shall have the right, in its sole discretion, to include in the package of assets to be divested the Module Business; in such event all of the obligations and of Raytheon under Section IV of this Final Judgment shall apply to the Module Business as well. Subject to Section V(C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of Raytheon any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to the DOJ and DoD, and shall have such other powers as this Court shall deem appropriate. Raytheon shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by Raytheon must be conveyed in writing to DOJ and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI of this Final Judgment.

C. The trustee shall serve at the cost and expense of Raytheon, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Raytheon and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the divested business and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. Raytheon shall use its best efforts to assist the trustee in accomplishing the required divestiture, including best efforts to affect all necessary regulatory approvals. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Raytheon shall develop financial or

other information relevant to the business to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. Raytheon shall permit bona fide prospective acquirers of the assets to have reasonable access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and other information as may be relevant to the divestiture required by this Final Judgment.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment; provided, however, that to the extent such reports contain information that the 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 business to be divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the business to be divested.

F. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth (1) The trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the trust which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by DOJ.

VI. Notification

Within two (2) business days following execution of a definitive agreement, contingent upon compliance

with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Sections IV or V of this Final Judgment, Raytheon or the trustee, whichever is then responsible for effecting the divestiture, shall notify DOJ and DoD of the proposed divestiture. If the trustee is responsible, it shall similarly notify Raytheon. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the business to be divested that is the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by DOJ and DoD of such notice, DOJ, in consultation with DoD, may request from Raytheon, the proposed purchaser, or any other third party additional information concerning the proposed divestiture and the proposed purchaser. Raytheon and the trustee shall furnish any additional information requested from them within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the DOJ has been provided the additional information requested from Raytheon, the proposed purchaser, and any third party, whichever is later, DOJ and DoD shall each provide written notice to Raytheon and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If DOJ and DoD provide written notice to Raytheon and the trustee that they do not object, then the divestiture may be consummated, subject only to Raytheon's limited right to object to the sale under Section V(B) of this Final Judgment. Absent written notice that DOJ and DoD do not object to the proposed purchaser or upon objection by DOJ or DoD, a divestiture proposed under Section IV or Section V may be consummated. Upon objection by Raytheon under the provision in Section V(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. 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 divestiture has been completed whether pursuant to Section IV or Section V of this Final Judgment, Raytheon shall deliver to DOJ and DoD an affidavit as to the fact and manner of compliance with Sections IV or V of this Final Judgment. Each such

affidavit shall include, *inter alia*, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, 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 business to be divested, 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 that Raytheon has taken to solicit a buyer for the relevant assets and to provide required information to prospective purchasers including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by DOJ to information provided by Raytheon, including limitations on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Raytheon shall deliver to DOJ and DoD an affidavit which describes in detail all actions Raytheon has taken and all steps Raytheon has implemented on an on-going basis to preserve the MMIC Business pursuant to Section VIII of this Final Judgment and the Hold Separate and Partition Order entered by the Court. The affidavit also shall describe, but not be limited to, Raytheon's efforts to maintain and operate the MMIC Business as an active competitor, maintain the management, staffing, research and development activities, sales, marketing and pricing of the MMIC Business, and maintain the MMIC Business in operable condition at current capacity configurations. Raytheon shall deliver to DOJ and DoD an affidavit describing any changes to the efforts and actions outlined in Raytheon's earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Until one year after such divestiture has been completed, Raytheon shall preserve all records of all efforts made to preserve the business to be divested and effect the divestiture.

VIII. Hold Separate Order

Until the divestitures required by the Final Judgment have been accomplished, Raytheon shall take all steps necessary to comply with the Hold Separate and Partition Plan Stipulation and Order entered by this Court and to preserve the assets of the Module Business. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

IX. Financing

Raytheon is ordered and directed not to finance all or any part of any purchase by an acquirer made pursuant to Sections IV or V of this Final Judgment without prior written consent of DOJ.

X. 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, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Raytheon made to its principal offices, shall be permitted:

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

2. Subject to the reasonable convenience of Raytheon 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 Raytheon's principal offices, Raytheon shall submit such written reports, under oath if requested, with respect to any matter contained in the Final Judgment and the Hold Separate and Partition Order.

C. No information or documents obtained by the means provided in Sections VII or X 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 Raytheon to DOJ or DoD, Raytheon 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

Raytheon 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 or DoD to Raytheon prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Raytheon is not a party.

XI. 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 order and directions as may be necessary or appropriate for the construction or carrying out 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.

XII. Termination

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

XIII. Public Interest

Entry of this Final Judgment is in the public interest.

Dated _____, 1997.

_____, 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 July 2, 1997, the United States filed a civil antitrust Complaint alleging that the proposed acquisition by Raytheon Company ("Raytheon") of the Defense Systems and Electronics Unit ("DS&E") of Texas Instruments ("TI") would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that Raytheon and TI are the only two firms that are now in a position to develop and produce an essential input required in state-of-the-art military radar systems that will cost the Department of Defense about \$10 billion. These inputs are X-band high power amplifier monolithic microwave integrated circuits ("MMICs"). Raytheon is also a leading producer of radar systems. TI, on the other hand, is an independent supplier of MMICs, often supplying them to Raytheon's radar system competitors.

