IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CAE INC.,	:	
	:	
Plaintiff,	:	
	:	
v.	:	C.A. No. 15-924-LPS
	:	
GULFSTREAM AEROSPACE CORPORATION and FLIGHTSAFETY INTERNATIONAL, INC.,	:	**REDACTED PUBLIC VERSION**
	:	
Defendants.	:	

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MEMORANDUM OPINION

July 28, 2017
Wilmington, Delaware

STARK, U.S. District Judge:

Plaintiff CAE Inc. ("CAE" or "Plaintiff") filed suit against Defendants Gulfstream Aerospace Corporation ("Gulfstream") and FlightSafety International, Inc. ("FSI" and, with Gulfstream, "Defendants") on October 13, 2015. (D.I. 1) On January 7, 2016, CAE filed an amended complaint ("Complaint"), alleging conspiracy in restraint of trade in violation of § 1 of the Sherman Act, tortious interference with CAE's prospective business relations, and civil conspiracy. (D.I. 4) On February 29, 2016, Gulfstream and FSI each filed a motion to dismiss the Complaint for failure to state a claim. (D.I. 12, D.I. 15) After hearing oral argument (D.I. 29), the Court granted Defendants' motions to dismiss, but also granted CAE's request for leave to file a Second Amended Complaint (D.I. 35). (*See* D.I. 30)

Pending before the Court is Defendants' motion to dismiss CAE's Second Amended Complaint. (D.I. 39) The Court heard argument on Defendants' motion on February 3, 2017. (*See* D.I. 53 ("Tr.")) For the reasons stated below, the Court will grant in part and deny in part Defendants' motion to dismiss.

I. BACKGROUND[1]

CAE is a Canadian corporation and one of the world's leading suppliers of civil and military flight simulators. (*See* D.I. 35 ¶ 17) CAE has provided simulators and training services for almost every modern airliner and for many business jets and helicopters. (*See id.* ¶¶ 17-20)

FSI is a New York corporation that competes with CAE. (*See id.* ¶ 22) Like CAE, FSI designs and manufactures flight simulators and offers training services for many types of aircraft.

[1]This recitation is based, as it must be at this stage, on taking as true all well-pleaded factual allegations in the Second Amended Complaint.

(*See id.*) CAE and FSI are the leading developers and providers of flight simulators and training services in the world. (*See id.* ¶ 38) Together, CAE and FSI provide nearly 90% of all business flight simulators and nearly 90% of the training services for those simulators. (*See id.*)

Gulfstream is a Georgia corporation that manufactures and sells business aircraft. (*See id.* ¶ 24) Gulfstream is "one of the roughly half-dozen [manufacturers] in the world that design[s] and manufacture[s] the overwhelming majority of all business aircraft." (*Id.* ¶ 26) Gulfstream does not design or manufacture flight simulators, nor does it offer training services for those who purchase its planes. (*See id.*; *see also id.* ¶ 40)

In order to produce a flight simulator, one must have "access to, among other things, a complete set of flight test data . . . reporting the aircraft's performance under various conditions . . . as well as the software and hardware components . . . that mimic the instrumentation and controls used by pilots in the cockpit to operate the aircraft." (*Id.* ¶ 32) (internal citation omitted) Collectively, the set of hardware, software, and data needed to build a flight simulator are referred to as "data, parts, & equipment" ("DP&E"). (*Id.* ¶ 4) Because each flight simulator relies on specialized DP&E, simulators designed for one model of aircraft "generally cannot be used to train pilots for another model of aircraft." (*Id.* ¶ 33)

When a new airplane model is announced, companies – usually just CAE and FSI – typically bid for the opportunity to be the manufacturer's "authorized" training provider. (*Id.* ¶ 41) (internal quotation marks omitted) The company that is selected as the authorized provider works with the manufacturer to develop the simulator that will accompany the plane at the time of its launch. (*See id.* ¶¶ 42-43) Companies that are not selected as the authorized training provider may obtain the necessary DP&E at a later time either from the original manufacturer or

from a third party. (*See id.* ¶ 44) "[T]he path to developing flight simulators and [training] programs without data from [a manufacturer] is substantially more difficult, time-consuming, and expensive." (*Id.* ¶ 48)

