



DoD DIRECTIVE 5000.62

REVIEW OF MERGERS, ACQUISITIONS, JOINT VENTURES, INVESTMENTS, AND STRATEGIC ALLIANCES OF MAJOR DEFENSE SUPPLIERS ON NATIONAL SECURITY AND PUBLIC INTEREST

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Approved by:	Robert O. Work, Deputy Secretary of Defense

Purpose: This directive establishes policy and assigns responsibilities as a result of an actual or proposed merger, acquisition, joint venture, investment, or strategic alliance involving a major defense supplier for:

- Assessing the potential impact on national security and public interest.
- Access to and retention of global technological leadership.
- The health and stewardship of the industrial and technological base.
- Ensuring a full and fair consideration of competition and innovation relating to defense programs.

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SECTION 1: GENERAL ISSUANCE INFORMATION

1.1. APPLICABILITY. This issuance:

a. Applies to the OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the DoD (referred to collectively in this issuance as the “DoD Components”).

b. Applies only to covered transactions involving U.S. entities or persons; it does not apply to transactions involving foreign entities or persons.

1.2. POLICY. When considering actual or proposed mergers, acquisitions, joint ventures, investments or strategic alliances with major defense suppliers, relevant law and facts will be assessed for potential implications of the covered transactions. The assessment must:

a. Consider:

(1) Any impact of the covered transaction on national security, the industrial and technological base, innovation, or any other potential issue including those relating to the public’s interest.

(2) The potential effect on competition for DoD contracts and subcontracts, including future programs and technologies of interest to the DoD.

(3) The potential restriction or impaired access of a critical supplier to a competitor or a potential restriction or impaired market access by a supplier.

(4) Any potential benefits for the DoD that can be expected to result from the covered transaction, including any anticipated cost savings.

(5) The potential risks associated with the covered transaction on the financial stability and continued stewardship of critical military capabilities, including any anticipated increased costs.

(6) Any other factor resulting from the covered transaction that may adversely affect the satisfactory completion of current or future DoD programs or operations.

(7) Any other aspect of the covered transaction that might impact DoD access to affordable or innovative sources to include impediments to obtain essential data rights.

b. Be conducted in a comprehensive and objective manner. The assessment must be performed:

(1) In a manner as timely and efficiently as possible, given the demand for accuracy, completeness, and fairness.

(2) If applicable, in cooperation with the responsible antitrust agency under Section 18a, Title 15, United States Code, by:

(a) Communicating any significant implications for the Department that may result from assessment of the covered transaction.

(b) If requested by the responsible antitrust agency, recommending actions the government should take to prevent or mitigate negative impacts resulting from assessment of a covered transaction.

(c) Participating in any discussions, interviews, and meetings conducted by the antitrust agency's review of a particular covered transaction.

(d) Providing any other additional support requested by the responsible antitrust agency as part of such agency's review of a particular covered transaction.

c. Be conducted under strict confidentiality with regard to proprietary information and in accordance with any confidentiality agreements between the Office of the General Counsel of the Department of Defense and the major defense suppliers or other interested parties.

SECTION 2: RESPONSIBILITIES

2.1. GENERAL COUNSEL FOR THE DEPARTMENT OF DEFENSE (GC DoD). The GC DoD:

- a. Performs legal analysis and provides legal advice regarding the covered transaction.
- b. When necessary, ensures that confidentiality agreements are reviewed and executed on behalf of the DoD.
- c. Requests information, as needed, from third parties involved in the covered transaction and to support the DoD assessment.
- d. Is the primary DoD point of contact for the responsible antitrust agency for any covered transaction under review.
- e. Communicates the Department's position and recommendations on a covered transaction to the responsible antitrust agency.
- f. In coordination with the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)), may develop supporting guidance to implement this directive.

2.2. USD(AT&L). Under the authority, direction, and control of the Secretary of Defense and the Deputy Secretary of Defense, the USD(AT&L):

- a. Advises the Secretary of Defense and the Deputy Secretary of Defense of the impact of a covered transaction as needed, in consultation with the GC DoD.
- b. Determines whether a particular contractor is a major defense supplier on behalf of the Secretary and Deputy Secretary of Defense.
- c. If requested by the responsible antitrust agency, recommends actions to prevent or mitigate negative impacts resulting from a particular covered transaction.
- d. In coordination with the GC DoD, may develop supporting guidance to implement this directive.

2.3. DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR MANUFACTURING AND INDUSTRIAL BASE POLICY (DASD(MIBP)). Under the authority, direction, and control of the USD(AT&L) and in addition to the responsibilities in Paragraph 2.4., the DASD(MIBP):

- a. Determines if an actual or proposed merger, acquisition, joint venture, strategic alliance, or investment involving a major defense supplier is a covered transaction.

b. Determines the need to initiate and conduct the DoD assessment of a particular covered transaction and its potential impact on:

- (1) National security;
- (2) The industrial and technological base;
- (3) Competition and innovation; or
- (4) Any other potential issue including those relating to the public's interest.

c. Develops the recommended DoD position on a particular covered transaction for the USD(AT&L), in coordination with Deputy General Counsel for Acquisition and Logistics (DGC(A&L)).

d. Seeks input from the appropriate DoD customers, requirements generators, program offices, or other representatives where appropriate.

e. Coordinates the antitrust review or inquiry within the Department, including coordination of contacts between DoD personnel and the responsible antitrust agency, if applicable.