As described in the Complaint, since X-band high power amplifier MMICs are purchased by domestic radar producers for inclusion in weapon systems sold to the Department of Defense, and there are no foreign producers to which domestic radar producers could reasonably turn to purchase these MMICs, 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 Raytheon from acquiring DS&E.

When the Complaint was filed, the United States also filed a proposed settlement that would permit Raytheon to complete its acquisition of DS&E, but require a divestiture and other terms that will preserve competition in the relevant market. This settlement consists of a Stipulation and Order, Hold Separate and Partition Plan Stipulation and Order, and a proposed Final Judgment.

The proposed Final Judgment orders Raytheon to divest, within one hundred and eighty (180) calendar days after the filings of the Complaint in this matter, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later, the MMIC Business (as defined in the Final Judgment) of DS&E to an acquirer acceptable to the Antitrust Division of the Department of Justice ("DOJ") and the Department of Defense ("DoD"). TI's MMIC Business includes its commercial and defense MMICs, a gallium arsenide foundry, and all tangible and intangible assets used by TI in the operation of its MMIC Business. Raytheon is also required to divest the Module Business (as defined in the Final Judgment) of DS&E if a trustee deems the sale of this business is necessary to perfect a sale of the MMIC Business.

Until such divestiture is completed, the terms of the Hold Separate and Partition Plan Stipulation and Order entered into by the parties apply to ensure that the MMIC Business of DS&E shall be maintained as an independent competitor from Raytheon.

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

Raytheon is a Delaware corporation headquartered in Lexington, Massachusetts. Raytheon produces aircraft, guided missiles, space vehicles, and defense electronics equipment. It develops and produces high power amplifier MMICs for military radars as its Advanced Device Center in Andover, Massachusetts. In 1996, Raytheon reported total sales of about \$12 billion. Raytheon is also a leading designer and producer of radar systems.

TI is a Delaware corporation headquartered in Dallas, Texas. In 1996, TI reported total sales of about \$13 billion. Its DS&E unit produces guided missiles, electro-optical systems, and defense electronics equipment. DS&E develops and produces high power amplifier MMICs for military radars through its R/F Microwave Business Unit at a facility in Dallas, Texas. In 1996, DS&E reported total sales of about \$1.3 billion.

On January 4, 1997, Raytheon entered into an agreement with TI to purchase DS&E. This transaction, which would, in part, take place in the highly concentrated high power amplifier MMIC market, precipitated the government's suit.

B. MMIC Market

High power amplifier MMICs are solid state semiconductor components (commonly referred to as "chips") made of gallium arsenide and used in active electronically scanned array ("AESA") radars. MMICs are designed to operate within specified frequency ranges or bands of the microwave spectrum. Military AESA radars demand the highest performance MMICs typically those operating in that part of the spectrum called the X-band, because this band offers the best combination of all-weather capability and ability to detect low-level targets. Because of the importance of the X-band high power amplifier MMIC to the performance of an AESA radar, the performance of these MMICs is important selection criterion among competing radar systems.

Raytheon has produced more high power amplifier MMICs and modules than any other firm, and TI is the recognized leader in developing high power amplifier MMICs. The two companies are the only firms capable of developing and producing the high power amplifier MMICs required for military radar bids scheduled for the next two to three years. In the next two

to three years, radar programs worth over \$10 billion will be competed. The radars for these programs will all require X-band high power amplifier MMICs. TI and Raytheon are the only firms that have established production processes and proven manufacturing capability for these high power amplifier MMICs.

Raytheon's acquisition of TI's DS&E, including the MMICs Business, would have eliminated competition in the development, production, and sale of X-band high power amplifier MMICs for military radars being developed over the next two to three years. The proposed acquisition would have resulted in a single supplier with the incentive and ability to raise prices and little or no incentive to minimize cost.

The acquisition also likely would have resulted in a lessening of competition in the market for military radars. Raytheon is not only a supplier of high power amplifier MMICs but is also a major supplier of the radar systems of which these devices are critical components. Prior to announcement of the acquisition, TI had teamed with other radar systems suppliers to develop MMICs that met the required specifications for DoD weapon systems. If it acquired the MMIC Business, Raytheon would have controlled access to all currently viable high power amplifier MMICs. Without access to the latest high power amplifier MMICs, a radar manufacturer would be at a serious disadvantage for upcoming military radar competitions.

Successful entry into the production and sale of high power amplifier MMICs is difficult, time consuming, and costly. Entry requires advanced technology, skilled engineers, and costly customized equipment. A new gallium arsenide foundry costs \$50-100 million and takes at least two years to construct. 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 high power amplifier MMICs. These designs and production processes must be perfected in order to bid successfully for a military radar program.

Because the high power amplifier MMIC is a crucial input of the radar system, there are no reasonable substitutes to which customers could switch in the event of a small, but significant and non-transitory price increase.