The claims in this case relate to flight simulators for the Gulfstream G650 ("G650"), Gulfstream's largest, fastest, and most expensive business jet. (*See id.* ¶ 27) The G650 was announced on March 13, 2008. (*See id.*) On October 21, 2009, FSI announced that it had been selected as the authorized training provider for the G650. (*See id.* ¶ 51) In late 2011, CAE attempted to license DP&E for G650 from Gulfstream, but Gulfstream refused to provide the DP&E. (*See id.* ¶ 56) A few years later, on April 23, 2013, CAE renewed its inquiry regarding a license to the DP&E for the G650. (*See id.* ¶ 59) On June 21, 2013, Gulfstream indicated that it had an agreement with FSI that prohibited Gulfstream from supplying DP&E or any other material support to anyone other than FSI for use in a G650 flight simulator. (*See id.* ¶ 60) Gulfstream also indicated that it would "do what it had to do" to "actively discourage" CAE from building a G650 flight simulator, including blocking sales from third-party suppliers. (*Id.*) (internal quotation marks omitted)

Despite these statements, CAE attempted to obtain some of the required DP&E from Honeywell International, Inc. ("Honeywell"). (*See id.* ¶ 62) In particular, CAE attempted to obtain Honeywell's proprietary Primus Epic avionics system – "the avionics system used in the G650." (*Id.*) From 2011 through 2014, "Honeywell provided CAE with up-to-date lists of . . . proprietary Honeywell software and data underlying the Primus Epic avionics system installed on the Gulfstream G650." (*Id.* ¶ 75) In early 2014, Honeywell also provided CAE with "price quotes for the Primus Epic avionics system and related licenses for two G650 flight simulators."

(*Id.*) Further, between March and December of 2014, Honeywell signed agreements allowing CAE to use its data and software in CAE's G650 flight simulator. (*See id.* ¶ 78) In providing CAE with data and software, "Honeywell carefully distinguished between its own proprietary software and data" and software and data that "were subject to restrictions imposed by other parties, including Gulfstream." (*Id.* ¶ 75) "Honeywell never agreed to provide, nor did it ever provide, to CAE those restricted data and databases." (*Id.* ¶ 77) CAE used Honeywell's proprietary data to produce its first flight simulator for the G650. (*See id.* ¶ 81)

In late 2014, CAE issued a press release indicating that it would deploy its G650 flight simulator in early 2016. (*See id.* ¶ 82) Shortly thereafter, Gulfstream contacted CAE in order to "challenge[] CAE's ability to lawfully deploy" its G650 flight simulator and "further claimed that it had agreements with certain independent suppliers that barred them from supplying any DP&E to third parties, including CAE, for use in a G650 simulator." (*Id.* ¶¶ 82-83)

In January 2015, Gulfstream "directed Honeywell . . . to disclose to Gulfstream a full and complete list . . . of all items provided to CAE . . . related to a G650 simulator." (*Id.* ¶ 87) (internal quotation marks omitted) Honeywell, in turn, "confirmed to CAE that Gulfstream . . . had demanded that Honeywell disclose the software, data, and equipment it had licensed or sold (or agreed to license or sell) to CAE for use in a G650 simulator" and "asked CAE to sign an agreement consenting to the requested disclosure." (*Id.* ¶¶ 88-89) A few weeks later, on March 3, 2015, Honeywell cancelled all of CAE's pending purchase orders related to the G650 and indicated that it would not accept any additional purchase orders. (*See id.* ¶ 90) Honeywell then informed CAE that it had entered into "a new agreement with Gulfstream that required Honeywell to obtain Gulfstream's consent before selling or licensing any of Honeywell's DP&E

for use in a G650 simulator." (*Id.* ¶ 91) (internal quotation marks omitted) Thereafter, Gulfstream has uniformly withheld consent. (*See id.* ¶ 92)

CAE alleges that it cannot complete its second G650 flight simulator without Honeywell's DP&E. According to CAE, Defendants intend to delay CAE from developing its G650 simulators so that FSI can charge supracompetitive prices for G650 training services. (*See id.* ¶¶ 98-99) (explaining that CAE's exclusion has allowed FSI to increase cost of training services by 20-30%) CAE further alleges that FSI will split its additional profits with Gulfstream. (*See id.* ¶ 5)

