

# Congress of the United States

Washington, DC 20515

February 23, 2024

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

Dear Secretary Austin,

We write regarding our ongoing concerns with the U.S. Department of Defense's (the Department, or DoD) insufficient review of consolidation in the defense industrial base and the resulting impacts on innovation, supply chains, and national security. A strong and resilient industrial base is vital to enable the development, maintenance, and deployment of military assets, but the domestic supply chain is already struggling to meet demands and defense consolidation further exacerbates these concerning dynamics. The current major conflicts around the globe are exposing supply chain gaps and the Department must fulfill its obligation to ensure our defense industrial base remains resilient.

## **The Defense Supply Chain Has Critical Weaknesses**

The unjustified invasion by Russia into Ukraine on February 24, 2022 and the competition posed by China on the global stage have increased the demand for defense systems, ammunition, and other military equipment.<sup>1</sup> The United States and our allies are struggling to meet the demand required by these events as the industrial base has become stretched to its limits.

The recently-released and first-ever National Defense Industrial Strategy found that the U.S. defense industrial base is falling behind and DoD needs to focus on “increasing our production capacity and strengthening our supply chains.”<sup>2</sup> The report’s findings on the need for “capacity to produce... capabilities at speed and scale” and DoD’s current lack of a “comprehensive effort for mitigating supply chain risk” raise concerns of the industrial base’s ability to meet demand and ensure supply chain resilience.<sup>3</sup> For example, customers for the National Advanced Surface-to-Air Missile System will have to wait two years for it to be manufactured.<sup>4</sup>

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<sup>1</sup> Wall Street Journal, “The West Badly Needs More Missiles—but the Wait to Buy Them Is Years Long,” Alistair MacDonald, Doug Cameron, and Dasl Yoon, January 3, 2024, <https://www.wsj.com/politics/national-security/missiles-demand-threats-wait-to-buy-them-is-years-long-3332c151>.

<sup>2</sup> U.S. Department of Defense, Office of Industrial Base Policy, “National Defense Industrial Strategy,” report, 2023, pp. 1 and 47, <https://www.businessdefense.gov/docs/ndis/2023-NDIS.pdf>.

<sup>3</sup> U.S. Department of Defense, Office of Industrial Base Policy, “National Defense Industrial Strategy,” report, 2023, p. 7, <https://www.businessdefense.gov/docs/ndis/2023-NDIS.pdf>.

<sup>4</sup> Wall Street Journal, “The West Badly Needs More Missiles—but the Wait to Buy Them Is Years Long,” Alistair MacDonald, Doug Cameron, and Dasl Yoon, January 3, 2024, <https://www.wsj.com/politics/national-security/missiles-demand-threats-wait-to-buy-them-is-years-long-3332c151>.

Last May, DoD directed the task force on 21<sup>st</sup> Century Industrial Base for National Defense to “refocus’ its efforts on improving the resilience of the U.S. defense industrial base.”<sup>5</sup> As part of that effort, the task force was charged with cataloguing all critical foreign imports to the industrial base and identifying alternatives to the sources DoD currently depends on.<sup>6</sup>

Overall, the task force’s mission was to “increase the resilience and capacity in the defense industrial base and associated supply chains.”<sup>7</sup> An essential component of increasing this resiliency and capacity is a robust and competitive defense industry. The work is critical as the DoD’s own state of competition report states “[w]hen markets are competitive... benefits [come] through improved cost, schedule, and performance” as well as effective and efficient performance for all of DoD’s equipment requirements.<sup>8</sup>

### **Supply Chain Threats from Industry Consolidation and GAO Findings on DoD’s Inability to Assess and Address Risky Mergers**

