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THE COMPETITIVE IMPLICATIONS OF THE BFGOODRICH/COLTEC MERGER

HEARING

BEFORE THE

SUBCOMMITTEE ON ANTITRUST, BUSINESS RIGHTS, AND COMPETITION

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

ON

EXAMINING THE COMPETITIVE AND NATIONAL SECURITY IMPLICATIONS OF THE PROPOSED MERGER BETWEEN BFGOODRICH/COLTEC INDUSTRIES

JUNE 10, 1999

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THE COMPETITIVE IMPLICATIONS OF THE BFGOODRICH/COLTEC MERGER

THURSDAY, JUNE 10, 1999

U.S. SENATE,
SUBCOMMITTEE ON ANTITRUST, BUSINESS RIGHTS
AND COMPETITION,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:06 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Mike DeWine (chairman of the subcommittee) presiding.

Also present: Senator Kohl.

OPENING STATEMENT OF HON. MIKE DeWINE, A U.S. SENATOR FROM THE STATE OF OHIO

Senator DEWINE. The hearing will come to order.

I want to welcome you to the Antitrust, Business Rights and Competition Subcommittee hearing on "The Competitive Implications of the Proposed Goodrich/Coltec Merger."

As many of you know, this proposed merger between BFGoodrich and Coltec Industries has attracted a great deal of controversy and attention. I have been following the progress of the deal since it was first announced in November of last year. At that point, Goodrich announced it would be relocating its headquarters from Ohio to North Carolina, resulting in the loss of 170 good-paying jobs in Ohio. That job loss alone obviously was a matter of concern, and my office immediately contacted Goodrich to discuss the issue.

Not long after this announcement, I received a letter from David Burner, the chief executive officer of Goodrich. Further, my staff had several conversations and a meeting with Goodrich officials. In the letter that I received and in the subsequent meeting and conversations, we were told that only the 170 headquarters jobs would be lost as a result of this merger. We were led to believe that the merger would not affect any of the other Goodrich jobs in Ohio.

Permit me at this point to read a portion of the letter that I received from Mr. Burner on November 23 of last year. It states as follows:

"* * * [O]ur corporate headquarters in Richfield and our aerospace headquarters * * * will relocate to Charlotte. A total of 170 jobs will leave Northeast Ohio * * *" The 170 jobs represent about 5 percent of BFGoodrich's Ohio employment, which totals almost 3,400 jobs at more than a dozen sites around the State, including major operations in Akron, Avon Lake, Brecksville, Cincinnati, Cleveland and Troy. None of these other Ohio-based jobs will be af-

fected by the relocation of the headquarters. Let me repeat: None of these other Ohio-based jobs will be affected by the relocation of the headquarters."

Now, as we can see, the clear implication of that letter is that only the headquarters jobs would be lost. My office had very specific discussions with Goodrich representatives, and my staff came away from these discussions with the same conclusion that I reached: only the headquarters jobs were going to be lost.

Now, I was already troubled by the potential loss of headquarters jobs in Ohio, but my concern grew dramatically last February, when my office received confidential documents submitted to the Defense Department—the Defense Department which was at that time examining the deal. These documents indicated that Goodrich was considering to do far more than just move the headquarters. In fact, Goodrich was considering closing the Cleveland Pneumatic landing gear facilities—putting 650 additional Ohio jobs at risk.

In fact, included as a packet of information submitted to the Department of Defense on February 1, 1999, by Goodrich is a chart showing three possible restructuring options Goodrich could pursue to achieve a cash reserve needed to pay for the costs of the merger. All three options had one striking similarity: they all included closing the Cleveland plant.

This chart is not the only evidence that the Cleveland facility is in danger. In fact, on February 3, 1999, Goodrich submitted a letter to the Department of Defense providing a more detailed explanation of their plans for the landing gear operations. And let me read into the record some excerpts from that particular letter. Again, this is a February 3, 1999, letter from Goodrich to the Defense Department.

"The Company has been searching for business options and alternatives (including closing and moving equipment and operations from Cleveland * * *) for several years in an attempt to put its landing gear business on a more sound footing * * * After struggling mightily to improve productivity at the Cleveland facility, it determined that an important component of any long-range program would include closing this facility. Several options for doing so have been considered but rejected as not being economically feasible * * * This situation highlights one of the main attractions of the merger with Coltec * * * With the combined volumes of the two firms, one or more options may be attractive. In particular, the combined firm might well choose to close the Cleveland plant and plating facility * * *".

Now, this letter paints a far different picture about the fate of more than 600 Ohioans than the one that was offered to my office when the merger was announced. The letter makes it clear that Goodrich has been considering the Cleveland plant for years, and the merger with Coltec offers a good opportunity to do so. At no time was my office given any indication that the Cleveland facility could be closed until we obtained the aforementioned materials. Again, as I said earlier, we were all led to believe that only the headquarters jobs were at risk.

Now, I should mention, in all fairness to Goodrich, that no final decision on the future of the facility has apparently been made. We have been told that a more thorough examination of the Coltec

landing gear facilities and other relevant financial data is needed before making the final determination. But, frankly, that does not change the fact that Goodrich is clearly considering the option of closing the Cleveland plant and has been actively considering it for years. In fact, the documents indicate that one of the reasons Goodrich is interested in purchasing Coltec is because it could make closure of the Cleveland facility more economically feasible.

This is how I came to the conclusion that Goodrich was not being forthright with me, nor with my office, nor with the people of Ohio, when it described how the merger could impact the State of Ohio. In response to this fundamental question, we were told initially by BFGoodrich that only headquarters jobs would be lost. It is clear, however, based upon these confidential submissions to the Defense Department, that there was far more to the Ohio side of the story than the loss of corporate headquarters jobs. Frankly, we received carefully tailored legalistic answers—technically accurate, maybe, but certainly misleading. Essentially, Goodrich was telling one story to the people of Ohio and another story to the regulators. I expect more candor from Goodrich, which has been a good corporate citizen of Ohio for many years. And I hope it will continue to work and build on its long history in Ohio. The people of Ohio, and the Goodrich workers and their families, deserve more candor.

So I am going to take this opportunity today to explore these issues with Terry Linnert, who is here representing Goodrich. We hope and we expect that we can find out once and for all exactly what Goodrich plans to do. For the hundreds of Ohioans who work at Goodrich's Cleveland plant, the recent controversy naturally has created a great sense of uncertainty. I am pleased to also have with us today Mr. Alan Reuther from the United Auto Workers, representing those workers in Ohio, and we are certainly going to take this opportunity to discuss the issue of jobs with Mr. Reuther and the other panelists. These workers need to know what the future holds for them, and I hope and expect to get some straight answers.

It is clear, however, that antitrust analysis does not generally include employment issues. Today's hearing, by necessity, goes well beyond the issue of jobs in Cleveland. As we began to investigate the potential impact of the merger, it became clear the merger itself posed significant competition issues.

This is not surprising. As this subcommittee has noted before, our Nation is in the midst of an unprecedented wave of consolidations, and the aerospace industry has certainly seen its share of mergers and acquisitions. In fact, in July 1997, this subcommittee held a hearing to examine the broad policy and competition issues raised by consolidation in the defense industry, and since that time the trend towards consolidation has continued. By focusing on the Goodrich/Coltec deal in particular, this subcommittee will have an opportunity to examine the impact of a specific deal, in a specific market, in the context, though, of the broader trend towards consolidation.

Accordingly, we will focus our efforts on the competitive implications of this proposed merger, but there are a few points that should be made clear from the outset. First, two of the parties represented here today, BFGoodrich and AlliedSignal, are parties to

private antitrust litigation. This subcommittee, obviously, is not a court of law, and we do not intend to resolve the antitrust dispute between Goodrich and AlliedSignal. That matter is properly before the district court in Indiana and the Seventh Circuit, and we will be very careful not to interfere in any way with those proceedings. Accordingly, let me caution our witnesses here today to keep in mind the ongoing court case and any protective orders that may now be in place. We are confident that this subcommittee can examine the competitive issues raised by the proposed merger without in any way releasing any confidential or proprietary information, and I expect our witnesses to take all necessary precautions in that regard.

Another point, also related to the ongoing litigation, is that this hearing is going to examine issues from a perspective more broad than just a strict antitrust review. The antitrust issues, such as product market definition and whether or not the proposed merger "substantially lessens competition" as contemplated by section 7 of the Clayton Act, are not going to be resolved by this hearing. Those issues have been examined by the Federal Trade Commission and are currently being examined again by the Federal courts as a result of the private litigation. This subcommittee is going to take a broader look at the competition and national security implications of this proposed merger.

Most importantly, I am troubled by the possibility that the only two major domestic landing gear manufacturers will merge, leaving the U.S. military with only one major domestic supplier. What impact will this have on the cost and quality of landing gear? Why does the Defense Department believe that such a merger is acceptable? And what types of factors go into their analysis of a deal such as this one? These are some of the questions that we expect to explore this afternoon.

We will go into these issues in more detail, and we are glad to have here today, David Oliver, representing the Department of Defense. I would like to note that we often hear the testimony of our Government witnesses on separate panels, but Mr. Oliver has agreed to provide his testimony in the context of the complete panel, and we certainly appreciate his consideration. We think it will facilitate our hearing and make it more understandable.

Let me at this point turn to my colleague on the committee, the ranking minority member, Senator Kohl.

STATEMENT OF HON. HERBERT KOHL, A U.S. SENATOR FROM THE STATE OF WISCONSIN

Senator KOHL. Thank you, Mr. Chairman, and let me commend you for holding this timely hearing. Our subcommittee has studied defense industry consolidation before. We realize that this is a complex issue, and the Goodrich/Coltec merger reveals to us why.

On the one hand, because Goodrich and Coltec are the only two domestic producers of aerospace landing gear, this deal will result in only one remaining U.S. manufacturer. From an antitrust perspective, that could create problems for suppliers, and it could also have troubling implications for the Department of Defense. More than that, even if these companies gain efficiencies, it may be at the expense of jobs, especially in northern Ohio.

So if there is any way that the merged companies can make a commitment to our panel to minimize that pain, it would be nice for them to tell us that today. And I am very concerned by what appears to be attempts by Goodrich to mislead Senator DeWine.

On the other hand, like many mergers, this one produces its fair share of benefits. For example, Coltec, which has a plant in Beloit, WI, is heavily leveraged. Hopefully, Goodrich will bring an even balance sheet to the table, creating a financially healthy company, dedicating more money for investment, and thereby generating more jobs instead of fewer. Perhaps that is why the Federal Trade Commission and the Department of Defense decided not to block this merger and why it is unclear whether the Seventh Circuit will uphold the temporary injunction stalling this deal when it hears arguments tomorrow in Chicago.

That said, I again support you, Senator, for closely examining this merger. And although I have to leave for another commitment, I may submit a few written questions to our witnesses.

Thank you, Mr. Chairman.

Senator DEWINE. Senator Kohl, thank you very much.

Let me move directly to our two members of the first panel. Dennis Kucinich was elected to Congress in 1996. He represents the 10th District of Ohio, which includes parts of Cleveland, Lakewood, and Parma. Representative Kucinich previously served on the city council and as mayor of Cleveland. He is currently the ranking minority member of the House Subcommittee on National Economic Growth.

Congressman David McIntosh was elected to Congress in 1994. He represents Indiana's 2nd District, which includes the cities of Muncie, Anderson, Columbus, and Richmond. He currently serves as chairman of the House Subcommittee on National Economic Growth.

We will start with Representative McIntosh.

STATEMENT OF HON. DAVID M. McINTOSH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

Representative MCINTOSH. Thank you, Mr. Chairman, and both Mr. Kucinich and I will have to leave for a vote. So if it is all right with you, I will submit my prepared testimony in full and summarize it for you so we can make sure both of us have a chance to speak.

Basically, I commend you a great deal for holding this hearing and looking into this matter. Our subcommittee is also taking up an oversight hearing—actually, two oversight hearings on the BFGoodrich/Coltec merger, to determine whether the FTC has been able to properly evaluate this merger. And my concerns are threefold:

First, the anticompetitive effects that you addressed in your opening statement, particularly when we see the number of suppliers for airline landing gear shrinking from two down to one in the country. A tremendous impact on our commercial airlines as well as military purchasers of that equipment.

Second, in my home state of Indiana, South Bend will be impacted by this merger. AlliedSignal provides the brakes and the wheels that are used on BFGoodrich and Coltec landing gear. The

potential with one manufacturer of the finished product is that AlliedSignal will not be in the market anymore because BFGoodrich can produce all of the needed wheels and brakes in-house. And so that is 1,100 jobs that are at risk in South Bend and something that brings a great deal of concern to me.

AlliedSignal has been a great corporate citizen in that community, and brings a lot more than just those jobs, although the jobs are very, very important as, I think, the number six employer. But AlliedSignal also adds a lot to the South Bend community beyond simply a manufacturing industry in that area.

The third is a concern that I have and share with you, Mr. Chairman, that not all of the facts are out and that you have personally had misrepresentations made to you, the same to the public. I have seen in the Wall Street Journal very similar misrepresentations about jobs not being lost in Ohio; therefore, presumably, the jobs could continue to be there in Indiana if the facility was open and able to be a viable alternative to the merged entity.

We are going to look at that. We are going to look at all of the documents and find out and determine whether representations that may have been made in the process are being lived up to in the Federal Trade Commission's review.

Finally, let me say—and, Mr. Kohl, address your point, because one of my colleagues, our Vice Chairman Paul Ryan, also mentioned it to me—that this merger is important to Coltec, which is in his district in Wisconsin. I am not against this merger per se. I believe in the free market. I think people should be able to do that. I understand there are some proposals for win-win solutions where there can be, instead of closure of the Ohio plant, a sell-off that would allow a willing buyer—and AlliedSignal is one such willing buyer—to establish a second alternative so that Coltec and BFGoodrich could continue with their strategic plan, have the synergy that comes about from that merger, but that the public could benefit from having two suppliers, competition to keep the price down, as well as increased quality.

That is where I would like to see this ultimately come out. The role of the Government is to make sure that the anticompetitive effects and the national security implications are thoroughly reviewed and studied, and I appreciate your holding this hearing to make sure that those are being adequately addressed.

Thank you for including us in this. Mr. Kucinich and I are working together on this subject. You will see strong bipartisan voices coming from the House.

[The prepared statement of Representative McIntosh follows:]

PREPARED STATEMENT OF THE HON. DAVID M. MCINTOSH

Today, I am here, with Congressman Kucinich, to express my concerns over the proposed merger between BFGoodrich Company and Coltec, Inc, and whether the merger violates the anti-trust laws.

I serve as the chairman of the House Government Reform Committee's Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs. Representative Kucinich serves as the Subcommittee's Ranking Member. Together, Mr. Kucinich and I are conducting a bipartisan investigation of the Federal Trade Commission's ("FTC") and Department of Defense's review of BFGoodrich/Coltec merger. Our first field hearing on the issue is scheduled for June 19th in South Bend, Indiana.

Based on the information that we have reviewed so far, I have three main areas of concern that I would like to raise today.

First, I am concerned about the potential anti-competitive effects of the BFGoodrich/Coltec merger. I am a strong believer in the benefits of a free market economy. However, in order to ensure fair competition in the marketplace, our antitrust laws require the FTC to review mergers with the potential to have a significant impact on market share. In entering a preliminary injunction against the merger on April 30th , Judge Allen Sharp of the U.S. District Court for the Northern District of Indiana concluded that the merger may be anti-competitive. According to Judge Sharp "the merger would likely result in a U.S. monopoly * * * that would likely result in higher prices for [landing] gears."

That is a real problem. If the merger would result in a monopoly that unfairly forces consumers to pay higher prices for landing gear, the FTC should oppose the merger. Similarly, such review is needed to ensure that the merger does not encourage less innovation in the marketplace, decrease incentives for safety, or damage our National Defense.

Second, I am concerned about the potential adverse impact of the merger on the economies of South Bend and Cleveland. Chairman DeWine, I am sure you are well aware of the likely economic impact of the merger on Cleveland. I want to make the Committee aware that economic impact of the merger on South Bend's economy is potentially devastating as well.

AlliedSignal, Inc. has a plant in South Bend that is an industry leader in manufacturing wheels and brakes for commercial and military aircraft. If BFGoodrich and Coltec complete this merger and, if as a result of the merger AlliedSignal is denied a fair opportunity to compete, AlliedSignal's South Bend business could be in significant danger.

AlliedSignal is the sixth largest employer in South Bend, with 1,100 employees. Most are high paying, technology driven jobs, averaging more than $18 per hour. These sort of high paying manufacturing jobs are vital to the South Bend community.

But, AlliedSignal's contributions to South Bend are not solely economic. AlliedSignal has been a leading corporate citizen in South Bend for years. That is why civic leaders like Patrick M. McMahon, the Executive Director of South Bend's Project Future, are concerned about the potential impact of the merger. AlliedSignal and its employees serve their community by helping to organize civic and volunteer projects, making charitable contributions, and participating on local boards of directors for many non-profit organizations. I, for one, want to help ensure that these great contributions continue.

Third, I am concerned about honest and open public debate on this issue. Based on our initial review of documents, I am concerned that BFGoodrich may have been less than candid regarding its intentions to close its landing gear operations in Cleveland.

In public statements to the *Wall Street Journal,* the *Cleveland Plain Dealer,* and others, BFGoodrich indicated that the merger would not affect jobs in Cleveland. For example, according to BFGoodrich's November 23, 1998 press release announcing the merger, "No other Ohio-based jobs will be affected by the decision to relocate the headquarters. The company currently employs approximately 3,300 Ohioans at more than a dozen locations around the state, including major operations in Akron, Avon Lake, Brecksville, Cincinnati, Cleveland and Troy." In the same press release, BFGoodrich CEO David L. Burner noted that BFGoodrich has "a long history here in Ohio, and many ties to the region. We intend to maintain those ties in as many ways as possible, including through the more than 3,000 Goodrich employees who will remain in Ohio."

However, in documents presented to the Department of Defense, BFGoodrich indicates a much different plan. In a letter addressed to the Department of Defense on February 3, 1999, BFGoodrich's attorney indicated that "[f]or much of the ownership of [Cleveland Pneumatic Corporation], BFG has evaluated the possibility of reconfiguring its manufacturing and assembly capacity for landing gear. After struggling mightily to improve productivity at the Cleveland facility, it determined that an important component of any long range program would include closing the facility."

In another document presented to the Department of Defense on February 1, 1999, BFGoodrich presents three options for restructuring its operations after the BFGoodrich/Coltec merger. All three options included the following phrase "Close Cleveland/Plating * * * Now."

It is my hope that today your committee will be able to shed some light on this issue.

Now, I am not here to say "no" to this merger. There is a win-win solution. I am told that if BFGoodrich sells its landing gear facility in Cleveland to AlliedSignal,

everyone could win. BFGoodrich and Coltec would complete their merger, because the sale would ensure competition in the landing gear industry. AlliedSignal would obtain the opportunity to develop landing gear systems that use its aircraft wheels and brakes. And, workers in South Bend and Cleveland could keep their jobs and continue to have the opportunity to compete in the marketplace. This is a common sense solution; I hope all parties will reconsider it.

And, I would emphasize that this solution is not only important for South Bend and Cleveland; but it is important for our Nation as well. Healthy competition leads to lower prices, increased innovation, and improved quality of safety, as industry leaders are forced to improve in an effort to compete in the marketplace. It is these positive benefits of competition that the antitrust laws are designed to protect.

In addition, we may have a direct national interest in having at least two domestic suppliers of landing gear. The proposed merger of BFGoodrich and Coltec would leave the United States with only one domestic landing gear manufacturer for large commercial and military aircraft. After the merger, the only other major landing gear manufacturer in the world would be Messier-Dowty, which is owned by the French government. I know that the Department of Defense has looked at the issue and determined that it has no objection to the merger. But, I, for one, am still not convinced of the wisdom of allowing a merger that would leave us with only one domestic manufacturer of landing gear.

Chairman DeWine, I know you plan to have David Oliver, Deputy Under Secretary of Defense Acquisition and Technology for the Department of Defense, testify here today. I hope he will be able to address this concern.

In closing, I certainly appreciate the difficult task before you today. As in any antitrust dispute, the issues are complex and answers never easy. But, I am here because I want to ensure that the Hoosiers who work for AlliedSignal are given a fair opportunity to compete. After all, when applied correctly, that is what antitrust laws are designed to accomplish—fair competition.

And, rest assured. If the 1,100 Hoosier workers at AlliedSignal are given a fair opportunity to compete, I have no doubt they will be successful. That's just the way it is in Indiana.

Thank you for the opportunity to testify today on this important issue.

Senator DEWINE. Congressman, thank you very much.

Congressman Kucinich.

STATEMENT OF HON. DENNIS J. KUCINICH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Representative KUCINICH. Thank you very much, Senator DeWine, and I want to thank you for holding this hearing and for your leadership in this important area which relates to the economic stability of a big industry in our State. So I thank you on behalf of my own constituency and the working men and women who have relied on your leadership. Also thanks to Congressman McIntosh for the chance to work with him on this issue.

Unfortunately, we are going to have to leave for a vote, but I did want to make a few points, and I will submit my entire testimony for the record.

Senator DEWINE. It will be made part of the record.

Representative KUCINICH. BFGoodrich executives, including the BFGoodrich chief executive officer, made representations to public officials that the Cleveland facility would not be closed as a result of the merger. In fact, BFGoodrich only admitted to relocating jobs in its corporate headquarters to the merged company's new headquarters in the South, and the press release issued by BFGoodrich explicitly states that no other Ohio jobs will be affected by the decision to relocate the headquarters after the merger.

However, BFGoodrich has also made diametrically opposite representations to officials within the Department of Defense and to the Federal Trade Commission. Specifically, BFGoodrich argued that these Federal agencies should not oppose the merger because

of the efficiencies which would result from it. One of the efficiencies supposedly promised to the Federal regulators was the closing of the Cleveland plant. BFGoodrich revealed that every option being considered by the company once the merger was approved hinges on the closing of the Cleveland facility.

Now, why would BFGoodrich tell public officials one story and tell Federal regulators the opposite story? I hope you are able to determine that in this hearing.

The subject of today's hearing is not only a local issue. Closing the Cleveland facility will not only put hundreds of my constituents out of work, but it will put U.S. taxpayers over a barrel. The U.S. Government will be beholden to a monopoly maker of landing gear for military planes. This merger will create a legal monopoly. With the recent public disclosure of BFGoodrich intentions to close the Cleveland facility and the fact that the Federal regulators knew it but did not act on the knowledge that the merged company would be a monopoly, I believe that several significant questions should be asked of the Federal regulators.

First, why did the Department of Defense not oppose this merger when it clearly concerned the complete and final consolidation within the domestic landing gear industry?

Does it really benefit the Department of Defense and the taxpayer who foots the bill that the Government would not oppose the creation of a legal monopoly?

What are the options available to the U.S. Government if the BFGoodrich/Coltec merged company, for whatever reason, cannot complete a contract?

These are questions that ought to be asked.

I am also hopeful that it will be asked of the Department of Defense: If the U.S. Government becomes aware that a contractor has shown a lack of integrity through misrepresentations made in an important decisionmaking process, would the U.S. Government have an obligation to consider suspension or debarment of that contractor from further Government business?

Second, as I am sure the committee knows, the only remaining source for landing gear structures for U.S. military aircraft and commercial aircraft is the Messier-Dowty firm, a firm owned by the French Government. The BFGoodrich/Coltec merger raises this question: Are we prepared to divulge classified information about our military aircraft to a foreign government if the merged company is not able to fulfill a contract and the Department of Defense has to contract with a French company?

Third, what consideration have the regulators given to some of the other well-known consequences of monopoly, namely, increased costs and loss of innovation. Direct competition between two or more domestic competitors imposes cost discipline on the competitors. That benefits the taxpayer. But will the creation of a monopoly lead to higher prices for landing gear equipment, making the cost to taxpayers higher? And what will be the consequences for U.S. commercial companies who also have to pay higher costs to the monopoly? Will the price of commercial airplane tickets go up as commercial carriers pass on to American consumers the higher prices of equipment?

Further, without competition between two or more domestic competitors, what will force the merged company to maintain high quality and safety standards? Could the loss of competition cause a loss in workmanship quality down the road? Could the loss of competition that drives innovation result in future landing gear that is less than cutting edge, less than state of the art in terms of safety and combat effectiveness?

Finally, Senator DeWine and Senator Kohl, the closing of the Cleveland facility caused by this merger will exact a significant cost on the workers, the families that rely on them in Cleveland, and the Cleveland community which is supported by the wages paid to these workers. The creation of this monopoly could have costly and even dangerous consequences for the U.S. taxpayers and consumers.

Whatever anyone's position on the merits of the merger, it cannot be disputed that a regulatory process which allows merging companies to make diametrically opposed statements to public officials and regulatory agencies is fundamentally flawed. Public officials have a right to know accurate information about a petitioning company's intentions. Public officials have a right to know if these jobs are being eliminated so that this work can be done—if it is eliminated because they want the work done in non-unionized shops in other States. Public officials have a right to know, and the regulatory process should provide it.

I thank Senator DeWine and Senator Kohl for their careful consideration of the topic of this important hearing, and I thank Mr. McIntosh for his participation.

[The prepared statement of Representative Kucinich follows:]

PREPARED STATEMENT OF HON. DENNIS J. KUCINICH

Mr. Chairman, and distinguished members of the Committee, I appreciate the opportunity to appear before you to discuss the pending merger of BFGoodrich and Coltec Industries Inc. I am also pleased to be sharing this panel with my colleague from Indiana, Mr. McIntosh.

I represent the West Side of Cleveland, Ohio, and the surrounding suburban communities. I became involved with this merger because of its impact on the BFGoodrich facility in Cleveland. That facility, called Cleveland Pneumatic Company, employs about 800 people, many of whom are my constituents. The jobs held by my constituents are high paying jobs, held by union workers, who have negotiated long term collective bargaining agreements with BFGoodrich.