Specifically, CAE's Second Amended Complaint alleges the following claims: conspiracy in restraint of trade under Section 1 of the Sherman Act, 15 U.S.C. § 1 (Count 1); tortious interference with CAE's prospective business relations with suppliers under Delaware and/or Georgia law (Count 2); and civil conspiracy under Delaware and/or Georgia law (Count 3). (*See id.* ¶¶ 117, 125, 131)

Defendants filed the pending motion to dismiss on October 21, 2016. (D.I. 39) The parties initially completed briefing on Defendants' motion to dismiss on November 17, 2016 (D.I. 40, 43, 46), and the Court heard oral argument on February 3, 2017 ("Tr."). Thereafter, on March 23, 2017, CAE submitted additional letter briefing regarding supplemental authority pertaining to its claim under Section 1 of the Sherman Act. (D.I. 55) Defendants responded to CAE's letter briefing on March 28, 2017. (D.I. 56)

II. LEGAL STANDARDS

Evaluating a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) requires the Court to accept as true all material allegations of the complaint. *See Spruill v. Gillis*, 372

F.3d 218, 223 (3d Cir. 2004). "The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1420 (3d Cir. 1997) (internal quotation marks omitted). Thus, the Court may grant such a motion to dismiss only if, after "accepting all well-pleaded allegations in the complaint as true, and viewing them in the light most favorable to plaintiff, plaintiff is not entitled to relief." *Maio v. Aetna, Inc.*, 221 F.3d 472, 481–82 (3d Cir. 2000) (internal quotation marks omitted).

However, "[t]o survive a motion to dismiss, a civil plaintiff must allege facts that "raise a right to relief above the speculative level on the assumption that the allegations in the complaint are true (even if doubtful in fact)." *Victaulic Co. v. Tieman*, 499 F.3d 227, 234 (3d Cir. 2007) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). At bottom, "[t]he complaint must state enough facts to raise a reasonable expectation that discovery will reveal evidence of [each] necessary element" of a plaintiff's claim. *Wilkerson v. New Media Tech. Charter Sch. Inc.*, 522 F.3d 315, 321 (3d Cir. 2008) (internal quotation marks omitted).

The Court is not obligated to accept as true "bald assertions," *Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3d Cir. 1997) (internal quotation marks omitted), "unsupported conclusions and unwarranted inferences," *Schuylkill Energy Res., Inc. v. Pennsylvania Power & Light Co.*, 113 F.3d 405, 417 (3d Cir. 1997), or allegations that are "self-evidently false," *Nami v. Fauver*, 82 F.3d 63, 69 (3d Cir. 1996).

III. DISCUSSION

In Defendants' view, the entirety of CAE's Second Amended Complaint should be dismissed for failure to state a claim upon which relief may be granted. (*See* D.I. 39) The Court addresses each count of CAE's Second Amended Complaint below.

A. Sherman Act Antitrust Claim

Count 1 of CAE's Second Amended Complaint alleges that Defendants violated § 1 of the Sherman Act. Specifically, CAE alleges that "Defendants have entered into a contract . . . with one another to deprive CAE of the critical DP&E that it needs to build and deploy competitive G650 flight simulators." (D.I. 35 ¶ 117) CAE further alleges that Gulfstream later entered into an agreement with Honeywell, requiring Honeywell to obtain Gulfstream's consent before selling or licensing any of Honeywell's DP&E for use in a G650 simulator. (*See id.* ¶ 91)

Section 1 of the Sherman Act, 15 U.S.C. § 1, prohibits "every contract . . . or conspiracy, in restraint of trade or commerce." In order to state a claim under § 1 of the Sherman Act, a plaintiff must allege "(1) an agreement; (2) imposing an unreasonable restraint of trade within a relevant product market; and (3) resulting in antitrust injury." *TruePosition, Inc. v. LM Ericsson Telephone Co.*, 899 F. Supp. 2d 356, 360 (E.D. Pa. 2012); *see also In re Ins. Brokerage Antitrust Litig.*, 618 F.3d 300, 315 (3d Cir. 2010).

