



October 2023

DEFENSE INDUSTRIAL BASE

DOD Needs Better Insight into Risks from Mergers and Acquisitions

Accessible Version

GAO Highlights

Highlights of [GAO-24-106129](#), a report to congressional committees

Why GAO Did This Study

DOD has reported that consolidation of its suppliers through M&A is a key risk imperiling the health and resilience of the defense industrial base. While M&A may create benefits, such as improving a supplier's financial health, they may also reduce competition and increase the risk of higher costs and reduced innovation.

To help manage these risks, DOD has established a process for assessing the potential effects of defense-related M&A. Under certain circumstances, DOD also provides input to the federal antitrust agencies, which review and, when necessary, take action to mitigate competition risks from M&A.

Congressional reports included provisions for GAO to evaluate DOD's efforts to assess the effects of M&A on the defense industrial base. This report assesses (1) the extent to which DOD has insight into defense-related M&A, and (2) the extent to which DOD monitors the effects of M&A on the defense industrial base, among other things. GAO reviewed agency policy and documentation, analyzed agency-provided and commercially available data, and interviewed agency officials.

What GAO Recommends

GAO is making four recommendations for DOD to: provide additional direction on assessing all risks and benefits identified in policy, clarify which defense suppliers' M&A need to be prioritized for assessment, assess whether Industrial Base Policy's M&A office is adequately resourced, and require monitoring of identified risks. DOD concurred with the recommendations and described its actions to address them.

View [GAO-24-106129](#). For more information, contact W. William Russell at (202) 512-4841 or RussellW@gao.gov.

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What GAO Found

The Department of Defense (DOD) has estimated that hundreds of defense companies undergo mergers and acquisitions (M&A) each year. DOD's Industrial Base Policy office and DOD stakeholders work together to conduct assessments of such M&A's risks and benefits. When M&A present risks to competition, DOD's Industrial Base Policy office also works with the antitrust agencies, which review and regulate M&A that may substantially lessen competition.



Source: Ngampol/stock.adobe.com. | GAO-24-106129

DOD's insight into defense M&A is limited. Industrial Base Policy's M&A office and DOD stakeholders assessed an average of 40 M&A per year in fiscal years 2018 through 2022, which represents a small portion of defense M&A. DOD's most recently published statistics on defense M&A, which were included in its *Fiscal Year 2017 Annual Industrial Capabilities* report, indicated that approximately 400 defense M&A occurred annually.

Most DOD assessments are initiated in response to antitrust reviews of large M&A valued over a certain dollar threshold, currently \$111.4 million. Therefore, Industrial Base Policy's M&A office and DOD stakeholders focus on evaluating competition risks in their M&A assessments. While DOD policy directs Industrial Base Policy and DOD stakeholders to assess other types of risks, such as national security and innovation risks, they have not routinely done so. Moreover, DOD policy does not provide clear direction about which M&A DOD should prioritize for assessment, beyond those conducted in response to antitrust reviews. DOD officials noted that the M&A office—which is comprised of two to three staff—does not have the staff resources to initiate more assessments of smaller M&A that may also present risks. Assessing whether the M&A office has adequate resources to meet its responsibilities and clarifying which defense suppliers' M&A should be prioritized would help DOD better assess risks.

DOD generally does not monitor whether risks identified in its M&A assessments were realized. GAO found that DOD policy does not require Industrial Base Policy and DOD stakeholders to conduct monitoring. As a result, they cannot determine if risks occurred and whether further action is needed to mitigate them.

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Abbreviations

DCMA	Defense Contract Management Agency
DOD	Department of Defense
DOJ	Department of Justice
FTC	Federal Trade Commission
HSR	Hart-Scott-Rodino
IBP	Industrial Base Policy
M&A	mergers and acquisitions
NDA	National Defense Authorization Act

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October 17, 2023

Congressional Committees

The White House and Department of Defense (DOD) have stated that a healthy and resilient defense industrial base is a critical element of U.S. power and a national priority. For decades, DOD has reported on complex challenges and risks facing the defense industrial base, including the consolidation of its supplier base through mergers and acquisitions (M&A). For example, DOD's 2022 *State of Competition within the Defense Industrial Base* reported that since the 1990s, the number of aerospace and defense prime contractors supporting DOD's weapon systems has decreased from 51 to five companies.¹ The DOD report stated that consolidation of the industrial base reduces competition for DOD contracts and leads DOD to rely on a more limited number of suppliers. This lack of competition may in turn increase the risk of supply chain gaps, price increases, reduced innovation, and other adverse effects, according to the DOD report.² DOD also reported that consolidation of the defense industrial base had reached historically high levels and that it needed to reevaluate its internal process for assessing M&A and continue working with the federal antitrust agencies to strengthen oversight of M&A.³

Members of Congress have noted similar concerns about declining competition in the defense industrial base and the potential adverse effect that industry consolidation has on weapon system programs and innovation. The Joint Explanatory Statement accompanying the National Defense Authorization Act (NDAA) for Fiscal Year 2022 and the Senate Armed Services Committee Report accompanying a bill for the James M. Inhofe NDAA for Fiscal Year 2023 included provisions for GAO to

¹Department of Defense, *State of Competition within the Defense Industrial Base* (February 2022).

²DOD, *State of Competition within the Defense Industrial Base*.

³For the purposes of this report, we refer to the Department of Justice (DOJ) and the Federal Trade Commission (FTC) as the federal antitrust agencies. The antitrust agencies enforce the antitrust laws, which prohibit business practices that unreasonably deprive consumers of the benefits of competition. Reduced competition can result in higher prices for, lower quality of, or less innovative products and services.

evaluate DOD's efforts to monitor and assess the effects of potential M&A on the defense industrial base, as well as DOD's oversight processes for vetting potential M&A within the defense industrial base.⁴

This report addresses (1) the extent to which DOD has insight into defense-related M&A; (2) how DOD's role as a stakeholder to the antitrust agencies affects how it conducts M&A assessments; and (3) the extent to which DOD monitors the effects of M&A on the defense industrial base.

To address the extent to which DOD has insight into defense-related M&A, we compared DOD data on defense M&A to commercially available data to determine how many occurred, how many were assessed by DOD, and the reliability of DOD's data.⁵ Our analysis covered fiscal years 2018 through 2022, the years for which DOD officials stated they had complete data on the M&A that DOD assessed. We determined these data were sufficiently reliable for the purposes of determining which M&A DOD had assessed in these years. We assessed the reliability of these data through manual data testing and interviews with DOD officials.⁶ We also interviewed DOD officials to discuss their M&A policy and staff capacity, and to determine if DOD has efforts to assess the effects of industry consolidation writ large.