C. Harm to Competition As A Consequence of the Acquisition

Raytheon's acquisition of DS&E's MMIC Business would eliminate

competition in the research, development, and production of high power amplifier MMICs necessary to military weapons systems in the United States.

If Raytheon acquired the MMIC Business of DS&E, the current two producers of high power amplifier MMICs in the United States would be reduced to one. Entry by a new company would not be timely, likely or sufficient to prevent harm to competition.

The Complaint alleges that the transaction would have the following effects, among others: competition generally in the innovation, development, production, and sale of high power amplifier MMICs for military radars in the United States would be lessened substantially; actual and future competition between Raytheon and TI in the development, production and sale of high power amplifier MMICs for military radars in the United States will be eliminated; prices for high power amplifier MMICs for military radars in the United States would likely increase; and competition generally in development, production and sale of military radars in the United States would be lessened substantially.

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 DS&E's MMIC Business by Raytheon.

The proposed Final Judgment provides that Raytheon must divest, within one hundred and eighty (180) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later, the MMIC Business of DS&E to an acquirer acceptable to the DOJ and DoD. If defendants fail to divest the MMIC Business, a trustee (selected by DOJ in consultation with DoD) will be appointed. The trustee will be authorized to sell, in his or her sole discretion, the MMIC Business. In addition, the trustee shall have the right, in his or her sole discretion, to include in the package of assets to be divested the Module Business, if sale of the Module Business is necessary to perfect a sale of the MMIC Business.

The Final Judgment provides that Raytheon will pay all costs and expenses of the trustee. After his or her appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish divestiture. At the end of six months, if

the divestiture has not been accomplished, the trustee and the parties will make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

Divestiture of the MMIC Business preserves competition because it will restore the high power amplifier MMIC market to a structure that existed prior to the acquisition and will preserve the existence of an independent competitor. Divestiture will keep at least two producers of high power amplifier MMICs in the market competing for upcoming AESA radar programs, which will preserve and encourage ongoing competition in product innovation and development, production, and sales. Divestiture will also prevent radar system manufacturers from being foreclosed from a critical input and thus will preserve competition in upcoming military radar programs.

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 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**. 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 Kramer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 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 Raytheon and TI. The United States could have brought suit and sought preliminary and permanent injunctions against Raytheon's acquisition. The United States also considered a settlement involving the licensing of MMIC technology to one or more firms. The United States determined, however, that such a proposal would not fully protect competition for important radar projects over the next several years.

United States is satisfied that the divestiture of the described assets and the other terms specified in the proposed Final Judgment will encourage viable competition in the research, development, and production of high power amplifier MMICs. The United States is satisfied that the proposed relief will prevent the acquisition from having anticompetitive effects in this market. The divestiture of the MMIC Business and the other proposed terms will restore the high power amplifier MMIC market to a structure that existed prior to the acquisition and will preserve the existence of an independent competitor.

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

The APPA requires that proposed consent judgment 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 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, if any, to be derived from a determination of the issues at trail. 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 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. *United States v. Mid-America Dairymen, Inc.*, 1977-1 Trace 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 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 certainly 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.

For Plaintiff *United States of America: J. Robert Kramer II, Chief, Litigation II Section, PA Bar # 23963; William L. Hudgins, Assistant Chief, Litigation II Section, DC Bar # 37127; and Janet Adams Nash, Kevin C. Quin, Stacy Nelson, Laura M. Scott, Nancy Olson, Tara M. Higgins, Charles R. Schwidde, Robert W. Wilder, Melanie Sabo, Trail Attorneys, U.S. Department of Justice, Antitrust Division, 1401 H St., N.W., Suite 3000, Washington, D.C. 20530, 202-307-0924, 202-307-6283 (Facsimile).*

Dated: July 2, 1997.

[FR Doc. 97-19315 Filed 7-22-97; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—CAD Framework Initiative, Inc.

Notice is hereby given that, on May 1, 1997 pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), CAD Framework Initiative, Inc. ("CFI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Compass Design Automation, San Jose, CA, has reinstated its membership in CFI. SGS Thompson Microelectronics, Argate Brianza, ITALY; CADIS Inc., Boulder, CO; Concurrent CAE Solutions, Inc., Santa Clara, CA; I.C. Master (a division of Hearst Business Publishing/UTP), Garden City, NY; and Synapticad, Inc., Blacksburg, VA, have joined CFI as Corporate Members. Corporate Member High Level Design Systems, Inc., was acquired by Cadence Design Systems, Inc., San Jose, CA.

On December 30, 1988, CFI filed its original notification pursuant to Section 6(a) of the Act. That filing was amended on February 7, 1989. The Department of Justice published a notice concerning the amended filing in the **Federal Register** pursuant to Section 6(b) of the Act on March 13, 1989 (54 Fed. Reg. 10456). A correction notice was published on April 20, 1989 (54 Fed. Reg. 16013).

The last notification was filed with the Department on November 7, 1996. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 29, 1997 (62 FR 23266).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97-19312 Filed 7-22-97; 8:45 am]

BILLING CODE 4410-11-M

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. & Ad. News 6535, 6538.

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).