In its earlier Memorandum Opinion dismissing CAE's Complaint, the Court concluded that CAE's Complaint adequately alleged the first two elements of a § 1 violation, but failed to allege that Gulfstream's agreements with FSI and Honeywell ("Gulfstream's agreements") resulted in antitrust injury. (*See* D.I. 30 at 6) In their motion to dismiss, Defendants argue that CAE's Second Amended Complaint also fails to allege antitrust injury with respect to both of

Gulfstream's agreements. (*See* D.I. 40 at 1-2) The Court addresses Defendants' arguments below.

1. Gulfstream's Agreement with FSI

CAE alleges that "Gulfstream and FSI entered into a ten-year no bid, exclusive dealing arrangement" that "bars Gulfstream . . . from licensing, selling, or providing any G650 DP&E . . . to a competing . . . provider . . . for use in building a G650 flight simulator or other G650 training devices . . . before December 2020." (D.I. 35 ¶ 5) CAE further alleges that Defendants' agreement is "in furtherance . . . of [Defendants'] common anticompetitive goal to actively discourage CAE from developing and deploying competing G650 flight simulators." (*Id.* ¶ 119) (internal quotation marks omitted) Finally, CAE alleges that Defendants' agreement "has injured competition . . . by depriving . . . customers of the benefits that a timely entry by a competing provider would produce." (*Id.* ¶ 122)

Defendants move to dismiss CAE's Second Amended Complaint on the ground that CAE's allegations do not demonstrate that Gulfstream's and FSI's exclusive arrangement had any anticompetitive effects. (*See* D.I. 40 at 1) Specifically, Defendants contend that "CAE's Sherman Act claim [is] subject to dismissal on the basis of extensive precedent that it is not an antitrust violation for one manufacturer to appoint a single downstream entity as its exclusive distributor or exclusive provider of ancillary services." (*Id.* at 2)

In order to establish antitrust injury, a plaintiff must show that: (1) it suffered an "injury of the type the antitrust laws were intended to prevent" and (2) the injury "flows from that which makes the defendant's acts unlawful." *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 489 (1977). Exclusivity agreements usually do not give rise to an antitrust violation "unless

the . . . agreement is intended to or actually does harm competition in the relevant market." *Rutman Wine Co. v. E&J Gallo Winery*, 829 F.2d 729, 735 (9th Cir. 1987); *see also E&L Consulting, Ltd. v. Doman Indus., Ltd.*, 472 F.3d 23, 30 (2d Cir. 2006) (noting that exclusivity agreements are generally permissible and "presumptively legal") (internal quotation marks omitted). To allege that an exclusivity agreement resulted in antitrust injury, the plaintiff "must show that the [defendant's] refusal to deal was intended to or did bring about some restraint of trade beyond the loss of business suffered by the [plaintiff] or the market's loss of a . . . competitor."[2] *Rutman Wine Co.*, 829 F.2d at 735 (internal quotation marks omitted).

The allegations in CAE's Second Amended Complaint do not adequately plead antitrust injury because CAE has not shown that Gulfstream and FSI intended to harm competition by entering into their exclusivity agreement. Although CAE claims that Defendants' exclusivity agreement had the "anticompetitive goal [of] actively discourag[ing] CAE from developing and deploying competing G650 flight simulators" (D.I. 35 ¶ 119) (internal quotation marks omitted), CAE's injuries as a competitor are insufficient to establish a § 1 violation. *See Rutman Wine Co.*, 829 F.2d at 734 ("Indispensable to any [§ 1] claim is an allegation that ***competition*** has been injured rather than merely ***competitors***.") (first emphasis in original; second emphasis added). Similarly, even though Defendants' agreement allegedly "injured competition . . . by depriving . . . customers of the benefits that a timely entry by a competing provider would produce" (D.I. 35 ¶ 122), such an allegation does not establish antitrust injury or prove that Defendants' actions

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[2]Throughout this Memorandum Opinion, although the Court sometimes notes what would be necessary for Plaintiffs to "establish," "prove," "demonstrate," or the like in order to ***prevail*** on the merits of their claims, the Court at this stage is only assessing the sufficiency of Plaintiffs' ***pleading*** of these elements.

