

**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION**

	)	
In the matter of	)	
	)	
TRW Inc.,	)	File No. 981-0081
a corporation.	)	
	)	

**AGREEMENT CONTAINING CONSENT ORDER**

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by TRW Inc. ("TRW") of BDM International Inc. ("BDM"), and it now appearing that TRW, hereinafter sometimes referred to as "proposed respondent," is willing to enter into an agreement containing a consent order to divest certain assets and providing for other relief:

**IT IS HEREBY AGREED** by and between proposed respondent, by its duly authorized officers and attorney, and counsel for the Commission that:

1. Proposed respondent TRW is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio with its office and principal place of business located at 1900 Richmond Road, Cleveland, Ohio, 44124.
2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.
3. Proposed respondent waives:
  - a. any further procedural steps;
  - b. the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;
  - c. all rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and
  - d. any claim under the Equal Access to Justice Act.

4. Proposed respondent shall submit, within thirty (30) days of the date this agreement is signed by proposed respondent, an initial report, pursuant to Section 2.33 of the Commission's Rules, signed by the proposed respondent setting forth in detail the manner in which the proposed respondent will comply with Paragraphs II., III., and IV. of the order when and if entered. Among other things, the report shall include a full and complete description of the efforts planned or underway to comply with the terms and conditions of the proposed order, including:
  - a. a list of the firms to which proposed respondent (i) has offered, and (ii) intends to offer, the SETA Services Operations; and
  - b. the actions, procedures and directives proposed respondent will employ to comply with Paragraphs II.C., II.G., II.H., II.I., and IV. of the order when and if entered.

Such report will not become part of the public record unless and until the accompanying agreement and order are accepted by the Commission for public comment.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.
6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.
7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondent, (1) issue

its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to divest in disposition of the proceeding and (2) make information public with respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. By signing this agreement containing consent order, proposed respondent represents that it can accomplish the full relief contemplated by the order.
9. Proposed respondent has read the proposed complaint and order contemplated hereby. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent agrees to comply with Paragraphs II. through IV. of the proposed order from the date it signs this agreement. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

#### **ORDER**

##### **I.**

**IT IS ORDERED** that, as used in this order, the following definitions shall apply:

- A. "Respondent" or "TRW" means TRW Inc., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by TRW Inc., and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

- B. "BDM" means BDM International Inc., a Delaware corporation with its principal place of business at 1501 BDM Way, McLean, VA, 22102, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by BDM International Inc., and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.
- C. "Commission" means the Federal Trade Commission.
- D. "Ballistic Missile Defense Organization" means the agency of the Department of Defense that is chartered by the Secretary of Defense under Department of Defense Directive 5134.9 and mandated by Congress to develop ballistic missile defense systems.
- E. "SETA Services Operations" means all assets, properties, business and goodwill, tangible and intangible, held by BDM and used in the provision of SETA Services to the Ballistic Missile Defense Organization under contract HQ0006-95-C-0006, including, without limitation, the following:
1. all rights, obligations and interests in contract HQ0006-95-C-0006, or any predecessor contract between the Ballistic Missile Defense Organization and BDM, or any subcontract of a contract between any entity and the Ballistic Missile Defense Organization where such subcontract is between BDM and such entity;
  2. all machinery, fixtures, equipment, vehicles, transportation facilities, furniture, tools and other tangible personal property;
  3. all customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, financial information, technical information, management information and systems, software, software licenses, inventions, trade secrets, intellectual property, patents, technology, know-how, specifications, designs, drawings, processes and quality control data;
  4. all rights, title and interests in and to owned or leased real property, together with appurtenances, licenses and permits;

5. all rights, title and interests in and to the contracts entered into in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;
  6. all rights under warranties and guarantees, express or implied;
  7. all books, records, and files;
  8. all data developed, prepared, received, stored or maintained under contract HQ0006-95-C-0006, or any predecessor contract or subcontract to support the operations of the Ballistic Missile Defense Organization;
  9. all items of prepaid expense; and
  10. all employment contracts.
- F. "SETA Services" means systems engineering and technical assistance services provided by BDM to the Ballistic Missile Defense Organization pursuant to HQ0006-95-C-0006 or any predecessor contract.
- G. "Proposed Acquisition" means TRW's proposed acquisition of all the voting securities of BDM pursuant to an Agreement and Plan of Merger dated November 20, 1997.
- H. "Non-public BMDO Information" means any information not in the public domain furnished by any company or the Ballistic Missile Defense Organization to BDM in its capacity as provider of SETA Services under contract HQ0006-95-C-0006 or any predecessor contract or subcontract.