To further assess the extent to which DOD has insight into defense-related M&A, we analyzed agency documents to compare DOD's actual implementation of M&A assessments to the requirements established in agency policy. As part of this effort, we selected a nongeneralizable sample of nine M&A that DOD assessed in fiscal years 2018 through 2022 as illustrative examples. Our selection was generated using several criteria, including representation of a variety of outcomes (proceeded

⁴The Joint Explanatory Statement accompanying the NDAA for Fiscal Year 2022 included a provision for GAO to assess DOD's actions to monitor and assess the effects of potential mergers and acquisitions on its defense industrial base. See National Defense Authorization Act for Fiscal Year 2022: Legislative Text and Joint Explanatory Statement to Accompany S. 1605, Public Law 117-81 (Dec. 2021). The Senate Armed Services Committee report accompanying a bill for the James M. Inhofe NDAA for Fiscal Year 2023 included a provision for GAO to evaluate DOD's oversight processes for vetting proposed mergers and acquisitions within the defense industrial base. See S. Rep. No. 117-130, at 204 (2022).

⁵For the purposes of this report, defense-related M&A indicates that one or more companies involved in a merger or acquisition supplies the defense industry.

⁶DOD officials told us that data from fiscal years before 2018 may be incomplete in part due to problems arising from a server migration and changes in data collection practices.

without further review, remedied, or blocked), merger values, and fiscal year of assessment.

To address how DOD's role as a stakeholder to the antitrust agencies affects how it conducts M&A assessments, we reviewed DOD and antitrust agency policy and guidance to determine how DOD is expected to support antitrust reviews led by the Department of Justice (DOJ) and the Federal Trade Commission (FTC). In doing so, we determined what information DOD has access to when it conducts M&A assessments and the nature and extent of its role in determining the outcome of antitrust reviews. We also interviewed DOD and antitrust agency officials and analyzed information from our nine illustrative examples to understand how DOD and the antitrust agencies interacted and shared information during those assessments.

To address the extent to which DOD monitors the effects of M&A on the defense industrial base, we reviewed agency policy to determine DOD's requirements for monitoring the effects of completed M&A. We also interviewed DOD officials and reviewed agency documentation to determine if DOD has efforts underway to assess the effects of specific M&A. A more detailed description of our scope and methodology is included in appendix I.

We conducted this performance audit from June 2022 to October 2023 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

The U.S. defense industrial base includes the people, technology, institutions, technological know-how, and facilities used to design, develop, manufacture, and maintain the weapons and other goods and services needed to meet U.S. national security objectives. The defense industrial base is composed of several tiers: top tiers that include prime contractors and major subcontractors, and lower tiers that include suppliers of parts, electronic components, and raw materials.

DOD stated in its 2022 *State of Competition within the Defense Industrial Base* report that a robust defense industrial base is essential to meeting U.S. national security objectives.⁷ Accordingly, DOD views any risk to the industrial base—any event or condition that can disrupt or degrade DOD supplier capabilities or capacity needed to equip or sustain military forces now and in the future—as a threat to U.S. national security. Industry consolidation caused by M&A between defense contractors and suppliers is one type of risk affecting the defense industrial base.⁸

Federal Antitrust Reviews of Mergers and Acquisitions

The antitrust agencies are responsible for the enforcement of the antitrust statutes: the Sherman Act, the Clayton Act, and the FTC Act.

- The Sherman Act is the oldest law governing antitrust, and outlaws all contracts, combinations (such as trusts), and conspiracies that restrain interstate and foreign trade and commerce. The Sherman Act also prohibits the monopolization or attempts to monopolize any part of interstate and foreign trade.⁹
- The Clayton Act provided more detail on certain practices not included under the Sherman Act. The current version of the statute generally prohibits mergers or acquisitions that may substantially lessen competition or tend to create a monopoly, among other things.¹⁰
- The FTC Act created FTC and bans unfair methods of competition.¹¹

⁷DOD, *State of Competition within the Defense Industrial Base*.

⁸Industry consolidation is one risk among many affecting the defense industrial base. Other types of industrial base risks include, but are not limited to, workforce shortfalls, foreign dependency, cybersecurity, obsolescence, and erosion of U.S.-based infrastructure.

⁹Ch. 647, 26 Stat. 209, § 1-2 (1890) (codified as amended at 15 U.S.C. § 1-2).

¹⁰Ch. 323, 38 Stat. 730 (1914) (codified as amended at 15 U.S.C. § 12-27; 29 U.S.C. § 52-53). The current version of the Clayton Act prohibits individuals subject to FTC's jurisdiction from acquiring the whole or any part of the assets of another person engaged in commerce or in an activity affecting commerce, where in any line of commerce or in any activity affecting commerce in any section of the United States, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly. See 15 U.S.C. § 18.

¹¹Ch. 311, 38 Stat. 717, § 1, 5 (1914) (codified as amended at 15 U.S.C. § 41, 45(a)).

To enforce the antitrust laws, the antitrust agencies review M&A and evaluate whether they may substantially lessen competition or may tend to create a monopoly. These reviews can occur in any sector of the economy and, regardless of the specific companies or markets involved, the antitrust agencies' focus is primarily on the potential risks to competition. For example, during antitrust reviews of defense-related M&A, the antitrust agencies evaluate how a merger or acquisition would affect competition in the defense industrial base. Antitrust agency officials told us that they will consider other types of risks, such as risks to national security and innovation, only if they can link those risks to a potential lessening of competition.

The antitrust agencies can review any M&A, but receive notice from the merging parties only if the merger or acquisition is valued over certain dollar thresholds and meets other requirements. The Hart-Scott-Rodino Antitrust Improvements (HSR) Act of 1976 amended the Clayton Act and established the Premerger Notification Program.¹² The HSR Act requires companies to notify the antitrust agencies when initiating and prior to completing certain M&A over certain dollar thresholds and to wait for a period—generally 30 days—before conducting the merger or

¹²See Pub. L. No. 94-435, § 201 (1976) (codified as amended at 15 U.S.C. § 18a). For the HSR Act to apply to a particular transaction, it must generally satisfy three tests: the commerce test, the size of transaction test, and the size of person test. An acquisition will satisfy the commerce test if either of the parties to a transaction is engaged in commerce or in any activity affecting commerce. See 15 U.S.C. § 18a(a)(1). The size of transaction test is met if, as a result of the acquisition, the acquiring person will hold an aggregate amount of voting securities, and assets of the acquired person valued at more than \$50 million, as adjusted (currently \$111.4 million). For M&A exceeding \$50 million, as adjusted (currently \$111.4 million), but less than \$200 million, as adjusted (currently \$445.5 million), the size of person test is met if a person who has total assets or annual net sales of at least \$100 million, as adjusted (currently \$222.7 million) acquires (1) any voting securities or assets of a person engaged in manufacturing which has annual net sales or total assets of at least \$10 million, as adjusted (currently \$22.3 million); (2) any voting securities or assets of a person not engaged in manufacturing which has total assets of \$10 million, as adjusted (currently \$22.3 million); or (3) any voting securities or assets of a person with annual net sales or total assets of \$10 million, as adjusted (currently \$22.3 million). See 15 U.S.C. § 18a(a)(2)(B). Transactions in excess of \$200 million, as adjusted (currently \$445.5 million), do not need to meet the size of the person test to qualify. See 15 U.S.C. § 18a(a)(2)(A). Certain transactions that meet these tests may be exempt from premerger notification rules and the waiting period. See 15 U.S.C. § 18a(c). For the current thresholds, see Federal Trade Commission: Revised Jurisdictional Thresholds, 88 Fed. Reg. 5004 (Jan. 26, 2023).

acquisition.¹³ This provides DOJ and FTC an opportunity to evaluate the potential competitive effects of the merger or acquisition. As of February 2023, the adjusted HSR premerger notification transaction threshold for a merger or acquisition is \$111.4 million.¹⁴ DOJ and FTC may also review smaller M&A that may substantially lessen competition or tend to create a monopoly. However, for these smaller M&A, the HSR Act does not require companies to report the M&A to the antitrust agencies and they do not have to wait until the end of a 30-day waiting period to carry out their merger or acquisition.

