



Department of Defense DIRECTIVE

NUMBER 5000.62

October 21, 1996

GC,DOD

SUBJECT: Impact of Mergers or Acquisitions of Major DoD Suppliers on DoD Programs

References: (a) Deputy Secretary of Defense Memorandum, "Antitrust Aspects of Defense Industry Consolidation," May 10, 1995 (hereby canceled)
(b) Title 10, United States Code

1. PURPOSE

This Directive:

1.1. Supersedes reference (a).

1.2. Establishes policy and assigns responsibilities for assessing the potential impact on DoD programs that might result from a proposed merger or acquisition involving a major defense supplier.

2. APPLICABILITY AND SCOPE

This Directive applies:

2.1. To the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities.

2.2. Only to provide internal guidance to DoD officials, and does not establish an independent basis for any person or entity to assert a right, benefit, or privilege.

3. DEFINITIONS

3.1. Antitrust Agencies. The Antitrust Division of the Department of Justice and the Federal Trade Commission.

3.2. Major Defense Suppliers. Any prime contractor or subcontractor that the Secretary of Defense designates as a major defense supplier. The following classes of contractors are considered major defense suppliers without further designation:

3.2.1. Any current prime contractor of a major system as defined in subsection 2302(5) of 10 U.S.C. (reference (b));

3.2.2. Any current prime contractor, under a contract awarded pursuant to subsection 2304(c)(3) of reference (b), for reasons described in clause (A) of that subsection.

4. POLICY

It is DoD policy to:

4.1. Assess the potential implications for DoD programs resulting from a merger or acquisition involving a major defense supplier. The assessment shall consider the potential loss of competition for DoD contracts and subcontracts, estimated cost savings or cost increases for DoD programs that can be expected to result from the merger or acquisition, and any other factor resulting from the proposed merger or acquisition that may adversely affect the satisfactory completion of a DoD program.

4.2. Cooperate with the responsible antitrust agency in that agency's review of a proposed merger or acquisition. Significant implications for DoD programs that are relevant to the responsibilities of the antitrust agencies shall be communicated in the manner specified in this Directive to the antitrust agency responsible for reviewing the proposed merger or acquisition.

4.3. Ensure reviews are conducted in accordance with the enclosure.

5. RESPONSIBILITIES

5.1. The General Counsel of the Department of Defense shall:

5.1.1. Perform the legal analysis of the impact on the Department of Defense of a particular merger or acquisition and coordinate the legal aspects of the Department's position related to such merger or acquisition.

5.1.2. Coordinate contacts between DoD personnel and the government agency responsible for reviewing the antitrust aspects of the merger or acquisition.

5.2. The Under Secretary of Defense for Acquisition and Technology shall act on behalf of the Secretary of Defense under this Directive and may designate a "major defense supplier" on behalf of the Secretary of Defense.

5.3. The Under Secretary of Defense for Acquisition and Technology and the General Counsel of the Department of Defense together may issue DoD Instructions and Publications that implement this Directive.

5.4. The Deputy Under Secretary of Defense for Industrial Affairs and Installations, under the Under Secretary of Defense for Acquisition and Technology, shall conduct an impact analysis of a particular merger or acquisition on the Department of Defense and coordinate the antitrust review within the Department; and shall consult, as appropriate, with other Under Secretary of Defense for Acquisition and Technology (USD(A&T)) offices and Defense Agencies on the effects of mergers or acquisitions.

5.5. The Deputy Under Secretary of Defense for Industrial Affairs and Installations, under the Under Secretary of Defense for Acquisition and Technology, and the General Counsel of the Department of Defense, working in coordination with each other, shall identify any impact on national security and on defense industrial capabilities of a proposed merger or acquisition, and advise the Secretary and Deputy Secretary of Defense and the USD(A&T) of that impact.

5.6. The Secretaries of the Military Departments and the Directors of the Defense Agencies with acquisition responsibility, under OSD Principal Staff Assistants and those that report directly to the Secretary or Deputy Secretary, shall:

5.6.1. Ensure that personnel within their respective components comply with this Directive.

5.6.2. Ensure that personnel within their respective components are advised that, unless they have been delegated specific authority for this purpose, they are not authorized to communicate to the antitrust agencies, to the media, to the parties

involved, or to any other person, the DoD position on the impact that a particular merger or acquisition will have on national security.

6. EFFECTIVE DATE

This Directive is effective immediately.

A handwritten signature in black ink, appearing to read "John P. White", is written over a rectangular stamp area.

John P. White
Deputy Secretary of Defense

Enclosures - 1

1. Review Protocols

E1. ENCLOSURE 1
REVIEW PROTOCOLS

E1.1.1. Upon notice of a prospective merger involving a major defense supplier, either from the antitrust agencies, or directly from a defense supplier, the Deputy Under Secretary of Defense for Industrial Affairs and Installations (DUSD(IA&I)) and the General Counsel of the Department of Defense (GC, DoD) shall:

E1.1.1.1. Analyze the potential impact of the merger on DoD programs;

E1.1.1.2. Coordinate with the responsible antitrust agency; and

E1.1.1.3. Advise the Secretary and Deputy Secretary of Defense and the USD(A&T) of that potential impact.

E1.1.2. DoD personnel shall respond promptly to requests from the DUSD(IA&I) or the GC, DoD, for assistance in connection with the analysis of the impact of a proposed merger or acquisition on a DoD program for which they are responsible.

E1.1.3. When requested by the GC, DoD, or the DUSD(IA&I), DoD personnel shall provide to the responsible antitrust agency factual information, such as plans for DoD purchases and sources of supply for particular defense products, relevant to the review being conducted by the antitrust agency. All communications from DoD personnel in response to requests received directly from an antitrust agency shall be coordinated with the GC, DoD, and the DUSD(IA&I).

E1.1.4. The DUSD(IA&I) and the GC, DoD, or their designees, are the DoD officials designated to receive comments from the parties involved in the merger or acquisition or from any other entity that may have information on the impact of a proposed merger or acquisition on DoD programs. A party desiring to convey such information to other officers or employees of the Department of Defense shall be referred to the GC, DoD, or the DUSD(IA&I), or their designees.

E1.1.5. The Department of Defense's final position on the impact of a merger or acquisition on the Department of Defense and on the defense industrial capabilities shall be determined and communicated to the antitrust agencies and the media only by the Secretary of Defense, the Deputy Secretary of Defense, the USD(A&T), or the GC, DoD, or their designees. Communication of such a determination in connection with litigation shall be made only through the GC, DoD, or a designee of the GC, DoD.