## II.

**IT IS FURTHER ORDERED** that:

- A. Respondent shall divest, absolutely and in good faith, within one hundred and twenty (120) days from the date the Proposed Acquisition is consummated, the SETA

Services Operations, and shall also divest such additional ancillary assets as are necessary to assure the continued ability of the acquirer to provide SETA Services.

- B. Respondent shall divest the SETA Services Operations only to an acquirer that receives the prior approval of the Commission and the Department of Defense and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture is to ensure the continued provision of SETA Services in the same manner as provided by BDM at the time of the proposed divestiture, at no increased cost to the Ballistic Missile Defense Organization, and to remedy the lessening of competition resulting from the Proposed Acquisition as alleged in the Commission's complaint.
- C. Pending divestiture of the SETA Services Operations, respondent shall take such actions as are necessary to ensure the continued provision of SETA Services, to maintain the viability and marketability of the assets used to provide SETA Services, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets used to provide SETA Services, except for ordinary wear and tear.
- D. Upon reasonable notice from the acquirer or from the Ballistic Missile Defense Organization to respondent, respondent shall provide such technical assistance to the acquirer as is reasonably necessary to enable the acquirer to provide SETA Services in substantially the same manner and quality as provided by BDM prior to divestiture. Such assistance shall include reasonable consultation with knowledgeable employees and training at the acquirer's facility for a period of time sufficient to satisfy the acquirer's management that its personnel are appropriately trained in the skills necessary to perform the SETA Services. Respondent shall convey all know-how necessary to perform SETA Services in substantially the same manner and quality employed or achieved by BDM prior to divestiture. However, respondent shall not be required to continue providing such assistance for more than one year from the date of the divestiture. Respondent shall charge the acquirer at a rate no more than its own costs for providing such technical assistance.

- E. At the time of the execution of a purchase agreement between respondent and a proposed acquirer of the SETA Services Operations, respondent shall provide the acquirer with a complete list of all current full-time, non-clerical, salaried employees of BDM engaged in the provision of SETA Services on the date of the purchase agreement. Such list shall state each such individual's name, position, address, telephone number, and a description of the duties of and work performed by the individual in connection with the SETA Services Operations.
- F. Respondent shall provide the proposed acquirer with an opportunity to inspect the personnel files and other documentation relating to the individuals identified in Paragraph II.E. of this order to the extent permissible under applicable laws. For a period of six (6) months following the divestiture, respondent shall further provide the acquirer with an opportunity to interview such individuals and negotiate employment contracts with them.
- G. Respondent shall provide all current employees identified in Paragraph II.E. of this order with financial incentives to continue in their employment positions pending divestiture of the SETA Services Operations, and to accept employment with the acquirer at the time of the divestiture. Such incentives shall include continuation of all employee benefits offered by BDM until the date of the divestiture, and vesting of all pension benefits.
- H. For a period of two (2) years commencing on the date of the individual's employment by the acquirer, respondent shall not re-hire any of the individuals identified in Paragraph II.E. of this order who accept employment with the acquirer.
- I. Prior to divestiture, respondent shall not transfer any of the individuals identified in Paragraph II.E. of this order whose employment responsibilities involve access to Non-public BMDO Information to any other positions.
- J. Respondents shall comply with all terms of the Agreement to Hold Separate, attached to this order and made part hereof as Appendix I.