Federal antitrust reviews have different stages, depending on whether the antitrust agencies initially determine that competition risks are present.

- The **initial review** stage usually takes place during the 30-day waiting period, during which time the antitrust agencies review the M&A to determine any potential antitrust concerns that warrant additional scrutiny. Officials from DOD's Office of Industrial Base Policy (IBP) told us that during this initial review, the antitrust agencies solicit input on potential competition risks from affected customers and interested parties, such as federal agencies that may contract with the merging companies. For example, IBP officials told us that if the antitrust agencies determine that a merger or acquisition involves a company with a defense equity, they may request DOD's input on how the M&A could affect DOD programs.¹⁵ After collecting information from these affected parties and conducting their own analysis, the antitrust agencies determine whether there is evidence that the potential M&A would substantially lessen competition or tend to create a monopoly. The Hart-Scott-Rodino Annual Report for Fiscal Year 2021 showed that about 98 percent of M&A proceeded after this initial review.

¹³The initial waiting period under the HSR Act is generally 30 days, except for cash tender offers where it is reduced to 15 days. See 15 U.S.C. § 18a(b)(1). The waiting period starts on the date that FTC and the Assistant Attorney General of DOJ's Antitrust Division receive completed notification of the merger as required by law, or if notification is not completed, notification to the extent completed and a statement of reasons for noncompliance. See 15 U.S.C. § 18a(b)(1)(A). FTC and the Assistant Attorney General may terminate the waiting period in individual cases and allow a person to proceed with the acquisition. 15 U.S.C. §18a(b)(2). FTC or the Assistant Attorney General may also extend the waiting period under certain circumstances.

¹⁴See Federal Trade Commission: Revised Jurisdictional Thresholds, 88 Fed. Reg. 5004 (Jan. 26, 2023).

¹⁵For the purposes of this report, a merger or acquisition with a defense equity indicates that one or more companies involved supplies the defense industry.

- The antitrust agencies can initiate a **second request** to request additional information on how the M&A will affect competition. The second request can extend the waiting period, during which the merging parties cannot complete their M&A until they have substantially complied with the second request. Second requests are infrequent and about 2 percent of reviews carried out in response to HSR filings proceeded to that stage, according to Hart-Scott-Rodino Annual Report for Fiscal Year 2021.

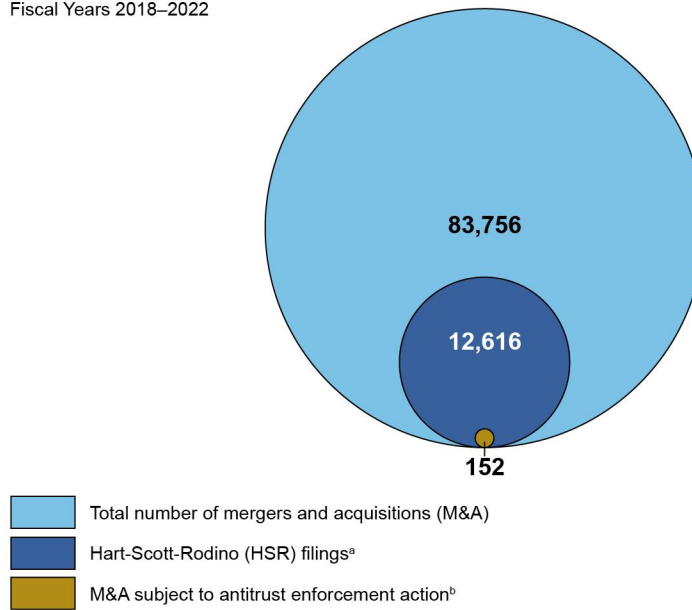
M&A subject to federal antitrust reviews can have multiple potential outcomes. The antitrust agencies allow nearly all M&A to proceed without challenge after an initial review under the HSR process. If the antitrust agencies have reason to believe a merger or acquisition could result in potential violations of certain antitrust statutes, they can take enforcement action to remedy the risks. For example, the antitrust agencies may negotiate an agreement with the parties to remedy the competition concerns. The agreement could result in a structural remedy (e.g., the divestiture of a line of business) or a behavioral remedy (e.g., creating firewalls between certain lines of business). If the antitrust agencies and the merging parties cannot negotiate an agreement or the antitrust agencies believe that the risks are too challenging to mitigate, either of the antitrust agencies may request a preliminary injunction in federal district court to block the M&A from proceeding.¹⁶ Between fiscal years 2018 and 2022, there were at least 83,756 M&A in the U.S. economy, according to commercially available data. The antitrust agencies received 12,616 filings under the HSR Act during the same period, which resulted in approximately 152 enforcement actions, as shown in figure 1 below.¹⁷ On average, around 1 percent of HSR filings result in an enforcement action.

¹⁶See 15 U.S.C. § 18a(f).

¹⁷Data on fiscal year 2022 enforcement actions were not available at the time of our report, so the statistic on enforcement actions includes fiscal years 2018-2021.

Figure 1: Mergers and Acquisitions Subject to Antitrust Enforcement Action

Mergers and Acquisitions
Fiscal Years 2018–2022



Source: GAO analysis of Hart-Scott-Rodino Annual Reports and publicly available antitrust agency data. | GAO-24-106129

Accessible Data for Figure 1: Mergers and Acquisitions Subject to Antitrust Enforcement Action

Category	FY18	FY19	FY20	FY21	FY22	Total, FY18-22
Total number of mergers and acquisitions (M&A)	14,456	15,099	13,038	19,318	21,845	83,756
Hart-Scott-Rodino (HSR) filings ^a	2,111	2,089	1,637	3,520	3,259	12,616
M&A subject to antitrust enforcement action ^b	39	38	43	32	Data not yet available	152

Source: GAO analysis of Hart-Scott-Rodino Annual Reports and publicly available antitrust agency data. | GAO-24-106129

^aThe HSR Act requires companies to notify the antitrust agencies when initiating and prior to completing certain M&A over certain dollar thresholds and to wait for a period of 30 days before conducting the merger or acquisition. During this 30-day period, the antitrust agencies and interested parties, such as the Department of Defense, review whether the M&A may substantially reduce competition or tend to create a monopoly.

^bData on fiscal year 2022 enforcement actions were not available at the time of GAO's report, so this total includes enforcement actions in fiscal years 2018-2021.