In the pursuit of federal and political approval of its planned merger, BFGoodrich executives, including BFGoodrich's Chief Executive Officer, made representations to public officials that the Cleveland facility would not be closed as a result of the merger. In fact, BFGoodrich only admitted to relocating jobs in its corporate headquarters to the merged company's new headquarters in the South. A press release issued by BFGoodrich explicitly states that "[n]o other Ohio-based jobs will be affected by the decision to relocate the headquarters" after the merger.

However, BFGoodrich has also made diametrically opposite representations to officials within the Department of Defense and the Federal Trade Commission. Specifically, BFGoodrich argued that these federal agencies should not oppose the merger because of "efficiencies" that would result from it. One of the efficiencies supposedly promised to the federal regulators was the closing of the Cleveland plant. It was reported on television in Cleveland last night, and in the Cleveland Plain-Dealer today, that in one such representation to federal regulators, BFGoodrich revealed that every option being considered by the company once the merger was approved hinged on closing the Cleveland facility.

How could BFGoodrich tell public officials one story and tell federal regulators the opposite story? Over the last three months I've attempted to ascertain whether BFGoodrich was indeed saying one thing to public officials and another to federal regulators. On April 15, 1999, I wrote a letter to BFGoodrich's Chief Executive Offi-

cer for information about whether the company intended to close the Cleveland plant. In that same letter, I asked for all documents related to the merger provided by BFGoodrich to the Federal Trade Commission and the Department of Defense. I did not even receive the courtesy of a response. Only after another letter requesting the same documents was sent to BFGoodrich by the House investigative subcommittee chaired by Mr. McIntosh and on which I am the Ranking Democratic member, did BFGoodrich provide any documents, and those are an incomplete set of documents.

The subject of today's hearing is not only a local issue. Closing the Cleveland facility will not only put hundreds of my constituents out of work, but it will put U.S. taxpayers over a barrel. The US government will be beholden to a monopoly maker of landing gear for military planes. This merger will create a legal monopoly. With the recent public disclosure of BFGoodrich's intentions to close the Cleveland facility and the fact that federal regulators knew it but did not act on the knowledge that the merged company would be a monopoly, I believe that several significant questions should be asked of the federal regulators.

First, why did the Secretary of Defense not oppose this merger, when it clearly concerned the complete and final consolidation within the domestic landing gear industry? Does it really benefit the Department of Defense and the taxpayer who foots the bill that the government would not oppose the creation of a legal monopoly? What are the options available to the U.S. government if the BFGoodrich/Coltec merged company, for whatever reason, cannot complete a contract?

Second, as I'm sure the committee knows, the only other remaining source for landing gear structures for U.S. military aircraft and commercial aircraft is Messier-Dowty, a firm owned by the French government. The BFGoodrich/Coltec merger raises this question: Are we prepared to divulge classified information about our military aircraft to a foreign government if the merged company is not able to fulfill a contract and the Department of Defense has to contract with the French company?

Thirdly, what consideration have the regulators given to some of the other, well-known consequences of monopoly, namely increased costs and loss of innovation? Direct competition between two or more domestic competitors imposes cost discipline on the competitors. That benefits the taxpayer. But will the creation of a monopoly lead to higher prices for landing gear equipment, making the cost to taxpayers higher? And what will be the consequence for U.S. commercial companies, which will also have to pay higher costs to the monopoly? Will the price of commercial airplane tickets also go up, as commercial carriers pass on to American consumers the higher prices of equipment? Further, without competition between two or more domestic competitors, what will force the merged company to maintain high quality and safety standards? Could the loss of competition cause a loss in workmanship quality down the road? Could the loss of competition that drives innovation result in future landing gear that is less than cutting-edge, less than state-of-the-art in terms of safety and combat effectiveness?

In conclusion, the closing of the Cleveland facility caused by this merger will exact a significant cost on the workers, the families that rely on them in Cleveland, and the community, which is supported by the wages paid to these workers. The creation of this monopoly could have costly and even dangerous consequences for the U.S. taxpayer and consumers. Whatever your position on the merits of this merger, it cannot be disputed that a regulatory process which allows merging companies to make diametrically opposed statements to public officials and regulatory agencies is fundamentally flawed. Public officials have a right to know accurate information about a petitioning company's intentions. Public officials have a right to know if these jobs are being eliminated so that this work can be done in a non-unionized shop in another state. Public officials have the right to know the truth, and the regulatory process should provide it.

I look forward to this hearing, and the hearings that Representative McIntosh and I will be holding on June 19 in South Bend Indiana, and on July 7 in Cleveland, as a way of resolving these issues.

Senator DEWINE. We would like to thank you and, of course, excuse both of you. We know that the clock is running and you have to get over and vote. But I just want to thank you both for some very excellent statements, and we look forward to working with both of you on this issue in the future.

Representative KUCINICH. Thank you.

Representative MCINTOSH. Thank you. And, Mr. Chairman, we will make any of the information we receive in our oversight inves-

tigation available to your committee so that you, too, will have all that.

Senator DEWINE. Good. We look forward to working with you.

Representative KUCINICH. Bipartisan effort. Thank you.

Senator DEWINE. Congressmen, thank you.

Senator DEWINE. We will now move to our second panel. I would now invite the members of the second panel to begin to come forward, and I will begin to introduce you at this point.

Let me introduce the members of the panel. Our first witness is Terrence G. Linnert, who is a senior vice president and general counsel of the BFGoodrich Company. He joined BFGoodrich in 1997. Prior to joining BFGoodrich, he was a senior vice president and general counsel in the Senterior Energy Corporation.

Carl R. Montalbine is a vice president and general manager of AlliedSignal Aircraft Landing Systems. His prior experience includes 3 years with Northrop B-2 Division and 16 years with Fairchild Republic.

David R. Oliver is the Principal Deputy Under Secretary of Defense for Acquisition and Technology and was confirmed to this position by the U.S. Senate on May 21, 1998. Previously, Mr. Oliver worked for Westinghouse Electric Systems Group.

Alan Reuther is the legislative director for the International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America, the UAW. He has been legislative director for the UAW since May 1, 1991.

Our final witness is Einer Elhauge, who comes to us from Harvard Law School. He joined the faculty of Harvard Law in 1995 where he specializes in antitrust law.

We welcome all of our witnesses.

Let me also state that, before we start the testimony from this panel, I think it is important that we note that Professor Elhauge is a paid consultant for Crane Company, one of the parties involved in the litigation.

Also, I would like to note that we have accepted the written statement of Kevin Arquit and Steven Newborn. They are also antitrust experts, and we will put their statements into the record, and without objection, they will be made a part of the record.

[The prepared statement of Mr. Arquit and Mr. Newborn follows:]

PREPARED STATEMENT OF KEVIN ARQUIT AND STEVEN NEWBORN[1]

We are pleased to have the opportunity to submit our views to the Subcommittee in connection with its hearing on the competitive implications of the BFGoodrich/Coltec merger.

While we were approached recently by counsel for BFGoodrich and asked if we had an interest in commenting on any aspect of this merger, we have not been retained or compensated by any interested party to the merger and the views contained herein are our own. While we are not conversant in the specific facts sur-

[1] Kevin J. Arquit heads the antitrust practice of Rogers & Wells LLP. Prior to joining Rogers & Wells in 1992, Mr. Arquit was General Counsel and then Director of the Bureau of Competition of the Federal Trade Commission.

Steven A. Newborn is the managing partner of Rogers & Wells' Antitrust Group. Until March 1994, he was Director for Litigation at the Federal Trade Commission's Bureau of Competition, where he was in charge of the Commission's merger enforcement program. He was named to the Department of Defense's Antitrust Task Force that advised the Secretary of Defense concerning merger policy in the Defense Industry.

rounding this transaction, we are familiar with the merger review process generally and have been provided information about the review that occurred here.

It is not uncommon, nor is it inappropriate, for competitors to try to convince the government that a particular merger should be challenged. What sets this transaction apart from any of thousands of other mergers that are granted government clearance every year is the extraordinary effort of two competitors—AlliedSignal Corp. and the Crane Co.—to take a second and third bite of the apple after full government review.

This case is interesting because it provides a clear illustration of how these issues should be handled by the FTC and DOD. Although the FTC is always interested in what competitors, suppliers and (most importantly) customers have to say about a proposed merger, in the end, the agencies view this public input with an eye towards each party's financial or political self-interest in coming forward, and then make a decision based on the competitive effect that the transaction will have on the marketplace. After all, it is the purpose of the antitrust laws to protect competition as a whole and not individual competitors.

Market shares are an important consideration in any merger analysis by the antitrust agencies. They are by no means the only determinant of consumer impact. Other key factors the FTC takes into consideration in reviewing mergers include: the existence and viability of foreign competitors; the need for large production scale to compete efficiently on a global basis; the ability of large buyers (in this case the Defense Department and commercial airline manufacturers) to use their market muscle to counter any threats to competition; and the likelihood that the combined entity will lead to lower cost or product innovations.

The idea that DOD *and* the FTC missed the boat in approving this merger, as alleged by its critics, is hard to imagine, given the activist stance of both of late. Just this year, DOD has objected to several consolidations (including two proposals to acquire Newport News). Last year alone, the FTC challenged close to three dozen transactions that it concluded would lessen competition. The enforcement activity affected numerous key industries, including pharmaceuticals, petroleum, computers, and defense and aerospace.

Nearly two years ago, this subcommittee conducted a hearing on "Defense Consolidation: Antitrust and Competition Issues." At that hearing, the subcommittee heard from Chairman Pitofsky of the FTC, Assistant Attorney General Klein from the Department of Justice, and Deputy Under Secretary of Defense Goodman. The subcommittee focused on whether the current review process and application of the merger guidelines provided sufficient assurance that defense consolidation would go far enough, but not too far. Each of the witnesses concurred that the review process and the merger guidelines were up to the task. In response to questioning by Senator DeWine, each witness assured the subcommittee that any additional major mergers would be carefully scrutinized.

Secretary Goodman's description of the process and of DOD's objectives helps frame the issue for today's hearing. In 1997, Secretary Goodman testified as follows:

> Our objective is to ensure that we are maintaining competition consistent with our acquisition strategies now and for the foreseeable future. Competition involves not only the number of bidders in a competition but also the quality of competition * * *.
>
> In order to make this assessment, we gather information from a variety of sources * * *. DOD also interact directly and frequently with the antitrust agencies as the review proceeds. The Department facilitates the antitrust agency review * * *. DOD also communicates to the antitrust agencies its views concerning the effects of the transaction.

We understand that is precisely what happened here. Following the merger announcement, DOD and the FTC undertook parallel, full scale reviews of the proposed merger. The review at DOD lasted 4 months, until mid March, and the review at the FTC lasted 5 months, until mid April. Both agencies received information and documents from the parties to the transaction and from AlliedSignal and Crane. In addition, the staff of the FTC's Bureau of Competition requested and received from BFGoodrich all discovery material from the private litigation initiated by AlliedSignal and Crane. This level of scrutiny in itself is highly unusual. Here, consistent with the FTC's commitment carefully to scrutinize major mergers in the defense industry, we understand that representatives of AlliedSignal and Crane met with each FTC commissioner to argue their case. In the end, not one commissioner opted to challenge the merger, and DOD advised the FTC that it had no objection to the merger.

With so many merger proposals in the pipeline, Government enforcement decisions have the potential to impact significantly every U.S. consumer as well as the

future of many companies, big and small. More than ever, it is imperative that the Government stick by the same set of standards when ruling on mergers, whether it is BFGoodrich/Coltec, AlliedSignal/Honeywell or countless transactions in the past. Government should continue to place the interests of consumers and competition over the financial interests of competing firms or the political interests of special interest groups.

We have been actively involved in the merger review process for many years, both as government regulators and as private practitioners. We have worked with the Bureau of Competition staff who investigated this transaction as colleagues, and sat on the opposite side of the table from them as adversaries. Mr. Newborn served on the Defense Science Board's Task Force on Antitrust Aspects of Defense Industry Consolidation. Based on our experience and the scrutiny to which this transaction has been subjected, it is difficult to imagine that the DOD and FTC missed the boat on this merger.

Senator DEWINE. Finally, we are also entering into the record now a letter on this issue from U.S. Senator Jesse Helms of North Carolina, and without objection, that will be made a part of the record.

[The letter of Senator Helms follows:]

U.S. SENATOR, JESSE HELMS,
North Carolina, June 10, 1999.

Hon. MIKE DEWINE, *Chairman,*
Subcommittee on Antitrust,
Business Rights and Competition,
Committee on the Judiciary,
226 Dirksen Senate Office Building,
Washington, DC.

DEAR MR. CHAIRMAN: I appreciate your interest in the proposed merger of BFGoodrich and Coltec, and I am grateful for your allowing me to share my views with your subcommittee. I certainly agree with you that vigorous competition is the engine that enables U.S. industries to lead the world in innovation and product development.

I am persuaded that the BFGoodrich/Coltec merger will be beneficial for the landing gear industry, and I am satisfied that swift approval of this transaction is consistent with the principles of open competition which you and I share.

This conclusion is supported, I believe, by several facts: First, the landing gear business is global in scope and requires the large production scale afforded by this transaction to compete efficiently; second, the merged entity will face competition from existing, viable domestic and foreign competitors; third, powerful buyers like Boeing, Lockheed Martin and the Department of Defense control the bidding for landing gears, thereby preventing suppliers from raising prices; and finally—and most importantly—no customer has opposed the merger.

The opposition to the BFGoodrich/Coltec merger has come from AlliedSignal and Crane, whose motives appear obvious: Both offered to acquire Coltec, but were ultimately spurned. In the face of this rejection, both are now unleashing all available resources to prevent completion of the merger.

AlliedSignal and Crane are now in court raising the same purported antitrust reasons for opposing the merger they initially proffered to the FTC. The FTC fully considered these arguments and rejected them for one clear reason: The theories lack factual support. This merger will not foreclose AlliedSignal and Crane from any aspect of the business which they now compete or aspire to compete.

Mr. Chairman, the regulatory agencies have ably discharged their duties to the American people, and AlliedSignal and Crane will have their day in court. I do hope your subcommittee will not further delay completion of the BFGoodrich/Coltec merger.

I'll very much appreciate your including this letter in the record of the proceedings.

Sincerely,

JESSE HELMS,
U.S. Senator.

Senator DEWINE. Let me start from my left to right. Mr. Linnert, good afternoon.

PANEL CONSISTING OF TERRENCE G. LINNERT, SENIOR VICE PRESIDENT AND GENERAL COUNSEL, BFGOODRICH CO., CLEVELAND, OH; CARL R. MONTALBINE, SENIOR VICE PRESIDENT AND GENERAL MANAGER, AIRCRAFT LANDING SYSTEMS, ALLIEDSIGNAL, SOUTH BEND, IN; DAVID R. OLIVER, DEPUTY UNDER SECRETARY OF DEFENSE, ACQUISITION AND TECHNOLOGY, DEPARTMENT OF DEFENSE, WASHINGTON, DC; ALAN REUTHER, LEGISLATIVE DIRECTOR, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, WASHINGTON, DC; AND EINER ELHAUGE, PROFESSOR OF LAW, HARVARD LAW SCHOOL, CAMBRIDGE, MA

STATEMENT OF TERRENCE G. LINNERT

Mr. LINNERT. Good afternoon. Thank you, Mr. Chairman.

Almost 2 years ago, in July 1997, this same subcommittee did undertake an oversight hearing on the questions of competition and consolidation in the defense industry and the administration's policy on defense mergers. Since then, your work has also included close looks at international antitrust and merger and acquisition activity in the telecommunication, energy, airline, information, entertainment, video, and sports marketplaces. All of those hearings raised the same questions as this panel presents to you today. There is a lot at stake in these types of transactions.

Jobs are created or constricted, companies move or grow, products succeed or flop overnight. Missing an expanding market or not deploying a new technology or borrowing money at the wrong time can create a dinosaur. The results for the U.S. economy, our national security, and the economic health of our workers and shareholders can be disastrous.

There will always be critics of these mergers beyond the appropriate interests of the Government or the courts. So be it. But those who usually carp the loudest are most afraid that they will lose a preferred position in a marketplace to new, more vigorous, more modern, and, yes, more formidable competition. And most frequently these corporate critics go out and get a deal of their own.

Since the end of the Cold War, U.S. defense spending has declined dramatically. This reduced spending has driven consolidation throughout the defense industry. Other factors, such as globalization and requirements of scale and scope, have combined to drive consolidation throughout the defense and aerospace industry. Efficiencies of design and production and the need to generate and consume large amounts of capital quickly dictate corporate and management strategies that must be judged simultaneously in both the short and long term. For these reasons, just this week AlliedSignal a nearly $15 billion merger with Honeywell.

One of the consequences of consolidation is typically the loss of some jobs. As part of the BFGoodrich merger with Coltec, approximately 170 headquarters positions will relocate to North Carolina. Similarly, the AlliedSignal/Honeywell merger will result in the closing of Honeywell's headquarters in Minneapolis and the elimination of 4,500 jobs.

While these relocations have a human impact that we take very seriously, they should not overshadow the positive consequences of

this merger. The plain fact is the merger of BFGoodrich and Coltec will produce significant benefits for employees, customers, shareholders, and our communities.

Following the merger, BFGoodrich will employ 27,000 people worldwide. The size and diversity, financial and technical strength, and global reach of our businesses will create job stability and growth opportunities for our existing workforce.

As a stronger worldwide competitor, we will be better positioned to compete for business abroad. A stronger, better BFGoodrich is good from our employees and our customers.

Our customers are very sophisticated. They demand innovative and quality products backed by the highest levels of customer service and technical support, all at a fair and competitive price. Our customers are our lifeblood. If they had objected to this merger, it probably would not have gone forward. They have not objected because they are satisfied that they do have sufficient options to preserve healthy competition for their business, and they recognize the merger enables us to serve them better.

I would like to frame this by showing you a chart, Senator, a chart that will show what the pre-merger suppliers are in three various businesses.

This chart shows who the industry players are in the landing gear manufacture business, the wheel and brake business, and the brake controls business. Those are all parts of what has been referred to as an integrated landing system.

If you look at the post-merger chart, you are going to see that not much changes as a result of this merger. In fact, there is no impact in either the brake control group of suppliers, the wheel and brake group of suppliers; there is one less landing gear manufacturer worldwide.

Mr. Chairman, as you know, the Federal Trade Commission and the Department of Defense, like our customers, have each come to the same conclusion following lengthy and comprehensive examinations. Both agencies listened carefully to the arguments presented by AlliedSignal and Crane. Both agencies concluded that the merger should be allowed to proceed without objection.

I would like to address more specifically your concern about the merger's impact on Ohio jobs. Following the merger, BFGoodrich will employ more than 3,000 people in Ohio in management, manufacturing, and research positions. Our performance materials business, with more than $1 billion in revenue, will remain headquartered in Brecksville, OH. Other BFGoodrich operations in Ohio are located in Akron, Avon Lake, Chagrin Falls, Cleveland, Columbus, Cincinnati, Dayton, Elyria, Green, Troy, Twinsburg, and Uniontown.

We have actually been adding jobs in Ohio. Since January 1997, our aerospace employment is up 14 percent. We remain committed to Ohio and to our workforce in Ohio. Following this merger, BFGoodrich will contribute more than $20 million per year in taxes to Ohio as part of its continuing presence in the State. As our company grows, we would hope to build on this significant employment base.

Much has been said about the future of our Cleveland landing gear plant, Mr. Chairman. Let me be very clear about this.

BFGoodrich management has made no decision about the future of this facility or any other landing gear facility. Having said that, I will tell you that the U.S. landing gear business is 15 percent below its peak volume, and customer demand is expected to remain low for the foreseeable future.

In this business environment, a status quo cannot prevail. One of the attractions of the Coltec merger comes from combining the volume of the two firms and achieving more efficient capacity utilization. The added volume and financial strength will inure to the benefit of BFGoodrich and will allow more investment in its facilities.

After the merger, we will look at our operations and determine how best to become a more efficient and lower-cost producer. This may include upgrading plants, reconfiguring our production mix, and perhaps closing facilities. The failure to make those hard decisions could cost us our competitive edge and even more jobs than if we ultimately decide to close a plant. But until the merger has closed, the planning cannot be done and no decisions have been taken.

Our goals are the same, Mr. Chairman. We at BFGoodrich want to grow so that we can satisfy our customers, challenge, reward, and retain our employees, and provide financial returns for our shareholders. We can only achieve those goals by providing innovative, quality, least-cost products to our customers consistently and timely. By becoming a stronger competitor, we help the economy and our workforce.

Mr. Chairman, let me tell you what BFGoodrich is committed to. We are committed to growing jobs and marketplace position. We are committed to sustaining a vigorous U.S. national defense position. We are committed to involving workers, shareholders, customers, management, and Government decisionmakers in our future business growth plans. Finally, we are committed to building and designing the best priced and best performing products for this or any other marketplace. We challenge AlliedSignal, Crane, Honeywell, or anyone else to come and compete with us fairly in the marketplace.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Linnert follows:]

PREPARED STATEMENT OF TERRENCE G. LINNERT

I am delighted to have the opportunity to appear before the Subcommittee to address the competitive implications of the merger between BFGoodrich and Coltec.

Multibillion dollar mergers have become an almost daily occurrence. As this Subcommittee has no doubt heard before, technology and globalization fuel this consolidation. In addition, in the defense and aerospace industries, the end of the Cold War drives much of the consolidation. Defense spending reductions and the consolidation at the apex of the defense supply chain have placed ever greater demands on the component supplier community to become more efficient while at the same time increasing the risks of business. BFGoodrich is not here to complain about the difficulty of competing. Rather, BFGoodrich believes that the market forces of competition will determine the winners and the losers in these changing and challenging times. Mergers are an inevitable part of the restructuring of our industrial base. From the standpoint of competition policy, this is not a bad thing—most mergers are procompetitive or competitively neutral. Rigorous review by the regulatory agencies—here, the Department of Defense and the Federal Trade Commission—provide important reassurance that those mergers that may hurt competition do not go unchallenged. Our transaction has successfully undergone a review by both the Department of Defense and the Federal Trade Commission, and I can assure the Sub-

committee that it was both rigorous and comprehensive. We welcome any inquiry the Subcommittee may have regarding the thoroughness of the work of the reviewing agencies.

It is also a fact that mergers and consolidations may dislocate people and can result in the consolidation or relocation of some jobs. While that is not always the case, clearly the demands of a global and technologically advanced society require greater productivity and efficiency. At BFGoodrich, we approach this part of the merger business very carefully. Our work force is important to us and we recognize the contributions our employees make to our success. We are committed to providing opportunities to our employee community to grow within our organization. We do not approach layoffs or plant closings with zeal or happiness. When such actions are needed for the greater good, we take them reluctantly and only after due deliberation. It is ironic, then, that interest in the BFGoodrich/Coltec merger was fueled by AlliedSignal's false allegations that, in conjunction with the merger, BFGoodrich would close its Cleveland plant and eliminate 650 jobs. AlliedSignal announced earlier this week its planned $15 billion merger with Honeywell. As part of that merger, AlliedSignal plans to fire 4,500 people to help it "realize the efficiencies" of its merger. We welcome any inquiry the Subcommittee may have regarding BFGoodrich's views on the important public policy issues associated with mergers and jobs.

I have organized my written testimony in three sections: (1) the merger review process; (2) the competitive implications of the merger; and (3) the effect of the merger on U.S. jobs.

THE MERGER REVIEW PROCESS

BFGoodrich and Coltec agreed to merge in late November, 1998, and submitted the required H-S-R notifications in early December. Shortly thereafter, representatives of BFGoodrich met with representatives of the Department of Defense to discuss the proposed merger. Between December 1998 and March 1999, representatives of the parties to the merger met and spoke with representatives of the Department of Defense regularly. The parties provided extensive information about their businesses to the Department of Defense in response to a detailed questionnaire from the Department. The parties responded fully and completely to every question posed by the Department of Defense.

We understand that representatives of Crane and AlliedSignal met with officials of the Department of Defense in multiple efforts to derail the merger. While we do not know the details of their arguments, we believe they raised many of the same competition concerns that have been presented in other forums. The Department of Defense carefully considered the arguments presented by all concerned; from time to time, we were asked by the Department of Defense to provide information responsive to Crane and AlliedSignal complaints, and we did. On March 15, 1999, the Department of Defense notified the FTC and BFGoodrich that "the Department will not object to the proposed acquisition of Coltec Industries by BFGoodrich."[1]

The FTC's Bureau of Competition conducted its own review parallel to that of the Department of Defense. While the Bureau of Competition conducted its investigation, AlliedSignal initiated private antitrust litigation in Indiana. With BFGoodrich's consent, AlliedSignal provided to the Bureau of Competition selected material it had obtained from BFGoodrich in discovery in the private lawsuit. BFGoodrich, at the request of the Bureau of Competition staff, provided the staff all of the discovery materials, including thousands of documents and pages of deposition testimony. The staff attorneys at the FTC diligently reviewed the material, evaluated the potential for anticompetitive effects, and concluded there were none.

AlliedSignal and Crane were not satisfied with this outcome and insisted on meetings with the FTC commissioners. We are informed that AlliedSignal and Crane met with each commissioner and used evidence obtained in discovery in the private litigation in their effort to persuade the FTC to intervene. Not one commissioner concluded that the merger ought to be challenged. On April 26, 1999, the FTC advised BFGoodrich and Coltec that it had closed its investigation without taking any action.[2]

Over a five month period, two federal agencies, each charged with considering the competitive implications of mergers, have reviewed the BFGoodrich/Coltec merger and both have concluded that no further action was warranted. This is strong evidence that the merger will not have anticompetitive effects, particularly given the

[1] Letter 3/15/99 from Jacques S. Gansler, Under Secretary of Defense, to Terrence G. Linnert.