### III.

**IT IS FURTHER ORDERED** that:

- A. If respondent has not divested, absolutely and in good faith and with the Commission's prior approval, the SETA Services Operations within one hundred and twenty (120) days from the date the Proposed Acquisition is consummated, the Commission may appoint a trustee to divest the SETA Services Operations. In the event that the Commission or the Attorney General brings an action pursuant to § 5( 1) of the Federal Trade Commission Act, 15 U.S.C. § 45( 1), or any other statute enforced by the Commission, respondent shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5( 1) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the respondent to comply with this order.
- B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III.A. of this order, respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:
1. The Commission shall select the trustee, subject to the consent of respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to respondent of the identity of any proposed trustee, respondent shall be deemed to have consented to the selection of the proposed trustee.
  2. Subject to the prior approval of the Commission and the Department of Defense, the trustee shall have the exclusive power and authority to divest the SETA Services Operations.



3. Within ten (10) days after appointment of the trustee, respondent shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.
4. The trustee shall have nine (9) months from the date the Commission approves the trust agreement described in Paragraph III.B.3. to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the nine-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.
5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the SETA Services Operations or to any other relevant information, as the trustee may request. Respondent shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.
6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondent's absolute and unconditional obligation to divest expeditiously at no minimum price. The divestiture shall be made in the manner and to the acquirer as set out in Paragraph II. of this order; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to

approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by respondent from among those approved by the Commission and the Department of Defense.

7. The trustee shall serve, without bond or other security, at the cost and expense of respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the respondent, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the SETA Services Operations.
8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.
9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III.A. of this order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.
11. The trustee shall have no obligation or authority to operate or maintain the SETA Services Operations.
12. The trustee shall report in writing to respondent and the Commission every thirty (30) days concerning the trustee's efforts to accomplish the divestiture.

#### **IV.**

**IT IS FURTHER ORDERED** that:

- A. Respondent shall not, absent the prior written consent of the proprietor of Non-public BMDO Information, provide, disclose, or otherwise make available to any entity any Non-public BMDO Information.
- B. Respondent shall use any Non-public BMDO Information only in its capacity as provider of technical assistance to the acquirer, pursuant to Paragraph II.D. of this order, unless respondent obtains the prior written consent of the proprietor of the Non-public BMDO Information.

#### **V.**

**IT IS FURTHER ORDERED** that within thirty (30) days after the date this order becomes final and every thirty (30) days thereafter until respondent has fully complied with the provisions of Paragraphs II. or III. of this order, respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraphs II. and III. of this order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II. and III. of the order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to

and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

**VI.**

**IT IS FURTHER ORDERED** that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, a sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the order.

**VII.**

**IT IS FURTHER ORDERED** that, for the purpose of determining or securing compliance with this order, upon written request, respondent shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to inspect any facility and to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this order; and
- B. Upon five days' notice to respondent and without restraint or interference from it, to interview officers, directors, or employees of respondent, who may have counsel present, regarding any such matters.

**VIII.**

**IT IS FURTHER ORDERED** that, notwithstanding any other provision of this order, this order shall terminate ten years from the date this order becomes final.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

**TRW INC, A CORPORATION**

By: \_\_\_\_\_  
William B. Lawrence  
Executive Vice President  
TRW Inc.

\_\_\_\_\_  
Tommy D. Smith  
Jones, Day, Reavis & Pogue  
Counsel for TRW Inc.

**FEDERAL TRADE COMMISSION**

By: \_\_\_\_\_  
Nicholas R. Koberstein  
Yolanda R. Gruendel  
Attorneys  
Bureau of Competition

Approved:

\_\_\_\_\_  
Ann Malester  
Assistant Director  
Bureau of Competition

\_\_\_\_\_  
George S. Cary  
Senior Deputy Director  
Bureau of Competition

\_\_\_\_\_  
William Baer  
Director  
Bureau of Competition

APPENDIX I

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

\_\_\_\_\_  
In the matter of )  
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 )  
TRW Inc, ) File No. 981-0081  
a corporation. )  
\_\_\_\_\_)

AGREEMENT TO HOLD SEPARATE

This Agreement to Hold Separate is by and between TRW Inc. ("TRW"), a corporation organized and existing under the laws of the State of Ohio, and the Federal Trade Commission (the "Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. § 41, et seq.