violated the antitrust laws. *See Great Escape, Inc. v. Union City Body Co.*, 791 F.2d 532, 540 (7th Cir. 1986) ("[P]laintiff's argument that [Plaintiff] will be forced out of business and that this development will have an anticompetitive effect through loss of an option for consumers is similarly without merit. . . . [T]here is a sense in which eliminating even a single competitor reduces competition. But it is not the sense that is relevant in deciding whether the antitrust laws have been violated.") (internal quotation marks and citation omitted). CAE's Second Amended Complaint, therefore, "states no set of facts [that], if true, would constitute an antitrust offense, notwithstanding its conclusory language regarding the elimination of competition." *Dunn & Mavis, Inc. v. Nu-Car Driveaway, Inc.*, 691 F.2d 241, 243 (6th Cir. 1982). As such, CAE has failed to adequately allege that Gulfstream's agreement with FSI resulted in antitrust injury.

CAE opposes this conclusion by relying on *Geneva Pharmaceuticals Technology Corp. v. Barr Laboratories*, 386 F.3d 485 (2d Cir. 2004). (*See* D.I. 43 at 4) But the conduct at issue in *Geneva* is not analogous to the conduct at issue in this case. Unlike the defendants in *Geneva*, Gulfstream and FSI were not "jointly involved in predatory practices designed to extend their respective temporary monopolies by deterring entry by competitors." *E&L Consulting*, 472 F.3d at 30 (discussing and distinguishing *Geneva* from other exclusive dealing cases). Although CAE does allege that Gulfstream interfered in CAE's relationship with Honeywell, CAE does not allege that Gulfstream acted in concert with FSI. (*See* D.I. 35 ¶ 7) Nor does CAE adequately allege that Gulfstream and FSI had a "conscious commitment to a common scheme," for example that FSI "demanded the [exclusivity] agreement" in order to interfere with CAE's business relationship with Honeywell or other third-party vendors. *Geneva*, 386 F.3d at 507-08 (internal quotation marks omitted). Instead, CAE's allegations suggest that Gulfstream acted alone in

intervening in CAE's business relationship with Honeywell.[3] (*See* D.I. 35 ¶¶ 7, 91, 118b) Thus, CAE's reliance on *Geneva* is unavailing.

Accordingly, the Court will grant Defendants' motion to dismiss CAE's Sherman Act claim with respect to Gulfstream's agreement with FSI.

2. Gulfstream's Agreement with Honeywell

CAE next alleges that Gulfstream and Honeywell entered into an "agreement . . . that required Honeywell to obtain Gulfstream's consent before selling or licensing any of Honeywell's proprietary DP&E for use in a G650 simulator or [training] program." (D.I. 35 ¶ 91) According to CAE, Honeywell's proprietary DP&E excluded Gulfstream's own intellectual property and confidential information, and Honeywell's licensing agreements [redacted] (*Id.* ¶ 79) Despite this, Gulfstream allegedly withheld its consent whenever Honeywell asked Gulfstream for permission to fulfill CAE's purchase orders. (*See id.* ¶ 95)

CAE alleges that Gulfstream's agreement with Honeywell – including Gulfstream's failure to consent to the fulfillment of CAE's purchase orders – "substantially delayed . . . the launch of CAE's G650 flight simulators and [training] programs . . . , thereby foreclosing all competition in the market for G650 [training services]." (*Id.* ¶ 98) CAE further alleges that, as a result of Gulfstream's agreement, customers "have . . . only one source . . . from which to

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[3]CAE does allege that Gulfstream's interference was a "part . . . of" or "in furtherance of its conspiracy" with FSI. (D.I. 35 ¶¶ 7, 91) Such allegations, however, are conclusory at best because CAE does not allege facts that Gulfstream acted at the behest of or in concert with FSI. *See Geneva*, 386 F.3d at 507 (requiring "conscious, concerted action" to find defendants violated § 1).

purchase G650 [training] services" and must pay supracompetitive prices. (*Id.*) Defendants move to dismiss CAE's allegations, arguing that "there is no basis under which antitrust liability can be imposed for Gulfstream's interactions with Honeywell." (D.I. 40 at 3)

In evaluating whether an agreement gives rise to antitrust injury, "each . . . agreement must be treated as a separate [alleged] conspiracy, and only acts taken in furtherance of that alleged conspiracy [should be] considered." *Dickson v. Microsoft Corp.*, 309 F.3d 193, 211 (4th Cir. 2002). Hence, for CAE to state a plausible § 1 claim, CAE must allege facts that, "if proven true, would demonstrate that [Gulfstream's] individual agreement[] with [Honeywell was] likely to result in an anticompetitive effect." *Id.*; *see also Mahone v. Addicks Util. Dist.*, 836 F.2d 921, 939 (5th Cir. 1988) (noting that in antitrust claims brought by private plaintiffs, "[the] plaintiff must allege, either directly or inferentially, that [it] has suffered an anticompetitive injury as result of the defendants' antitrust violation").

