

Congress of the United States

Washington, DC 20515

July 9, 2023

The Honorable Lloyd Austin
Secretary of Defense
U.S. Department of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

The Honorable William A. LaPlante
Under Secretary of Defense for Acquisition and Sustainment
U.S. Department of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Dear Secretary Austin and Under Secretary LaPlante:

We are writing regarding the proposed \$4.7 billion merger between L3Harris Technologies (L3Harris) and Aerojet Rocketdyne (Aerojet),¹ and the role the Department of Defense (DoD) plays in the merger and acquisition process. As previously communicated to the Federal Trade Commission (FTC) in January 2023,² this transaction would threaten competition and national security, increase prices, reduce innovation, and reduce product quality and create production delays for the defense industrial base. We urge the DoD to carefully review this deal and disclose any identified concerns to the FTC and the Department of Justice (DOJ), and – consistent with the need to protect national security and other proprietary information – to the public.

Department of Defense's Role

The Department of Defense plays an important role in reviewing proposed transactions that may affect the defense industry.³ Specifically, DoD's assessment of actual or proposed mergers includes evaluating the impact of various factors, collaborating with the FTC and DOJ,⁴ and

¹ Wall Street Journal, "Defense Contractor L3Harris Plans to Buy Aerojet Rocketdyne for \$4.7 Billion," Doug Cameron, December 18, 2022, <https://www.wsj.com/articles/defense-contractor-l3harris-plans-to-buy-aeroprocketdyne-for-4-7-billion-11671412218>.

² Letter to FTC from Senator Warren, January 26, 2023, <https://www.warren.senate.gov/imo/media/doc/2023.01.26%20Letter%20to%20FTC%20re%20Aerojet-L3Harris.pdf>.

³ Competition Policy International, "The Department of Defense's Role in Merger Review," David Higbee, Djordje Petkoski, Ben Gris, and Mark Weiss, April 2019, p. 2, https://www.competitionpolicyinternational.com/wp-content/uploads/2019/04/CPI-Higbee_Petkoski_Gris_Weiss-.pdf.

⁴ U.S. Department of Defense, Industrial Base Policy, Industrial Base Resilience, Mergers & Acquisitions, <https://www.businessdefense.gov/ibr/gies/ma/index.html>; U.S. Department of Defense, Directive 5000.62, "Review of Mergers, Acquisitions, Joint Ventures, Investments, and Strategic Alliances of Major Defense

“ensur[ing] DoD stakeholder equities and the Department’s interests are protected both during merger review and in other antitrust matters.”⁵ The Office of the Assistant Secretary of Defense for Industrial Base Policy’s Global Investment and Economic Security (GIES) Directorate and the Office of General Counsel (OGC) lead DoD’s review process for proposed mergers and acquisitions.⁶ The GIES Merger and Acquisition (M&A) team evaluates the transaction based on the impacts on national security, the industrial and technological base, and innovation; the effect on competition for DoD contracts and subcontracts; potential restriction of a critical supplier to a competitor; potential benefits and risks for DoD, including cost savings or increases; and competition in current or future DoD programs.⁷ GIES and OGC then work together to report findings to DoD leadership and FTC or DOJ,⁸ which are generally not publicly disclosed.⁹ According to DoD, “promoting competition to the maximum extent possible is a top priority;”¹⁰ however, we have concerns surrounding DoD’s efforts to achieve this priority.

Competition and National Security

Last year, DoD released a troubling report that found the defense industrial base is “historically consolidated” due to excessive merger-and-acquisition activity, leaving DoD with fewer suppliers and creating vulnerabilities in our supply chain.¹¹ The report warned that additional “consolidations that reduce required capability and capacity and the depth of competition would have serious consequences for national security,” making “promoting competition and ensuring it is fair and open for future programs ... a critical Department priority.”¹² The

Suppliers on National Security and Public Interest,” February 27, 2017, p. 4, Section 1.2.b.2., <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/500062p.pdf>.

⁵ U.S. Department of Defense, Industrial Base Policy, Industrial Base Resilience, Mergers & Acquisitions, <https://www.businessdefense.gov/ibr/gies/ma/index.html>.

