5. Proposed Respondents waive all rights to contest the validity of this

Interim Agreement.

6. For the purpose of determining or securing compliance with this Interim Agreement, subject to any legally recognized privilege and applicable United States Government national security requirements, and upon written request, and on reasonable notice, to any Proposed Respondent made to its principal office, that Proposed Respondent shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of that Proposed Respondent and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of that Proposed Respondent relating to compliance with this Interim Agreement; and

b. Upon five (5) days' notice to any Proposed Respondent and without restraint or interference from it, to interview officers, directors, or employees of that Proposed Respondent, who may have counsel present, regarding any such matters.

7. This Interim Agreement shall not be binding until accepted by the Commission.

## Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an agreement containing a proposed Consent Order from Lockheed Corporation ("Lockheed"), Martin Marietta Corporation ("Martin Marietta") and Lockheed Martin Corporation ("Lockheed Martin") collectively referred to as respondents. The proposed Consent Order prohibits respondents from enforcing exclusivity provisions contained in teaming agreements with manufacturers of sensors for space-based early warning systems. The proposed Consent Order also prohibits respondents' military aircraft division from gaining access to any non-public information that respondents' electronics division receives from competing military aircraft manufacturers when providing a navigation and targeting system known as "LANTIRN" to competing aircraft producers. In addition, the proposed Consent Order prohibits respondents from making any modifications to the LANTIRN system that discriminate against other military aircraft manufacturers unless such modifications either are necessary to meet competition or are approved by the Secretary of Defense. Finally, the proposed Consent Order prohibits respondents' expendable launch vehicle ("ELV") divisions from gaining access to any non-public information that respondents' satellite divisions receive from competing ELV suppliers when those competing suppliers launch respondents' satellites.

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

Pursuant to an August 29, 1994, Agreement and Plan of Reorganization, Lockheed and Martin Marietta agreed to merge their businesses into a newly created corporation, Lockheed Martin. The proposed complaint alleges that the merger, if consummated, would violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, in the following three markets in the United States:

 the research, development, manufacture and sale of satellites for use in space-based early warning systems;

(2) the research, development, manufacture and sale of military aircraft; and

(3) the research, development, manufacture and sale of expendable launch vehicles.

The proposed Consent Order would remedy the alleged violations. First, in the market for space-based early warning systems, Lockheed and Martin Marietta are exclusively teamed with the Electro-Optical and Data Systems Group of Hughes Aircraft Company ("Hughes") and Northrop Grumman Corporation ("Northrop Grumman"), respectively. Hughes and Northrop Grumman are two of the leading manufacturers of sensors for spacebased early warning systems. Because the Lockheed/Hughes and Martin Marietta/Northrop Grumman teaming agreements are both exclusive, the proposed merger would allow Lockheed Martin to tie up two different sensors for space-based early warning systems. The proposed Consent Order makes these agreements non-exclusive, which allows Hughes and Northrop Grumman to bid for space-based early warning systems either on their own or teamed with other companies, as well as to continue working with their current teammates, Lockheed and Martin Marietta. The

purpose of the proposed Consent Order is to increase the number of competitors for space-based early warning systems procured by the United States Department of Defense ("DoD").

Second, Lockheed is a significant competitor in the manufacture and sale of military aircraft, and Martin Marietta is the only supplier of the LANTIRN infrared navigation and targeting system, a critical component on some military aircraft. Following the merger, Lockheed Martin would be the sole source for LANTIRN systems, as well as a competitor in the military aircraft market. Because military aircraft manufacturers will have to provide proprietary information to the Lockheed Martin division that manufacturers LANTIRN, Lockheed Martin's military aircraft division could gain access to competitively significant and nonpublic information concerning competing military aircraft. In addition, because the LANTIRN system is periodically modified or upgraded, Lockheed Martin could modify the LANTIRN in a manner that discriminates against competing military aircraft manufacturers. As a result, the proposed merger increases the likelihood that competition between military aircraft suppliers would decrease because Lockheed Martin would have access to its competitors' proprietary information, which could affect the prices and services that Lockheed Martin provides. In addition, advancements in military aircraft research, innovation, and quality would be reduced because Lockheed Martin's military aircraft competitors would fear that Lockheed Martin could "free ride" off of its competitors' technological developments.

Therefore, the proposed Consent Order prohibits Lockheed Martin from disclosing any non-public information that it received from military aircraft manufacturers in its capacity as a provider of the LANTIRN system to Lockheed Martin's military aircraft division. Under the proposed Order, Lockheed Martin may only use such information in its capacity as a provider of the LANTIRN system. Non-public information in this context means any information not in the public domain and designated as proprietary information by any military aircraft manufacturer that provides such information to Lockheed Martin. The proposed Consent Order also prohibits Lockheed Martin from making any modifications to the LANTIRN system that disadvantage other military aircraft manufacturers unless the modification are necessary to meet competition or are approved by the Secretary of Defense, or