Here, CAE's Second Amended Complaint plausibly alleges that Gulfstream's agreement with Honeywell had anticompetitive effects and, thus, resulted in antitrust injury. For example, the Second Amended Complaint alleges that Gulfstream's conduct, including its agreement with Honeywell, "foreclos[ed] all competition in the market for G650 [training] services." (D.I. 35 ¶ 98) This foreclosure, according to CAE, allegedly reduced options for G650 customers and "compelled" customers to pay "supracompetitive . . . prices," "exceeding by 20-30 percent the prices for [training] services for comparable business aircraft." (*Id.* ¶¶ 99, 101) Since "[h]igher prices . . . and lower output are exactly the types of harm that the antitrust laws are meant to prevent," CAE's Second Amended Complaint adequately alleges that Gulfstream's agreement

with Honeywell resulted in antitrust injury.[4] *In re Pool Prods. Distribution Mkt. Antitrust Litig.*, 940 F. Supp. 2d 367, 400 (E.D. La. 2013).

Accordingly, the Court will deny Defendants' motion to dismiss CAE's Sherman Act claim with respect to Gulfstream's agreement with Honeywell.

B. Tortious Interference Claim

Count 2 of CAE's Second Amended Complaint alleges that Gulfstream tortiously interfered with CAE's prospective business relations by "intentionally and improperly interfer[ing] with CAE's licensing and purchase of DP&E owned by independent third-party aerospace vendors, including Honeywell." (D.I. 35 ¶ 125) CAE further alleges that "[n]one of the DP&E CAE sought . . . to procure from Honeywell – specifically, Honeywell's Primus Epic avionics system – contain[ed] any proprietary Gulfstream material or Gulfstream intellectual property." (*Id.*)

To state a claim for tortious interference with prospective business relations under Georgia law,[5] a plaintiff must allege the following:

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[4]In its earlier Memorandum Opinion dismissing CAE's Complaint, the Court concluded that CAE failed to allege that Gulfstream's agreement with Honeywell resulted in antitrust injury. (*See* D.I. 30 at 13) The Court further concluded that "[t]here is no plausible allegation of antitrust injury" if "Gulfstream entered into agreements with . . . Honeywell . . . to protect Gulfstream's own data and intellectual property." (*Id.*) The Second Amended Complaint, however, alleges that Gulfstream withheld its consent for ***any*** purchase order, even those in which Gulfstream had no "proprietary, intellectual property, or economic interest." (D.I. 35 ¶ 95; *see also* D.I. 40 Ex. 1 at 35) Taking this allegation in the light most favorable to CAE, such an allegation belies that assumption that "Gulfstream entered into agreements with . . . Honeywell . . . to protect Gulfstream's own data and intellectual property." (D.I. 30 at 13) As such, the Second Amended Complaint contains sufficient allegations to plead antitrust injury.

[5]CAE brings its tortious interference claim under "Delaware and Georgia common law." (D.I. 35 ¶ 125) In its earlier Memorandum Opinion dismissing CAE's Complaint, the Court concluded that Georgia law, not Delaware law, governs CAE's tortious interference claim. (*See*

> (1) improper action or wrongful conduct by the defendant without privilege; (2) the defendant acted purposely and with malice with the intent to injure; (3) the defendant induced a breach of contractual obligations or caused a party or third parties to discontinue or fail to enter into an anticipated business relationship with the plaintiff; and (4) the defendant's tortious conduct proximately caused damage to the plaintiff

Fortson v. Brown, 690 S.E.2d 239, 241 (Ga. Ct. App. 2010) (internal quotation marks omitted).

Defendants move to dismiss CAE's tortious interference claim on the basis of the first element, arguing that Gulfstream's actions were privileged and did not amount to improper action or wrongful conduct. (*See* D.I. 40 at 4-6 & n.6) The Court addresses both arguments below.