[2] April 26, 1999 letter from Richard G. Parker, Senior Deputy Director, Bureau of Competition, FTC, to Terrence G. Linnert.

vigorous antitrust enforcement we have seen in this same time frame (Lockheed-Martin/Northrop; General Dynamics/Newport News; Litton Industries/Newport News).

THE COMPETITIVE IMPLICATIONS OF THE MERGER

The merger of BFGoodrich and Coltec is procompetitive. As a result of consolidation among aircraft manufacturers and a declining number of new aircraft program starts, business opportunities for landing gear structure manufacturers have diminished. The total number of aircraft produced declined from more than 900 per year in the early 1990's to a low of 416 in 1996. While production has picked up since 1996, it is not expected to exceed about 800 aircraft per year over the foreseeable future.

The merged BFGoodrich/Coltec is likely to be better able to serve its customers in this environment. Significant cost savings are likely to result from the merger. These cost savings will enable BFGoodrich to offer savings to its customers, invest in more efficient equipment, and invest in additional landing gear projects.

BFGoodrich presently competes with Messier-Dowty, a French firm, for landing gear. At Airbus, Messier-Dowty has won all the procurements in which BFGoodrich has competed. The merger will place BFGoodrich in a stronger position to compete for Airbus business.

AlliedSignal contends that the merger will put BFGoodrich in a near monopoly position with regard to sales of landing gear. Nothing could be further from the truth. Our business is global and we compete with suppliers from around the world for business here and abroad. The following are among the landing gear manufacturers capable of providing main landing gear for large commercial aircraft: BFG/Coltec; Messier-Dowty (a French firm); SHL (a subsidiary of Israeli Industries, which provides the landing gear for the Boeing 717); Heroux (a Canadian firm which provides landing gear for the C17); and Hydro-Mash (a Russian company). Several other firms presently manufacture nose gear for commercial aircraft and could increase capacity to supply main landing gear for large commercial aircraft. These companies include Liebherr, APPH, Sumitomo, and Castle Precision. Thus, after the merger, BFGoodrich would face competition from at least 8 firms that presently manufacture main and/or nose gear for commercial aircraft. These firms, and two others (EDE and Cessna) provide landing gear for regional, business and military aircraft.

For several reasons, BFGoodrich cannot, and will not be able to, dictate terms to any aircraft manufacturer, or to unilaterally raise prices or to design landing gear in a way that disadvantages competitors' wheels and brakes and components. Whether the customer is Boeing or the Department of Defense or any other airframe manufacturer, the customer owns the data rights to the landing gear and to the interface between the landing gear and other system components. Indeed, on new programs, Boeing requires potential landing gear suppliers to jointly prepare the design of new landing gear at no cost to Boeing. Boeing then selects various suppliers to compete to produce the components and subsystems. If Boeing believes a supplier is not responsive or competitive, it can and will select another manufacturer. Moreover, many of the smaller landing gear components can be subcontracted. (BFGoodrich presently subcontracts 90 percent of its landing gear components.)

BFGoodrich and AlliedSignal compete in the wheel and brake business, but nothing about this merger will enable BFGoodrich to discriminate against AlliedSignal's wheel and brake business. As noted above, the airframe manufacturer owns the data rights, and the wheel and brake manufacturer can obtain the necessary interface information from the airframe manufacturer. Airframe manufacturers actively promote multiple sources of wheels and brakes because it drives down the total, lifetime cost of aircraft.

If this merger were likely to have anticompetitive effects, our customers would have objected. They have not. Our relationships with our customers are so important that, had they objected, we probably would not have gone forward with the merger. Indeed, prior to announcing the merger, my CEO, the President of BFG Aerospace and the CEO of Coltec met with the President and CEO of Boeing and we were advised that Boeing did not oppose the merger. We have also been told by Lockheed Martin and Bombardier that neither opposed the merger. As far as we know, no aircraft manufacturer has opposed this merger.

I appear before the Subcommittee confident that this merger is good for competition and good for our customers. Those customers and the federal agencies charged with enforcing competition policy have agreed. I am confident that history will bear out those judgments.

THE EFFECT OF THE MERGER ON U.S. JOBS

Following the merger, BFGoodrich will employ 27,000 people worldwide. The size and diversity, financial and technological strength and global reach of our businesses will create job stability and growth opportunities for our existing work force. The benefits and efficiencies in this merger, perhaps unlike others, are not centralized on employee reductions and layoffs. Rather, it is our hope that the merger will be a source of job growth as we realize the benefits of being more competitive both domestically and overseas.

As part of the merger, approximately 170 headquarters positions will relocate from Ohio to North Carolina. This sort of headquarters consolidation and relocation is typical of mergers. There will be 4,500 jobs lost as a result of the AlliedSignal/Honeywell merger, including 1,000 due to Honeywell's relocation from Minnesota to New Jersey.

I would like to address more specifically the Chair's concern about the merger's impact on Ohio jobs. In February, 1999, in response to an inquiry from the Department of Defense, BFGoodrich provided a preliminary, internal study that presented possible options for restructuring the landing gear business. Although each of the options presented by the study contemplated closing the Cleveland plant, BFGoodrich told the Department of Defense that "its views concerning reconfiguration are necessarily tentative" because it did not have cost information regarding any Coltec facilities.[3]

Let me be very clear about the future of our Cleveland landing gear plant: BFGoodrich management has made no decision about the future of this facility. Having said that, I must tell you that the U.S. landing gear business is 15 percent below its peak volume, and customer demand is expected to remain low for the next 10 years. In this business environment, status quo cannot prevail.

After the merger, we will look at all of our operations and determine how best to become a more efficient and lower-cost producer. This may include upgrading plants, reconfiguring our production mix and, perhaps, closing facilities. The failure to make these hard decisions could cost us our competitive edge and even more jobs than if we ultimately decide to close a plant. Until the merger has closed, however, we do not have access to the information we need to make an intelligent decision and, as a consequence, no decisions have been taken.

I promise you this—we will include all of our stakeholders in the process. We have already received a very appropriate and much appreciated invitation from Governor Taft of Ohio to consult with his office as we go forward in our planning and we have assured him that we will do so. Likewise, we will talk to the unions, other state, local and federal government officials as well as other interested groups to help us make the most informed and sound decision possible.

Whatever decision is reached regarding any of our facilities, BFGoodrich remains committed to Ohio. Following the merger, BFGoodrich will employ more than 3,000 people in Ohio in management, manufacturing and research positions. Our Performance Materials business, with more than $1 billion in revenue, will remain headquartered in Brecksville. Other BFGoodrich operations in Ohio are located in Akron, Avon Lake, Chagrin Falls, Cleveland, Cincinnati, Columbus, Dayton, Elyria, Green, Troy, Twinsburg and Uniontown.

We have been adding jobs in Ohio—since January 1997 we have added 200 jobs to our aerospace work force in Ohio and aerospace employment is up 14 percent. We remain committed to Ohio and to our work force in Ohio. Following the merger, BFGoodrich will contribute more than $20 million per year in taxes to Ohio as part of its continuing presence in the State.

Our goals are the same as those of the Subcommittee. We at BFGoodrich want to grow so that we can satisfy our customers, challenge, reward and retain our employees, and provide financial returns for our stockholders. We can only achieve these goals by providing innovative, quality, least-cost products to our customers consistently and timely. By becoming a stronger competitor, we help the economy and the work force in Ohio and in the other states in which we have operations.

Senator DEWINE. Thank you very much.

Mr. Montalbine.

[3] February 3, 1999 letter to Kathy Brown, Senior Attorney, Office of General Counsel, Department of Defense from Tom D. Smith. There is absolutely no truth to allegations that BFGoodrich told the Department of Defense or the FTC that it would close the Cleveland plant.

STATEMENT OF CARL R. MONTALBINE

Mr. MONTALBINE. Thank you very much, Senator. It is a privilege to appear before you.

I am Carl Montalbine, vice president and general manager of Aircraft Landing Systems, a business unit of AlliedSignal located in South Bend, IN. AlliedSignal's Aircraft Landing Systems division sells wheels and brakes, brake control systems, and integrated landing systems for commercial and U.S. military aircraft and employs approximately 1,400 people in its South Bend facility. I would like to thank Chairman DeWine and the subcommittee for inviting me to participate in the public debate of this issue.

I have submitted written testimony, and I would like to take 5 minutes to discuss that testimony. At the outset, I would like to emphasize three points:

One, the BFGoodrich/Coltec merger will have serious anticompetitive consequences.

Two, Allied is not alone in concluding that the BFGoodrich merger is anticompetitive. Airlines, wheels and brakes manufacturers, and even U.S. military personnel at Hill Air Force Base concur.

Three, the anticompetitive effects can be avoided by BFGoodrich selling its Cleveland Pneumatics landing gear business to Allied. This sale would ensure vigorous competition for landing systems, and AlliedSignal commits to you that it will keep jobs in Cleveland, and we will keep jobs there long term, not for just 2 years.

To understand the negative effects of the merger, I have a diagram that illustrates how the merger will affect the industry's structure that you can see to your right. Goodrich, Coltec, and Messier control approximately 99 percent of the large commercial landing gear market. There are only three companies in the world—and they are shown on that chart—with the capabilities to design, manufacture, and test landing gear for commercial aircraft.

Now, let me explain something. Previously, you just saw a chart that showed other landing gear companies—SHL, Liebherr Aerotechnic, AP Precision. Those are classified as the build-to-print, mom-and-pop-shop-type operations. They do not really have the capability to design large commercial landing gears. And if you look at the record and you look at the programs they are on, it is obvious that that is the case as Cleveland Pneumatics and Menasco constitute almost 100 percent of Boeing landing gear content, and Messier-Dowty constitutes 100 percent of Airbus content. If SHL, Liebherr, and AP Precision were capable of designing gears of that size, where is their market share?

Today, two of those three landing gear companies up there, Goodrich and Messier, also have their own wheel and brake operations. That leaves the third company, Coltec, as the only viable landing gear partner for AlliedSignal. AlliedSignal's experience in the past has been that if Coltec is not willing to cooperate with AlliedSignal on a particular program, AlliedSignal has no other viable partner with which to team in order to be a systems integrator for future aircraft programs.

A good example of that was the Dornier 728. When Menasco decided it didn't want to participate, we tried to team with Liebherr Aerotechnic, and they were not capable of doing the design work that was required, and that deal fell through.

In short, after the merger, only Goodrich and Messier will have access to landing gear needed to compete, and Messier is owned by a French firm controlled by the French Government. With that background, let me emphasize three points.

The first point I want to emphasize is that AlliedSignal will be harmed by this merger. The combined BFGoodrich landing gear business will result in a U.S. monopoly for landing gear with overwhelming market power to harm Allied and others by vertically foreclosing or gaming Allied and raising Allied prices for landing gear.

In terms of vertical foreclosure, landing gear is similar to Windows 95 operating system, and the wheels and brakes are like the browser. The browser, a wheel and brake company, must get the technical information from the operating system. BFGoodrich and Coltec will control the landing gear information necessary for Allied to understand the interface and to compete. Based on Allied's experience, BFGoodrich will have every incentive to game the information provided to Allied.

In terms of price increases, BFGoodrich will also control the supply of landing gear that Allied needs to compete with BFG as a landing systems integrator. Allied purchases landing gear on projects such as the Joint Strike Fighter. BFGoodrich, who is competing with Allied on the Joint Strike Fighter, will have no incentive to sell landing gear to Allied at fair prices, if at all.

The second point I want to emphasize is that these anticompetitive effects are recognized by numerous parties who know landing systems. Airlines, who are the customers for wheels and brakes, oppose this merger. SAS, AirTran, United, Northwest, American, Air New Zealand, and others have all indicated anticompetitive concerns. Significantly, not a single airline supports this merger as pro-competitive. Besides Allied, the other two major independent wheel and brake manufacturers in the world oppose this merger. ABSC, based in Akron, also opposes this merger, and I urge the committee to review the sworn affidavit of Mr. Ron Welsch, president of ABSC, which is attached to this written testimony. In addition, Dunlop Aviation, based in Coventry, England, also opposes this merger.

The third and final point I would like to emphasize is that all of these problems can be avoided. According to published reports, BFGoodrich and Coltec will consolidate their landing gear facilities and will close the Cleveland business. Indeed, according to today's papers, BFGoodrich even told the Department of Defense that it planned to close Cleveland. The fact that BFGoodrich would prefer to close Cleveland rather than sell Cleveland to AlliedSignal only confirms the high value BFGoodrich places on being a monopolist in landing gear. BFGoodrich would prefer to spend money to mothball a business rather than receive money from Allied.

I want to emphasize AlliedSignal's long-term commitment to the Cleveland landing gear business, again, not just for 1 or 2 years. Senator, Allied, is committed to purchase Cleveland, keep Cleveland open, invest in Cleveland, and use Cleveland to compete vigorously. We promise to be a strong competitor.

Thank you for your time.

[The prepared statement of Mr. Montalbine follows:]

PREPARED STATEMENT OF CARL R. MONTALBINE

I would like to thank Chairman DeWine and the subcommittee for giving me the opportunity to speak today.

I am Carl Montalbine, vice president and general manager of Aircraft Landing Systems, a business unit of AlliedSignal located in South Bend, Indiana. AlliedSignal's Aircraft Landing Systems division sells wheels and brakes, brake control systems, and integrated landing systems for commercial and U.S. military aircraft and employs approximately 1,400 people at its South Bend facility. I am the senior executive for the entire AlliedSignal Aircraft Landing Systems business unit in South Bend and have ultimate responsibility for the profit and loss statement of the business unit.

OVERVIEW

BFGoodrich ("Goodrich") and Coltec have announced a merger that will result in a single U.S. landing gear manufacturer (and one of only 2 worldwide). A federal court in Indiana has preliminary enjoined the merger based on a finding that "the merger would likely result in a U.S. monopoly for the sale of landing gear that would result in higher prices for such gears," and the Ohio Attorney General is also investigating the transaction. Moreover, according to published reports, Goodrich may close its landing gear operations in Cleveland after the merger.

There is a simple solution to the anti-competitive effects of the Goodrich/Coltec merger. AlliedSignal has stated on more than one occasion that it is willing to purchase the Cleveland landing gear business—that is slated to be closed after the merger anyway—from Goodrich. AlliedSignal has further stated that it would invest significantly to modernize those operations so as to not only maintain, but increase, competition in the United States landing gear market. Moreover, AlliedSignal has publicly stated that it has every intention of maintaining the high-paying union jobs at the Cleveland landing gear business if it is sold to AlliedSignal.

PERSONAL BACKGROUND

My background is in engineering. I have a Bachelor of Science degree in aeronautical engineering from the University of Cincinnati and a Masters degree in mechanical systems and applied mechanics from the Polytechnic Institute of New York. Before coming to AlliedSignal, I was in charge of systems engineering on the Northrop B-2 bomber. I was specifically hired by AlliedSignal to bring my expertise in systems integration to the company to help work on future bids for landing gear systems integration. At AlliedSignal, prior to holding my current position, I was director of engineering at AlliedSignal and manager of landing systems at AlliedSignal. Through these various positions, I have experience providing integrated landing systems, designing and manufacturing wheels and brakes, designing and manufacturing brake control systems, and, before AlliedSignal sold its landing gear business to Coltec in 1995, designing and manufacturing landing gear.

ALLIEDSIGNAL'S OPPOSITION TO THE GOODRICH/COLTEC MERGER

As I already indicated, AlliedSignal opposes the merger and there is ongoing litigation with respect to this merger. Because of a protective order in the litigation, I personally have not reviewed the numerous documents produced by Goodrich, Coltec, and third parties during the course of the case. Nor have I had the opportunity to review the deposition testimony of various Goodrich, Coltec, and third party witnesses. My testimony therefore reflects what I know of the public statements that have been made with respect to the merger and AlliedSignal's experience and knowledge with respect to the landing gear, wheels and brakes, and integrated landing systems businesses.

At the outset, it should be noted that AlliedSignal generally does not oppose mergers. AlliedSignal itself has been—and will continue to be—a company that seeks out merger opportunities to improve its competitiveness in the markets in which it competes. AlliedSignal almost never opposes mergers among its suppliers, customers, and competitors. Nor does AlliedSignal oppose the combination of Goodrich's and Coltec's aerospace businesses unrelated to landing gear systems, even though AlliedSignal competes with Goodrich and Coltec in these other aerospace lines of business. If AlliedSignal's opposition simply represented the complaints of a "whining competitor"—as Goodrich and Coltec have suggested—then AlliedSignal would have challenged many aspects of the merger—which it has not.

Instead, AlliedSignal's opposition to the merger has focused on the particular anticompetitive effects of the combination of Goodrich's and Coltec's landing gear businesses. There are only three companies in the world today capable of designing, de-

veloping, and manufacturing landing gear for large commercial aircraft, larger regional jets, and U.S. military aircraft: Goodrich, Coltec, and a French company, Messier-Dowty. Goodrich and Coltec are the only two domestic suppliers. AlliedSignal believes that the merger of these two companies' landing gear operations—which would create a worldwide duopoly and a domestic monopoly—will have particularly adverse effects upon competition, not only in terms of sales of landing gear, but also in terms of sales of wheels and brakes (which must interface with the landing gear) and integrated landing systems (which requires access to a supply of landing gear).

OTHER WHEEL AND BRAKE SUPPLIERS AGREE WITH ALLIEDSIGNAL

AlliedSignal is not alone in this view. There are five prominent wheels and brakes suppliers in the world: AlliedSignal, Aircraft Braking Systems (ABS), Dunlop, Goodrich, and Messier-Bugatti. Two of these companies—Goodrich and Messier-Bugatti—are affiliated with the two remaining landing gear companies. The other three companies oppose this merger:

- ABS submitted an affidavit in the litigation stating that the "post-merger Goodrich entity can be expected to exert leverage by its landing gear market concentration to benefit its Goodrich wheel and brake business" and that the merger will "lessen competition in the integrated landing system, landing gear, and wheel and brake markets." Tab A.
- Similarly, Dunlop submitted an affidavit in the litigation stating that the merger will lessen competition in these markets. Tab B.

In short, every wheel and brake supplier not affiliated to one of the two remaining landing gear suppliers recognizes the anticompetitive effects of the merger.

DEFENSE DEPARTMENT PERSONNEL WHO KNOW LANDING GEAR AGREE THAT THE PROPOSED MERGER IS ANTICOMPETITIVE

After the merger, the Defense Department will have only one domestic supplier of aircraft landing systems for its fighter, bomber, attack, and cargo aircraft. Although the Defense Department has not formally come out in favor of or opposition to the merger (wrongly, in my opinion), key procurement personnel within the Defense Department at Hill Air Force Base—the base responsible for landing gear sustainment on AirForce aircraft—have expressed their opposition to the merger. John Hamlen, for example, notes that several discussions have occurred at Hill Air Force Base among personnel in which concerns have been raised about the merger. Tab C. Frank Zuech similarly notes that these concerns have revolved around the merger limiting the Air Force's sources of landing gear and wheels and brakes and the possibility for higher prices. Tab D. And John King wrote a memo in January 1999 outlining the Hill Air Force Base landing gear engineering group's collective concerns with the merger, noting that the merger could "adversely affect technical data availability, product support, and technical capability for future designs," that Goodrich after the merger would be like a "non-regulated monopoly," that Goodrich could "leverage their control of the gear into control of wheels, brakes, and brake controls," and that Air Force personnel "simply don't want to put all of our eggs in one basket." Tab E.

AIRLINES AGREE WITH ALLIEDSIGNAL

Significantly, airlines—including major U.S. carriers—also agree with these Defense Department personnel and AlliedSignal. Ed Doty of Scandinavian Airlines, who is involved in wheel and brake issues for eight different major airlines through the Star Alliance, believes that aftermarket wheel and brakes prices will rise and that Goodrich could leverage its control over landing gear to obtain sole source positions on future aircraft programs, adversely affecting airlines. Tab F. AirTran similarly believes that the merger will result in higher landing gear prices, that "Boeing will pass any additional cost of landing gear resulting from the merger on to customers," and that the merger will have a "negative impact on our ability to purchase wheels and brakes at a competitive price." Tab G. I also am told that personnel from United Airlines and Northwest Airlines have testified, but, because of the protective order, I have not seen their testimony. I am not aware of a single airline that has come out in favor of the merger.

BACKGROUND ON LANDING SYSTEMS

An aircraft landing system consists of three key components: (1) the landing gear structure (or "landing gear"), which absorbs the shock of an aircraft's landing; (2) the wheels and brakes (which are typically sold as a package and apply the friction

to slow the aircraft upon landing); and (3) the brake control system, which allows the pilot to operate and control the rest of the landing system.

AlliedSignal Aircraft Landing Systems's primary business focus among these three components is selling wheels and brakes. AlliedSignal Aircraft Landing Systems has designed, developed, and manufactured wheels and brakes for numerous commercial and military aircraft. On the military side, AlliedSignal makes the wheels and brakes for the F-22, F-18 E/F, and F-15 fighter and attack aircraft, the C-17 cargo transport aircraft, and the B-2 bomber. On the commercial side, AlliedSignal sells wheels and brakes for numerous Boeing and Airbus commercial aircraft, including the Boeing 717, Boeing 777, Boeing 767, Boeing 737, Airbus 330/340, and Airbus 319/320. AlliedSignal also has provided the wheels and brakes for the X-33, the prototype vehicle for the next generation Space Shuttle. In addition to this wheels and brakes business, AlliedSignal has a smaller brake control systems business and is providing brake controls for the F-22 fighter.

Prior to 1995, AlliedSignal also had a niche landing gear business, primarily focused on designing and manufacturing the smaller landing gear used in U.S. military aircraft. AlliedSignal, for example, designed and manufactured the F-18 E/F landing gear. In 1995, AlliedSignal sold its landing gear business to Coltec and therefore today does not compete with Coltec and Goodrich in the sale of landing gear. The reason for this sale was the need to compete for integrated landing systems, a subject to which I turn next.

SYSTEMS INTEGRATION

The design and development of the interfaces between the three key landing gear components is often referred to as "systems integration." The task of integrating the landing system can be performed by either the airframe manufacturer or by an outside systems integrator. Systems integration typically involves performing the upfront engineering work required to define the requirements for the landing gear system itself, including the structure, wheels and brakes, and brake control system.

Historically, the airframe manufacturer—*i.e.,* Boeing, Lockheed-Martin, Bombardier, Northrop Grumman—performed the landing gear systems integration function themselves. Increasingly today, airframe manufacturers look to outside systems integrators to perform the systems integration on landing gear systems for new aircraft. Integrated systems bids are now the standard procedure for aircraft procured by the U.S. military as well as several major aircraft manufacturers. The reason is that outsourcing systems integration can lower costs and improve overall system design.

Several years ago, AlliedSignal recognized this trend toward outsourcing systems integration and realized that in order to compete for future aircraft landing system programs, the company would need to be a systems integrator. To compete as a systems integrator, AlliedSignal would need access to landing gear (so as to have landing gear to integrate with the rest of the landing gear system). In particular, AlliedSignal needed access to landing gear from a company that could design and manufacture landing gear for larger aircraft such as Boeing and Airbus aircraft. AlliedSignal had two choices. It could undertake the massive investment in equipment and resources needed to upgrade its small landing gear operations and enter the business of supplying landing gear for larger aircraft. That did not make economic sense. Or it could acquire or ally itself with such a landing gear supplier. As I have noted, there were only three companies that had the ability to design and manufacture landing gear for such aircraft: the two merging parties, Goodrich and Coltec, and a French company, Messier-Dowty. Goodrich and Messier each had their own wheels and brakes business units that compete with AlliedSignal and therefore would have little incentive to cooperate with AlliedSignal. Hence, AlliedSignal turned to Coltec.

In 1995, AlliedSignal and Coltec entered into a Strategic Alliance Agreement to compete for the sale of integrated landing systems. As part of this Strategic Alliance, Coltec insisted that AlliedSignal sell its small, landing gear business to it, so that Coltec would not be partnered with a competitor in the landing gear business. AlliedSignal agreed to this sale as part of an overall transaction that would provide the company access to landing gear for the sale of integrated landing systems. Under the Strategic Alliance Agreement with Coltec, AlliedSignal has submitted joint bids with Coltec for integrated landing systems on the Canadair Regional Jet, the Bombardier Dash 8-400, the Joint Strike Fighter, and the X-33 project (the next generation Space Shuttle). The joint bids for the Joint Strike Fighter and X-33 were accepted and AlliedSignal and Coltec are currently working together on these projects, with AlliedSignal providing the wheels and brakes and overall systems integration, and Coltec providing the landing gear.

It is my understanding that BFG and Coltec now argue there is no market for integrated landing systems. Their own conduct belies this argument. Coltec teamed with AlliedSignal under the Strategic Alliance specifically to sell integrated landing systems. Coltec and AlliedSignal today continue to work on integrated landing systems bids for future programs. BFG meanwhile has been as active as any company in bidding on programs involving systems integration. The reality is that there are numerous integrated systems bids upcoming or in the planning stages including the Joint Strike Fighter, Embraer 170, Embraer 190, the next generation Space Shuttle, the Lockheed-Martin Aerocraft, the Bombardier 90 seat regional jet, the Airbus A3XX, the Boeing New Small Aircraft, and the Boeing Large Aircraft Product Development. Not only is there a integrated systems market, but the vast majority of upcoming aircraft programs will likely involve integrated systems.