DOD Process for Assessing Risks and Benefits Posed by Defense M&A

To identify and better understand the effects of consolidation on the defense industrial base, DOD can conduct assessments of defense M&A. DOD's M&A policy, DOD Directive 5000.62, outlines a department-wide policy for assessing M&A in the defense industrial base.¹⁸ DOD's M&A policy stipulates that through these assessments, DOD will consider the effect of M&A on competition for DOD contracts and subcontracts, innovation of defense technologies, DOD costs, and national security, among other things. For example, DOD may assess if the M&A will reduce competition when contracting for a particular product or service purchased by defense programs. DOD officials stated that they may also assess if the M&A would result in a foreign company or a commercial company owning a critical defense supplier, which could pose a national security risk. DOD officials told us that under certain circumstances, DOD will share information requested by the antitrust agencies and coordinate its M&A assessments with the antitrust agencies, which, as noted above, have the authority to challenge certain M&A that violate certain antitrust statutes.

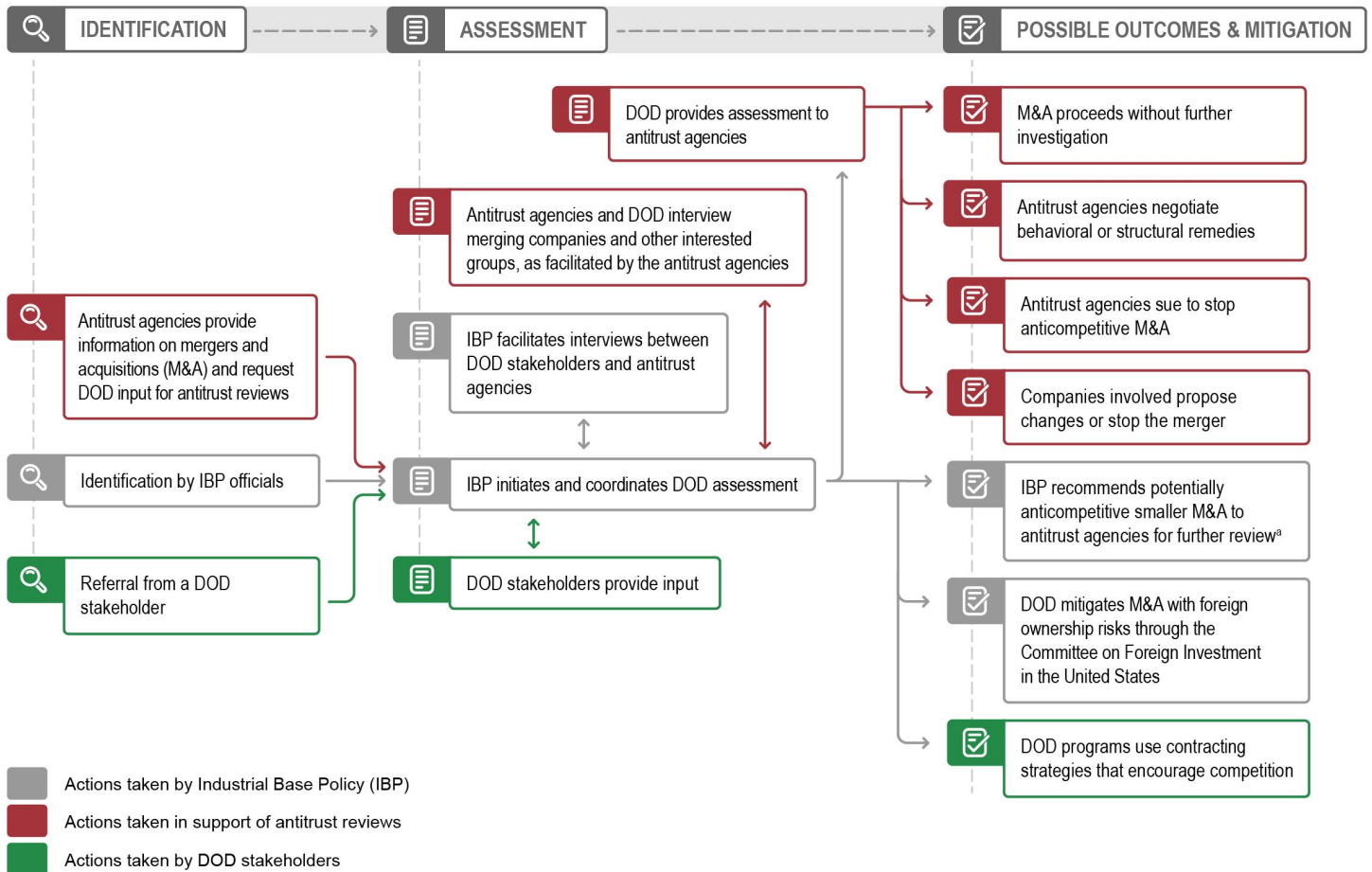
According to DOD's M&A policy, DOD's M&A assessments are a department-wide effort supported by multiple organizations across DOD. Under the authority, direction, and control of the Under Secretary of Defense for Acquisition and Sustainment, IBP determines the need to assess certain M&A involving major defense suppliers, develops DOD's recommended position on reviewed M&A, and seeks input from program

¹⁸Department of Defense, *Review of Mergers, Acquisitions, Joint Ventures, Investments, and Strategic Alliances of Major Defense Suppliers on National Security and Public Interest*, DOD Directive 5000.62 (Feb. 27, 2017).

offices and certain DOD stakeholders, among other duties.¹⁹ IBP's M&A office, comprised of two to three full-time equivalent employees, initiates and coordinates the DOD-wide assessment. A department-wide network of DOD stakeholders supports the M&A office by providing input on the assessments. IBP officials told us that 33 stakeholder organizations across DOD help IBP identify relevant M&A and provide input on the potential risks and benefits of M&A based on the nature and scope of their interactions with the merging companies. According to IBP officials, these stakeholders generally work in acquisitions for their respective military departments, field activities, or defense agencies (such as the Defense Logistics Agency or the Missile Defense Agency). Figure 2 depicts DOD's notional M&A assessment process and the key organizations involved.

¹⁹DOD Directive 5000.62 provides that the Deputy Assistant Secretary of Defense for Manufacturing and Industrial Base Policy undertake certain responsibilities related to industrial base assessments under the authority, direction, and control of the Under Secretary of Defense for Acquisition, Technology, and Logistics. The National Defense Authorization Act for Fiscal Year 2017 reorganized the Office of the Secretary of Defense by dissolving the Under Secretary of Defense for Acquisition, Technology, and Logistics and establishing the Under Secretary of Defense for Acquisition and Sustainment and the Under Secretary of Defense for Research and Engineering. See Pub. L. No. 114-328, § 901(a)-(b) (2016) (codified as amended at 10 U.S.C. § 133a-133b). IBP officials told us that the office of the Deputy Assistant Secretary of Defense for Manufacturing and Industrial Base Policy was reorganized, and IBP now assumes the directive's roles and responsibilities for Manufacturing and Industrial Base Policy, and they operate under the authority, direction, and control of the Under Secretary of Defense for Acquisition and Sustainment.