⁶ Request for Information, on file with Senator Warren, Question 2, April 10, 2023.

⁷ U.S. Department of Defense, Industrial Base Policy, Industrial Base Resilience, Mergers & Acquisitions, <https://www.businessdefense.gov/ibr/gies/ma/index.html>;

U.S. Department of Defense, Directive 5000.62, “Review of Mergers, Acquisitions, Joint Ventures, Investments, and Strategic Alliances of Major Defense Suppliers on National Security and Public Interest,” February 27, 2017, p. 3, Section 1.2.a., <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/500062p.pdf>.

⁸ U.S. Department of Defense, Industrial Base Policy, Programs, Industrial Assessments, Mergers & Acquisitions, <https://web.archive.org/web/20210920042436/https://www.businessdefense.gov/Industrial-Assessments/Mergers-and-Acquisitions/>.

⁹ Competition Policy International, “The Department of Defense’s Role in Merger Review,” David Higbee, Djordje Petkoski, Ben Gris, and Mark Weiss, April 2019, p. 2, https://www.competitionpolicyinternational.com/wp-content/uploads/2019/04/CPI-Higbee_Petkoski_Gris_Weiss-.pdf.

¹⁰ U.S. Department of Defense Report, “State of Competition within the Defense Industrial Base,” Office of the Under Secretary of Defense Acquisition and Sustainment, February 2022, p. 1, <https://media.defense.gov/2022/Feb/15/2002939087/-1/-1/1/STATE-OF-COMPETITION-WITHIN-THE-DEFENSE-INDUSTRIAL-BASE.PDF>.

¹¹ Department of Defense Office of the Under Secretary of Defense for Acquisition and Sustainment, “State of Competition within the Defense Industrial Base,” February 2022, p. 1, <https://media.defense.gov/2022/Feb/15/2002939087/-1/-1/1/STATE-OF-COMPETITION-WITHIN-THE-DEFENSE-INDUSTRIAL-BASE.PDF>.

¹² *Id.*

report's primary recommendation called for "heightened review of any further mergers and acquisitions."¹³

Following years of mergers in the solid rocket motor sector, the number of domestic suppliers has declined from eight to just two: Aerojet and Orbital-ATK.¹⁴ As previously highlighted to the FTC in January 2023,¹⁵ the proposed merger between L3Harris and Aerojet raises serious anti-competitive concerns in an already consolidated market. Waves of merger activity and consolidation have transformed our nation's defense industry from a competitive market with over 50 firms to an oligopoly of five massive rivals,¹⁶ with "nearly 20,000 small businesses have been pushed out of the defense market in the last decade alone."¹⁷

This sector is already failing to meet U.S. national security needs. In October, the Department concluded that "the current domestic solid-rocket motor industrial base manufacturing capacity is insufficient to support U.S. military plans to field long-range hypersonic strike weapons."¹⁸ To address this shortfall, DoD is studying "the possibility of establishing an additional source"¹⁹ for solid-rocket motors while taking additional steps to further strengthen the sector's supply chain.²⁰ Further consolidation in this sector could also jeopardize the ability to affordably replenish our own diminishing weapon stocks,²¹ including Javelin²² and Stinger missiles²³ sent to defend Ukraine against Russia's illegal invasion.²⁴ As DoD's report notes, "too much market concentration can negatively impact competition by providing the remaining companies with greater market power to potentially foreclose on competitors, reduce customer choices, limit innovation, and charge higher prices to DoD."²⁵

¹³ *Id.*

¹⁴ *Id.* at p. 26.

¹⁵ Letter to FTC from Senator Warren, January 26, 2023, <https://www.warren.senate.gov/imo/media/doc/2023.01.26%20Letter%20to%20FTC%20re%20Aerojet-L3Harris.pdf>.

¹⁶ Commission on the Future of the United States Aerospace Industry, "Final Report," November 2002, p. 134, <https://history.nasa.gov/AeroCommissionFinalReport.pdf>.