INDUSTRY STRUCTURE AFTER THE MERGER

Tab H gives an overview of how the merger will affect industry structure. Today, two of three landing gear companies, Goodrich and Messier, have their own wheels and brakes operations. That leaves the third company, Coltec, as the only viable partner for AlliedSignal. AlliedSignal's experience is that if Coltec is not willing to cooperate with AlliedSignal on a particular program, AlliedSignal has no other viable partner with which to team in order to be a systems integrator for future wide-body, narrow-body, large regional jet, and U.S. military programs. After the merger, Coltec will no longer exist, meaning that AlliedSignal would no longer be able to purchase landing gear on reasonable terms and conditions in order to compete as a systems integrator. While prior to the merger, four companies—Goodrich, Messier, Coltec, and AlliedSignal—could compete to supply integrated landing systems, after the merger only Goodrich and Messier would have access to the landing gear needed to compete. The merger not only would harm AlliedSignal as a buyer of landing gear and a competitor in the integrated landing systems market, it will harm competition for landing gear and integrated landing systems generally.

THE GOODRICH/COLTEC MERGER WILL GREATLY DIMINISH LANDING GEAR COMPETITION

It is my understanding that Goodrich and Coltec have suggested that the merger will not reduce landing gear competition because there are supposedly numerous other potential landing gear suppliers. That simply is not true. Developing landing gear for future aircraft requires specialized equipment and skills that only Goodrich, Coltec, and Messier-Dowty have.

To supply a newly designed landing gear for future aircraft models, a company must be able to design, test and manufacture landing gear structures.

DESIGNING LANDING GEAR

To design a landing gear, a company must have expertise in such areas as the load and stress placed upon a landing gear when an aircraft lands. Specialized analytical approaches are used in designing landing gear to account for these issues that involve interpreting the results from proprietary software. The ability to interpret and understand the results of this analysis requires considerable know-how that is a function of the experience of the personnel involved. The difficulty of this analysis significantly increases for larger landing gear and for landing gear used in the specialized circumstances of U.S. military aircraft.

TESTING LANDING GEAR

Suppliers of new landing gear also must have the capability to perform drop tests, structural tests, and fatigue tests. Testing requires not only access to specialized equipment, but also personnel experienced in interpreting test results.

MANUFACTURING LANDING GEAR

Finally, suppliers of new landing gear must have the equipment to manufacture landing gear. Manufacturing landing gear requires large, specialized machine tools that are used to machine forgings. While some machining can be outsourced, only Goodrich, Coltec, and Messier-Dowty have the equipment to perform certain necessary machining to produce landing gear for larger aircraft, particularly wide-body aircraft.

BUILD-TO-PRINT SHOPS DO NOT HAVE ALL THESE CAPABILITIES

While only Goodrich, Coltec, and Messier-Dowty have these design, testing, and machining capabilities, it is my understanding that Goodrich and Coltec point to the

existence of other "mom and pop" operations as evidence of other competition. There are "build to print" companies that have the capability (to varying degrees) to manufacture landing gear for aircraft up to a certain size, but none are credible competitors to undertake the entire task of designing, testing, and qualifying new landing gear on future aircraft models of these types. Not only do these companies not have these capabilities today, it would be very difficult for current "build-to-print" shops to develop these capabilities. As I have noted, AlliedSignal itself considered developing these capabilities before entering into the Strategic Alliance in 1995. AlliedSignal determined that it would cost about $150 million to do so and that it would take years to develop the engineering skills and reputation necessary to obtain an adequate return on the investment. For that reason, AlliedSignal decided it was not viable to upgrade from being a small landing gear provider to a company that could provide landing gear on larger aircraft. Because AlliedSignal already had engineers with designing and testing skills and know-how for U.S. military aircraft, AlliedSignal in 1995 was better positioned to become a major landing gear supplier (such as Messier-Dowty, Coltec, and Goodrich) than are build-to-print shops that operate today.

DIFFICULTY OF ENTRY

It is my understanding that Goodrich and Coltec also have suggested that entry into the landing gear business is not difficult. That is wrong. As I just discussed, AlliedSignal contemplated upgrading its operations a few years ago and found that it was not possible on any reasonable economic basis. There are several reasons. There is a long lead time to acquire the necessary equipment and the equipment is very expensive. A company also would have to develop a team of engineers with sufficient know-how and experience to design, test, and manufacture the landing gear. It should be emphasized that it is not just a matter of hiring a few engineers, but rather a team of engineers with skills in design, structural analysis, and testing along with specific knowledge of chip cutting, plating, heat treating, and assembly. A potential entrant also would have to obtain proprietary design materials. Finally, a company would have to develop a reputation as a credible supplier of landing gear for new aircraft.

HARM TO COMPETITION IN THE WHEELS AND BRAKES MARKET

After the merger, the two remaining landing gear suppliers—Goodrich and Messier—will each have their own wheels and brakes business units. Each company will have an incentive to design landing gear and distort the bidding process in a way that favors its own wheels and brakes operations. The result will be harm to competition and harm to AlliedSignal and other wheels and brakes suppliers.

HOW WHEELS AND BRAKES ARE SOLD

The sale of wheels and brakes to airline operators—*i.e.,* airline passenger companies and companies such as Federal Express and UPS—involves large up-front investments that are recouped over the life of the aircraft. These up-front investments come basically in two forms. First, in order to become "certified" as a wheel and brake supplier for a particular aircraft (a prerequisite for being able to sell wheels and brakes), a wheel and brake supplier typically will offer to invest significant amounts in designing and developing wheels and brakes for a new aircraft model along with perhaps making direct payments to the airframe manufacturer. This up-front investment will usually involve millions of dollars. Second, once certified, a wheel and brake supplier often will have to provide up-front inducements to airline operators (typically, free wheels and brakes on the initial aircraft sale plus some additional free spares) in order to persuade them to use the company's wheels and brakes. Again, these inducements will usually involve providing millions of dollars in free equipment.

To recover these investments, a wheel and brake supplier expects to sell replacement wheels and brakes over the life of the aircraft. (After a certain number of landings, an aircraft's wheels and brakes must be overhauled and a wheel and brake supplier provides the replacement equipment.) A wheel and brake supplier usually will enter into a long-term agreement with an airline operator to provide wheels and brakes replacements for some period of time (such as ten years) in exchange for the up-front investment in free equipment. AlliedSignal recoups its up-front investments with sales of replacement wheels and brakes over the life of the aircraft.

POTENTIAL DISADVANTAGES THAT CAN BE IMPOSED ON COMPETITORS

Obviously, the more a company must invest initially in designing wheels and brakes for a new aircraft model and becoming certified, the less likely it is a company will be cost competitive or find it attractive to invest in a particular aircraft program. Therefore, a company that can raise a competitor wheel and brake supplier's initial costs can achieve a competitive advantage.

It also is important to be one of the wheel and brake suppliers initially certified for an aircraft model. Once major airline operators have chosen a particular wheel and brake supplier for their initial purchases of a particular aircraft model, it is unusual for the airline operator to switch to another supplier because of the high costs of retrofitting an existing fleet. As a result, if a wheel and brake supplier is not initially certified, it will find a dwindling pool of potential customers available to which wheels and brakes can be sold to offset the initial up-front investment in the program. Hence, if a wheel and brake supplier can delay the certification of a competitor wheel and brake supplier, it will obtain a competitive advantage.

Finally, with a sufficiently attractive offer, an airframe manufacturer may be willing to "sole source" wheels and brakes for a particular aircraft, meaning only one wheel and brake supplier will be allowed to sell wheels and brakes for a particular aircraft model. Hence, it is conceivable that a company that has leverage with respect to landing gear can offer not to charge monopoly prices for landing gear in exchange for a sole source position as a wheels and brakes supplier. Because the airframe manufacturer itself pays directly for landing gear while airline operators pay for wheels and brakes in the aftermarket, an airframe manufacturer may find such an offer attractive.

LANDING GEAR DESIGN PROCESS

The Goodrich/Coltec merger will give Goodrich the opportunity to exploit its dominance over the landing gear marketplace to favor its own wheels and brakes operation. In particular, Goodrich can exploit its control over the landing gear design process. The landing gear usually is the first component designed. Once the landing gear is designed, the brake control system and then the wheels and brakes are designed to fit the specifications and interfaces created by the landing gear design. In order to work properly, an aircraft's wheels and brakes must have a proper interface with the landing gear.

Obtaining timely information about the proposed landing gear design and its interface with wheels and brakes is crucial to being a cost-effective producer of wheels and brakes. Early knowledge of technical factors such as the load sizes of a landing gear, the torque take out, and other general information about the materials, weight, and type of wheel and brakes desired can avoid the unnecessary costs that might result from developing wheels and brakes based on incomplete information or from having to rush to complete the design work because the information was not received in a timely fashion.

"GAMING" THE DESIGN PROCESS

There is little doubt that the landing gear design process can be used to impose higher costs upon wheels and brakes suppliers not affiliated with the landing gear suppliers. As an example of such potential "gaming," a landing gear systems integrator might announce restrictions for a wheel and brake design that seemingly pose costly technical challenges without informing other parties that other aspects of the design will compensate for the restrictions. A wheels and brakes designer without complete information in that situation might invest in unnecessary and costly research to meet the challenge. The landing gear also can be designed in ways that favor the landing gear company's own wheel and brakes division. For example, the vibrations of a wheel and brake must, accommodate or fit the frequency of the vibration of landing gear structure when an aircraft lands. A landing gear designer can tune the frequency of the landing gear so as to disadvantage a competitor's wheels and brakes. Similarly, a landing gear designer can change the way in which an axle is mounted or the spacing of a bearing so as to disadvantage a competitor's off-the-shelf products. Or the landing gear designer may tune the landing gear specifically to compensate for the oscillations of its own wheels and brakes, while forcing other wheels and brakes competitors to modify the oscillations of their own wheels and brakes to meet the landing gear design.

GAMING HAS ALREADY HAPPENED

It is my understanding that Goodrich and Coltec have argued that such gaming is not possible. But AlliedSignal itself already has experienced such gaming. The

French firm Messier—which consists of Messier-Dowty (which supplies landing gear) and Messier-Bugatti (which supplies wheels and brakes)—supplies virtually all landing gear components and systems for Airbus. Messier-Dowty obviously has an incentive to promote and favor inclusion of Messier-Bugatti's wheels and brakes on Airbus programs. AlliedSignal has faced significant hurdles getting certified as a wheels and brake supplier on Airbus airplanes for such reasons. For example, AlliedSignal has been trying for months to obtain more information from Messier-Dowty on the upcoming A340-600 landing gear design, but Messier-Dowty has refused to provide it. (The attached Tab I is an AlliedSignal letter complaining about this problem.) On earlier versions of the A340, Messier designed the landing gear in ways that disfavored AlliedSignal's wheel and brakes and gave AlliedSignal the wrong specifications for the interface between its brake control system and the wheels and brakes, causing substantial problems that resulted in AlliedSignal incurring additional costs. And on the A319-320, several airlines requested that AlliedSignal's wheels and brakes be certified and AlliedSignal signed contracts with the airlines to deliver wheels and brakes on future aircraft (after being told by Airbus that AlliedSignal would be certified). After signing these contracts, Airbus then moved very slowly in certifying AlliedSignal's wheels and brakes in order to protect Messier-Dowty's position. AlliedSignal has suffered hundreds of thousands of dollars of financial penalties under these contracts because it was not certified in a timely fashion.

After the merger, Goodrich will be the primary (if not only) supplier of landing gear to U.S. airframe manufacturers. With the reduction in landing gear competition, AlliedSignal expects to see the same type of gaming with future aircraft development programs that it has experienced at Airbus with Messier. Moreover, AlliedSignal also expects that Goodrich will try to leverage its dominance over landing gear into sole source positions on future aircraft programs.

HARM TO AIRLINE OPERATORS

Such behavior will not only harm AlliedSignal but also airline operators. By driving up competitors' costs and either obtaining sole source positions or delaying certification of competitors, Goodrich will be able to reduce customer choice, raise wheels and brakes prices, and reduce the amount competitors are willing to offer airline operators to attract business. These results are harmful to airline operators. In addition, AlliedSignal invests millions of dollars each year in research and development of wheels and brakes. As a result, AlliedSignal competes not only in terms of price, but also quality, innovation, and service. If the merger results in AlliedSignal being excluded from future competitions or having its costs artificially raised, the result will not only be higher prices for wheels and brakes, but also reduced quality, innovation, and service. The merger also may make it difficult to justify maintaining current levels of research and development spending or to expand or even retain the personnel now used to provide systems bids and perform research and development.

LOCKHEED MARTIN JOINT STRIKE FIGHTER BID

When the Defense Department originally reviewed the Goodrich/Coltec merger, it was unclear whether Lockheed Martin's Joint Strike Fighter bid would be an integrated systems bid. Now, it is clear that it will be. Absent the merger, the two most important bidders would have been Goodrich and Coltec/AlliedSignal. The merger would remove the benefits of this competition, to the detriment of AlliedSignal and taxpayers as well.

SALE OF GOODRICH'S LANDING GEAR BUSINESS TO ALLIEDSIGNAL WOULD SOLVE THE PROBLEM

As I noted at the outset, I believe there is an easy resolution to the competitive problems posed by the merger. AlliedSignal has offered to buy Goodrich's landing gear business (the former Cleveland Pneumatic Company). If AlliedSignal acquires Goodrich's landing gear business, it will invest in the company and aggressively compete for new business in the landing gear market. Such an acquisition would preserve competition in the marketplace and preserve any job losses that might occur due to any consolidation of Coltec's and Goodrich's operations. I therefore believe the sale of Goodrich's landing gear operations to AlliedSignal is a reasonable pro-competitive resolution of this dispute that would still allow the rest of the Goodrich/Coltec merger to go forward.

CONCLUSION

I believe the evidence will be compelling that the Goodrich/Coltec merger is anticompetitive. A federal judge has already decided that such a conclusion can be reached. Other wheels and brake suppliers, Defense Department personnel, and airlines agree that the merger is anticompetitive. By contrast, while some companies have apparently decided not to get involved and therefore have chosen not to oppose the merger, I am not aware of any supplier, customer, or competitor of Goodrich and Coltec that has actually stated its support for the merger.

Thank you again for giving me the time today to present testimony on this important subject.

TAB A

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA SOUTH BEND DIVISION

ALLIEDSIGNAL, INC., *et al.* *Plaintiff,*	)	
v.	)	CIVIL NO. 3:99 CV 0116 AS
	)	CIVIL NO. 3:99 CV 0181 AS
THE B.F. GOODRICH CO., *et al.* *Defendants.*	)	

AFFIDAVIT OF RONALD E. WELSCH

1. I am the President of Aircraft Braking Systems Corporation (ABSC) and have held that position for the past three years. Prior to becoming the President, I was the Executive Vice President and Chief Operating Officer of ABSC. I have been involved in the aerospace industry for over 30 years.

2. This affidavit is made in support of AlliedSignal's motion for a preliminary injunction to enjoin the proposed merger of BF Goodrich (BFG) and Coltec.

3. ABSC is a manufacturer of aircraft wheels and brakes and brake control systems, with approximately 950 employees. By our estimates, wheel and brake and brake control system sales by ABSC represent approximately 21 % of the market. ABSC sales in 1998 were $ 306 million. Approximately 75 % of ABSC's sales come from aftermarket sales of replacement parts.

4. ABSC views the market for wheels and brakes as world-wide, in which there are 5 main wheel and brake competitors and approximately $ 1.1 billion in total sales revenues. Four of those companies – BFG, AlliedSignal, ABSC and Messier – represent around 90 % of the business.

5. ABSC sells products to the commercial, general aviation and military markets. Customers include airframe manufacturers and airlines.

6. There is a market for integrated landing systems and landing systems integration is a trend in the industry.

7. I am aware that BFG (which manufactures landing gear through its Cleveland Pneumatic operation) and Coltec (which manufactures landing gear through its Menasco Aerospace operation) have agreed to merge.

8. ABSC is concerned that it will have significantly reduced access to new aircraft program bidding opportunities if BFG/Cleveland acquires Coltec/Menasco. BFG will then own both Cleveland Pneumatic and Menasco – the only two viable U.S. landing gear manufacturers.

9. It has been ABSC's experience that it must team with a landing gear manufacturer when an original equipment manufacturer (OEM) requests a proposal for a dressed landing gear or an integrated landing system. If the proposed merger is completed, BFG will have no reason to seek a competitive bid from a supplier like ABSC or AlliedSignal, when its landing gear operations receive a bidding opportunity, since BFG is trying to sell its own wheels and brakes – in direct competition with ABSC and AlliedSignal wheels and brakes.

10. The post-merger BFG entity can be expected to exert leverage by its landing gear market concentration to benefit its BFG wheel and brake business. If successful on integrated landing systems bids, BFG will have the potential to eliminate wheel and brake suppliers like ABSC from competition or raise ABSC's costs.

11. Currently, ABSC estimates that Messier-Dowty represents around 40 % of the market worldwide for landing gear. We estimate that BFG/Cleveland has approximately 20-25 % and Menasco has approximately 20-25 % of the worldwide landing gear market – resulting in a 40-50 % market share for a post-merger BFG in all landing gear worldwide. Moreover, post-merger, BFG would have at least 80 % of the United States landing gear market, because Messier-Dowty

does not have a large presence in the United States. For large commercial aircraft landing gear, BFG, Menasco, and Messier essentially control the entire market. Thus, a combined BFG/Coltec will have the real potential to dominate the market for integrated landing gear systems, especially in the United States and among large commercial aircraft.

12. In the United States, the proposed merger would combine the only two major landing gear suppliers, leaving only BFG as a major U.S. landing gear manufacturer. On a worldwide basis, the three main suppliers would become two. Messier-Dowty (landing gear) and Messier-Bugatti (wheels and brakes) are commonly-owned by SNECMA. Thus, the worldwide market will potentially be dominated by two organizations – BFG and SNECMA – each having the ability to respond internally to all bids for dressed landing gear or integrated landing systems.

13. The other landing gear suppliers in the world are each smaller companies and in many cases they rely on BFG and Menasco for piece part business. They do not have the design or technical capabilities of BFG, Menasco or Messier. They cannot be expected to be able to partner successfully with ABSC to compete with BFG for all dressed landing gear or integrated landing systems after the proposed merger.

14. ABSC cannot be expected to establish its own landing gear division either. The barriers to entry into the landing gear market are huge. The machinery and equipment are large and costly, and the facilities are capital intensive. Customers would also have little incentive to do business with a new landing gear company, which would necessarily lack a history of experience and important technical abilities. It could take 20-30 years to successfully establish oneself in the landing gear business if one could afford to do it. The development costs on landing gear programs are also huge, raising additional barriers.

15. Recently, aircraft OEMs have requested dressed landing gear or integrated landing system proposals for new programs. When this happens, it is necessary for a supplier like ABSC to convince the recipient of the request for a proposal to use ABSC products. Because ABSC doesn't manufacture landing gear, the opportunity to present a bid, and certainly the opportunity to win the bid, is significantly reduced if the landing gear supplier is integrated with a wheel and brake company – like BFG and Messier – because they have no need or incentive to look to an outside wheel and brake vendor.

16. A post-merger BFG will have the leverage and incentive to bring about sole source positions using BFG wheels and brakes. As a result of the elimination of the competitive bid process at the landing gear level, BFG's wheel and brake division will have a significant lead time advantage over the other wheel and brake manufacturers by having access to the landing gear designs from the very beginning of the landing system design process.

17. As a practical matter, when the landing gear supplier controls the wheel and brake interface – which is the case in a dressed landing gear or integrated landing system request for proposal – the landing gear manufacturer is in a position to withhold or delay, inadvertently or otherwise, the access to information needed by a wheel and brake supplier like ABSC to proceed toward potential certification even as a second source.

18. Being the first qualified or default source of wheels and brakes on an aircraft always provides a significant competitive advantage to the wheel and brake supplier. The first qualified source essentially eliminates every other supplier of wheels and brakes from selling to the OEM by getting position at the airlines in the early years in the production run of the aircraft. Being a second or later-qualified source can rarely provide a recovery for the lost first source opportunity, and the second source is still disadvantaged to the extent it is trying to displace or compete with an

entrenched first source. Thus denial of first-source opportunities can be expected to seriously diminish competition in the sale of wheels and brakes.

19. Without a strong landing gear supplier independent of a wheel and brake house – a position currently filled by Menasco – there would ordinarily be no landing gear teammate for the independent wheel and brake suppliers, such as ABSC, AlliedSignal and Dunlop, potentially leaving the entire integrated landing system market (and the sole or first-source wheels and brakes on those aircraft) to BFG and Messier, who would both be vertically integrated.

20. In our view, as ABSC's opportunities on new aircraft diminish, an adverse impact on the market and the consumer can be expected to occur. For example, ABSC has invested millions of dollars in product innovation and improvements, such as carbon brakes. However, suppliers like ABSC and AlliedSignal, when faced with lessening commercial opportunities, would face difficult decisions about continuing their research and development investments if there is little chance of bringing advanced and innovative products to market to recoup that investment.

21. Pricing in the aftermarket is also likely to increase as a result of the proposed merger, as wheel and brake suppliers attempt to recover as much as possible in the short term. Eventually, if competition for parts is lessened, costs that the airline incur and that the passenger eventually pays can be expected to increase. Furthermore, since ABSC has been the major supplier of wheels and brakes to the military, many advances in the industry have been brought on through military programs and national security could eventually suffer if a wheel and brake competitor like ABSC is weakened.

22. At the present time, the competition among suppliers of wheels and brakes is robust, and has led to cost cutting, price reductions to the consumers, and increased spending for research and development of better quality braking systems. I can see no way in which the proposed

BFG/Coltec merger will serve to benefit the industry in any of those areas. In fact, based on my experience in the industry, the proposed merger will lessen competition in the integrated landing system, landing gear, and wheel and brake markets.

23. I declare, under penalty of perjury, that the above statements are true and correct.

Dated: April 21, 1999

Ronald E. Welsch

Ronald E. Welsch
President, Aircraft Braking Systems Corp.

Sworn before me this 22 day of April, 1999
at AKRON, OH.

Diane E. Moran

Notary Public

DIANE E. MORAN
NOTARY PUBLIC, STATE OF OHIO
Recorded in Cuyahoga County
My Comm. Expires Aug. 19, 2003

TAB B

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

ALLIEDSIGNAL, INC., *et al.* *Plaintiff,*	)	
	)	CIVIL NO. 3:99 CV 0116 AS
v	)	CIVIL NO. 3:99 CV 0181 AS
	)	
THE B.F. GOODRICH CO., *et al.* *Defendants.*	)	

DECLARATION OF JOHN WHELAN

1. I am the Director and General Manager of Wheel and Brake Programmes for Dunlop Aviation Division in Coventry, England. I have held that position for the past five years and have worked in the aerospace industry for 14 years.

2. Dunlop designs and manufactures aircraft wheels and brakes. The large majority of Dunlop's sales come from aftermarket sales of replacement wheel and brake components to airlines.

3. I am aware that BF Goodrich and Coltec (including its Menasco Aerospace landing gear business) have stated their intention to merge. In connection with that proposal, the FTC contacted me several weeks ago.

4. Dunlop is concerned that its access to new aircraft programs could be reduced if BFG acquires Coltec/Menasco. BFG will then own both Cleveland Pneumatic and Menasco - the only two U.S. landing gear manufacturers. This will reduce competition in the landing gear market.

5. In my experience, there is a growing market for integrated landing systems and landing systems integration is a trend in the industry. If the proposed merger is completed BFG can be expected to use its landing gear market concentration to exert leverage on the airframe OEM's to benefit its wheel and brake

business. This would be to the detriment of the other wheel and brake companies like Dunlop

6. A post-merger BFG will essentially be the sole supplier of landing gear to Boeing, and will be able to dominate the market for integrated landing systems in the United States.

7. It is my view that the proposed BFG/Coltec merger will lessen competition in the integrated landing system, landing gear, and wheel and brake markets.

8. I declare, under penalty of perjury, that the above statements are true and correct.

Dated: April 27, 1999

John Whelan

John Whelan
Dunlop Aviation Division

TAB C

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA SOUTH BEND DIVISION

ALLIEDSIGNAL, INC., *Plaintiff,* v. THE B.F. GOODRICH CO., *et al.* *Defendants.*	)	CIVIL NO. 3:99 CV 0116 AS
CRANE CO., *et al.* *Plaintiff,* v. THE B.F. GOODRICH CO., *et al.* *Defendants.*	)	CIVIL NO. 3:99 CV 0181 AS

AFFIDAVIT OF JOHN R. HAMLEN

1. I am the Program Manager for F-15 landing gear systems at Hill Air Force Base in Ogden, Utah. I am responsible for issues relating to landing gear systems for the United States Air Force fleet of F-15 aircraft.

2. Prior to becoming F-15 Landing Gear Systems Program Manager, I held the positions of Assistant Program Manager and Item Manager for landing gear and wheels and brakes at Hill Air Force Base. As an Item Manager, I was responsible for procurement of aftermarket parts as well as other repair and overhaul issues relating to the United States Air Force fleet of F-15 and F-16 aircraft throughout the world. I have been involved in these Landing Gear Systems positions at Hill Air Force Base for 11 years.

3. Today, I am also a Master Sergeant in the United States Air Force Reserve. In 1985, when I switched from active-duty to reserve-duty status in the United States Air Force, I

held the rank of Staff Sergeant. From 1979 to 1985, I was based at Hill Air Force Base as an inventory management specialist.

4. Hill Air Force Base is responsible for landing gear system sustainability on most existing United States Air Force aircraft, including almost all work for the Air Force fleet of F-15 and F-16 fighter aircraft.

5. On most models of United States Air Force aircraft, there is only one qualified source of supply for wheels and brakes. There are two models of the F-16 in service in the Air Force today, a heavyweight version and a lightweight version. Aircraft Braking Systems is the sole qualified source of supply for wheels and brakes on the lightweight version of the F-16, and BF Goodrich is the sole qualified source of supply for wheels and brakes on the heavyweight version of the F-16. On all United States Air Force F-15 aircraft, AlliedSignal is the only qualified source of supply for wheels and brakes.