PREMISES

**WHEREAS**, TRW has proposed to acquire one hundred percent of the voting securities of BDM International Inc. ("BDM"); and

**WHEREAS**, the Commission is now investigating the proposed acquisition to determine if it would violate any of the statutes the Commission enforces; and

**WHEREAS**, TRW has entered into an Agreement Containing Consent Order ("Consent Agreement"), which requires, among other things, TRW to divest the SETA Services Operations, as defined; and

**WHEREAS**, if the Commission accepts the Consent Agreement, the Commission will place it on the public record for a period of at least sixty (60) days and subsequently may either withdraw such acceptance or issue and serve its Complaint and decision in disposition of the proceeding pursuant to the provisions of Section 2.34 of the Commission's Rules; and

**WHEREAS**, the Commission is concerned that if an understanding is not reached, preserving the status of the SETA Services Operations during the period prior to the final issuance of the Consent Agreement by the Commission (after the 60-day

public notice period), there may be interim competitive harm and divestiture or other relief resulting from a proceeding challenging the legality of the proposed acquisition might not be possible, or might be less than an effective remedy; and

**WHEREAS**, TRW entering into this Agreement to Hold Separate shall in no way be construed as an admission by TRW that the proposed acquisition constitutes a violation of any statute; and

**WHEREAS**, TRW understands that no act or transaction contemplated by this Agreement to Hold Separate shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement to Hold Separate.

**NOW, THEREFORE**, upon the understanding that the Commission has not yet determined whether it will challenge the proposed acquisition, and in consideration of the Commission's agreement that, at the time it accepts the Consent Agreement for public comment, it will grant early termination of the Hart-Scott-Rodino waiting period, TRW agrees as follows:

1. TRW agrees to execute and be bound by the terms of the order contained in the Consent Agreement, as if it were final, from the date TRW signs the Consent Agreement.

2. TRW agrees that from the date the Proposed Acquisition is consummated until the earlier of the dates listed in subparagraphs 2.a. - 2.b., it will comply with the provisions of Paragraph 3. of this Agreement to Hold Separate:

a. three (3) business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Section 2.34 of the Commission's rules;

b. the day after the divestiture required by the Consent Order has been completed.

3. To ensure the complete independence and viability of the SETA Services Operations and to assure that no competitive information is exchanged between the SETA Services Operations and TRW, TRW shall hold the SETA Services Operations separate and apart on the following terms and conditions:

a. TRW will appoint, within three (3) days of the date the Proposed Acquisition is consummated, an individual to manage and maintain the SETA Services Operations who will make no changes to the SETA Services Operations other than changes made in the ordinary course of business. This

individual ("the Manager") shall manage the SETA Services Operations independently of the management of TRW's other businesses. The Manager shall not be involved in any way in the operations or management of any other TRW business.

b. The Manager shall have exclusive control over the SETA Services Operations, with responsibility for the management of the SETA Services Operations and for maintaining the independence of that business.

c. TRW shall not exercise direction or control over, or influence directly or indirectly the Manager relating to the operation of the SETA Services Operations; provided, however, that TRW may exercise only such direction and control over the Manager and the SETA Services Operations as is necessary to assure compliance with this Agreement to Hold Separate and with all applicable laws.

d. TRW shall maintain the marketability, viability, and competitiveness of the SETA Services Operations and shall not sell, transfer, encumber them (other than in the normal course of business or to assure compliance with the Consent Agreement), or otherwise impair their marketability, viability or competitiveness.

e. Except for the Manager and support service employees involved in the SETA Services Operations, such as Human Resources, Legal, Tax, Accounting, Insurance, and Internal Audit employees, TRW shall not permit any other TRW employee, officer, or director to be involved in the management of the SETA Services Operations. Employees of the SETA Services Operations shall not be involved in any other TRW business.

f. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations or litigation, or negotiating agreements to divest assets, TRW, other than employees involved in the SETA Services Operations, or support service employees involved in the SETA Services Operations, shall not receive or have access to, or the use of, Non-public BMDO Information, or any material confidential information about the SETA Services Operations or the activities of the Manager or support service employees involved in the SETA Services Operations, not in the public domain.

g. TRW shall circulate to all its employees involved with the SETA Services Operations or any Ballistic Missile