Excessive consolidation of the defense industrial base is one of the main factors contributing to the industrial base’s fragile supply chain and inability to meet demand. The consolidation often leaves DoD with only one or two suppliers that can meet its needs.<sup>9</sup> With only one available supplier for a contract, DoD is unable to compare offers to ensure fairness and has to provide a non-compete award, undermining the intention of the bidding process. Following Northrop Grumman’s acquisition of Orbital ATK, Boeing withdrew from bidding for the Sentinel (formerly known as the Ground Base Strategic Deterrent) program and claimed that Northrop delayed negotiations necessary for Orbital to work with Boeing. This withdrawal left Northrop Grumman as the sole bidder for the Sentinel program.<sup>10</sup> DoD’s state of competition report warned that “[i]nsufficient competition may leave gaps in filling... needs, remove pressures to innovate to outpace other firms, result in higher costs to taxpayers as leading firms leverage their market position to charge more, and raise barriers for new entrants.”<sup>11</sup> Additionally, the report warned how “a single source or a small number

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<sup>5</sup> Inside Defense, “DOD ‘refocuses’ industrial base task force on supply chain security,” Tony Bertuca, May 1, 2023, <https://insidedefense.com/share/217867>.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> U.S. Department of Defense, Office of the Under Secretary of Defense for Acquisition and Sustainment, “State of Competition within the Defense Industrial Base,” report, February 2022, p. 1, <https://media.defense.gov/2022/Feb/15/2002939087/-1/-1/1/STATE-OF-COMPETITION-WITHIN-THE-DEFENSE-INDUSTRIAL-BASE.PDF>.

<sup>9</sup> *See*, U.S. Department of Defense, Office of the Under Secretary of Defense for Acquisition and Sustainment, “State of Competition within the Defense Industrial Base,” report, February 2022, p. 19, <https://media.defense.gov/2022/Feb/15/2002939087/-1/-1/1/STATE-OF-COMPETITION-WITHIN-THE-DEFENSE-INDUSTRIAL-BASE.PDF>; Intercept, “After Blocking Lockheed Martin Acquisition, FTC Allows Another Defense Firm to Close the Deal,” Austin Ahlman, August 31, 2023, <https://theintercept.com/2023/08/31/ftc-defense-mergers-lockheed-l3harris/>.

<sup>10</sup> Politico, “FTC turns up heat on Trump-era defense merger,” Josh Sisco and Lee Hudson, July 22, 2022, <https://www.politico.com/news/2022/07/22/ftc-turns-up-the-heat-on-trump-era-defense-merger-00047452>.

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

of sources for a defense need can pose mission risk and... significant national security risks.”<sup>12</sup> With hundreds of mergers and acquisitions (M&A) each year in the defense space, the DoD has found consolidation is “a key risk imperiling the health and resilience of the defense industrial base.”<sup>13</sup>

To address the threats posed by consolidation, the DoD established a process to assess the potential effects of defense-related M&A and provide input to federal antitrust agencies when necessary. But the Government Accountability Office (GAO) recently released a report that found deficiencies in the DoD’s process, including that DoD does not “effectively align... its concerns... with the resources and robustness of its efforts to assess M&A risks.”<sup>14</sup> Although around 400 defense M&A occur annually, DoD only assessed an average of 40 for potential risks each year. This leaves hundreds of consolidations unchecked and vulnerable to produce unfavorable outcomes that “reduce competition and increase the risk of higher costs and reduced innovation.”<sup>15</sup> The GAO also found DoD did “not proactively monitor the effects of M&A to determine if the potential risks they assessed were realized,”<sup>16</sup> even in instances where industrial base policy or DoD officials “determined during the assessment that further monitoring was warranted because potential risks existed.”<sup>17</sup> The lack of monitoring and follow up by DoD and stakeholders means the government cannot know if identified risks or advantages ever materialize. Without that information DoD cannot assess whether its own processes are sufficient or whether additional measures need to be put in place to mitigate a realized risk – or ensure a promised benefit.<sup>18</sup>