6. In my position at Hill Air Force Base, I am aware from discussions and industry publications that integrated landing systems, also referred to as "one-stop shopping" from the "wheel-well down," is the trend in landing gear, wheel and brake, and brake control procurement. I understand that Boeing and Lockheed procurement follows this trend.

7. As a result of this trend, which includes industry consolidation and teaming arrangements, component manufacturers without access to landing gear systems have lost market share and capability. For instance, Aircraft Braking Systems has been such a casualty, resulting in decreased innovation and higher prices.

8. In my experience, the designer of the landing gear controls the interface between the landing gear and the wheels and brakes and brake control system. In addition, the

landing gear supplier owns the landing gear data. As a result, the landing gear manufacturer controls the wheel and brake and brake control suppliers' access to the landing gear system and OEM.

9. I have had several discussions with other personnel at Hill Air Force Base about the proposed B.F. Goodrich-Coltec merger in which concerns have been raised with respect to the loss of component suppliers, decreased innovation, reduced capacity, and higher prices.

10. I swear that the above statements are true and correct.

Dated: April 12, 1999

John R. Hamlen
Hill Air Force Base, Ogden, Utah.

Sworn before me this 12 day of April, 1999
at OO-ALC/JAM, HAFB, UT.

Notary Public
3 Apr 01

LINDEN S. DARE
NOTARY PUBLIC • STATE of UTAH
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HAFB, UT 84056
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TAB D

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA SOUTH BEND DIVISION

ALLIEDSIGNAL, INC., *Plaintiff,* v. THE B.F. GOODRICH CO., *et al.* *Defendants.*	)	CIVIL NO. 3:99 CV 0116 AS
CRANE CO., *et al.* *Plaintiff,* v. THE B.F. GOODRICH CO., *et al.* *Defendants.*	)	CIVIL NO. 3:99 CV 0181 AS

AFFIDAVIT OF FRANK O. ZUECH

1. I am the Project Engineer for F-15 landing gear systems at Hill Air Force Base in Ogden, Utah. I am responsible for all landing gear system sustainability issues (repair, overhaul, technical orders, spare procurement, etc.) relating to the United States Air Force fleet of F-15 aircraft. I have worked on landing gear systems for various aircraft at Hill Air Force Base for over 38 years. Personnel at Hill Air Force Base are responsible for landing gear system sustainability on most existing United States Air Force aircraft, as well as consulting on the development of landing gear systems for new United States Air Force aircraft.

2. Military aircraft manufacturers have evolved to an integrated landing gear systems market in recent years. Specifically, OEMs like Boeing, Lockheed, and Northrop-Grumman have been dissolving their capability to perform landing systems integration themselves by letting go of their systems integration personnel. As a result, they have become reliant on the industry to develop landing systems integration capability. This trend toward providing integrated landing

systems is reflected by B.F. Goodrich's purchase of the Cleveland Pneumatic Company and AlliedSignal's Strategic Alliance with Menasco.

3. Today, the United States Air Force relies on B.F. Goodrich and the AlliedSignal/Menasco Alliance as its two suppliers of integrated landing systems. Foreign suppliers of landing gear, such as Messier-Dowty, have not been used by the United States Air Force due to national security concerns.

4. The merger of B.F. Goodrich and Coltec (Menasco) will result in one United States landing gear manufacturer, that also manufactures wheels, brakes, and brake controls. Without an established landing gear teammate, such as Menasco, wheel and brake manufacturers like AlliedSignal and brake control (anti-skid) manufacturers like Hydro-Aire will not be in a position to bid on future integrated landing gear systems.

5. An example of a component supplier being injured by not having access to integrated landing systems on new aircraft is Aircraft Braking Systems, who have lost market share in recent years.

6. In my experience, the designer of landing gear structure has control over the interface between the landing gear and the wheels and brakes and brake control system. As a result, the landing gear manufacturer can unilaterally impact the cost and timing of wheel and brake design and manufacture.

7. I have had several discussions with other landing systems engineers at Hill Air Force Base since learning about the proposed B.F. Goodrich-Coltec merger. Personnel at Hill Air Force Base and I have shared our mutual concerns about: (1) the merger limiting our sources for landing gear, wheels and brakes, and brake control supply; (2) the merger causing higher aftermarket

prices for landing gear and wheel and brake repair, overhaul, and spare parts; and (3) the merged entity not having adequate capacity to provide aftermarket parts in a timely fashion.

8. I swear that the above statements are true and correct.

Dated: April 7, 1999

Frank Zuech
Hill Air Force Base, Ogden, Utah.

Sworn before me this 7th day of April, 1999
at OO-ALC/JAM, Hill AFBUT.

Notary Public
Exp: 3 Apr 01

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HAFB, UT 84056
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TAB E

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA SOUTH BEND DIVISION

ALLIEDSIGNAL, INC., *Plaintiff,* v. THE B.F. GOODRICH CO., *et al.* *Defendants.*	CIVIL NO. 3:99 CV 0116 AS
CRANE CO., *et al.* *Plaintiff,* v. THE B.F. GOODRICH CO., *et al.* *Defendants.*	CIVIL NO. 3:99 CV 0181 AS

AFFIDAVIT OF JOHN C. KING

1. I am an electrical engineer responsible for brake control and anti-skid systems on United States Air Force military aircraft. I have worked on brake control and anti-skid systems at Hill Air Force Base in Ogden, Utah for 14 years and currently hold the position of Project Engineer. Hill Air Force Base is responsible for landing system sustainability on all existing United States Air Force aircraft, as well as consulting on the development of landing systems for new United States Air Force aircraft.

2. In January 1999, I had discussions with other landing systems engineers at Hill Air Force Base and at other Air Force bases regarding the competitive impact of the proposed merger between B.F. Goodrich and Coltec Industries, specifically relating to their landing gear divisions, wheels, brakes, and brake controls. As a result of those discussions, I prepared a summary of our concerns relating to the proposed merger. That summary was prepared during the week leading up to February 17, 1999 and is attached as Exhibit A. Exhibit A accurately reflects the

analysis of the proposed merger and the concerns expressed by landing systems personnel at Hill Air Force Base.

3. On February 17, 1999, I sent this summary to Bart Wood, Supervisor of Landing Gear Engineering at Hill Air Force Base, for his review. After reviewing my summary, Mr. Wood sent me the following message: "Hi John, Looks good, I added a word regarding strut data. I will forward this to Ken Percell. Thanks, BW." A printout of this message is attached as Exhibit B.

4. On February 18, 1999, Bart Wood sent the summary to Ken Percell, Director of Commodities at Hill Air Force Base, for his review and delivery to the appropriate senior officials. Mr. Wood sent the summary to Mr. Percell with the following message, which was copied to me as well: "Hi Ken, John King has compiled the attached word document which summaries our concerns. Any questions can be directed to either John or myself. Thanks, BW." A printout of this message is attached as Exhibit C.

5. Thereafter, Mr. Percell was in a serious automobile accident that has forced him to miss work since that time. As a result, I am not aware that the concerns of Hill Air Force Base, contained in Exhibit A, were delivered to the appropriate officials.

6. I swear that the above statements are true and correct.

Dated: April 6, 1999

John C. King
Hill Air Force Base, Ogden, Utah.

Sworn before me this 6th day of April, 1999
at OO-ALC/JAM, HAFB UT

Notary Public 3 Apr 01

LINDEN S. DARE
NOTARY PUBLIC • STATE OF UTAH
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Purpose

This document presents our landing gear engineering sections input concerning the acquisition of Menasco Landing Gear by B. F. Goodrich. Our overall consensus is that this merger could adversely affect technical data availability, product support, and technical capability for future designs.

Background-

B. F. Goodrich (BFG), one of our primary sources for aircraft wheels, brakes, and gear components (struts, etc.) is purchasing (Coltec) Menasco Landing Gear Division. Menasco produces Struts and couplings for landing gear

Menasco and BFG are the only current domestic suppliers of landing struts
Dowty (Canada) aerospace may have the technical capability to compete with BFG, but since their acquisition by Messier (a French company and a primary Airbus supplier) they have shown little interest in USAF procurements. Aircraft OEM's like Boeing and the former McDonnell Douglas may have capability to do landing gear design, but only for in house use, and the results have been very poor (i. e. C-17).

We consider BFG to be a good supplier and have a generally favorable relationship ship with them. Our concerns are not with BFG as a company.

Concerns-

Most of the concerns are those that would apply to any non-regulated monopoly. A monopoly can set any price desired, ignore customer support and data requests, and generally has no incentive to innovate.

BFG could leverage their control of the gear into control of wheels, brakes, and brake controls (antiskid). In fact, because OEM's are insisting more on integrated systems, they would find it hard not to do this.

Their recent brake control (antiskid) development work, for example, suggests that they intend to do exactly that. The antiskid performance capability they can offer is currently far less than existing vendors, so this would have an adverse impact on new systems.

If BFG is non responsive or cannot technically meet a particular requirement, there is no reasonable alternative, especially on a "black" program.

We simply don't want to put all of our eggs in one basket.

POC is John C. King/OO-ALC/LILE Engineering/DSN 777-5673.

>>>>>
Hi John,
Looks good, I added a word regarding strut data. I will forward this to Ken Percell.
Thanks, BW

LILE SP 99-103 18 Feb 99

Hi Ken,
John King has compiled the attached word document which summaries our concerns. Any questions can be directed to either John or myself.
Thanks, BW

TAB F

DECLARATION OF EDWARD E. DOTY

1. I am currently a Technical Advisor to SAS Scandanavian Airlines, one of the largest passenger airlines in Europe – with service in the Scandanavian countries of Denmark, Norway and Sweden as well as the rest of Europe, Asia and North America. I have over 35 years of experience in the aerospace industry. I worked for SAS in Copenhagen, Denmark from 1993 to 1996 as a Technical Advisor and have since served as their Technical Advisor on component and financial issues, including procurement of landing gear components and aircraft wheels and brakes.

2. SAS maintains a fleet of approximately 164 aircraft, including Boeing 767s, MD-80s, MD90s, and DC-9s. SAS recently placed an order for 41 Boeing 737-600s, with an option for an additional 35 aircraft. In 1997 SAS carried approximately 20.8 million passengers to 104 destinations in 34 countries. SAS operates, on average, approximately 1,000 flights a day. The airline serves three destinations in the United States directly.

3. SAS is one of the founding members of the Star Alliance, the first truly global airline network, formed in May 1997. The members of Star Alliance are: SAS, Air Canada, Air New Zealand, Ansett Australia, Lufthansa, Thai Airways International, United Airlines and Varig. In October 1999, All Nippon Airways will join the Star Alliance as its ninth member airline. The members of the Star Alliance work together to arrange convenient travel across airlines by combining and adapting the route networks and timetables of the Alliance members, code-sharing, and common member benefits programs. The Star Alliance also makes it possible to cut costs in production, procurement, and distribution. Together the Star Alliance flies to more than 720 destinations in over 110 countries around the world. The Star Alliance represents over 1,500 aircraft worldwide. I am SAS' wheel and brake and landing gear representative to the Star Alliance. I also represent the airlines of the Star Alliance on wheel and brake issues.

EEP 4.23.99

4. I am aware that BF Goodrich and Coltec (the parent company of Menasco Aerospace) have announced their intention to merge. This merger will result in the combination of two of the three commercial aircraft landing gear manufacturers in the world. Other companies that are considered second-tier landing gear manufacturers – such as Liebherr, Heroux, and SHL – are essentially build-to-print machine shops without the design, financial, or manufacturing capabilities to successfully compete with BFG, Menasco or Messier. Moreover, these companies cannot increase their capabilities to become an effective competitor due to very high barriers to entry into the landing gear market in the areas of training, experience, technology and financing. This is evidenced by the lack of any new entrants into the landing gear market in the past 30 years.

5. Procurement for aircraft systems has changed dramatically over the past 30 years. At one point, aircraft OEMs like Boeing and McDonnell Douglas would provide nonrecurring engineering costs as funding to component suppliers in order to foster competitive development of the best and most efficient subsystem components. However, as part of the OEMs' continuing trend to lower their internal costs and responsibilities, component and subsystem suppliers have more recently been required to provide financial assistance to the OEMs in order to have their products placed or certified on the aircraft. As part of this trend, OEMs have evolved toward procurement of integrated landing systems, which include landing gear and wheels and brakes (as well as other components) that have been designed together. The entire landing system is often referred to as the undercarriage of the aircraft.

6. Costs associated with the landing system or undercarriage of the aircraft are the third largest operating cost to an airline, after personnel and engine operations, and are a significant portion of the airlines' operating budget. As a result, these costs dictate personnel decisions, ticket prices, and airline safety.

11-22-99

7. For financial reasons, it is in aircraft manufacturers' interest to have a sole source for wheels and brakes on all of its aircraft. Multiple sourcing, on the other hand, fosters innovation, choice, and competitive pricing for wheels and brakes to the airlines. Despite these benefits, Boeing has in the past sole-sourced its wheels and brakes when faced with significant financial incentives. An example of this would be the Boeing 747-400, on which only BF Goodrich wheels and brakes are certified.

8. Wheels and brakes must be designed to match the landing gear interface, which is designed by the landing gear manufacturer. As a result, having access to the landing gear design information provides a significant advantage to a wheel and brake manufacturer. Moreover, without access to an independent landing gear manufacturer, wheel and brake suppliers cannot compete on integrated landing systems bids.

9. Specifically, as the OEMs continue to evolve toward an integrated landing systems approach, partnership or interaction with a landing gear manufacturer becomes essential. For instance, Dunlop had effectively teamed with Dowty landing gear prior to the acquisition of Dowty by Messier, who has their own wheel and brake division. Wheel and brake manufacturers without access to a landing gear manufacturer, such as Aircraft Braking Systems (ABS) and now Dunlop, have been certified on fewer new programs in recent years, becoming even less competitive with the other wheel and brake manufacturers. As a result, ABS' viability is questionable. Although these manufacturers have in some instances been later-certified on an aircraft (through significant payments to the OEM), they are still not effective competitors to the earlier-certified and often entrenched source for wheels and brakes.

10. As an advisor to SAS as well as to other airlines – including those in the Star Alliance, I am concerned that a post-merger company of this type will use its market concentration

in the landing gear market to leverage its wheels and brakes on Boeing as a sole source. This would obviously result in less choice to any airline or purchaser of Boeing aircraft. Another impact of the merger would be a reduction in competition, and thus, innovation, in the wheel and brake industry as the merged entity strives for sole-source positions via its landing gear market concentration. I also believe that, as a result of the merger, aftermarket wheel and brake costs will likely increase as the airlines' choices are reduced for new aircraft wheels and brakes.

11. I declare under penalty of perjury that the above statements are true and correct.

Dated: April 22, 1999

Ed Doty

TAB G

March 1, 1999

Norman A. Armstrong, Jr.
Federal Trade Commission
Bureau of Competition
601 Pennsylvania Avenue, NW
Washington, D.C. 20580

Dear Mr. Armstrong:

Re: Proposed Merger of BF Goodrich Company and Coltec Industries, Inc.

AirTran Airways, Inc. ("AirTran") is writing to express its serious concerns about the proposed merger of BF Goodrich Company and Coltec Industries, Inc.

AirTran is a low-cost, affordable airline, which serves approximately six million passengers per year. AirTran's ticket prices, can be as much as fifty percent lower than our competitors' prices. We make make air travel available to a larger number of passengers who could not otherwise afford the cost of air travel.

In order to provide these low prices, AirTran carefully monitors its bottom line and we strive to reduce our cost of doing business. The cost of aircraft and operating aircraft, including the cost of repair and replacement parts, are a significant part of AirTran's overall cost of operations.

AirTran currently operates a fleet of former McDonnell Douglas DC-9-10 and Boeing 737-200 aircraft. In September, 1999, we will take delivery of the new Boeing 717 aircraft – as you can see, Boeing is the principal supplier of aircraft for AirTran. BF Goodrich and Coltec are currently the only U.S. suppliers of landing gear and, with very little exception, the only suppliers of landing gear to Boeing.

AirTran is concerned that the merger of BF Goodrich and Coltec will eliminate competition for supply of landing gear to Boeing and, as a result, will raise AirTran's costs of doing business. AirTran expects that Boeing will pass any additional cost of landing gear resulting from the merger on to customers. Unlike most airlines, which do

P.O. Box 621117 Orlando, FL 32862-1117 Phone 1.800.247.8726 Fax 407.240.5816

not offer low prices, AirTran cannot simply pass this additional cost on to its customers and remain competitive as a low-price airline. Accordingly, AirTran, its customers, and competition in general will be harmed as a result of the merger.

AirTran is also concerned that the BF Goodrich/Coltec merger will have a negative impact on our ability to purchase wheels and brakes at a competitive price. Today, even where BF Goodrich is the supplier of landing gear, we believe that it must behave competitively in providing technical information to other wheel and brake suppliers and including them in its systems where they have the most competitive offering. However, we are concerned that after the merger, BF Goodrich will always favor its own wheels and brakes and that we will lose competitive offerings. For example, last year, we purchased aftermarket wheels and brakes valued at $34.6 million from AlliedSignal Landing Systems. We chose the ALS wheels and brakes for our aircraft because they were the most competitive offering. We are concerned that the merger between BF Goodrich and Coltec will affect our ability to make such choices.

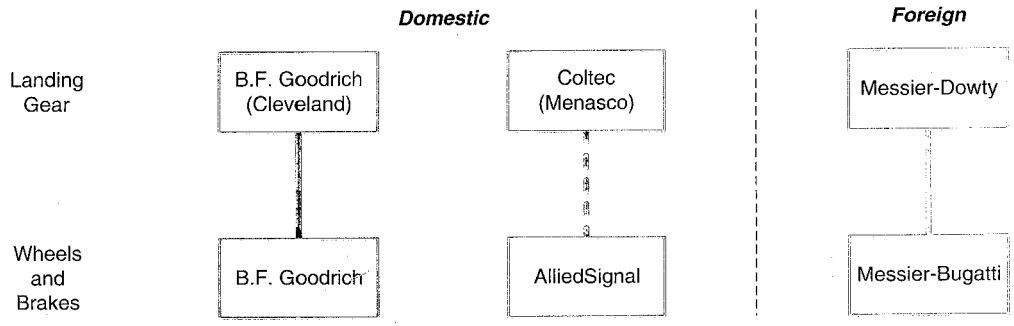
We therefore urge the FTC to not approve the proposed merger of BF Goodrich and Coltec.

Yours very truly,

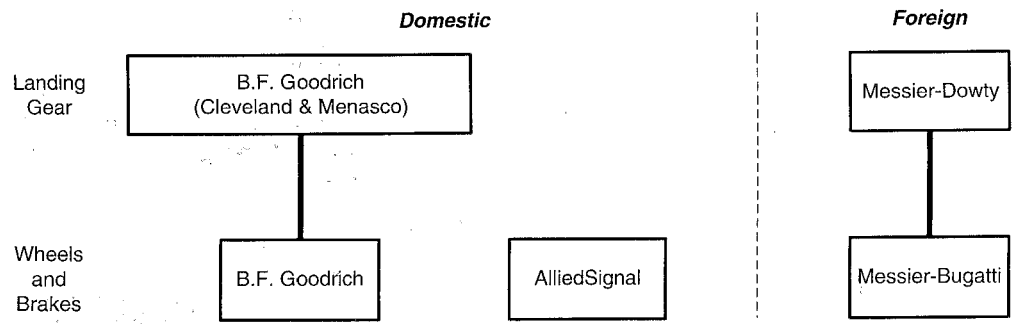
Leslie C. Head
Vice President General Counsel

TAB H

Industry Players: Pre-Merger



Industry Players: Post-Merger



AlliedSignal
Aircraft Landing Systems

Aerospace Equipment Systems
3520 Westmoor Street
South Bend, IN 46628-1373

(219) 231-2000
(219) 231-2020 Fax

TAB I

November 5, 1998

Mr. Didier Gaidon, Purchasing Director
Airbus Industrie
1 Rond Point Maurice Bellonte
31707 Blagnac Cedex France

Mr. Ian Robinson, Purchasing Manager
British Aerospace-Airbus
New Filton House
Filton, Bristol, England BS99 7AR

References:

a. ALS response to ALS Action Items 7 and 27, closed by BAe, electronic mail from ALS (R. Dale) to British Aerospace-Airbus (A. Samuels) on April 27, 1998

b. ALS fax document PM-A346-98-15 (D. Roulett) to British Aerospace-Airbus (A. Sharp) dated July 10, 1998

c. ALS document PM-A346-98-17 (D. Roulett) to British Aerospace-Airbus (I. Robinson) dated August 2, 1998

d. ALS document PM-A346-98-18 (D. Roulett) to British Aerospace-Airbus (I. Robinson) dated September 1, 1998

e. ALS document PM-A346-98-20 (D. Roulett) to British Aerospace-Airbus (I. Robinson) dated October 2, 1998

f. Airbus fax (D. Gaidon) to ALS (D. Roulett) dated October 19, 1998

HIGHLY CONFIDENTIAL

Dear Sirs,

AlliedSignal Aircraft Landing Systems (ALS) commitment to invest and participate in the Airbus A340-500/600 aircraft development and production manufacture is dependent on our ability to compete under the same commercial and technical terms as any other supplier of wheels and brakes for the A340-500/600. Early on in our detailed work with Airbus, ALS defined in Reference a. what ALS needed with regard to critical landing gear parameters. ALS has informed Airbus numerous times (References b., c., d. and e.) during past several months of the critical need to have A340-500/600 landing gear parameters in order to perform a landing system dynamic analysis. ALS believes British Aerospace-Airbus (BAe-Airbus) engineers have made a good faith effort in requesting the information from the landing gear supplier. As of this date ALS has not been provided with any landing gear parameters. Accordingly, ALS must at this time put Airbus on notice of the potential business and program risks associated with the unavailable landing gear data which is required to design, develop and deliver wheel and brake products that would insure a dynamically stable landing gear system.

The first ALS A340-500/600 product delivery to Airbus is the wheel and brake required to perform brake anti-skid tuning hydraulic simulation. In order to provide the correct brake hydraulic configuration, utilizing proper design and product features, it is necessary to perform a complete system dynamic analysis at least six months in advance of this delivery. Without the landing gear parameters ALS is unable to perform the required analysis that would identify the proper hydraulic design features of the brake. Because of this

situation, there is significant program schedule risk concerning the ALS ability to deliver the proper brake tuning hardware on time.

In reference b. ALS informed Airbus that ALS would require the landing gear data in August 1998, to make meaningful design refinements to the wheel and brake design. Expensive long lead time wheel and brake forging manufacture was started in September 1998 to satisfy the required start date of qualification testing. Since the data was not provided during the August timeframe, an opportunity to properly analyze the system and make any required changes to the wheel and brake forgings has passed. This puts the landing gear system at a high risk during flight test and operational service. Because Airbus has provided ALS with insufficient design data, ALS will not take responsibility for the operational dynamic performance of the wheels and brakes mounted on this undefined aircraft landing gear.

Because a publicly known business partner of our competitor for A340-500/600 wheels and brakes is also the supplier of the landing gear, ALS believes that the landing gear parameters are inherently available to our wheel and brake competitor on this program. This situation puts ALS at a competitive disadvantage to design, develop and deliver on time the proper configuration of brakes for the A340-500/600. This high-risk situation is not borne solely by ALS, but also by Airbus who would be at risk of having only one competitive supplier available in the marketplace for the initial customers of the A340-500/600. Fundamentally, this competitive disadvantage imposed on ALS nullifies the recent Airbus claims of reference f., that ALS is offered for airline selection with the same commercial terms.

ALS requests Airbus immediate attention to this urgent issue. Currently the lack of a landing system dynamic analysis is the highest risk item associated with the development and delivery of A340-500/600 wheels and brakes. ALS is available at anytime to discuss this issue with Airbus, BAe, the landing gear supplier, etc. As mentioned in numerous conversations between BAe and ALS, and in order to resolve this unacceptable situation, ALS is prepared to work with all interested parties in the development of a confidentiality agreement similar to the one that already exists between BAe and ALS.

If you should have any questions or comments please do not hesitate to telephone me at phone number 1-219-231-2245.

Sincerely,

Don Roulett

Don Roulett, Program Manager

HIGHLY
CONFIDENTIAL

Senator DEWINE. Thank you very much.
Mr. Oliver.

STATEMENT OF DAVID R. OLIVER

Mr. OLIVER. Senator, I appreciate this opportunity. I have submitted my comments for the record. Let me summarize the key points.

In the Defense Department, we have two key issues, I think, in looking at each of these mergers to advise FTC and Justice, one of which is the security issue, and the second is with respect to whether or not we think there will be sufficient competition to keep the prices down and the technology advancing.

With respect to security, in this area when we looked at it, we said the French company, whose facilities are really in Canada and the United Kingdom, we found was already the producer of choice for the F-18 C and D for the Navy, for the Harrier for the Marine Corps, and for the Air Force's F-22. In addition, they have many of the contracts for our newer airplanes. And so it was our conclusion, after we had talked to the services and also to the manufacturers who were using them, that they did not feel that there was a security issue, and we did not either.

The second issue has to do with competition and the question is: What is the competition? And that is a difficult question because it depends on the industry and it depends on the situation. It depends upon what kind of technology you are involved in, and I don't pretend that is an easy question. And we wrestled with that for some time and took a great deal of data.

What we came to the conclusion was that in this case the market would be almost evenly divided between the two competitors that would be left and that they were vigorous competitors and that since only 15 percent of this is the military and 85 percent of it is commercial, then you have the large commercial companies riding herd on them, plus the airlines, all of which—and the after-market issue, all of whom are actually less subject than we are to the niceties of ensuring that the companies behave in a competitive manner. So it was our conclusion that it was not a security problem and that you had a competitive environment.

That is my discussion, sir.