1. Acting Without Privilege (Stranger Doctrine)

As part of its tortious interference claim, CAE must allege that Gulfstream acted without privilege. A defendant acts without privilege if it is a "stranger to the contract" with which it allegedly interferes. *Fortson*, 690 S.E.2d at 241 (internal quotation marks omitted).

A defendant is not a stranger to a contract if it has a "bona fide economic interest in the contract or relationship with one of the parties to the contract." *Id.* (internal quotation marks omitted). Additionally, as a matter of law, a defendant is not a stranger to the contract if:

> (1) the defendant is an essential entity to the purported injured relations; (2) the allegedly injured relations are inextricably a part of or dependent upon the defendant's contractual or business relations; (3) the defendant would benefit economically from the alleged injured relations; or (4) both the defendant and the plaintiff are parties to a comprehensive interwoven set of contracts or

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D.I. 30 at 14-15) Because the parties do not raise a choice-of-law dispute in their briefing on the pending motion to dismiss (*compare, e.g.*, D.I. 16 at 6 *with* D.I. 40 at 4-6), this Memorandum Opinion incorporates by reference the choice-of-law analysis from the Court's earlier Memorandum Opinion (*see* D.I. 30 at 14-15).

relations.

Britt Paulk Ins. Agency, Inc. v. Vandroff Ins. Agency, Inc., 952 F. Supp. 1575, 1584 (N.D. Ga. 1996).

Defendants argue that CAE's tortious interference claim should be dismissed because Gulfstream had a "bona fide economic interest in the DP&E sold by Honeywell" and, hence, was not a stranger to the contract between Honeywell and CAE. (D.I. 40 at 6) In support of their argument, Defendants contend that "Gulfstream collaborated with Honeywell on the development of the G650 and that CAE's relationship with Honeywell . . . was dependent upon Gulfstream's relationship with Honeywell." (*Id.* (internal quotation marks omitted); *see also* Tr. at 19 ("[Gulfstream and Honeywell] jointly developed the product.")) Defendants further contend that "the information Gulfstream provided to Honeywell . . . contained confidential information and [was] 'subject to restrictions imposed by . . . Gulfstream.'" (D.I. 40 at 7) (quoting D.I. 35 ¶ 75)

CAE opposes Defendants contentions, arguing that the Second Amended Complaint "allows no reasonable inference . . . that . . . Gulfstream's intellectual property or proprietary information was embedded in Honeywell's system as sold to CAE." (D.I. 43 at 8) CAE further argues that the Second Amended Complaint neither states nor "support[s] an inference . . . that Gulfstream collaborated with Honeywell to develop the G650." (*Id.*) (internal quotation marks omitted) Instead, CAE argues, the Second Amended Complaint alleges that "most . . . DP&E are manufactured by independent third-party aerospace vendors – not by the aircraft OEM – and these independent third-party vendors' DP&E are used on multiple OEMs' aircraft." (D.I. 35 ¶ 33) Finally, CAE points out that the Second Amended Complaint alleges that "Gulfstream has

no 'legitimate commercial or economic interest in [the Honeywell avionics] system.'" (D.I. 43 at 8) (quoting D.I. 35 ¶ 112)

The Court agrees with Defendants. When taken as true and in the light most favorable to CAE, the allegations in the Second Amended Complaint demonstrate that Gulfstream had a bona fide economic interest in the contract between CAE and Honeywell. [redacted] As Defendants state, the only plausible inference from the Second Amended Complaint "is that the avionics system Honeywell licensed to CAE was purpose-built for the G650 . . . and was subject to restrictions imposed by Gulfstream." (D.I. 46 at 3 n.5) These realities render Gulfstream a non-stranger to the CAE-Honeywell relationship. (*See id.* at 4) ("Because the Honeywell product was designed solely for the G650 as part of a Gulfstream-Honeywell contractual relationships, Gulfstream, Honeywell, and CAE are parties to an interwoven set of contracts relating to the G650 avionics. That alone is sufficient to confer 'non-stranger' status to Gulfstream, regardless of whether particular data or software is technically proprietary to Gulfstream.") Moreover, at oral argument, CAE essentially admitted that Honeywell's DP&E for the G650 is a unique product that works only in the Gulfstream G650. (*See* Tr. at 44) (defense counsel making this observation) Thus, based on the allegations in the Second Amended Complaint, Gulfstream had a bona fide relationship with Honeywell and a bona fide economic interest in the DP&E sold by Honeywell. Gulfstream, therefore, was not a stranger to the contract between CAE and Honeywell and acted with privilege in interfering in

CAE's relationship with Honeywell.[6]

Accordingly, the Court will grant Defendants' motion to dismiss Count 2 of CAE's Second Amended Complaint.