### **DoD’s Failure to Address Supply Chain Risks from the L3Harris-Aerojet Merger**

DoD’s failure to provide thorough oversight on defense M&A is even more concerning given the recent approval of the merger between L3Harris Technologies and Aerojet Rocketdyne. Last year, Senator Warren wrote to the Federal Trade Commission (FTC) urging the agency to oppose the merger which would allow L3Harris to take ownership of the last remaining independent U.S. supplier of missile propulsion systems.<sup>19</sup> Senator Warren and Representative Garamendi also sent a letter to DoD urging it to do a full assessment of the merger risks and provide as much public transparency as possible around that review.<sup>20</sup> According to press reports, DoD ultimately allowed the merger to close with

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<sup>12</sup> *Id.*

<sup>13</sup> Government Accountability Office, “Defense Industrial Base: DOD Needs Better Insight into Risks from Mergers and Acquisitions,” October 17, 2023, <https://www.gao.gov/products/gao-24-106129>.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*, p. 34.

<sup>16</sup> *Id.*, p. 32.

<sup>17</sup> *Id.*, p. 32.

<sup>18</sup> *Id.*

<sup>19</sup> Office of U.S. Senator Elizabeth Warren, “Warren: FTC Should Oppose Aerojet-L3Harris Merger,” press release, January 27, 2023, <https://www.warren.senate.gov/newsroom/press-releases/warren-ftc-should-oppose-aerojet-l3harris-merger>; DefenseNews, “L3Harris closes purchase of Aerojet Rocketdyne,” Stephen Losey, July 28, 2023, <https://www.defensenews.com/air/2023/07/28/l3harris-closes-purchase-of-aerojet-rocketdyne/>.

<sup>20</sup> Office of U.S. Senator Elizabeth Warren, “Senator Warren, Representatives Garamendi, Pocan Raise Concerns, Call for Increased Oversight, Transparency from DoD Following the L3Harris-Aerojet Merger,” press release, September 15, 2023, <https://www.warren.senate.gov/oversight/letters/senator-warren->

“assurances” from the L3Harris CEO Chris Kubasik that the merger would bring benefits to the industrial base.<sup>21</sup>

It remains unclear what, if any, assurances were actually made. On November 3rd, 2023, DoD provided a briefing to Senator Warren’s and Representative Garamendi’s staff that confirmed DoD imposed no conditions on the merger. One simple condition would be a signed consent agreement ensuring the company would continue to supply missile propulsion systems to other companies, such as in the Northrop Grumman-Orbital ATK merger.<sup>22</sup> However, such an agreement was never made.<sup>23</sup> There was also no indication that the impacts of this merger would be monitored, making it difficult to validate whether the promised merger benefits would take place. Finally, the briefing revealed the DoD officials could not provide a clear roadmap of engagement they had with antitrust offices at FTC and the U.S. Department of Justice (DOJ) on this matter. These specific gaps in the DoD’s review of the L3Harris-Aerojet are serious flaws that the GAO report indicates may be systemic lapses, requiring DoD to completely reassess its approach major defense industry mergers moving forward.

These concerns are not unique to the L3Harris-Aerojet merger. The assessments DoD conducts on M&A lack basic public transparency which might otherwise provide useful insight and accountability. The DoD does not provide public comments or disclose its findings related to defense mergers.<sup>24</sup> Without transparency the public cannot know DoD’s assessment of whether a merger might affect defense contracts, prices, supply chain gaps, innovation, and national security. This makes it more difficult to oversee and mitigate the risks of mergers, or to assess the sufficiency of DoD’s review process. Given the importance of ensuring a robust defense industrial base and diversified supply chains, it is concerning that the DoD does not appear to be conducting robust oversight of even some of the largest mergers.