[The prepared statement of Mr. Oliver follows:]

PREPARED STATEMENT OF DAVE R. OLIVER

INTRODUCTION

Mr. Chairman and distinguished members of the Committee, thank you for this opportunity to present the views of the Department of Defense (DOD) on our process for reviewing mergers in the defense industry and the application of that process to BFGoodrich's proposed acquisition of Coltec Industries. DOD has generally supported the process of consolidation in the defense industry to reduce excess capacity and overhead, the cost of which are ultimately charged to DOD contracts, raising the cost of the systems we buy. Throughout this process, however, we have reviewed various transactions in the defense industry carefully and thoroughly to ensure that we maintain competition for our current and future programs. In my remarks today, I will describe, first, the process by which the Department of Defense reviews transactions, and second, the application of that process to BFGoodrich's acquisition of Coltec, which led to our conclusion that the proposed merger would not create unacceptable adverse competitive implications on DOD acquisition programs.

DOD'S RESPONSE TO PROPOSED MERGERS AND ACQUISITIONS

In 1993, the Department asked the Defense Science Board, an independent advisory body to DOD of distinguished defense experts, business leaders, and academics, to form a Task Force on Antitrust Aspects of Defense Industry Consolidation to advise DOD on the role it should play in the antitrust review process. In its April 1994 report, the Task Force concluded, among other things, that due to the nature of DOD's role in defense industry procurements, DOD has an important stake in the antitrust review and special expertise that is critical to the analysis of industry transactions.

The Task Force recommended that DOD review proposed transactions and advise the enforcement agencies of facts, concerns, and views relevant to the antitrust analysis, and that the enforcement agencies likewise notify DOD of any knowledge they possess that would be valuable to DOD's review.

DOD'S ROLE IN REVIEWING PROPOSED MERGERS AND ACQUISITIONS

The Department facilitates the merger investigation by the antitrust agencies. and develops its own judgment about the proposed merger or acquisition. The Department's merger and acquisition review process is now delineated in DOD Directive 5000.62, issued October 21, 1996. The DOD General Counsel and my staff, under the DUSD (Industrial Affairs), lead DOD's review, which proceeds simultaneously with the antitrust agency's review.

When we learn of a transaction, we begin by identifying each and every program (from those in the research and development phase to those in full production) and every market area (for example, satellites, radar) where the two companies are competing, are likely to compete in the future, or are involved in a potential supplier relationship. Specifically, we examine four areas:

- Horizontal overlaps in programs or market areas.
- Vertical integration in programs or market areas where one party to a merger or acquisition is, or is likely to be, a key supplier to the other party or its competitors.
- Organizational conflicts of interest where one party is providing systems integration or technical assistance to a program office, and the other party is either a future competitor for programs managed by that program office or is currently performing work for that office.
- Savings that may result to the Department from the merger or acquisition.

Our objective is to ensure that we are maintaining competition consistent with our acquisition strategies now and for the foreseeable future. Competition encompasses not only the number of bidders in a competition, but also the quality of the competition. In some cases, a business combination may improve the capabilities of a weaker firm, thus strengthening the competitive environment. In other cases, a reduction in the number of competitors may have no significant effect on competition because an adequate number of suppliers remain to ensure continued pressure for technological innovation and price competition. In still others, as we have found, some action may be required to maintain robust competition.

In order to make this assessment, we gather information from a variety of sources—the Military Departments, the Defense Agencies, the parties to the transaction, and competitors who may choose to convey their views to us or the antitrust agency. DOD also interacts directly and frequently with the antitrust agencies as the review proceeds. The Department facilitates the antitrust agency review by arranging interviews with DOD program personnel or other technical experts and by providing an overall perspective on Department programs. DOD also communicates to the antitrust agencies its views concerning the competitive effects of the transaction.

BFGOODRICH'S PROPOSED ACQUISITION OF COLTEC INDUSTRIES

The Department of Defense reviewed BFGoodrich's acquisition of Coltec Industries in a manner consistent with past reviews by DOD. Our finding that the transaction would not adversely affect competition on DOD procurements was based on our assessment of information gathered from DOD Military Departments and Agencies, the parties to the transaction, suppliers and competitors, as well as the prime airframers who select components to be incorporated on their platforms. Following our investigation, we informed the Federal Trade Commission of our conclusions.

BFGoodrich announced its intention to acquire Coltec on November 23, 1999. As part of our review, we talked with the parties, their suppliers, and their competitors, as well as the prime U.S. airframers. As a result of our review we focused on an area of potential DOD concern, military landing gear. According to parties, mili-

tary landing gear is less than 1 percent and less than 4 percent of BFGoodrich and Coltec's business, respectively.

Landing gear systems are comprised of various components such as the landing gear, wheels and brakes, and brake controls. Each of these components can represent a separate market. Three companies, BFGoodrich, Coltec's subsidiary Menasco, and Messier-Dowty, a French company, have the specific engineering and manufacturing capabilities to design and fabricate both large landing gear and gear made from specialty materials that DOD uses on high-performance tactical aircraft. Currently, the Department of Defense and U.S. commercial airframers purchase landing gear from all three companies. We were concerned that the merger would reduce the number of competitors for certain types of landing gear from three suppliers to two, with one being a foreign source. It is noted that Messier-Dowty, which has facilities in Canada and UK in addition to France, currently provides landing gear on several U.S. military aircraft. Following a thorough review of the market, including size, technology, etc., and continued discussions with the parties, suppliers and competitors, U.S. airframers, and DOD program managers, we concluded that the merger would not have an unacceptable effect on future landing gear competitions.

A concern raised by competitors during the course of the merger review, which I understand has now become an issue in litigation, is the ability of the landing gear manufacturer to limit competition for other components of the landing system by the design of the interface points on the landing gear, specifically those for wheels and brakes. DOD believes that competition will continue for those components, nevertheless, we will monitor procurements for those components. Should it appear that anticompetitive practices are being exercised by the landing gear producers, DOD can take appropriate action to encourage competition.

CONCLUSION

In closing, I would like to thank you and the Committee for providing me this opportunity to discuss the Department's views on defense industry mergers and acquisitions, particularly BFGoodrich's acquisition of Coltec. I believe the Department has acted responsibly and effectively in reviewing this transaction and that our review was indeed careful and thorough. I would be pleased to answer your questions.

Senator DEWINE. Mr. Oliver, thank you very much.

Mr. Reuther, thank you for joining us.

STATEMENT OF ALAN REUTHER

Mr. REUTHER. Thank you. My name is Alan Reuther. I am the legislative director for the UAW. We appreciate this opportunity to present our views on the proposed merger between BFGoodrich and Coltec Industries.

The UAW represents about 300 workers at the BFGoodrich Landing Gear Division in Cleveland and another 40 workers at the Goodrich Plating Operations facility, which is a supplier for the Landing Gear Division.

In addition, the UAW represents about 490 members at the AlliedSignal Aircraft Landing Systems operation in South Bend, IN, which produces wheels and brakes for the landing gear.

The workers at the BFGoodrich and AlliedSignal plants are highly skilled employees. As a result, these are good-paying jobs with pay ranging from about $13 to $21 per hour, and also with excellent benefits.

The UAW is very concerned that the proposed merger will lead to the loss of a substantial number of jobs for the UAW members, both at the BFGoodrich facilities in Cleveland and the AlliedSignal facility in South Bend. As has previously been indicated, Coltec has plants in a number of States, as does BFGoodrich. As you have indicated, Mr. Chairman, BFGoodrich officials have previously advised you that there have been discussions about post-merger consolidation of these operations, and in their written report to Fed-

eral agencies, they have repeatedly listed the closing of the Cleveland plants as an option in all of their post-merger consolidation plans.

I think the most telling thing is that BFGoodrich officials consistently are refusing to make a commitment to keep the Cleveland plants open, and even today in the testimony, although they say that no decision has been made, they are explicitly not committing to keep the plants open in the future.

At the same time, we also think that following the merger, BFGoodrich will cease to use AlliedSignal as a supplier for brakes and wheels since they produce their own brakes and wheels. This in turn will result in the loss of many jobs at the South Bend facility of AlliedSignal.

The UAW submits that this is contrary to our national interest to allow the proposed merger. First, and most importantly, from our point of view, the loss of the jobs at the BFGoodrich plants and the AlliedSignal facility will be a terrible blow to our members. Also, the loss of these good-paying jobs will have a devastating impact on the communities in which these workers live.

Second, the loss of the highly skilled jobs we believe will undermine our defense industrial base, thereby weakening our ability to respond to future threats to our national security. In particular, we are concerned that it will be impossible to reassemble the skilled workforce that is currently employed in these facilities if they are closed.

Third, by eliminating the dual U.S.-based sources for aircraft landing gear, we believe the proposed merger will reduce competition and that this creation of a monopoly will inevitably lead to higher prices that will have to be paid both by the Pentagon and ultimately by U.S. taxpayers.

As has previously been indicated, there is absolutely no reason why the proposed merger is needed. AlliedSignal has already offered in writing and also here today in their testimony to purchase the Cleveland plants from BFGoodrich. We do believe this is a win-win situation. AlliedSignal is promising to put investment into the plants and to maintain the workforce and the union contract. If AlliedSignal is permitted to pursue this alternative, we can maintain the good-paying, family-supporting jobs that are so important to both of the communities in Cleveland and South Bend. Equally important, we can maintain the skilled workforce that is an important part of our defense industrial base. And we can also maintain a competitive environment that will be good for the Pentagon and the taxpayers of this country.

For all of these reasons, the UAW urges the subcommittee and the entire Congress to stop the proposed merger of BFGoodrich and Coltec.

In conclusion, we would like to thank you, Mr. Chairman, for the leadership that you have shown on this important issue.

Thank you.

[The prepared statement of Mr. Reuther follows:]

PREPARED STATEMENT OF ALAN REUTHER

My name is Alan Reuther. I am the Legislative Director for the International Union, United Automobile, Aerospace & Agricultural Implement Workers of Amer-

ica (UAW). The UAW represents 1.4 million active and retired workers in the automotive, aerospace, agricultural implement, defense and other industries.

We appreciate the opportunity to present our views on the competitive implications of the proposed merger between BFGoodrich Co. and Coltec Industries. The UAW is particularly interested in this issue because we represent workers at the BFGoodrich plants in Cleveland, Ohio and workers at the AlliedSignal plant in South Bend, Indiana, who would both be adversely impacted by the proposed merger. We commend the Chairman of this Subcommittee, Senator DeWine, for holding this hearing on the proposed merger.

The UAW represents workers at two BFGoodrich plants in Cleveland, Ohio. We represent about 300 workers at the BFGoodrich Landing Gear Division, and about 40 workers at the BFGoodrich Plating Operations facility. We have represented the workers at these two plants since 1991. The Plating Operation facility is a supplier for the Landing Gear Division.

The UAW also represents about 490 members at the AlliedSignal Aircraft Landing Systems operation in South Bend, Indiana, which produces wheels and brakes for aircraft landing gear. We have represented the workers at this facility since 1935.

The workers at the BFGoodrich and AlliedSignal plants are highly skilled employees. Over the years they have acquired the specialized knowledge and skills that enable them to produce high quality aircraft landing gear. As a result, these are good paying jobs, with the pay ranging from $13.60 to $21.00, along with excellent pension, health care and other benefits. These are family supporting jobs, which also help to sustain the surrounding communities in Cleveland and South Bend.

The UAW is very concerned that the proposed merger of BFGoodrich and Coltec will lead to the loss of a substantial number of jobs for the UAW members at the BFGoodrich plants in Cleveland and the AlliedSignal facility in South Bend. Coltec currently has plants in Texas, Washington and Ontario. In addition to the plant in Cleveland, Ohio, BFGoodrich also has a facility in Tennessee. We understand that BFGoodrich officials have previously advised Senate staff that there have already been discussions about post-merger consolidation of these operations. Furthermore, BFGoodrich officials have refused to give any commitments about the future of the Cleveland plants. At the same time, they have already announced that they intend to close their corporate headquarters in Ohio and move about 170 jobs to Coltec facilities in North Carolina. Accordingly, the UAW believes it is likely that BFGoodrich will close the Cleveland plants following the merger, and then shift the jobs and production to operations in other states where the wages and benefits are significantly lower.

At the same time, we believe that following the merger BFGoodrich will cease to use AlliedSignal as a supplier of brakes and wheels for aircraft landing gear, since BFGoodrich produces its own aircraft brakes and wheels. This in turn will result in the loss of many of the jobs at the South Bend facility of AlliedSignal.

The UAW submits that it is contrary to our national interest to allow the proposed merger of BFGoodrich and Coltec to proceed. First, the loss of a substantial number of jobs at the BFGoodrich plants in Cleveland and the AlliedSignal facility in South Bend will obviously be a terrible blow for the UAW members who are laid off. In addition, the loss of these good paying jobs will also have a devastating impact on the communities in which they live. The UAW believes Congress should do everything possible to stop these types of job-destroying, community-undermining corporate mergers.

Second, the loss of these highly skilled jobs will undermine our defense industrial base, thereby weakening our ability to respond to future threats to our national security. In order to maintain a strong national defense, we need to establish and maintain a strong, vibrant industrial defense capability. This includes maintaining the highly skilled, trained workforce that can produce various military systems. If the proposed BFGoodrich/Coltec merger results in the closing of the Cleveland plants and the loss of a substantial number of jobs at the South Bend facility, there will be irreversible harm to our defense industrial base. It will be impossible to reassemble the skilled, trained workforce that is currently employed at these facilities. As a result, we will have lost an essential piece of our defensive industrial base that would be needed to produce high quality aircraft landing gear in the event our nation should need to quickly increase production of this vital aircraft component in order to respond to a threat to our national security.

Third, by eliminating the dual U.S. based sources for aircraft landing gear, the proposed merger will reduce competition in this area. We believe the creation of this monopoly will inevitably lead to higher prices that will have to be paid by the Pentagon and U.S. taxpayers.

There is absolutely no reason why the proposed merger is needed. AlliedSignal has already offered in writing to purchase the Cleveland plants from BFGoodrich. In addition, AlliedSignal has promised to put substantial investment into the plants, and to maintain smooth operations by continuing the current workforce and union contract. If AlliedSignal is permitted to pursue this alternative, we can maintain the good paying, family supporting jobs in both Cleveland and South Bend. Equally important, we can maintain the highly skilled workforce which is essential to maintaining this part of our defense industrial base. And, by continuing dual sources for the aircraft landing gear, we can maintain a competitive environment that will benefit the Pentagon and the taxpayers of this country.

For all of these reasons, the UAW urges this Subcommittee and the entire Congress to stop the proposed merger of BFGoodrich Co. and Coltec Industries. This proposed merger is contrary to the interests of the workers, their communities, and the entire nation.

In conclusion, the UAW appreciates the opportunity to present our views on the proposed merger of BFGoodrich Co. and Coltec Industries. We look forward to working with the Members of this Subcommittee on this vital issue of direct concern to UAW members.

Senator DEWINE. Mr. Reuther, thank you very much.

Professor Elhauge, you may proceed. Thank you.

STATEMENT OF EINER ELHAUGE

Mr. ELHAUGE. Thank you for inviting me to appear.

To summarize my written testimony, this merger essentially involves a merger to monopoly, the most anticompetitive form of merger possible. There are lots of distractions and details, but that is the central fact that concerns me about this merger. No court has ever sustained a merger involving such high market concentration.

Now, one distraction is that this merger creates a monopoly of buyers as well as sellers, or what in economics we call a monopsony. Here, the monopsony is for buying components for integrated landing systems on airplanes. But it is well established as a matter of economics and law that monopsony power is just as evil as monopoly power. Both produce a subcompetitive level of market output that ultimately harms not only suppliers but consumers.

For example, courts have struck down buying cartels or mergers that create monopsony power that is used against farmers, thus not only harming those farmers but producing lower farm output, and thus ultimately harming consumers in the grocery stores.

In this particular case, the lower form of output is likely to take the form of lower market quality as firms faced with monopsony pricing are forced to cut back on research and development and, thus, not improve the quality of landing gear and component parts as much as they otherwise would have. So there is, I think a long-term concern for what this means for the quality of airline parts as well as for prices.

A second distraction is that in addition to the two merging firms, there is a third firm in the world that can make the relevant products, the aforementioned Messier-Dowty, which is controlled by SNECMA. But this firm owned by the French Government does not have the same competitive significance as an independent firm in the U.S. market for several reasons.

First, it is in a joint venture with one of the merging parties, so it is not entirely independent.

Second, it is legally barred from at least some military markets and has so far not been an effective competitor for landing gear on

U.S. military planes other than currently participating in the demonstration phase of the NATO Joint Strike Fighter.

Third, it has never sold landing gears in the U.S. market for large commercial planes, thus suggesting a relevant sub-market there.

In any event, even if you include this French firm in the market, that would still mean that this merger would result in a global market with only two firms. And whether you have a merger from two to one or from three to two, it is still highly anticompetitive.

Now, a third distraction are various fringe firms that you saw in the charts put forward by BFGoodrich. Now, in my opinion, those firms should properly be excluded from the markets because they lack the physical assets to make large landing gear and lack the design capacity to make new large or medium landing gear, and also lack the technical capacity to be integrators of landing systems. But even if you include all those fringe firms, the thing to notice is that the market percentages they have are extremely small. The market concentration in the medium-gear market and the large-gear market would still be nearly 3 times, triple the FTC threshold for presumptive condemnation, and the increase in market concentration would still be 5 to 20 times that threshold.

Now, even if you include all the firms in that chart, what this merger produces is a market where the two biggest firms have over 98 percent of that market. No court, again, I reiterate, has ever sustained a merger producing that high a market concentration.

A fourth distraction are arguments that there is no real market for integrated landing systems, and that market was, in fact, omitted from the chart that you saw. The merging firms have argued that this market is too speculative because it is only part of a market trend. But this trend is a historical fact in the medium-gear market, has already started in the large-gear market, and all indications are that everybody expects it to be a market that will expand in the future. And it is with future competitive effects that antitrust is properly most concerned.

In any event, even if there was no such integrated landing system market, the merger still creates a domestic monopoly in the medium and large landing gear markets, and that is clearly anticompetitive. So this clearly warrants presumptive condemnation, I think, even under the undisputed facts in this case. The two grounds for rebutting that presumption are absent here. Entry barriers are not low; they are extremely high. In fact, this market has not known entry for 2 decades, has only known exit from the market. And as far as efficiencies, there are no redeeming efficiencies in this case. In fact, the only real efficiency offered, what it amounts to is cost savings from closing a plant. Now, closing a plant is in effect a restriction of market output. That is the very anticompetitive concern that antitrust law was meant to address. It is not an efficiency to close a plant.

Finally, it has been said that buyers have not been complaining, mainly Boeing, it amounts to, one powerful buyer has not complained. But this for very good reason is not an antitrust defense. It doesn't mean that there is no anticompetitive effect.

First, when you have a merger that creates a monopsony power like this one, you would expect suppliers to complain first because they are the most directly affected.

Second, although Boeing hasn't complained, many other buyers have, as Mr. Montalbine has indicated.

And, third, the existence of a powerful buyer like Boeing does not eliminate the possibility of anticompetitive effect, as economic theory shows. Worse, a powerful buyer actually has incentives to preserve and enhance seller market power in exchange for a side payment giving you the share of the seller's monopoly profits. Such special discounts can also anticompetitively raise entry barriers because new entrants wouldn't have the same special discounts available to them.

I have also become increasingly concerned that firms can coordinate on the policy of not objecting to enforcement officials. We all know that firms can coordinate on price without explicit agreement if there are few enough firms in a market. They can also coordinate on a policy of not objecting to each other's mergers. Here, Coltec and BFG didn't object about Boeing's prior mergers, so it is not surprising that it responds by returning the favor.

Given these complicating factors, I have become increasingly concerned about the general trend towards consolidation that the Senator mentioned and that an enforcement policy of requiring buyer complaints can really facilitate that trend. Now, I have to say it is true that often a buyer decision like that can be an accurate surrogate for whether or not the merger is efficient or not. It is just that the economic analysis one needs to undergo to decide which buyers decisions are accurate surrogates and which ones are a result of other factors unrelated to competitiveness is so complex that it is actually more accurate, and certainly a lot easier, to instead rely on the structural market concentration analysis that has always been the bedrock of merger analysis. And that standard analysis clearly condemns this merger.

Thank you.

[The prepared statement of Mr. Elhauge follows:]

PREPARED STATEMENT OF EINER ELHAUGE

This merger essentially involves a merger to monopoly, the most anticompetitive sort of merger possible. There are various distractions and details, but that is the central fact that makes this merger highly worrisome. No court has ever sustained a merger to monopoly.

1. Monopsony As Well as Monopoly. One distraction is that the merger creates a monopoly of buyers as well as sellers—i.e., a monopsony. Here, the monopsony is for buying components for integrated landing systems. But it is well-established in economics and antitrust law that monopsony power and monopoly power are equally evil. Both produce a subcompetitive output that harms not only suppliers but also consumers. For example, courts have struck down buying cartels or mergers that use monopsony power to depress the prices paid to farmers, which not only harms those farmers but also lowers farm. output and thus ultimately harms consumers in the grocery store. No court has ever sustained a merger to monopsony.

2. Duopoly Instead of Monopoly? A second distraction is that in addition to the two merging firms there is a third firm in the world that can make the relevant products: large landing gear, medium landing gear, and integrated landing systems. But this firm owned by the French government (SNECMA/Messier-Dowty) does not have the competitive significance of a independent firm in the same market. First, it has a joint venture with the merging firms that makes it unlikely to compete vigorously. Second, it is legally barred from some military markets, and has generally not been an effective competitor for U.S. military planes other than currently par-

ticipating in a joint bid for the NATO Joint Strike Fighter. Third, it has never sold landing gears in the U.S. market for large commercial planes, thus suggesting differentiated buyer preferences and a relevant submarket. In any event, even if one did include This French firm, That would still mean the merger creates a global market with only two firms, known in economics as a duopoly. A duopoly can be just as anticompetitive as monopoly, and clearly requires presumptive statutory condemnation. No case has ever sustained a merger to monopoly or duopoly.

3. Include Fringe Firms? A third distraction are various fringe firms. These firms should be excluded from the markets here because they lark the physical assets to make large landing gear, lack the design expertise to make new large or medium gears, and lack the technical capacity to be integrators of landing systems. But even if one includes *all* these fringe firms in the market, the resulting market concentration would still be three *times* the FTC threshold for presumptive condemnation, and the increase in HHI's five to twenty *times* that threshold. No case has ever sustained a merger creating such a high market concentration and increase.

4. No Integrated Landing Systems Market? A fourth distraction are arguments about whether a market for integrated landing systems really exists. It does. The merging firms argue that this market is too speculative because it is only part of a market trend. But this trend is a historical fact in the medium gear market, has already begun in the large gear market, and there is copious evidence that all sides think it is a market that will expand in the future.

The merging firms also argue that integrated landing systems cannot be a product because their components vary from plane to plane and thus cannot be precisely defined. But some cars have air conditioning, power steering, antilock brakes, and automatic transmission. Others don't. Indeed, even for a given car model, consumers can normally dictate which of these features they want as options. The fact that every component of a car cannot be specified does not mean cars are not a product, any more than it means integrated landing systems are not a product. Market definition is not about the metaphysics of what a product "is" but a functional inquiry about which firms a customer can turn to in order to get its needs met. Thus, even if (like car manufacturers) systems integrators tailor their product to particular customer's requirements, it remains a product, and a monopoly in it (like a monopoly in cars) would be worrisome.

Finally, defendants argue that no such market can exist because airplane makers can always re-enter it and integrate their own landing gear systems. But the possibility of buyer self-provision doesn't mean no market exists. We could always make cookies from scratch, but there remains a market for pre-made cookies. The whole point of markets is to permit a division of labor that allows each product to be made by the more efficient actor. A distinct market for integrated landing systems is emerging precisely because it is more efficient for an airframe manufacturer To outsource the integration function than to do the work itself, and it is that difference in efficiency that excludes the airframe manufacturers from the market.

In any event, even if there were no such market, the merger would create a domestic monopoly in medium and large landing gears and thus clearly be anticompetitive.

The merger thus clearly warrants presumptive condemnation under the undisputed facts. The merging firms have offered two defenses, but neither is availing.

1. Entry Barriers Not Low. The merging firms have at times asserted that entry barriers are low. But this claim is completely contradicted by the evidence, which demonstrates extremely high barriers to entry. Indeed, as a historical fact, these markets have known only exit, not entry, for the last couple of decades, as the markets shrunk from 13 firms to 3.

2. There Are No Redeeming Efficiencies. Defendants claim that efficiencies exist. But they have never substantiated any merger-specific efficiencies. To the, contrary, their cost-savings flow from a plan to restrict output by closing a plant. Such a restriction of output is not an efficiency justification but precisely the anticompetitive effect the statute seeks to avoid.

Finally, the merging firms claim there can be no anticompetitive effect because there is a powerful buyer, Boeing, who has not complained. But this is not an antitrust defense, and is insufficient for a number of reasons. *First,* where (as here) a merger creates serious monopsony issues, suppliers rather than buyers are most directly injured and thus most likely to complain, as Crane has done. *Second,* although Boeing has not complained, many other buyers have. This includes AlliedSignal, which buys landing gears for integrated landing systems. It also includes personnel at several airlines. These airlines bear the bulk of any monopoly overcharge because most component profits are derived not from sales to airplane makers like Boeing, but from sales of replacement parts to airlines in the aftermarket. *Third,* the existence of a powerful buyer does not eliminate the possi-

bility of anticompetitive effect. Where the buyer market power is legal, it is better to have it corrected by market forces (like the entry encouraged by supracompetitive prices) than to entrench market power on the other side. Even where it is uncorrectable, it turns out to be ambiguous whether exercising countervailing market power would improve or worsen market output. Areeda & Kaplow, Antitrust Analysis 200 n.51 (5th ed. 1997). Worse, a powerful buyer has incentives to preserve and enhance seller market power (rather than countervail it) in exchange for a sidepayment giving it a share of the sellers' monopoly profits. IV Areeda, Hovenkamp & Solow, Antitrust Law 204–06 & n.4 (rev. ed. 1998). Such special discounts also anxicompetitively benefit the buyer by increasing barriers to entry into the buyer's market because new entrants would be disadvantaged by being denied the discount.