Figure 2: Notional Department of Defense (DOD) Process for Merger and Acquisition Assessments



Source: GAO analysis of DOD and antitrust agency information. | GAO-24-106129

Accessible Data for Figure 2: Notional Department of Defense (DOD) Process for Merger and Acquisition Assessments

Action	Category	Phase
Antitrust agencies provide information on mergers and acquisitions (M&A) and request DOD input for antitrust reviews	Actions taken in support of antitrust reviews	Identification
Identification by IBP officials	Actions taken by Industrial Base Policy (IBP)	Identification
Referral from a DOD stakeholder	Actions taken by DOD stakeholders	Identification
DOD provides assessment to antitrust agencies	Actions taken in support of antitrust reviews	Assessment

Letter

Action	Category	Phase
Antitrust agencies and DOD interview merging companies and other interested groups, as facilitated by the antitrust agencies	Actions taken in support of antitrust reviews	Assessment
IBP facilitates interviews between DOD stakeholders and antitrust agencies	Actions taken by Industrial Base Policy (IBP)	Assessment
IBP initiates and coordinates DOD assessment	Actions taken by Industrial Base Policy (IBP)	Assessment
DOD stakeholders provide input	Actions taken by DOD stakeholders	Assessment
M&A proceeds without further investigation	Actions taken in support of antitrust reviews	Possible outcomes and mitigation
Antitrust agencies negotiate behavioral or structural remedies	Actions taken in support of antitrust reviews	Possible outcomes and mitigation
Antitrust agencies sue to stop anticompetitive M&A	Actions taken in support of antitrust reviews	Possible outcomes and mitigation
Companies involved propose changes or stop the merger	Actions taken in support of antitrust reviews	Possible outcomes and mitigation
IBP recommends potentially anticompetitive smaller M&A to antitrust agencies for further review ^a	Actions taken by Industrial Base Policy (IBP)	Possible outcomes and mitigation
DOD mitigates M&A with foreign ownership risks through the Committee on Foreign Investment in the United States	Actions taken by Industrial Base Policy (IBP)	Possible outcomes and mitigation
DOD programs use contracting strategies that encourage competition	Actions taken by DOD stakeholders	Possible outcomes and mitigation

Source: GAO analysis of DOD and antitrust agency information. | GAO-24-106129

^aThe antitrust agencies can review any M&A, but receive notice from the merging parties only if the merger or acquisition is valued over certain dollar thresholds and meets other requirements, as established in the Hart-Scott-Rodino Antitrust Improvements (HSR) Act of 1976. As of February 2023, the adjusted HSR premerger notification threshold for a merger or acquisition was \$111.4 million. The Department of Justice and the Federal Trade Commission may also review smaller M&A, but the HSR Act does not require companies to report these M&A to the antitrust agencies. Instead, antitrust officials said they learn about these M&A from news reporting or affected market participants, such as DOD.

Identifying M&A. IBP initiates a DOD M&A assessment after learning about a defense merger or acquisition through one of three ways:

- Requests for input from one of the antitrust agencies: During an antitrust review, the antitrust agencies may solicit DOD input if they determine that the merger or acquisition has defense equities and DOD is an affected customer. DOD provides input on how the proposed M&A may affect competition in the defense industrial base.
- IBP’s own research: IBP identifies proposed M&A on its own through several means, including news reporting and public data sources. For example, IBP officials told us that, in some cases, they identify announced M&A involving DOD suppliers through their subscriptions

to market intelligence services and determine whether the proposed M&A warrants further DOD assessment and potential elevation to the antitrust agencies for review. According to DOD's M&A policy, IBP should consider risks related to national security, the industrial and technological base, competition, innovation, or other issues, including those related to the public interest, when deciding if a DOD assessment is needed.

- Referral from a DOD stakeholder: Stakeholders across DOD notify IBP if they become aware of M&A that could affect their programs. Stakeholders told us that they become aware of such M&A through a variety of ways, including public news reporting and acquisition program officials' day-to-day interactions with contractors.

Assessing M&A. When IBP officials begin an M&A assessment, they conduct initial research about the companies involved and reach out to DOD stakeholders to solicit their input on how the M&A could affect their acquisition programs. According to IBP officials, the M&A office generally sends out a wide call for stakeholder input, but also tries to identify the particular offices likely to be most affected by the proposed M&A to make sure their views are incorporated. These stakeholders have subject matter experts who are able to conduct deep-dive analyses on how a proposed M&A could affect particular acquisition programs. IBP collects responses from stakeholders and develops a consolidated DOD position on the likely risks and benefits of the proposed M&A.

Mitigating M&A risks. When IBP and DOD stakeholders identify potential risks to the defense industrial base through their M&A assessments, there are several ways they can mitigate these risks. According to IBP officials, the most effective way to mitigate identified competition risks is to provide this information to the antitrust agencies, which are statutorily empowered to take enforcement action, as appropriate, to preserve competition.

There are also mitigation measures that DOD can implement on its own to address any of the risks it identifies. For example, IBP officials said that DOD programs are able to increase opportunities for competition by breaking up a large contract or requirement into several smaller contracts or including competition effects in the source selection criteria for contract awards. Additionally, if the M&A involves a foreign company, the Committee on Foreign Investment in the United States, which is an interagency group that addresses national security risks that result from

foreign investment in U.S. companies, may examine the transaction.²⁰ Furthermore, DOD manages funding designated to support the defense industrial base, which can also help mitigate M&A risks. DOD's Industrial Base Analysis and Sustainment program, for instance, supports initiatives to increase industrial manufacturing capabilities and supply chain resiliency. DOD can also use funding under Defense Production Act authorities to establish, expand, maintain, or restore domestic production capacity for critical components and technologies.²¹

Prior GAO Work on DOD Industrial Base Efforts

GAO has issued several reports on DOD's efforts to manage risks affecting the defense industrial base, such as risks related to M&A. We have found that DOD's management of the defense industrial base poses a risk to its acquisition of weapons systems, and this management challenge is included in our *High-Risk Series* report as an area of significant concern.²² In our prior reports, we found the following:

- In June 2018, we recommended that DOD make better use of existing supplier data to identify risks to the industrial base, as well as identify the appropriate workforce mix of government personnel and contractor support staff needed to work with business-sensitive data.²³ DOD partially concurred with these recommendations and has since taken action to implement both of them. To implement our supplier data recommendation, IBP worked with the military departments and other DOD organizations to compile data on the prime contractors and

²⁰The Committee on Foreign Investment in the United States is responsible for assessing, reviewing, and investigating covered transactions—which include, for example, mergers, acquisitions, or takeovers carried out by a joint venture that could result in control of a U.S. business by a foreign government or an entity controlled by or acting on behalf of a foreign government. In examining covered transactions, committee members seek to identify and address, as appropriate, any national security concerns that arise as a result of the transaction.

²¹See Defense Production Act of 1950, Pub. L. No. 81-774 (1950) (codified as amended at 50 U.S.C. §§ 4501 et seq.).