2.4. DASD(MIBP) AND DGC(A&L). Under the authority, direction, and control of the USD(AT&L) and GC DoD, respectively, the DASD(MIBP) and the DGC(A&L):

- a. Seek input, if needed, from DoD Component customers, subject matter experts, requirements generators, program offices, or other representatives.
- b. Receive comments from the parties involved in the covered transaction, competitors, or interested third parties regarding such transaction's impact.
- c. Seek input, if needed, from other federal agencies or external subject matter experts.
- d. Conduct interviews with DoD customers at the request of antitrust agencies, as appropriate.
- e. Jointly determine whether to provide consent and authority to DoD Components to disseminate information relating to DoD views, documents, or positions on the impact that a particular covered transaction has or will have on the interests of DoD or national security.

2.5. UNDER SECRETARY OF DEFENSE FOR INTELLIGENCE (USD(I)). In accordance with DoD Directive 5143.01 and DoD Instruction 5220.22, the USD(I) advises the USD(AT&L) on matters involving the National Industrial Security Program requirements if a party to a covered transaction has contracts requiring access to classified information.

2.6. DIRECTOR, DEFENSE SECURITY SERVICE . Under the authority, direction, and control of the USD(I), and in accordance with DoD Instruction 5220.22, the Director, Defense

Security Service, consults with the USD(I) and the USD(AT&L) on the impact of a covered transaction on facility clearances granted under the National Industrial Security Program.

2.7. SECRETARIES OF THE MILITARY DEPARTMENTS, DIRECTORS OF THE DEFENSE AGENCIES, AND DIRECTORS OF THE DOD FIELD ACTIVITIES WITH ACQUISITION RESPONSIBILITY. The Secretaries of the Military Departments, Directors of the Defense Agencies, and Directors of the DoD Field Activities with acquisition responsibility:

a. Participate in the review of a particular covered transaction upon request by the OSD to ensure that:

(1) Personnel within their respective DoD Component comply with this directive.

(2) All relevant information is provided to the OSD in an objective and timely manner from within their respective DoD Component.

(3) Personnel within their respective DoD Component do not disseminate information relating to DoD views, documents, or positions on the impact that a particular covered transaction has or will have on the DoD or national security to the antitrust agencies, the media, financial community, or any other parties without explicit consent and authority to do so from the Office of the Secretary of Defense in accordance with Paragraph 2.4.e.

(4) All personnel within their respective DoD Component comply with the confidentiality agreement when a DoD confidentiality agreement is in place in accordance with Paragraph 2.1.b.

b. May recommend to the GC DoD to initiate an assessment of a covered transaction in accordance with this directive.

GLOSSARY

G.1. ACRONYMS.

DASD(MIBP)	Deputy Assistant Secretary of Defense for Manufacturing & Industrial Base Policy
DGC(A&L)	Deputy General Counsel for Acquisition and Logistics
GC DoD	General Counsel of the Department of Defense
USD(AT&L)	Under Secretary of Defense for Acquisition, Technology and Logistics
USD(I)	Under Secretary of Defense for Intelligence

G.2. DEFINITIONS. Unless otherwise noted, these terms and their definitions are for the purpose of this issuance.

antitrust agencies. The Antitrust Division of the Department of Justice and the Federal Trade Commission.

assessment. The procedures by which the DoD position relative to a particular covered transaction is developed.

covered transaction. An actual or proposed merger, acquisition, joint venture, strategic alliance, or investment involving a major defense supplier.

major defense supplier. Any prime contractor or subcontractor that the Secretary of Defense, the Deputy Secretary of Defense, the USD(AT&L), or the DASD(MIBP) designates as a main source of supply, including any firm that supplies or could supply goods or services directly or indirectly to the DoD or any company with technology potentially significant to defense capabilities. The following classes of contractors are considered major defense suppliers without the need for specific designation:

Any current prime contractor of a major system as defined in Subsection 2302(5), Title 10, United States Code.

Any current prime contractor, under a contract awarded pursuant to Subsection 2304(c)(3), Title 10, United States Code, for reasons described in clause (A) of that subsection.

responsible antitrust agency. The antitrust agency responsible for reviewing the covered transaction.

REFERENCES

DoD Directive 5143.01, “Under Secretary of Defense for Intelligence (USD(I)),” October 24, 2014, as amended

DoD Instruction 5220.22, “National Industrial Security Program (NISP),” March 18, 2011

United States Code, Title 10

United States Code, Title 15, Section 18a