### **Merger Provisions in the National Defense Authorization Act of 2024**

Congress recently strengthened DoD’s ability to assess potential mergers and acquisitions. Section 857 of the *National Defense Authorization Act for Fiscal Year 2024* (FY24 NDAA)

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[representatives-garamendi-pocan-raise-concerns-call-for-increased-oversight-transparency-from-dod-following-the-l3harris-aerojet-merger.](#)

<sup>21</sup> Defense One, “L3Harris rejects fears it will deny Aerojet rockets to competitors,” Audrey Decker, July 27, 2023, <https://www.defenseone.com/business/2023/07/l3harris-rejects-fears-it-will-deny-aerojet-rockets-competitors/388885/>.

<sup>22</sup> Federal Trade Commission, “FTC Imposes Conditions on Northrop Grumman’s Acquisition of Solid Rocket Motor Supplier Orbital ATK, Inc.,” press release, June 5, 2018, <https://www.ftc.gov/news-events/news/press-releases/2018/06/ftc-imposes-conditions-northrop-grummans-acquisition-solid-rocket-motor-supplier-orbital-atk-inc>.

<sup>23</sup> Defense One, “L3Harris rejects fears it will deny Aerojet rockets to competitors,” Audrey Decker, July 27, 2023, <https://www.defenseone.com/business/2023/07/l3harris-rejects-fears-it-will-deny-aerojet-rockets-competitors/388885/>.

<sup>24</sup> 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/CPIHigbee\\_Petkoski\\_Gris\\_Weiss.pdf](https://www.competitionpolicyinternational.com/wp-content/uploads/2019/04/CPIHigbee_Petkoski_Gris_Weiss.pdf).

requires defense companies that are parties of a potential merger or acquisition to simultaneously notify and provide the same information to DoD that they are already required to provide to DOJ and FTC.<sup>25</sup> This will allow DoD to proactively assess potential threats to the industrial base rather than being forced to rely on federal antitrust agencies to do so. Recent history suggests that much more needs to be done to ensure we maintain a robust, competitive defense base. Without more transparency, however, Congress cannot assess whether DoD's current authorities and access are sufficient to protect our national security.

### **Conclusion and Questions**

Major conflicts around the globe have made clear that the defense industrial base must remain strong and resilient to be able to support our national defense. In this effort, DoD spent over a \$130 billion on weapons and systems in 2022, raising the importance of the U.S. government to ensure taxpayer dollars are spent on fairly priced equipment and not contributing to price gouging.<sup>26</sup> With rampant consolidation that affects supply chains, prices, and security, DoD must conduct more thorough and transparent assessments of M&A in the defense space.

To better understand DoD's process and DoD's view on the status of the defense industrial base, we request answers to the following questions by March 11, 2024:

1. What is DoD's current assessment of the health of the defense industrial base?
2. In response to GAO's report, has DoD committed to tracking or conducting any long-term reviews of defense mergers?
3. What were the assurances DoD received from L3Harris regarding the L3Harris-Aerojet merger? If DoD received no assurances, why did it not choose to seek them?
4. What are the benefits DoD expects the defense industrial base will gain from the L3Harris-Aerojet merger?
5. How does DoD plan to ensure those benefits materialize and hold the company to its "assurances"?
6. What does DoD release to the public regarding its assessments and recommendations on defense M&A?
  - a. Is DoD in the process of changing its disclosure procedures regarding its assessments and recommendations on defense M&A?
7. How will DoD ensure that it receives the disclosures required under section 857 of the FY24 NDAA?

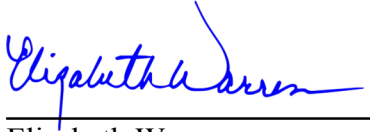
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<sup>25</sup> National Defense Authorization Act for Fiscal Year 2024, Public Law No: 118-31.

<sup>26</sup> Peter G. Peterson Foundation, Budget Basics: National Defense, April 28, 2023, <https://www.pgpf.org/budget-basics/budget-explainer-national-defense>.

- a. What actions will DoD take to assess the impacts of mergers when it receives these disclosures?

Sincerely,



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Elizabeth Warren  
United States Senator



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John Garamendi  
Member of Congress  
Ranking Member,  
Subcommittee on Readiness