²²GAO, *High-Risk Series: Efforts Made to Achieve Progress Need to Be Maintained and Expanded to Fully Address All Areas*, [GAO-23-106203](#) (Washington, D.C.: Apr. 20, 2023).

²³IBP relied extensively on contractor support staff in its workforce but could not provide contractors with access to business-sensitive proprietary data due to its interpretation of the Trade Secrets Act. GAO, *Defense Industrial Base: Integrating Existing Supplier Data and Addressing Workforce Challenges Could Improve Risk Analysis*, [GAO-18-435](#) (Washington, D.C.: June 13, 2018).

first and second tier suppliers supporting certain weapon systems. These data will be integrated into a DOD-wide data system and used to assess industrial base risks. DOD implemented our workforce recommendation by conducting a staffing assessment and, as a result, requesting 14 additional staff members for its industrial base analytics office.

- In June 2022, we recommended that DOD update its industrial base assessment instruction to ensure that DOD has greater insight into industrial base risks across the department.²⁴ DOD concurred with this recommendation and plans to update the instruction by September 2025.
- In July 2022, we reported that DOD had yet to develop a congressionally mandated analytical framework for mitigating industrial base risks across the acquisition process.²⁵ We additionally found that DOD did not have a consolidated and comprehensive strategy to mitigate risks in the defense industrial base and was not collecting the information that such a strategy would require to track the status of those risks. As a result, we recommended that DOD develop a consolidated and comprehensive industrial base strategy. DOD partially concurred with this recommendation, noting that it agrees with the importance of a comprehensive strategy. According to DOD officials, IBP is in the process of developing an overarching DOD industrial base strategy and expects to release it by May 2024.

A list of our prior work on DOD's industrial base efforts is provided at the end of this report.

DOD Has Limited Insight into the Potential Risks of Most Defense M&A

DOD has limited insight into most defense-related M&A, as it focuses its resources on assessing high-dollar-value M&A for competition risks in support of antitrust reviews. While DOD's most recent estimates found there were approximately 400 M&A occurring each year in the defense industrial base, IBP and DOD stakeholders assessed an average of 40

²⁴GAO, *Weapon Systems Annual Assessment: Challenges to Fielding Capabilities Faster Persist*, [GAO-22-105230](#) (Washington, D.C.: June 8, 2022).

²⁵GAO, *Defense Industrial Base: DOD Should Take Actions to Strengthen Its Risk Mitigation Approach*, [GAO-22-104154](#) (Washington, D.C.: July 7, 2022).

M&A per year between fiscal years 2018 and 2022. DOD policy states that IBP is responsible for determining the need to assess any M&A involving a major defense supplier, but the office's efforts have largely focused on assessing high-dollar-value M&A so DOD could provide input to antitrust reviews.²⁶ For the M&A that IBP and DOD stakeholders did assess, they primarily focused on evaluating competition risks to provide information needed for antitrust reviews. Their assessments placed less emphasis on potential benefits, such as strengthening the financial position of a supplier, or other types of risks identified in DOD policy, such as national security or innovation risks.

DOD Assessments Are Generally Limited to High-Dollar-Value Defense M&A

DOD assessed an average of 40 M&A each year in fiscal years 2018 through 2022, out of hundreds of M&A estimated to occur in the defense industrial base each year. DOD's most recently published statistics on defense M&A—which were included in its *Fiscal Year 2017 Annual Industrial Capabilities* report—indicated that approximately 400 defense-related M&A were occurring annually in the aerospace and defense sector.²⁷ IBP officials could not say with certainty how many defense-related M&A now occur annually because they no longer track or maintain data on all M&A in the defense industrial base. IBP officials said they stopped collecting and reporting these data because they faced challenges in identifying the universe of defense-related M&A due to the complex structure of the defense industrial base. IBP officials told us that the defense industrial base is comprised not only of companies in the aerospace and defense sector, but also of companies in other sectors of the economy that support both defense and commercial customers, such as shipbuilders or semiconductor companies. IBP officials noted that collecting data on M&A across multiple sectors of the economy makes it

²⁶DOD's M&A policy defines a "major defense supplier" as any prime contractor or subcontractor that IBP or certain other officials designate as a main source of supply, including any company that "supplies or could supply goods or services directly or indirectly to DOD or any company with technology potentially significant to defense capabilities." The policy also specifies that the following are considered a major defense supplier even if they have not been designated as one: (1) any prime contractor of a major system, as defined by provisions currently codified at 10 U.S.C. § 3041(a)-(b), and (2) any prime contractor of a contract awarded pursuant to provisions currently codified at 10 U.S.C. § 3204(a)(3) for reasons outlined in clause (A) of that subsection.

²⁷DOD, *Fiscal Year 2017 Annual Industrial Capabilities* (Washington, D.C.: Apr. 12, 2018).

challenging and time-consuming for DOD to estimate the total number of defense-related M&A.²⁸

DOD’s M&A assessments between fiscal years 2018 and 2022 largely concentrated on high-dollar-value M&A that were subject to antitrust reviews, as shown in table 1 below.

Table 1: DOD-Assessed Mergers and Acquisitions (M&A) Compared to HSR Thresholds, Fiscal Years 2018-2022

Category	2018	2019	2020	2021	2022
Total number of assessed M&A	17	65	36	48	32 ^a
Number of M&A assessed by DOD that were above applicable HSR thresholds for antitrust review ^b	17	22	27	48	26
Number of M&A assessed by DOD that were below applicable HSR thresholds for antitrust review	0	43 ^c	9	0	5

Source: GAO analysis of Department of Defense (DOD) data, based on the Hart-Scott-Rodino (HSR) transaction threshold at the time of the merger or acquisition. | GAO-24-106129

^aIn fiscal year 2022, there was one case for which DOD could not provide information on whether the M&A exceeded the HSR threshold.

^bFrom fiscal years 2018 through 2022, the HSR transaction threshold ranged from \$80.8 million to \$101 million.

^cIndustrial Base Policy officials attributed the 1-year spike in below-threshold M&A assessments in fiscal year 2019 to an M&A office initiative to identify whether smaller-dollar-value M&A posed risks to the defense industrial base.

In 4 of the 5 years from fiscal years 2018 through 2022, nearly all of IBP’s assessments focused on M&A that surpassed the applicable HSR transaction threshold, according to IBP’s data. Fiscal year 2019 was the only exception to this trend, during which year IBP assessed 43 M&A that its data indicated were below the HSR transaction threshold. IBP officials attributed this to an M&A office initiative in fiscal year 2019 to identify whether smaller-dollar-value M&A posed risks to the defense industrial base by scanning for such transactions and initiating internal assessments. IBP officials stated that they did not identify major concerns from such M&A at the time and, as a result, stopped scanning for such M&A.

²⁸In attempting to validate how many defense-related M&A occur annually, we analyzed commercially available M&A data and encountered data limitations similar to those experienced by DOD officials. Appendix I includes more information about our analysis of defense-related M&A using commercially available data.