¹⁷ Responsible Statecraft, "Incredibly shrinking defense industry is a boon for the fat cats," Connor Echols, December 19, 2022, <https://responsiblestatecraft.org/2022/12/19/incredibly-shrinking-defense-industry-is-a-boon-for-the-fat-cats/>; U.S. Government Accountability Office, "Small Business Contracting: Actions Needed to Implement and Monitor DOD's Small Business Strategy," October 2021, <https://www.gao.gov/assets/720/717090.pdf>.

¹⁸ Inside Defense, "DOD plans to scale hypersonic production at risk with current solid-rocket motor industry," Jason Sherman, October 24, 2022, <https://insidedefense.com/daily-news/dod-plans-scale-hypersonic-production-risk-current-solid-rocket-motor-industry>.

¹⁹ *Id.*

²⁰ Department of Defense, "Department Moves Quick to Replenish Weapons Sent to Ukraine," C. Todd Lopez, September 9, 2022, <https://www.defense.gov/News/News-Stories/Article/Article/3154210/departments-moves-quick-to-replenish-weapons-sent-to-ukraine/>.

²¹ CNBC, "The U.S. and Europe are running out of weapons to send to Ukraine," Natasha Turak, September 28, 2022, <https://www.cnbc.com/2022/09/28/the-us-and-europe-are-running-out-of-weapons-to-send-to-ukraine.html>.

²² Aerojet Rocketdyne, "Javelin," <https://www.rocket.com/defense/tactical-missiles/javelin>.

²³ Aerojet Rocketdyne, "Stinger," <https://www.rocket.com/defense/tactical-missiles/stinger>.

²⁴ NPR, "The U.S. will send a Patriot air defense system to Ukraine. How will it help?" Becky Sullivan and Tom Bowman, December 21, 2022, <https://www.npr.org/2022/12/21/1144662505/us-ukraine-patriot-missile-system>.

²⁵ Department of Defense Office of the Under Secretary of Defense for Acquisition and Sustainment, "State of Competition within the Defense Industrial Base," February 2022, p. 26, <https://media.defense.gov/2022/Feb/15/2002939087/-1/-1/1/STATE-OF-COMPETITION-WITHIN-THE-DEFENSE-INDUSTRIAL-BASE.PDF>.

L3Harris – Aerojet Merger

L3Harris, the sixth-largest U.S.-based defense contractor,²⁶ announced in December 2022 that it would acquire Aerojet,²⁷ the last remaining independent U.S. supplier of missile propulsion systems.²⁸ This action by L3Harris, which itself is the product of decades of mergers,²⁹ is a continuation of the company's pursuit to buy its way to the top of the defense industrial base, a trend that raises competition concerns and could ultimately threaten U.S. national security. Lockheed Martin, Raytheon, and Boeing are all dependent on products that only Aerojet is able to produce, and their operations could be hamstrung by its acquisition.³⁰ If L3Harris were to own Aerojet, L3Harris would be in a position to leverage its control over solid rocket motors and other Aerojet products to force other companies and the United States to purchase its other products, regardless of the impact this would have on price or quality.³¹

Some have questioned Aerojet's ability to "thrive over the long run" and argue that L3Harris needs to buy Aerojet for Aerojet to be competitive with Northrop Grumman following its acquisition of Orbital ATK.³² However, such "failing firm" defenses do not negate the underlying anticompetitiveness of the merger.³³ In this case, Aerojet appears to have replaced its prior anticompetitive merger attempt (involving Lockheed Martin in 2020-2022)³⁴ with another, without showing that "it has made unsuccessful good-faith efforts to elicit reasonable

²⁶ Defense One, "After Big Pentagon Contract Wins, L3Harris CEO Eyes More Growth," Marcus Weisgerber, September 28, 2022, <https://www.defenseone.com/business/2022/09/after-big-pentagon-contract-wins-l3harris-ceo-eyes-more-growth/377773/>.

²⁷ Wall Street Journal, "Defense Contractor L3Harris Plans to Buy Aerojet Rocketdyne for \$4.7 Billion," Doug Cameron, December 18, 2022, <https://www.wsj.com/articles/defense-contractor-l3harris-plans-to-buy-aerojetrocketdyne-for-4-7-billion-11671412218>.