Buyer nonobjections might also rest on three other grounds that have nothing to do with the merger being procompetitive. (1) *Agency Costs.* A buyer's managers may benefit from a short-term price reduction (which affects their promotion and rewards) even if the buyer's long-term costs increase because of the created monopoly (which harms not current managers but their successors). (2) *Oligopolistic Coordination on Non-objection Policy.* Just as a few firms in an oligopolistic industry can coordinate on price, so too a few firms in an industry can also coordinate on a policy of not objecting to each other's mergers. Coltec and BFG did not complain about Boeing's prior mergers, so it is not surprising that it responds by returning the favor. (3) *Collectivee Action Problem.* Complaining firms must incur individual costs in petitioning and risking possible retaliation by merging firms. In contrast, the benefits of successfully complaining are collective and nonexclusive because every buyer benefits if an inefficient merger is blocked whether it complained or not. This free riding problem may prevent any buyer from objecting to inefficient merger that harms them all.

Given these complicating factors, I have become increasingly concerned that a general enforcement policy of requiring buyer complaints can lead to industrial overconcentration. While many buyer decisions may be accurate surrogates for whether a merger is efficient or not, the economic analysis to determine when one can rely on buyer decisions is so complex that it is preferable—and indeed easier—to rely on standard market analysis. That standard market analysis clearly would condemn this merger.

Senator DEWINE. Thank you very much. We appreciate the testimony of all the witnesses.

Mr. Linnert, you have stated in your testimony that Goodrich has no plans to close the Cleveland facility, and I believe you basically said, if I wrote this correctly, "No decision has been made. After the merger, we will look at this issue."

The problem I have is that we have heard this before, in letters to my office and your press release. But I don't think it is entirely accurate. According to the confidential submissions that Goodrich made to the Defense Department, the submissions that I read in my opening statement, Goodrich is actively consider closing the Cleveland facility and has been, in fact, for years.

I do, though, want to give you a chance on the record to explain why on the one hand you have told us and the people of Ohio one thing, that you have no plans to close the Cleveland facility, and then on the other hand you have told the Department of Defense that you have plans, at least tentative plans, to close Cleveland.

Mr. LINNERT. Senator, I would be happy to address that.

The Cleveland facility has been studied ever since it was acquired. It has been studied in ways to improve its operations and efficiency. Investments have been made in that facility, and it is still a viable facility today.

The company has made no decision to close any facility in any of our landing gear manufacturing portfolio. The simple reason for that, Senator, is we can't make a decision as to what to do with those landing gear facilities until after we merge. We do not have access to the cost or operating data for the Coltec facilities. That

is why I have said before, and I will say it today, that no decision has been made to close Cleveland, Tennessee, Washington, Texas, or Canada—the locations of other facilities.

But what we will do, we will do an in-depth study after the merger is closed. We have said to your staff that that study will take 6 to 8 months to complete when all operating data and all facts are available to us. That is our fiduciary duty to do that study, and we intend to do it. But no decision can be made until that study is complete.

In terms of the letter that you are referring to to the Department of Defense, we did provide to the Department of Defense a study that was done by the gentleman who runs our landing gear business. He was asked to take a look at what financial reserves might be set up if such an action were taken. He looked at actions going forward based only on Goodrich data. That study that he performed was never given to Marshall Larson, the president of Aerospace, never given to Mr. Burner, the chairman of our company, never given to our board.

In terms of corporate governance, that plan can never be acted upon until it has been reviewed with the appropriate folks. The appropriate folks have said in their sworn testimony in the court case that they have never seen that study, and they will not—they will not act on that kind of a study. An appropriate study will be done post-merger.

Senator DEWINE. Well, I appreciate that, and I also noted in the press coverage the last few days your position in regard to this planning document that I talked about in my opening statement—and you have just referenced this—that the planning document—this is the one that refers to the three different options for closing the Cleveland plant. And you have said and it has been reported in the press and you have been quoted as saying that this is basically a preliminary study by one person and that the study does not reflect Goodrich's plans to close the Cleveland plant. That is my understanding of what you are saying. Correct?

Mr. LINNERT. That is correct.

Senator DEWINE. Now, let me just say, though, it seems to me that the documents make it clear that, in fact, that planning document is not an isolated document created by one plant manager, and I think it is a little misleading to say it is just one person's document. It is part of the long-term thinking of Goodrich, part of the goal of eventually closing the Cleveland facility.

Let me read to you again—because I want to give you a chance to answer and explain it, let me read to you again the language from the Goodrich letter to the Department of Defense. Now, this is from your company to the Department of Defense. It is not one low-level individual. This is from your representation to the Department of Defense as recently as February.

"The Company has been searching for business options and alternatives (including closing and moving equipment and operations from Cleveland * * *) for several years in an attempt to put its landing gear business on a more sound footing * * * After struggling mightily to improve productivity at the Cleveland facility, it determined that an important component of any long-range program would include closing this facility. Several options for doing

so have been considered but rejected as not being economically feasible * * * This situation highlights one of the main attractions of the merger with Coltec * * * With the combined volumes of the two firms, one or more options may be attractive. In particular, the combined firm might well choose to close the Cleveland plant and plating facility * * *"

Let me read that last sentence again. "In particular, the combined firm might well choose to close the Cleveland plant and plating facility * * *"

It seems to me that Goodrich has been thinking about closing Cleveland for years. This isn't anything new. Now, you know, we can deal with language, we can deal with words. Goodrich may not have a plan. Goodrich today may not know that it is going to close the plant. But I think, frankly, that is more of a lawyer's answer than anything else.

What we were looking for today is, frankly, a very straightforward answer. If the Coltec data shows you what you think it will show you, you do plan to close the facility. Isn't that correct?

Mr. LINNERT. Senator, I have said before we do not have access to the Coltec operating data or——

Senator DEWINE. Let me rephrase it. Let me reread my question. If the Coltec data shows what you think it will show, you plan to close the facility. Isn't that true?

Mr. LINNERT. Senator, I do not know what the Coltec data will show, and neither do our people because they haven't seen the data. I think what is fair is that once the merger is complete and we have access to that data, it will be—all the facilities will be examined on a level playing field.

Whether any consolidation results from that, whether any closing results from that, whether there is any shifting of programs, is to be determined. There has been no predetermined outcome to that study.

Senator DEWINE. How do you explain the language of your letter?

Mr. LINNERT. The letter——

Senator DEWINE. I just read it to you. I would be more than happy to read it to you again, but——

Mr. LINNERT. I have the letter.

Senator DEWINE. I am sure you do. How do you explain that?

Mr. LINNERT. What that letter said is——

Senator DEWINE. It does not say what it says? I mean, it does not say what it seems to——

Mr. LINNERT. No, I think it says exactly what it says. It reflects the history of studies that have been undertaken at the Cleveland facility. There has been a constant effort to upgrade the efficiency and the competitiveness——

Senator DEWINE. Well, let me ask you this—I am sorry. Go ahead and finish.

Mr. LINNERT. No, I didn't mean that. I meant the bell.

Senator DEWINE. This happens all the time. Don't worry about it.

Mr. LINNERT. Do you want me to finish?

Senator DEWINE. I would like for you to finish. I apologize.

Mr. LINNERT. That is OK. There have been ongoing studies since that plant was acquired to look at ways to improve the efficiency and competitiveness of that facility. Closing that facility is an option that is looked at when you look at those scenarios, in building another facility, consolidating elsewhere. That was done prior to the merger, Senator, and every time the Cleveland facility survived.

Senator DEWINE. If you were an employee in Cleveland Pneumatic and looked at that letter, wouldn't it bother you that Cleveland, of all the BFGoodrich facilities, is singled out so prominently in this document? It just jumps out. Cleveland seems to be where the focus is of this letter. It is prominent.

Mr. LINNERT. Yes, because——

Senator DEWINE. You don't have anybody else that prominent.

Mr. LINNERT. Yes, because of the three facilities that we operate in Tennessee, Ohio, and Washington, the one that was earmarked to try to improve its efficiency and competitiveness was Cleveland. So, yes, if I was an employee of Cleveland, I would be concerned about that study. But what we have said, there is a new landscape, a new playing field. We are going to look at five facilities. What that outcome will be is yet to be determined. There is no prejudgment of that.

Senator DEWINE. Mr. Oliver, let me turn to you. You had the opportunity to—and I didn't interrupt him, but I almost wanted to because I wanted to get your reaction contemporaneous. But Professor Elhauge made some interesting comments, and I wonder if you would like to respond to those. Let me read them to you. I am reading from the prepared testimony of the professor: "* * * this firm owned by the French government * * * does not have the competitive significance of an independent firm in the same market. First, it has a joint venture with the merging firms that makes it unlikely to compete vigorously. Second, it is legally barred from some military markets, and has generally not been an effective competitor for U.S. military planes other than currently participating in a joint bid for the NATO Joint Strike Fighter. Third, it has never sold landing gears in the [United States] * * * for large commercial planes * * *" That was a portion of what you said.

Mr. OLIVER. Yes, I heard that, and I think it may have been inadvertently misleading.

Senator DEWINE. I am sorry.

Mr. OLIVER. I think it may have been inadvertently misleading.

Senator DEWINE. OK. That is why we have a panel. I want to get your reaction.

Mr. OLIVER. Because, as I said, they actually provide landing gears for current airplanes, military airplanes, and for many future airplanes, and, in fact, the Joint Strike Fighter is going to be the airplane that the Navy, Marine Corps, and the U.S. Air Force use almost exclusively, and some NATO countries may buy it, too. But when you say the NATO Joint Strike Fighter, it implies that one might think that this is something that you are only going to build overseas. That is going to be the airplane that is going to be our primary warfighter, and it is going to be for all the services that fly fixed-wing airplanes.

The French company is the partner on one of the teams. I mean, if that team wins, they will get whatever they have negotiated with the team, but certainly either all of them or a great majority of them. They are also in the business—I look at—they are on all of our other teams, including our most classified plans, such as the F-22. So I think it is misleading to say that there is business by which they are, one, restricted from because that is not true in the airplane landing business.

Senator DEWINE. Wait a minute. I want to make sure I understand. There is no area because of security that they can't bid on?

Mr. OLIVER. They can't bid on black programs.

Senator DEWINE. Right.

Mr. OLIVER. But you tend not to have black programs on landing gears.

Senator DEWINE. Well, we won't go beyond that today.

Mr. OLIVER. And as I said, they have 50 percent of the market for military planes, and they would have 50 percent after this. And the American companies would have 50 percent, and one might even consider them to be in a much better position to compete after the merger.

Senator DEWINE. So we would be down, though, effectively to one French company, one American company.

Mr. OLIVER. Yes, sir, that is correct.

Senator DEWINE. And the Defense Department is just happy with that.

Mr. OLIVER. We looked at it——

Senator DEWINE. That is just OK.

Mr. OLIVER. Yes, sir, that is correct.

Senator DEWINE. OK.

Mr. OLIVER. We looked at it from the point of security and competitiveness, and we feel the security problem is solved—we feel that security is answered, and we believe that it will be a competitive situation. And that might not be true if we were talking about some other component, but in this case it is true.

Senator DEWINE. Do you want to respond to that, Professor?

Mr. ELHAUGE. Well, I guess I would like to begin by saying that there are many personnel within the Department of Defense who have expressed concerns about this merger, particularly personnel in the landing procurement business.

Now, I would also note that in declining to pursue this merger, the Department of Defense has, as Mr. Oliver indicated, focused on the military market, not on the impact on the commercial markets, which are a big part of this merger. And, in particular, in their letter they express concern about this joint venture, and if the joint venture extended to the military projects, they might want to revisit——

Senator DEWINE. Whose letter is this? I am sorry.

Mr. ELHAUGE. This is the letter——

Senator DEWINE. The specific letter?

Mr. ELHAUGE. I don't have it in front of me, but it is a letter from the Department of Defense notifying the parties that they weren't going to pursue the merger, noted this joint venture with Messier-Bugatti, which is owned also by the parent corporation,

SNECMA, and that if anything changed with regard to the scope of that joint venture, they might want to revisit.

But I think it should be of concern to the military that there are only going to be two purchasers, even if there is one U.S. purchaser and even if they think that the French firm is a viable competitor. General market analysis indicates that duopolies tend to perform poorly, not well.

Now, you know, I think the military, to be fair, has not seen all of the documents I have seen, and I can't talk about all of them because of the protective order here today. But I think I just have a different judgment of the likely competitive impact of this merger than indicated by the statements of the Department of Defense here today.

Senator DEWINE. Well, it is an interesting statement you made, and you believe that the Pentagon has not seen all the documents that you have seen, something that I understand you don't want to go beyond at this open hearing. But that is something that I think we clearly should follow upon, if, in fact, it is true that the Pentagon has not seen those same documents that you have seen. I don't know whether Mr. Oliver wants to respond to that.

Mr. OLIVER. Sir, it is difficult for me to respond about whether or not I have seen——

Senator DEWINE. No, I understand that.

Mr. OLIVER. But I do have a correction to make. My staff has pointed out that I misspoke because the French company is not on the F-22, they are on the F-18, the T-45, which is a trainer, and the AV-8B, which is the Marine airplane.

Now, it is also my understanding—and I do not have the document—that the joint venture that you are talking about is on brakes and wheels, not on landing gear. That is my recollection.

Senator DEWINE. You are responding that that is correct, Professor Elhauge? Let the record reflect——

Mr. ELHAUGE. I believe that is right. My point about the joint venture goes to whether—the vigorousness, their willingness to compete, not that they will be merged in the landing gear business but that when you share profits with another business, you are less likely to compete as vigorously with them as you would otherwise.

Senator DEWINE. Mr. Oliver, recently the Department of Defense objected to the proposed merger of Northrop Grumman and Lockheed Martin. The basis for that objection, as I understood it at the time, was that in certain markets the merger would reduce the competitors from three to two. Even assuming for purposes of discussion that the French company is just as desirable as an American supplier, why isn't the Defense Department concerned about this merger, which reduces, in your own words, competition from three down to two? It was apparently a big problem when we were dealing with Northrop Grumman and Lockheed Martin?

Mr. OLIVER. Senator, Mr. Chairman, it becomes—each of these is a difficult problem. I think we spent about 4 months on the Coltec/Goodrich thing. I had a group of people working this for about 4 months, and I would guess that they briefed me half a dozen times. Each of these falls on lots of different issues. Let me say that they are different, and the problem—and other than talking about the security and the fact that we thought there was sufficient competi-

tion, I am somewhat constrained by the ongoing lawsuit to talk about specifics of the considerations that we went into.

Senator DEWINE. You are under an order?

Mr. OLIVER. No, sir. I am—the companies have to—we require the companies, when we are looking at these things, to talk to us and give us data. In addition, we require that data from other people. We go out and talk to different services, competitors, and everyone else, and we require them to give us data.

That data right now is not discoverable in the current lawsuit, and we don't want it to become discoverable because we would like to continue to have an open and full relationship with companies when we discuss this, because we go into them not knowing where we are going to come down, and we believe the decisions we are making are those which are based towards the best interest of the country. So, therefore, we are pretty insistent with these companies that they talk to us clearly and forthrightly. And so I am not interested in opening up all that data.

Senator DEWINE. Well, you know, I understand that, and I am not going to beat up on you or the Department today. But I tell you, DOD is not a party to this lawsuit, and if the Department of Defense fails to give candid testimony to this committee or any other—now, just let me finish—this committee or any other committee because there happens to be a private lawsuit, it is going to be very difficult for this Senate to do business. I mean, we are talking about broad public policy issues that, quite frankly, are a lot more important than any one particular lawsuit.

We do not want to get involved in this lawsuit. We made that very clear. I made that very clear at the beginning. But now we are talking about you, the U.S. Government, talking about why you made a public policy decision, and whether it was right or not, it is something that clearly we have the right to air in this committee. And when you answer my question and you basically say, Senator, I would love to talk to you about this but I can't, it makes it very difficult to look behind your decision, which I think we have every right to do.

Mr. OLIVER. Yes, sir. As you know, you do. I am only worried—I told you what I was worried about.

The decision in this particular case, when you look at the type of competition, the type of business it is, and whether or not it is a piece part business, whether it is an organization in which you sell one thing and the same people provide all of the repair parts, whether or not the military in this case is 15 percent of the market and commercial is 85 percent of the market, how much of the business it is, for example, this is 1 percent of one company and 4 percent of another, what is the cost of the airplane, relative to the cost of the airplane, and let's say it is in the low percents in the cost of the airplane, what type of technology it is—in all those, we have found this to be a different case from the previous one, and we believe that in this case two companies who have been accepted and were on military planes and were performing adequately and were accepted by the large plane manufacturers, we believe the competition was adequate.

Senator DEWINE. Mr. Montalbine has testified that if this merger is allowed, AlliedSignal might be forced to exit the wheels and

brakes market. In fact, we saw a chart that was put up. What is your reaction to that? If that is true, would that be a problem from a competitive point of view?

Mr. OLIVER. I don't know, Senator, whether we looked at that or not. I would have to get back to you, Senator.

Senator DEWINE. Well, I accept that answer and I appreciate you don't recall. But that seemed to be a fairly significant thing as his presentation was being made. Would you—you just don't know, apparently.

Mr. OLIVER. I do not know, Senator.

Senator DEWINE. Mr. Montalbine, do you want to comment on that?

Mr. MONTALBINE. Yes, if I could address a point that has to do with the focus on what a landing system constitutes, and it is a landing gear and a wheel and brake specifically that we are talking about here.

When we discussed previously the existing joint venture—and it happens to be between Messier and BFGoodrich—it is on wheels and brakes. But that has a very significant effect.

A landing gear is designed 18 months before a wheel and brake is really configured. In a post-merger world, BFGoodrich and Messier will be predisposed to configure the landing gear to suit their wheels and brakes. That is how we will be precluded——

Senator DEWINE. Excuse me. Maybe we will put that chart up. Anytime anybody as they are testifying wants one of their charts up, just let me know because I think it may be helpful as we have this discussion.

Mr. MONTALBINE. If you look at the lower half of the chart in the post-merger world, let's say that exists, and there is an existing wheel and brake joint venture between Messier and BFGoodrich, and it is on the A-319, the A-320, the A-321, the A-330, and A-340 programs, it would be in their best interests to configure the landing gear for their equipment. And there is gaming that can occur, ways to configure the interface points, the size of the axle, the size of the equipment, to preclude our wheels and brakes and favor their wheels and brakes.

In the next year and a half, there will be about six major programs that will be let in as integrated landing systems—the A-3SX, the AS-400, the Embraer 170, the Bombardier 90-passenger jet—and those systems will require a single supplier to be able to integrate and provide a landing gear, wheel and brake, and brake control.

In the post-merger world, where would AlliedSignal team? We couldn't team with Messier. They have their own wheel and brake company. We couldn't team with BFGoodrich. They have their own wheel and brake company. And as I stated before, we did attempt to look at Liebherr—and there are other smaller mom-and-pop-type, build-to-print landing gear companies. They lack the adequate design, knowledge, and expertise to develop structures for airplanes like the A-3SX, an 800-passenger size aircraft. Very, very large structure. And even if they do have some moderate design capability, they lack the manufacturing facilities for that.

So we will not be able to compete on any of those new programs that are coming down. Over time our market share will drop. We

will be forced to just focus on the products that we have now in production, and eventually we will be forced to exit the business.

Senator DEWINE. Mr. Oliver, do you want to comment on that?

Mr. OLIVER. Let me comment on part of it because it——

Senator DEWINE. Sure.

Mr. OLIVER. Which is that if I were doing this chart, I would have drawn it differently, and I would have drawn it with each of these at half the size they are to represent market share and to show that currently this company has half the market share, say 46 percent in the world. And we are talking these two being half that.

Senator DEWINE. Excuse me. I want to get my statistics correct and make sure I have got it down. The total market share worldwide is what?

Mr. OLIVER. With respect to military.

Senator DEWINE. OK. Oh, we are talking about U.S. military?

Mr. OLIVER. No, no. Military, period. I am interested in U.S. military.

Senator DEWINE. Wait a minute. Which?

Mr. OLIVER. I am interested in——

Senator DEWINE. I am just trying to——

Mr. OLIVER. I am interested in market share of U.S. military.

Senator DEWINE. U.S. military market share. OK. Give me the figures.

Mr. OLIVER. And this would be half, and these would be a quarter. And so now what you would end up with——

Senator DEWINE. Total sales, what you are saying is total sales, they have half the market now—half the U.S. military.

Mr. OLIVER. And this will have half.

Senator DEWINE. OK.

Mr. OLIVER. So that is the way I would have drawn it if I were making the same chart.

Senator DEWINE. The size would be different in the boxes. OK.

Mr. OLIVER. Yes, sir.

Senator DEWINE. Anything else you want to add to that?

Mr. OLIVER. No, sir.

Senator DEWINE. Mr. Montalbine, you noted that individuals at Hill Air Force Base expressed concerns with the merger. Do you want to expand on that? And then I want to give Mr. Oliver a chance to follow up with that.

Mr. MONTALBINE. Hill Air Force Base is responsible for predominantly all of the overhaul and maintenance for landing gears and wheels and brakes on military aircraft. Several people—John King in particular, a key individual in that base has expressed in a written affidavit that they opposed this merger based on the anticompetitive effects that they foresaw. The ability—or the fact that they would be held hostage with regard to spares pricing, and they would have no alternative source of that material.

Senator DEWINE. Mr. Oliver, do you want to comment on that?

Mr. OLIVER. Yes, sir. I don't know him, but it is difficult for an individual at that level to have access to all the information that you might have in an office dedicated to looking at these things.

Senator DEWINE. OK. Let me ask you a question, Professor. On its face, this merger appears to be troubling. Either we have a

three-firm market shrinking to two, or a two-firm market shrinking to one, depending on how you look at it. You certainly appear to believe that this raises significant competitive concerns, but why hasn't there been, in your opinion more objection to the deal? And why hasn't the FTC pursued a case? How do you explain that.

Mr. ELHAUGE. Well, I am not entirely sure. I think the overall answer is that the FTC exercises prosecutorial discretion here, so it does not challenge every merger and does not have to challenge every merger that violates the statute. It has scarce enforcement resources. It has to allocate them in the way that it sees fit, and I don't know what competing demands there might be on their time.

Here there are a couple of factors that it might well have looked at under standard policy. One is that we have private litigants in this case who are bringing an antitrust enforcement action, anyway. So if you are sitting in the FTC, it might make a lot of sense to say we will go after some other merger and allow the private parties to fight this one out in court and save our personnel for something else.

Second, I think the FTC does rely on buyer complaints and in this case on the absence of Boeing's complaints, which for the reasons I indicated previously I think to the extent it is relying on that, it is over-relying. Really, they are not—a lack of complaint by Boeing is not nearly as significant as the market structural analysis is, and if there are reasons to doubt it and the fear that such a policy would lead to general over-concentration.

But I would note that because of all these concerns about whether FTC non-enforcement really means anything, the FTC itself in the letter about this merger and as a general matter of policy says that its decision not to go after a merger does not mean the merger is not anti-competitive, and it always reserves the right to intervene later in any merger if further information develops. And Congress has itself passed a statute to indicate that judges should not shy away from enjoining mergers of private litigants even though the FTC has decided not to pursue the matter.

Senator DEWINE. Mr. Reuther, I imagine that in your time at the UAW you have seen too many plant closings. Can you describe briefly the impact that a closing like this would have on a community and how long it would take to recover the economic benefit of those jobs? I mean, you know the type jobs we are talking about. You know what the basic pay is.

Mr. REUTHER. Well, for the workers involved, typically, especially if you have an older work force, they can experience unemployment for lengthy periods of time. And even when they are able to find new employment, typically, it is at much lower pay, without the same type of benefits.

In addition, when you have job loss of these magnitudes, the entire community suffers; businesses in the area that depend on people having good-paying jobs to buy products, the local school system can suffer. It can have a ripple effect throughout the entire community that can last for quite some time.

Senator DEWINE. Let me ask you another question. We all know there has been a significant decrease in the defense budget, and we know that some mergers are certainly necessary.

Let me ask you, has the UAW opposed all of the mergers in the defense industry or have there been some that you did not oppose?

Mr. REUTHER. We do not oppose mergers per se. We always look at them on a case-by-case basis to see whether, as a result of the merger, will the workers be in a stronger position in terms of maintaining their jobs or are the mergers likely to lead to the layoff of a lot of the workers?

In the nondefense area, the most recent major example, Daimler-Chrysler, we did not object to that merger. I would note that shortly after that was announced, the CEO's immediately made announcements that there would not be any plant closings or layoff of Chrysler workers in this country. In contrast to the statements we heard today, they didn't say, "Well, no decision has been made. We are going to gather data, and we will get back to you in 8 months." They immediately were able to make an announcement in a case, you know, that was a much grander scale than the merger here.

Also, on each merger case, we look at the operations of the companies involved to try and make our own judgment about whether the company is going to be planning to consolidate operations. Taking the Daimler-Chrysler case, it was pretty clear that their lines did not directly compete, so that it was not likely to lead to consolidations. In this case, as we have heard from the testimony before, they have been planning a closure of the Cleveland facility for some time, and there has not been any dispute about the impact on the AlliedSignal facility in South Bend.

So it is based on the specific facts of this case that we think a merger is not in the interest of the workers.