Defense Organization program, and appropriately display, a copy of this Agreement to Hold Separate and the Consent Agreement.

h. If the Manager ceases to act or fails to act diligently, a substitute Manager shall be appointed.

i. The Manager shall have access to and be informed about all companies who inquire about, seek or propose to buy the SETA Services Operations. TRW may require the Manager to sign a confidentiality agreement prohibiting the disclosure of any material confidential information gained as a result of his or her role as a Manager to anyone other than the Commission.

j. The Manager shall report in writing to the Commission every thirty (30) days concerning his or her efforts to accomplish the purposes of this Agreement to Hold Separate.

4. TRW shall deliver, within three (3) days of the date the Consent Agreement is accepted for public comment by the Commission, a copy of the Consent Agreement and a copy of this Agreement to Hold Separate to the Ballistic Missile Defense Organization.

5. TRW waives all rights to contest the validity of this Agreement to Hold Separate.

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

a. Access during the office hours of TRW and in the presence of counsel to inspect any facilities and to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of TRW relating to compliance with this Agreement to Hold Separate; and

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

7. This Agreement to Hold Separate shall not be binding until accepted by the Commission.

Dated:

FEDERAL TRADE COMMISSION

TRW INC.

By: \_\_\_\_\_

By: \_\_\_\_\_

Debra A. Valentine  
General Counsel

William B. Lawrence  
Executive Vice President  
TRW Inc.

By: \_\_\_\_\_

Tommy D. Smith  
Jones, Day, Reavis & Pogue  
Counsel for TRW Inc.

**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION**

	)	
In the matter of	)	
	)	
TRW Inc.,	)	Docket No.
a corporation.	)	
	)	

**COMPLAINT**

The Federal Trade Commission ("Commission"), having reason to believe that respondent, TRW Inc. ("TRW"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire all of the voting securities of BDM International Inc. ("BDM"), a corporation subject to the jurisdiction of the Commission, in violation of Section 5 of the Federal Trade Commission Act ("FTC Act"), as amended, 15 U.S.C. § 45, and that such acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45; and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

**I. RESPONDENT**

1. Respondent TRW is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its principal executive offices located at 1900 Richmond Road, Cleveland, Ohio, 44124.

**II. ACQUIRED COMPANY**

2. BDM is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal executive offices located at 1501 BDM Way, McLean, Virginia, 22102.

### **III. JURISDICTION**

3. TRW and BDM are, and at all times relevant herein have been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and are corporations whose business is in or affects commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

### **IV. THE ACQUISITION**

4. On November 20, 1997, TRW and BDM entered into an Agreement and Plan of Merger whereby TRW will acquire all of the issued and outstanding common shares of BDM for approximately \$942 million (the "Acquisition").

### **V. THE RELEVANT MARKETS**

5. The relevant lines of commerce in which to analyze the effects of the acquisition are: (a) the research, development, manufacture and sale of a ballistic missile defense system for the United States Department of Defense ("BMD System"); and (b) the provision of systems engineering and technical assistance services to the United States Ballistic Missile Defense Organization ("SETA Services").

6. The United States is the relevant geographic area in which to analyze the effects of the acquisition in both relevant lines of commerce.

### **VI. STRUCTURE OF THE MARKETS**

7. The market for the research, development, manufacture and sale of a BMD System is highly concentrated whether measured by the Herfindahl-Hirschman Index ("HHI") or the two-firm and four-firm concentration ratios ("concentration ratios"). Respondent is a member of one of only two teams competing to supply a BMD System to the United States Department of Defense.

8. The market for SETA Services is highly concentrated whether measured by the HHI or by concentration ratios. BDM has been the only provider of SETA Services since 1994.

9. Respondent, through the Acquisition, would be engaged in both the research, development, manufacture and sale of a BMD System and the provision of SETA Services.

### **VII. BARRIERS TO ENTRY**

10. New entry into the market for the research, development, manufacture and sale of a BMD System would be difficult and unlikely. The time required to develop the necessary expertise to manufacture a BMD System would far exceed two years. The cost to develop the necessary technology to manufacture a BMD System would be prohibitively high.