2. Improper Action or Wrongful Conduct

Given the inadequacy of CAE's pleading as already described above in connection with the stranger doctrine, it is unnecessary for the Court to assess the other purported deficiencies Defendants identify in seeking to dismiss Count 2 of the Second Amended Complaint.

C. Civil Conspiracy

Finally, in Count 3 of the Second Amended Complaint, CAE alleges that Gulfstream and FSI were part of a civil conspiracy. (*See, e.g.*, D.I. 35 ¶ 136) ("Gulfstream, pursuant to its conspiracy with FSI, intentionally, wrongfully, and maliciously coerced Honeywell to agree not to provide its proprietary DP&E to anyone, including CAE.") Under Georgia law, a conspiracy "is a combination between two or more persons . . . to do some act which is a tort. . . . The gist of the action . . . is not the conspiracy alleged, but the tort committed against the plaintiff and the

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[6]There may appear to be tension between the Court's decision not to dismiss the portion of the antitrust claim based on the Gulfstream-Honeywell agreement – which was predicated, in part, on the Second Amended Complaint's adequate, plausible allegation that CAE was seeking to purchase from Honeywell only Honeywell information and property, with any Gulfstream protected information and property effectively "redacted" – and its decision to dismiss the tortious interference claim – based on the Second Amended Complaint's failure to adequately allege that Gulfstream is a stranger to the CAE-Honeywell relationship. But both decisions follow from careful application of the elements of the claims being considered to the well-pled factual allegations in the Second Amended Complaint. Moreover, it seems consistent with Georgia law that a party, such as Gulfstream, may not be a stranger to a transaction between two other parties (e.g., CAE and Honeywell) even if none of Gulfstream's intellectual property was involved in the CAE-Honeywell transaction. *See generally Britt Paulk Ins. Agency*, 952 F. Supp. at 1584 (noting that defendant may not be "a stranger to the contract" if "both the defendant and the plaintiff are parties to a comprehensive interwoven set of contracts or relations").

resulting damage." *Savannah Coll. of Art & Design, Inc. v. Sch. of Visual Arts of Savannah Inc.*, 464 S.E.2d 895, 896 (Ga. Ct. App. 1995) (internal quotation marks omitted).

CAE has failed to adequately state a claim for civil conspiracy. Because CAE has failed to allege antitrust injury with respect to the Gulfstream-FSI agreement and has failed to state a claim against Gulfstream for tortious interference, it follows that CAE has failed to state a civil conspiracy claim based on those underlying allegations. That is, since no underlying tort has been adequately pled, no civil conspiracy claim can be based on these non-tortious actions. While CAE has adequately stated an antitrust claim against Gulfstream, and "[i]t is well settled that an antitrust action is a tort action" under Georgia law, *Wainwright v. Kraftco Corp.*, 58 F.R.D. 9, 11 (N.D. Ga. 1973), even this remaining antitrust claim is not a sufficient predicate for CAE's civil conspiracy claim because the Second Amended Complaint does not adequately allege that Gulfstream "combined" "conspired" or "agreed with" any other party in connection with the Gulfstream-Honeywell agreement. The conspiracy claim only alleges that Gulfstream conspired with FSI, but the Second Amended Complaint is devoid of well-pled factual allegations that FSI was part of the Gulfstream-Honeywell agreement. Nor does the Second Amended Complaint allege that Gulfstream conspired with Honeywell.

Accordingly, the Court will grant Defendants' motion to dismiss Count 3 of the Second Amended Complaint.

IV. CONCLUSION

For the reasons stated above, the Court will grant in part and deny in part Defendants' motions to dismiss for failure to state a claim. An appropriate Order follows.