Senator DEWINE. Mr. Linnert, what about a potential sale to AlliedSignal? There has been a lot in the press about this. Apparently, they have made an offer.

Mr. LINNERT. They have not made an offer.

Senator DEWINE. All right. What about if they do make an offer? What if you make the decision that you are going to close this facility? You are certainly not just going to close it up and eliminate competition. You are going to put that on the market, I assume.

Mr. LINNERT. Let me put in context what has been offered, since you asked.

What AlliedSignal has offered was to buy the Cleveland Pneumatic Company or Menasco. They offered to buy Menasco 2 months after our merger was announced. They called the Coltec CEO and offered to buy his entire landing gear business in exchange for stopping their efforts at DOD and FTC to block the merger. He told him he was not willing to sell his landing gear business, which is more than just facilities. It is the entire profitable business to them.

What Allied has offered since then is to buy the entire Cleveland Pneumatic Company, which is the Goodrich landing gear business. That business is not for sale, just as Coltec's landing gear business is not for sale.

So for someone to offer to buy our entire landing gear business, it just makes no sense to us, and we will not do it.

Senator DEWINE. Mr. Montalbine, do you want to respond to that in any way?

Mr. MONTALBINE. Well, we have, as Mr. Linnert had said, we——

Mr. LINNERT. Senator, while he is thinking of his answer, may I have a few minutes later on to address some of these other points, if that is——

Senator DEWINE. Oh, we will give you all the time you want.

Mr. LINNERT. All right. Thank you.

Senator DEWINE. You just kind of raise your hand or give me a signal, and we will just kind of do it. We are pretty informal here, and we will take all of the time it takes today.

Good ahead, sir.

Mr. MONTALBINE. AlliedSignal has offered to buy the Cleveland plant in order to remedy—or the Menasco plant—in order to remedy this anti-competitive situation that——

Senator DEWINE. The plant.

Mr. MONTALBINE. Well, the business. I am sorry. The business. The Cleveland Pneumatic's business or the Menasco business in order to remedy this situation, subject, of course, to due diligence. We have not made a monetary offer. We need to go through that process. But, again, as was indicated, we have been rebuffed and told that the business was not for sale. We are still willing to do that. We are still willing to go through that process, and it is just a matter of BFGoodrich allowing that to continue.

Mr. LINNERT. May I speak to that?

Senator DEWINE. Sure.

Mr. LINNERT. Let us be real clear about what has been offered. They have offered to buy an entire business. That is commercial programs, regional programs, business programs, military programs. That is what makes up both those businesses. Those businesses are not for sale, as we have said.

In settlement discussions with AlliedSignal, which were made public yesterday, what AlliedSignal was willing to discuss, was having returned to them the military programs that they sold to Coltec in 1995. That would be several programs and some equipment, no facilities, no business in regional business or commercial.

Mr. MONTALBINE. We also offered to buy something less than the entire CPC business. And there was discussions about the factory that is based in Cleveland less than the Tennessee facility, and that offer also stands.

Mr. LINNERT. Again, our business is not for sale. What we offered to sell back to them was just the military programs that they owned when they exited the business—those programs and the equipment that they sold to Coltec in order to service those programs. That was on the table, not an entire business, and we just will not sell it. It destroys the reason of why we are doing this merger. We just will not sell an entire profitable business.

Senator, could I take a few minutes——

Senator DEWINE. Mr. Linnert, you can take your time now and go right ahead. You wanted to respond, apparently, to a few other comments, and you go right ahead.

Mr. LINNERT. Just to help with the understanding. We have a chart on the military——

Senator DEWINE. OK. We will put the chart up.

Mr. LINNERT [continuing]. Landing gear business. And what we tried to show was here, currently, are folks who are in the landing gear supply business for the military, and we tried to list the programs on the left and then the names of the companies across the top. The flags merely show what country they are from. I just wanted to put that up to show that there is a more vibrant——

Senator DEWINE. Mr. Linnert, I hope people's eyes are better than the Chairman's eyes. That is all I have got to say. Do a good job describing it because I cannot see it very well.

Mr. LINNERT. The flags just indicate a number of different suppliers.

Senator DEWINE. I can see the flags. It is the rest of it I cannot see.

Mr. LINNERT. I think, just to finish that one thought, and I will get off that one, the one thought. In the military business, the data rights to the landing gear are owned by the military. They can choose who they want to provide that landing gear. Once you get past the people who supply an entire landing gear design, if you look at the people who supply components to that, the pieces and parts of it, there are 25 or more suppliers. This is something where the military owns the data rights. There are a number of people who can supply military landing gear. It is not a two-to-one merger.

In the commercial markets—there was a lot of discussion about this three-to-two—in the large commercial markets, the way these markets work, take Boeing as an example, Boeing, in cooperation with the landing gear manufacturer, designs the landing gear. Boeing owns that design. Boeing can choose to have, whether it is BFG, Coltec or Messier-Dowty, Coltec can choose who they want on any of their programs. They have that same choice after the merger. Admittedly there are two large commercial suppliers.

If they ever get to the point where they think they are not getting a competitive, high-quality product from those large commercial suppliers, it will be their going forward plan to incentivize that next tier of suppliers to come up into the large commercial market. The reason there are not more up there is what we have said before. There has been this declining production in the commercial and military markets.

So, again——

Senator DEWINE. Do you think that is practical?

Mr. LINNERT. To incentivize others? Absolutely. If Boeing is dissatisfied with its suppliers, it will make more—it will create and enhance or give the opportunity to more people to get into that business. And the reason I say that is——

Senator DEWINE. What if the U.S. Government becomes dissatisfied?

Mr. LINNERT. The same with the U.S. Government on the military side. Right now, as you can see from that chart, the military currently buys landing gear from a number of different suppliers.

Let me just finish the thought with Boeing, though, please. A comment was made earlier about Boeing's support for this merger being obtained with a side payment. What I think that oblique reference to is Boeing has a program whereby they deal with their suppliers, and as Boeing competes for a worldwide share of com-

mercial planes with Airbus, Boeing does have a program of trying to have their suppliers become lower cost and more efficient. That is what has driven the consolidation in this business.

Boeing has a program of asking its suppliers for discounts, in terms of the products they supply to them. It has got nothing to do with a side payment from any one company. It has to do with a program by Boeing to become more efficient and cost competitive.

In terms of Airbus, one of the goals of this merger is for us to grow. This merger is not about shrinkage. The BFGoodrich Company wants to grow. As I mentioned, we would have 27,000 employees worldwide. We intend to continue to grow in both our aerospace and chemicals business, as well as industrial products, which we will get through the merger.

This merger is anything but anti-competitive. If it was, the FTC and the DoD would not have come to the conclusions that they have come to. In their process, they do a very good professional process in the course with their merger guidelines. What was different here is Allied and Crane kept raising arguments during the process, as was their right to do. DoD and FTC considered all of those arguments that were presented by Allied and Crane, and even with that lengthened scrutiny, came to the same conclusion. This merger is not anti-competitive.

Senator DEWINE. Anything else you want to comment on?

Mr. LINNERT. Let me look at my notes real quick, Senator.

Senator DEWINE. Sure. Take your time.

Mr. LINNERT. There was a comment about the integrated systems market and Allied being foreclosed—its wheel and brakes facility going forward.

Two thoughts there. The one thought was that somehow this merger will cause loss of jobs in South Bend. We disagree with that. The reason we disagree with it is AlliedSignal is currently on 9 of 13 Boeing programs with wheel and brakes and 6 of 11 military programs. Once you are on those programs, once you are certified on those programs, you are on those programs for the life of the plane, however long that program is in existence.

The work that is currently being done in South Bend will continue for a long, long time. Now, the competition is for new programs. The jobs I mentioned that we have added in Ohio over the past 2 years, the 200 jobs in aerospace, principally have come at the Troy, OH, wheel and brake facility. One-hundred-and-twenty-some of the additional jobs have come at that facility. Why? Because we have been competing more vigorously with AlliedSignal in terms of winning new competitions for wheels and brakes.

Again, that is a competitive issue. We are happy to compete with that. But the annuity part of it, the programs they have now are not impacted by this merger. Wherever they are certified, they will keep making the wheel and brakes. Competing going forward, we are glad to do that.

Now, the argument that they are making is there is an integrated system market out there where Goodrich will favor its wheel and brakes over Allied wheel and brakes in putting together a package. Two thoughts to that.

First, there is a strategic alliance agreement that Allied has with Coltec in which they will team to put in bids for integrated landing

systems. We succeed to that agreement. We will honor that agreement. We have told Allied we will honor that agreement with all appropriate safeguards with respect to any proprietary knowledge. We have offered to let them take it back, but we will honor that agreement through its term.

Second, the fact is there is really no integrated landing system market today. During the first 5 or 6 years of that agreement—and it is a 10-year agreement. It is about halfway through—there were a couple of programs that were bid. There is no large commercial integrated landing system market today.

Senator DEWINE. Mr. Oliver, you testified why you did not, grossly summarizing here, why the Defense Department did not have a problem with this merger, and you gave a number of reasons. What is the advantage, though, of this merger? What does the Defense Department pick up by this merger? How are you better off? It is a different question.

Mr. OLIVER. Yes, I know it is.

Senator DEWINE. I'm not saying that should be your standard, but I am just curious. What do you pick up, if anything, from this thing?

Mr. OLIVER. Let me preface that by saying that we use the standards I said. So I am not sure—we did not look at that, of what we pick up, we picked up. I mean, that was not part of it.

I will give you my personal perspective, which is really——

Senator DEWINE. Excuse me. So, first of all, the Defense Department, what you are saying is—I want to make sure I understand—you did not, in your study, because that was not part of what you do, come up with anything that was positive about this.

Mr. OLIVER. The industry——

Senator DEWINE. Now, what you are going to do is give me your own opinion, which I appreciate it, and I welcome.

Mr. OLIVER. Yes. Because from our perspective, if the industry proposes to do something, it is our goal to look at it and see if this does the Defense Department harm, and that is particularly interesting.

In this particular aspect, it looks to me as if you end up with a company which is a much stronger competitor.

Senator DEWINE. And why is that?

Mr. OLIVER. Because you end up with two companies in the market which have nearly the same market share, and are well capitalized and have most of the business; in other words, you have two good competitors.

Senator DEWINE. OK.

Mr. OLIVER. And I like to have two strong, but I am not saying that was not the situation before. I do not know what the situation—I am saying——

Senator DEWINE. Right.

Mr. OLIVER. When I look at what the situation is coming to, I said I still have two strong competitors. That is good.

Senator DEWINE. OK. But you are not really saying, are you, that, as a basic principle, it is better to have two competitors than three?

Mr. OLIVER. No, sir. Absolutely not.

Senator DEWINE. I mean, they are all pretty strong. They all three have a fairly good market share at this point. So you go from three that are players to two that are players, right?

Mr. OLIVER. A difficult—that is part of the reason we did not look at that specific problem.

Senator DEWINE. All right. I appreciate that.

Professor, do you want to comment on that? I see you making some notes there and nodding your head.

Mr. ELHAUGE. Yes. I would like to comment on that and a number of other items.

Senator DEWINE. You go right ahead.

Mr. ELHAUGE. One, there is a general argument being made that because of declining market demands producing industrywide overcapacity, a consolidation is merited and thus justified. That is just contrary to antitrust theory and economics. Overcapacity is not a justification for a merger. Competition will drive out overcapacity itself. If the firms have too much capacity, it is better to let the competition decide which capacity gets cut rather than have an agreement decide. Because when you have a merger and agreement, you never know whether the capacity is being cut because of an agreement to restrict output by the merger rather than because competition produced that answer.

Then as to the claim that going from three firms to two firms is better because it creates stronger competition, first, I would note that in the large commercial market, and I understand the admiral has mainly focused on the military market, but in the commercial market for large planes, there will only be one who sells in the U.S. market. But even if you look worldwide, they will have 70 percent market share, the two firms combined after this merger, not 50 percent market share.

And as a matter of theory, it is just not true that you necessarily have stronger competition, even for a market where both did have 50 percent, than you would have with two firms with 25 percent and one firm with 50 percent. You are better off having more competitors, as long as none of them is below the minimum efficient scale for operating. And there is nothing to indicate that 50 percent of the entire market is a minimum efficient scale for a company.

Senator DEWINE. There is nothing to indicate that, status quo, today, that any of the three cannot compete. I mean, in layman's terms, is that what you are talking or what you mean?

Mr. ELHAUGE. Yes. Now, there are a number of other things I would like to comment on, if I could.

One, is the claim that self-provision by the airframe makers of landing gears is a possibility. They can enter the market. Now, there is a lot I cannot tell you, because of the protective order, about the documents. But this and other things may urge the committee to get the document itself so it can make up its own mind. But I think that that is completely wrong. The entry barriers are extremely high.

And if I may offer a homey analogy, this is a lot like saying to consumers, "Well, there is a monopoly for cookies that are premade, but you can all make cookies from scratch yourself. So, really, there is no monopoly at all." The fact that buyers can self-provide something does not mean that a merger is not anti-competi-

tive. Ever since Adam Smith, we have known that what makes markets efficient is a division of labor, so the most efficient producer is making the item.

I have similar reactions, I guess, to the claim that there is no integrated landing systems market. Again, I do not think that that is right. I urge the committee to get documents to decide that question for itself.

Senator DEWINE. Say that again.

Mr. ELHAUGE. I do not think it is right, and I urge the committee to get documents to decide that question——

Senator DEWINE. And the question is what, though?

Mr. ELHAUGE. Whether there is an integrated landing systems market. I think there is a demonstrable one. There has been one on many medium planes, and I think it is clear that the trend is that there will be on large commercial planes.

On the question of a side payment, again, the committee should get documents for itself. The only thing I can comment on, from publicly available knowledge, is that there was a CCIP price reduction given to Boeing after the merger was announced. All I was saying here in the testimony is that because of the possibility of payments, one should not rely excessively on buyer noncomplaints.

So the analysis for that, and many other reasons, the analysis to figure out when buyer noncomplaints indicate a merger is efficient and when it does not, is itself an extremely complex undertaking. It is easier to figure out just what the market concentration is.

And when you do review this question more closely, on some market share information given by the merging parties, I know they have a tendency to conflate different kinds of gear; nose gear with the main landing structure, small gears with the large and medium gears that were talked about here, and proposals versus actual sales. So all of that should be sorted out.

Senator DEWINE. Mr. Montalbine, as described in the testimony, AlliedSignal and Coltec currently have a strategic alliance agreement, which sets out the terms under which AlliedSignal and Coltec will work together to provide landing systems.

It is my understanding that Goodrich has sworn under oath that it will meet all of the obligations between Coltec and AlliedSignal. And if that is the case, why are you concerned about the future relationship between Goodrich and AlliedSignal?

Mr. MONTALBINE. We looked at the proposal, Senator, that Goodrich had made. And, essentially, they are asking us to trust them with highly sensitive competitive data on wheels and brakes.

In order to do an integrated landing system bid like we do—if you could put our chart back up—right now with Menasco, Menasco provides all of their cost data for designing, and developing and testing the landing gear, and we give them all of our very sensitive pricing data with regard to the wheels and brakes. We also give them data, how much we are willing to invest, what our break-even points are, all of the pertinent cost data that would be extremely useful to BFGoodrich on the wheel and brake side.

Quite frankly, we just do not trust them. We do not think it is a viable alternative. We see no way that we would feel comfortable, in dealing with a competitor like BFGoodrich, giving them sensitive data and hoping that, you know, they kept that data confidential.

In addition, we have no way of knowing that the prices—look in the post-merger area. We would have no way of knowing that the prices that we got from BFGoodrich/Coltec now were competitive. We have no way of auditing them or determining that we are getting a fair price on landing gear.

I have a couple other points I would like to make here, if I could, Senator.

Senator DEWINE. Sure. Go right ahead.

Mr. MONTALBINE. I think it is easy to be inadvertently misled, and everyone is focusing on who can manufacture landing gear.

Mr. Oliver indicated, and rightfully so, that the F-18 C/D right now is being manufactured by Messier-Dowty. That is not really what the issue is here. The issue is the eroding design capability in this country. The F-18 C/D landing gear was originally designed by CPC. The C-17 was designed by CPC. The F-18 E/F was designed by AlliedSignal in 1992. Those landing gears right now are made by other companies.

Who can make a landing gear and what their capability is is important. But the more important fact is, in the future, when large commercial transport or military aircraft or transport aircraft are envisioned to be built, who is capable of designing that equipment? And the answer is it comes down to three companies: CPC, Menasco and Messier-Dowty. And that is what needs to be focused on. That design capability is eroding significantly, and that is one of the major barriers to entry in this business.

If you had a spare $300-or-so million to facilitate a plant and buy all of the tooling and equipment, which is about what it would cost to upgrade a plant and go into the business, your real obstacle would be finding the design engineers and the talent. You do not learn how to design landing gears in engineering school. You hire people with the basic rudimentary structural and dynamic capabilities, and those people learn over time, and it takes many, many years and many, many programs for that reputation to be assured with companies like Boeing or Menasco.

To the point that the future is not integrated landing systems, again, I strongly urge the committee to look into the facts. There are currently 12 programs, either in the conceptual stage, pre-production or production phase, that were all let as integrated landing system contracts. It is clearly the wave of the future. And the prime reason for that is that if you look at the OEM's ability to oversee and ride herd, as Mr. Oliver said, on subcontractors, that ability is eroding significantly.

Boeing has 220 people in their landing gear group at the beginning of this year, and they are laying off anywhere from six to seven a week for the entire year. Boeing has announced a reduction in force of 45,000 people. That capability to ride herd, and oversee and participate in landing gear design is significantly eroding, and this situation will only make it worse.

Finally, I would just like to be clear on one point. AlliedSignal is committed to buy all or part of the Cleveland Pneumatic business. And maybe I was not clear before. I think the fact that BFG will not sell it, and even if they plan on closing it, will not sell it, is evidence to the fact that the value that it has to them and their intention to really grab hold of this monopoly, and that is some-

thing that is of real concern to us for the long-term viability of the wheel and brake business.

Thank you.

Senator DEWINE. Mr. Oliver, you state in your testimony that the Defense Department would be monitoring developments in the wheels and brakes market and that you would, in fact, take action if you spot any discriminatory behavior. What are the types of steps that the Pentagon can take if it finds such behavior and that you might take?

Mr. OLIVER. There are several, sir. For example, recently in the ship business for the Navy, where we felt that the people had put together a dream team of all of the people who were the real competitors, both technically and politically, we just simply told them they could not do it. And we went in and renegotiated. I renegotiated two new teams with them.

Subsequent to that, Dr. Gansler, the Under Secretary of Defense for Acquisition and Technology, put out a memorandum on January 5 on anti-competitive teaming, in which we talked about this particular point and talked about teams becoming too small and talked to our people about consent to subcontract, et cetera.

And I wrote a memorandum on May 5, it turns out, on subcontractor competition, in which I talked to everybody about the necessity to watch this as we go down in number of suppliers.

We also have the authority, in the event it does not work, to bring that to the Justice Department's attention for violation of antitrust law. We also can develop a second source, and we can also, since it is our drawings, provide them to other companies and have them made.

With respect to that, there were some references to the joint agreement between BFGoodrich and Messier on wheels and brakes for Airbus aircraft. And I have a memorandum on that, essentially, which Dr. Gansler signed, to BFGoodrich saying, "While this does not adversely affect competition involving this Department, the Department would be considered, however, if this agreement were extended to include other aircraft and that extension could affect competition for military programs."

"The Department would also be concerned if BFGoodrich and Messier-Dowty collaborate in areas that have been the subject of this merger review."

Consequently, we requested them not to do that and said we would be watching them and asked them to reply in writing. So that is reference to that issue.

Mr. REUTHER. Senator.

Senator DEWINE. Mr. Reuther.

Mr. REUTHER. The fact that the Defense Department may monitor the situation in the future is really not going to help the workers very much at the Cleveland plant or in South Bend if they lose their jobs in the near term. It becomes impossible to unscramble the egg and get these people their jobs back or to repair the damage to the communities. It is much better before that damage happens in the first place.

Senator DEWINE. Mr. Linnert.

Mr. LINNERT. Senator, a couple points. The question came up about design capability eroding, engineering. You asked the Department of Defense what they gain from this merger.

I would like to point out something that Senator Kohl said. Coltec is a highly leveraged company. Coltec has not, on its own, been able to invest and reinvest significantly in new programs, new technology, new facilities. One of the good things about this merger is, on a combined basis, we will have a stronger balance sheet. We will be a higher quality supplier.

One of the things Boeing, DOD, all of our customers look for is a stronger partner going forward. That is one of the benefits of this merger, and it is a benefit strategically of why we are doing it.

I said before customers are our life blood. If we cannot partner with them to provide high-quality, cost-effective products, we are not going to be in business. That is what this merger is about, and that is what we tend to achieve.

I find it also interesting the comment about Boeing and Boeing's support for our merger as being somehow tainted or is not as credible as it should be in terms of looking at competition. Yet when AlliedSignal and Honeywell announced their merger, that is one of the first things that they announced; that Boeing supported their merger. And, again, when you look at some of the aerospace markets that result in that merger, that deserves a close look, and that is probably why they asked Boeing ahead of time.

So I find Boeing's support, as a buyer, as a disciplinarian in the markets, will be very key to this transaction, just as they must feel it is very key to theirs.

Mr. REUTHER. Senator.

Senator DEWINE. Mr. Reuther.

Mr. REUTHER. If I could respond. We are hearing, on the one hand, that this merger is going to create a stronger company that will be able to have more investment and create more jobs, and yet earlier we heard that they would not know for 8 months or so, after they saw data from Coltec, what their options would be and whether they are going to close the Cleveland facility or not.

And I would just ask how can those two statements both be true? It seems to me that they are saying, well, there may be a stronger company for investment elsewhere, but not in Cleveland.

Senator DEWINE. Mr. Linnert, do you want to respond to that?

Mr. LINNERT. Yes. Absolutely.

BFGoodrich is a company across a large—that operates businesses across a wide variety of markets. We will be a stronger company going forward. Clearly, the merger is about building a stronger platform.

But it is our responsibility, when we close the merger, to take a look at those areas where efficiencies may be able to be obtained. We mentioned earlier the classic example, when you merge two companies, there is no need for two general counsels going forward, there is no need for two CEO's going forward. The staff headquarter's functions are always initially looked at, but we do need to look at the operations. It is not just landing gear, it is also sensors that we will take a look at. But, again, you look at the combined facilities operations when you have data available.

To ask us to make a decision prior to that time is premature. It is just pure premature decisionmaking. We have said, as strongly as we can, we are going to study this, but no decision has been made.

Now, one of the things that is going on in Cleveland is we have talked to the work force in Cleveland about different forms, changing the manufacturing processes, the work practices. There is dialogue going on about that. That dialogue would not be taking place if we had written Cleveland off. That is to improve Cleveland, to make it better, not to close it.

Senator DEWINE. I want to thank—Mr. Reuther.

Mr. REUTHER. If I could respond, again.

Senator DEWINE. Sure.

Mr. REUTHER. And I would again ask, if Daimler and Chrysler could immediately make an announcement about no layoffs in the United States in that merger, which is much larger, I find it difficult to understand why a similar commitment cannot be made in the context of this merger.

And in terms of the comments about efficiencies and not needing two CEO's or two general counsels, we tend to notice that the CEO's and general counsels tend to get golden parachutes. And if they are willing to provide the same type of commitments to the rank and file workers in the Cleveland plant and in South Bend, we would be happy to accept that type of offer.

Senator DEWINE. On that note, we will——

Mr. LINNERT. Senator.

Senator DEWINE. Go ahead, Mr. Linnert.

Mr. LINNERT. The commitment to jobs, I am glad Chrysler could make that kind of commitment. AlliedSignal and Honeywell could not make that kind of commitment and neither can BFGoodrich. What we can commit to is a responsible study using all data available. We will do that. And as Mr. Reuther probably knows, whenever there have been reductions in force for any reason at Goodrich over the past few years, appropriate severance mechanism tools were used.

Senator DEWINE. Well, I think this has been a very helpful hearing. Any additional comments anyone feels they have to make? If not, we will—Professor, are you OK over there?

Mr. ELHAUGE. Well——

Senator DEWINE. You look like you are ready to go. I just did not want to shut you off.

Mr. ELHAUGE. I guess I will say a few things, then.

One is that that this merger is being justified as efficient, and it is hard to see how it could be so justified, if they have not studied the question, as they say today.

Second, it is just common sense, the undisputed fact is, at the end of the day, we have two firms in this market financially related to each other with a joint venture. And I would just submit that common sense indicates that is not a competitive market.

Senator DEWINE. Let me say I want to thank you all again very much. Let me say I think this has been a very helpful hearing. I appreciate your patience. I appreciate your time. I think this has provided the subcommittee with really some valuable insight into

the competitive implications of this deal and the impact it may have on the national security of our country.

This subcommittee will continue to monitor and provide oversight as the defense industry continues to consolidate because it is critically important that these mergers are thoroughly and carefully examined.

Specifically, I might add, that we look forward to discussing this merger, in particular, in more detail in private with the Defense Department. And maybe we can follow up, Mr. Oliver, with some of the things that we could not get into in a public hearing today.

I must say, though, in conclusion, that I am disappointed in the amount of information we received today about the prospects of the Goodrich Cleveland plant. I had hoped, and frankly had expected, to hear a clear, candid explanation of the Goodrich plans for the Cleveland facility.

While I think that Mr. Linnert was able to provide a little more of an explanation, I am still not satisfied. The people of northeast Ohio, the Goodrich workers, their families, deserve an answer, and they deserve an answer as clearly as possible and as soon as possible. And I am going to continue to keep working to see that they get that answer.

Let me, again, thank all of you very much. Our hearing is now adjourned.

Thank you.

[Whereupon, at 4:14 p.m., the subcommittee was adjourned.]

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