11. New entry into the market for the provision of SETA Services would be untimely. The Department of Defense intends to award a BMD System procurement contract within the next six months. It would not be possible for a firm to develop the necessary expertise to provide SETA Services in that time.

#### **VIII. EFFECTS OF THE ACQUISITION**

12. The effects of the Acquisition, if consummated, may be substantially to lessen competition or to tend to create a monopoly in the market for a BMD System in the United States in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, in the following ways, among others:

a. Respondent may gain access to competitively sensitive non-public information concerning the other BMD System manufacturers, so that actual competition between respondent and the other BMD System manufacturers will be reduced; and

b. Respondent may be in a position to disadvantage the other BMD System manufacturers, so that actual competition between respondent and the other BMD System manufacturers will be reduced.

#### **IX. VIOLATIONS CHARGED**

13. The Acquisition described in Paragraph 4, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

14. The Agreement and Plan of Merger described in Paragraph 4 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this Complaint to be signed by the Secretary and its official seal to be affixed, at Washington, D.C. this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 199\_\_.

By the Commission.

Donald S. Clark  
Secretary

SEAL

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

The Federal Trade Commission ("Commission") has accepted subject to final approval an agreement containing a proposed Consent Order from TRW Inc. ("TRW"), under which TRW will be required to divest all of the assets relating to the provision of systems engineering and technical assistance ("SETA") services in support of the Department of Defense's Ballistic Missile Defense Organization ("BMDO").

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

On November 20, 1997, TRW and BDM International Inc. ("BDM") entered into an Agreement and Plan of Merger whereby TRW will acquire all of the issued and outstanding common shares of BDM for approximately \$942 million. The proposed Complaint alleges that the acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, in the market for the research, development, manufacture and sale of a Ballistic Missile Defense System.

The United Missile Defense Corporation, a joint venture including TRW, is one of only two competitors for the Ballistic Missile Defense Organization's Lead Systems Integrator ("LSI") contract, and BDM is the Ballistic Missile Defense Organization's sole supplier of SETA services for the LSI program. In its capacity as SETA contractor for the LSI program, BDM is charged with the responsibility for, among other things, developing technical and other specifications for the LSI procurement, assessing bid and other proposals submitted by the two competitors, and evaluating the cost and quality performance of the winning bidder. If the proposed acquisition takes place, TRW, one of the two LSI competitors, would become the LSI SETA contractor as well.

The proposed acquisition of BDM by TRW raises antitrust concerns in two areas. First, to perform the function of SETA contractor for the LSI program, it is necessary for BDM to obtain a great deal of highly competitively sensitive information from the two LSI competitors. If TRW acquires BDM, and thus becomes the SETA contractor, TRW will have access to this information from its only LSI program competitor. Access to this information may enable TRW to raise prices for the LSI contract by bidding less aggressively than it otherwise would. Second, if TRW assumes the role of LSI SETA contractor, it may be able to

anticompetitively favor itself and disfavor its competitor in a variety of ways, such as setting unfair procurement specifications or submitting unfair performance evaluations.

The proposed Consent Order requires TRW to divest BDM's SETA services contract with the BMDO, including its SETA responsibilities for the LSI program, and all of BDM's assets associated with the performance of that contract, within one hundred and twenty (120) days from the date TRW consummates its proposed acquisition of BDM. The proposed Consent Order states that this divestiture shall be to an acquirer approved by the Commission and the Department of Defense. If TRW fails to divest the assets within one hundred and twenty (120) days from the date it consummates the proposed acquisition of BDM, a trustee may be appointed to accomplish the divestiture. An Agreement to Hold Separate signed by TRW provides that until BDM's SETA services contract is divested, BDM's SETA services business will be operated independently of TRW. The proposed Consent Order also requires TRW to provide technical assistance to the acquirer for a period of one (1) year, at the request of either the acquirer or the Ballistic Missile Defense Organization.

The Order also requires TRW to provide the Commission a report of compliance with the divestiture provisions of the Order within thirty (30) days following the date the Order becomes final, and every thirty (30) days thereafter until TRW has completed the required divestiture.

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