We found that IBP infrequently identifies M&A that may present a risk to DOD through methods outside of antitrust agencies' requests for input, such as through stakeholder referrals or IBP-led trend analyses. DOD's M&A policy allows DOD stakeholders to submit referrals for potential assessments, but IBP officials and stakeholders stated that stakeholders infrequently submit such referrals. Additionally, IBP officials said their M&A office is not collecting robust data or conducting recurring trend analyses that could help them identify M&A in risky areas of consolidation among defense suppliers. For example, DOD's annual reports on the industrial base describe specific above-threshold M&A that DOD assessed in a given fiscal year in support of antitrust reviews, but no longer describe all M&A involving major defense suppliers or consolidation trends. IBP also conducted new sector-specific M&A trend analyses in support of the February 2022 *State of Competition within the Defense Industrial Base* report, which found that there was significant consolidation among contractors for major weapon systems. IBP officials told us that these were onetime efforts and they have not kept these trend analyses up to date.

Unclear Policy and Limited Resourcing Hinder IBP's Ability to Assess Defense M&A

Although most of DOD's focus is on assessing high-dollar-value M&A, its M&A policy states that IBP is responsible for determining the need to initiate DOD assessments for a broad range of defense-related M&A. According to DOD's M&A policy, IBP can initiate an assessment of an actual or proposed merger or acquisition involving any major defense supplier. IBP officials told us this broad authority is useful because it allows DOD to assess a wide range of companies they or DOD stakeholders deem critical to DOD programs.

We found that IBP focuses on assessing high-dollar-value M&A instead of a broader range of defense M&A, in part, because of unclear policy on which major defense suppliers to prioritize for assessment and limited staff resources within IBP. These factors hinder IBP's ability to identify and assess additional M&A that may present risks to the defense industrial base. GAO's *Standards for Internal Control in the Federal Government* state that agency management should define objectives clearly to enable the identification of risks and establish the organizational

structure necessary to achieve its objectives.²⁹ Doing so helps agencies ensure that they identify relevant risks and have the appropriate amount of staff resources to mitigate those risks.

Unclear direction in DOD's M&A policy and no additional guidance.

DOD's M&A policy states that IBP is responsible for determining the need to assess any merger or acquisition involving a major defense supplier, but the policy does not provide clear direction on which major defense suppliers IBP and DOD stakeholders should prioritize for the purposes of conducting M&A assessments. According to IBP officials, DOD also does not currently have additional guidance to supplement its M&A policy and provide implementation instructions. As a result, IBP officials said they do not have any documented DOD-specific criteria in the M&A policy or additional guidance to help prioritize their efforts to assess defense-related M&A that pose risks. In the absence of clear direction in the DOD policy or additional guidance, IBP officials told us that they prioritize the high-value M&A the antitrust agencies notify them about as a proxy for identifying which M&A present the highest risk. IBP officials said this approach helps them ensure DOD is being responsive to antitrust agency requests for input and assessing M&A the antitrust agencies have determined may present risks to competition. IBP and stakeholder officials said, however, that this focus on high-value M&A has resulted in DOD not comprehensively assessing the M&A of smaller suppliers, including those that supply critical products to DOD.

The DOD M&A policy generally defines a major defense supplier as any prime contractor or subcontractor that certain DOD officials, including those within IBP, designate as a main source of supply, as well as prime contractors that meet certain criteria.³⁰ Companies qualifying for designation as major defense suppliers include any firm that supplies or could supply goods or services, directly, or indirectly, to DOD or any company with technology potentially significant to defense capabilities. In addition, all prime contractors supporting major systems are automatically

²⁹GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Sept. 10, 2014).

³⁰DOD's M&A policy specifies that the following are considered a major defense supplier even if they have not been designated as one: (1) any prime contractor of a major system, as defined by provisions currently codified at 10 U.S.C. § 3041(a)-(b), and (2) any prime contractor of a contract awarded pursuant to provisions currently codified at 10 U.S.C. § 3204(a)(3) for reasons outlined in clause (A) of that subsection.

considered major defense suppliers.³¹ DOD officials estimate that the defense industrial base is comprised of approximately 200,000 contractors. Under DOD's M&A policy, a potentially large number of these contractors could be considered or could qualify for designation as a major defense supplier. As a result, IBP officials and DOD stakeholders told us that they have to focus their efforts for identifying relevant M&A due to the number of potential M&A to assess.

DOD's M&A policy, however, does not provide clear direction on how IBP and DOD stakeholders should determine which of these defense companies present the most risk to prioritize their efforts. We discussed with IBP potential mechanisms officials could use to help prioritize M&A for assessment, but officials stated that they had not used them. For example, IBP officials we met with stated that there is not a comprehensive list of suppliers that DOD considers to be major defense suppliers for the purposes of conducting M&A assessments. Additionally, the M&A policy does not specifically direct IBP to use existing DOD determinations of high-priority supply chains or industrial base risks to prioritize M&A assessments. For example, DOD's most recent annual Industrial Capabilities Report identifies its five highest priority supply chains and four industrial base strategic risk areas. IBP officials said that focusing on M&A related to these high-priority supply chains and strategic industrial base risks is one way they could prioritize their efforts, but they have not used these existing determinations to guide which defense suppliers to prioritize for M&A assessments.

IBP officials also said that DOD's understanding of which companies comprise the defense industrial base has evolved over time, expanding from just prime contractors in the aerospace and defense sector to also include sub-tier aerospace and defense suppliers and contractors in other sectors. For example, IBP officials told us that since 2018, IBP has expanded its understanding of the defense industrial base to include sectors that support defense programs outside of the traditional

³¹Major systems generally refer to a combination of elements that will function together to produce the capabilities required to fulfill a mission need, including hardware, equipment, software, or any combination thereof, but excluding construction or other improvements to real property. A DOD system is considered a major system if (1) the milestone decision authority designates it as a major system; or (2) it is estimated to require an eventual total expenditure for research, development, test, and evaluation of more than \$200 million in fiscal year 2020 constant dollars, or for procurement of more than \$920 million in fiscal year 2020 constant dollars. See 10 U.S.C. § 3041(a)-(c); DOD Instruction 5000.85, *Major Capability Acquisition* (Aug. 6, 2020) (incorporating change 1, Nov. 4, 2021) (reflecting statutory major system cost thresholds in fiscal year 2020 constant dollars).

aerospace and defense sector, such as pharmaceuticals, information technology, and semiconductors. DOD's broadened understanding of the defense industrial base underscores how the absence of more clear direction on how to prioritize among major defense suppliers hinders IBP's ability to ensure it identifies and assesses M&A that present risks to DOD.

Furthermore, we found two of the military department stakeholders we spoke with were using proxy criteria to identify and prioritize defense-related M&A, in the absence of clear direction in the DOD policy. For example, one stakeholder told us that they consider whether the M&A would affect a critical DOD program, if it involves a contractor that produces a unique military item, and if one or more of the companies involved is a sole source vendor (i.e., the vendor is the only source capable of providing the item). Another stakeholder told us that due to the high volume of M&A identified through their publicly available data source, they filter what they refer to IBP for further assessment based on those companies with which it has contracts.