²⁸ Federal Trade Commission, "FTC Sues to Block Lockheed Martin Corporation's \$4.4 Billion Vertical Acquisition of Aerojet Rocketdyne Holdings Inc.," press release, January 25, 2022, <https://www.ftc.gov/newsevents/news/press-releases/2022/01/ftc-sues-block-lockheed-martin-corporations-44-billion-vertical-acquisitionaerojet-rocketdyne>.

²⁹ Letter to FTC from Senator Warren, January 26, 2023, <https://www.warren.senate.gov/imo/media/doc/2023.01.26%20Letter%20to%20FTC%20re%20Aerojet-L3Harris.pdf>.

³⁰ Forbes, "How Aerojet Rocketdyne Manages To Play An Outsized Role In The U.S. Defense Supply Chain," Loren Thompson, May 1, 2020, <https://www.forbes.com/sites/lorenthompson/2020/05/01/how-aerojetrocketdyne-manages-to-play-an-outsized-role-in-the-us-defense-supply-chain/?sh=61ce7e6611d1>.

³¹ Letter to FTC from Senator Warren, January 26, 2023, <https://www.warren.senate.gov/imo/media/doc/2023.01.26%20Letter%20to%20FTC%20re%20Aerojet-L3Harris.pdf>.

³² Forbes, "Five Reasons And L3Harris Merger With Aerojet Will Not Face The Obstacles Lockheed Martin's Bid Did," Loren Thompson, January 13, 2023, <https://www.forbes.com/sites/lorenthompson/2023/01/13/fivereasons-an-l3harris-merger-with-aerojet-will-not-face-the-obstacles-lockheed-martins-biddid/?sh=3ccd91b116b3>.

³³ Federal Trade Commission, "On 'Failing' Firms — and Miraculous Recoveries," Ian Conner, May 27, 2020, <https://www.ftc.gov/enforcement/competition-matters/2020/05/failing-firms-miraculous-recoveries>; U.S. Department of Justice and the Federal Trade Commission, "Horizontal Merger Guidelines," Section 11, August 19, 2010, <https://www.justice.gov/atr/horizontal-merger-guidelines-08192010>.

³⁴ Federal Trade Commission, "FTC Sues to Block Lockheed Martin Corporation's \$4.4 Billion Vertical Acquisition of Aerojet Rocketdyne Holdings Inc.," press release, January 25, 2022, <https://www.ftc.gov/news-events/news/press-releases/2022/01/ftc-sues-block-lockheed-martin-corporations-44-billion-vertical-acquisition-aerojet-rocketdyne>.

alternative offers that would . . . pose a less severe danger to competition.”³⁵ Further, Aerojet’s challenges may result from management issues rather than legitimate competition concerns: for at least the past year, instead of being focused on investing in research and development and producing high-quality products that are critical to protect our service members and national security, Aerojet has been consumed by infighting regarding deals with potential buyers.³⁶ Raytheon’s chief executive officer told reporters this has resulted in Aerojet being “distracted” and “struggling to deliver quality rocket motors,” causing it to “become ‘the weak link’ in Raytheon Technologies’ supply chain.”³⁷

Allowing L3Harris to acquire Aerojet would present threats to innovation. The FTC’s warning when it sued to block Aerojet’s acquisition by Lockheed remains relevant here: currently, Aerojet, as an independent supplier, has the incentive to allocate its research and development funds “based on the potential return the funds would generate regardless of which prime [contractor] it is supporting. . . The combined firm would be incentivized to allocate Aerojet investment dollars for the combined firm’s benefit alone,” which would stifle innovation.³⁸

Conclusion

DoD’s merger review process is a powerful tool to prevent dangerous defense industry consolidation. Stephen Hull, the former director of M&A within DoD’s Office of Industrial Policy, explained that the antitrust agencies give a “lot of weight” – and in some cases, “nearly dispositive weight” – to complaints from DoD regarding competitive effects of a deal,³⁹ and that defense companies often walk away from mergers when the M&A team objects.⁴⁰ Given the troubling record of anticompetitive mergers in the defense industry, and their impact on contracting costs and national security, we are concerned with DoD’s history of flawed merger reviews, and we write to ensure that the Department conducts a careful thorough review of the L3Harris-Aerojet merger, as recommended in the Department’s own 2022 report.⁴¹ We also ask that in this case, and for similar merger reviews moving forward, DoD provide as much public transparency as possible – consistent with the need to protect propriety national security and

³⁵ U.S. Department of Justice and the Federal Trade Commission, “Horizontal Merger Guidelines,” Section 11, August 19, 2010, <https://www.justice.gov/atr/horizontal-merger-guidelines-08192010>.

³⁶ Forbes, “Five Reasons And L3Harris Merger With Aerojet Will Not Face The Obstacles Lockheed Martin’s Bid Did,” Loren Thompson, January 13, 2023, <https://www.forbes.com/sites/lorenthompson/2023/01/13/fivereasons-an-l3harris-merger-with-aerojet-will-not-face-the-obstacles-lockheed-martins-biddid/?sh=3ccd91b116b3>.

³⁷ Defense One, “Aerojet Rocketdyne Struggling to Deliver Rocket Motors, Raytheon CEO Says,” Marcus Weisgerber, December 7, 2022, <https://www.defenseone.com/business/2022/12/aerojet-rocketdyne-struggling-deliver-rocket-motors-raytheon-ceo-says/380562/>.

³⁸ Federal Trade Commission, Complaint In the Matter of Lockheed Martin Corporation and Aerojet Rocketdyne Holdings, Inc., (F.T.C. 2022)

³⁹ Competition Policy International, “The Department of Defense’s Role in Merger Review,” David Higbee, Djordje Petkoski, Ben Gris, and Mark Weiss, April 2019, p. 2, https://www.competitionpolicyinternational.com/wp-content/uploads/2019/04/CPI-Higbee_Petkoski_Gris_Weiss-.pdf.

⁴⁰ *Id.*

⁴¹ Department of Defense Office of the Under Secretary of Defense for Acquisition and Sustainment, “State of Competition within the Defense Industrial Base,” February 2022, p. 1, <https://media.defense.gov/2022/Feb/15/2002939087/-1/-1/1/STATE-OF-COMPETITION-WITHIN-THE-DEFENSE-INDUSTRIAL-BASE.PDF>.

business confidential information – about the findings of its review and its communications with FTC and DOJ.

Finally, to better understand DoD’s role and decision-making in the L3Harris-Aerojet transaction we request answers – in a unclassified format – to the following questions by July 21, 2023:

1. Which major defense programs does DoD anticipate would be impacted by L3Harris merging with Aerojet? Please describe the anticipated impact.
2. Has DoD performed any analysis of future program costs, or analysis of impacts on innovation, the defense supply chain, or other national security concerns if the L3Harris-Aerojet merger is approved? If so, what were the findings of these analyses?
3. What concerns has DoD received from DoD stakeholders regarding the impact of this merger? How will DoD incorporate these concerns into its assessment?
4. Earlier this year, Senator Warren submitted a Request for Information to the DoD regarding mergers and acquisitions. In its response, DoD shared that it has “identified an opportunity to develop an Instruction that will include procedures for implementing Directive 5000.62.”⁴² Has there been an update? If so, please detail.
5. Has DoD recommended or does DoD intend to recommend any structural or behavioral remedies if the L3Harris-Aerojet merger is approved?
 - a. If yes, please provide details. Additionally, how would behavioral remedies be implemented and enforced?
6. Has DoD communicated any recommendations to FTC or DOJ about the merger? If so, please make the information public.

Sincerely,



Elizabeth Warren
United States Senator



Chris Deluzio
Member of Congress

⁴² Request for Information, on file with Senator Warren, Question 11, April 10, 2023.



John Garamendi
Member of Congress



Mark Pocan
Member of Congress

CC:

Lina Khan, Chair – Federal Trade Commission

Jonathan Kanter, Assistant Attorney General – Antitrust Division, Department of Justice