IBP resource constraints. IBP has a small M&A office, so there are limits on the amount of work it can conduct to identify and assess defense-related M&A. According to IBP officials, DOD established IBP's M&A office in 2017 with one full-time equivalent staff member and expanded it to two to three full-time equivalents in fiscal year 2021. IBP officials told us that if DOD is providing input for many antitrust reviews or if there is a large or complex M&A assessment, those assessment activities can consume the majority of the M&A office's staff resources. IBP officials said that, to the best of their knowledge, IBP has not studied how many additional staff it would need to conduct additional assessments. They also noted that the DOD stakeholders that support IBP during M&A assessments similarly face resource constraints.

IBP officials identified multiple activities that they cannot conduct due to limited staff resources.

- IBP officials said they have limited capacity to scan for M&A above the HSR transaction threshold that do not have an obvious defense equity. IBP officials told us that if a merger undergoing an antitrust review primarily affects commercial customers, it may not be immediately clear to the antitrust agencies that there is a defense equity. IBP, DOJ, and FTC officials told us that IBP can proactively reach out and ask to provide input on M&A with a defense equity even if DOD is not contacted by the antitrust agencies—but that is

contingent upon DOD being aware that the defense merger or acquisition is occurring.

- IBP officials said they are limited in their ability to scan for defense-related M&A under the HSR transaction threshold. IBP officials told us that their efforts to scan for smaller M&A (for which merging parties do not have to notify the antitrust agencies) is secondary to their efforts to respond to existing antitrust reviews and they often do not have the capacity to conduct this additional research.
- IBP officials told us that their office does not have the capacity to conduct any recurring macro-level trend analyses or a complete analysis of markets following mergers to assess defense industrial base consolidation. If they become aware of a particular company conducting several M&A, they will review whether the company has acquired concentrated market power, but they do not conduct broader consolidation analyses.

We found numerous examples of defense-related M&A that potentially presented risks to DOD, but which IBP did not identify for a DOD assessment.

- Our comparison of IBP's list of assessed M&A with a commercially available list of defense-related mergers from fiscal year 2018 through fiscal year 2022 found that IBP did not initiate a DOD assessment for at least 17 M&A with a defense equity that were above the HSR transaction threshold.³² IBP officials told us that while they could not provide a specific reason as to why DOD did not assess these specific M&A, they were probably unaware of the M&A at the time or the antitrust agencies did not request their input during the HSR process. In that regard, FTC officials told us that they could not find evidence that they reached out to DOD on those M&A that FTC reviewed. DOJ officials stated that they did not track M&A for which they sought DOD's input.
- Our comparison of IBP's list of assessed M&A with a commercially available list of defense-related mergers from fiscal years 2018 through 2022 also found that IBP did not assess at least 13 smaller-dollar-value M&A involving companies with a defense equity. For

³²We obtained commercially available Bloomberg data on M&A where at least one party in the transaction was in the aerospace and defense sector. However, these data were not an exhaustive list of all DOD suppliers and their M&A, so our analysis identifies the minimum number of M&A above the HSR transaction threshold that were not assessed by IBP. DOD's definition of the defense industrial base includes not only aerospace and defense suppliers, but suppliers in other sectors, as well. See appendix I for more information about our analysis of Bloomberg M&A data.

example, IBP's records indicate that DOD did not assess a \$36 million acquisition of a sub-tier supplier that provides computing capabilities to multiple defense programs. IBP officials stated that they likely did not assess these M&A because IBP and the stakeholders were not aware of them.

- In at least one other instance, DOD did not participate in the initial antitrust review for a high-dollar-value M&A but did provide input during the second request. IBP officials told us that the antitrust agencies sometimes do not realize that DOD is an affected customer until later in the antitrust review process, such as during the second request. While DOD did not have data on the number of instances in which it only participated during the second request, our analysis of nine illustrative examples of M&A assessed by DOD found one such instance. In this case, IBP was not aware of an ongoing merger involving a DOD prime contractor until an antitrust agency contacted DOD during the second request, when the antitrust agency recognized the defense equity. IBP initiated DOD's assessment of that M&A over a year after the companies publicly announced their merger. The majority of M&A proceed after the initial review, so not getting involved early in the antitrust review presents the risk that M&A are proceeding without DOD's input.

Collectively, these examples underscore that IBP does not always identify defense-related M&A, which means M&A that could present risks to the defense industrial base are proceeding without assessment by DOD. Until IBP and DOD stakeholders receive clear direction on how to prioritize M&A involving major defense suppliers that need to be assessed, such as those in critical supply chains, and IBP assesses whether it has adequate staff resources to carry out its responsibilities, DOD will likely continue to miss opportunities to assess M&A that may pose a risk to the defense industrial base.

DOD M&A Assessments Do Not Consistently Evaluate All Types of Risks and Benefits

IBP and DOD stakeholders primarily focus on evaluating competition risks during M&A assessments, even though DOD's M&A policy calls for the consideration of a broader range of potential risks and benefits. According to DOD policy, DOD's M&A assessments must consider a variety of effects, such as effects on competition, national security, and

innovation.³³ In practice, however, we found that DOD did not consistently assess all of these types of potential effects. IBP officials and DOD stakeholders we spoke with said they assess competition risks, but the extent to which they assess other types of risks and benefits, if any, varies.

In our analysis of nine M&A assessments selected as illustrative examples, we found that DOD primarily assessed competition risks and less consistently evaluated other types of risks and benefits, including innovation effects, national security effects, and DOD benefits, such as potential cost savings. Table 2 summarizes the types of effects identified in DOD’s M&A policy and how frequently DOD stakeholders assessed those effects in the nine illustrative examples we selected.

Table 2: Types of Effects Evaluated in a Selection of Nine DOD Merger and Acquisition (M&A) Assessments

Types of effects that must be assessed, per DOD policy	Number of M&A assessments in which DOD stakeholders specifically evaluated each type of effect
National security effect ^a	0 of 9
Industrial and technological base effect ^b	4 of 9
Innovation effect ^c	1 of 9
Effect on competition for DOD contracts and subcontracts, including future programs and technologies of interest to DOD	9 of 9
Restriction or impaired access of a critical supplier to a competitor, or restriction or impaired market access by a supplier	2 of 9
Benefits for DOD, including anticipated cost savings	1 of 9
Risks to the financial stability and continued stewardship of critical military capabilities, including anticipated increased costs	2 of 9
Risks to the satisfactory completion of current or future DOD programs or operations	4 of 9
Effect on DOD access to affordable or innovative sources, including impediments to obtain essential data rights	1 of 9
Other potential issues ^d	7 of 9

Source: GAO analysis of Department of Defense (DOD) Directive 5000.62 and DOD information from nine illustrative examples. | GAO-24-106129

Note: DOD’s M&A policy states that assessments must consider each of the risks and benefits listed above, and when applicable, assessments must be conducted in cooperation with antitrust agencies under section 18a, title 15 of the U.S. Code (pertaining to premerger notification and waiting periods under the Hart-Scott-Rodino Act). DOD coordinated its assessments with antitrust agencies for seven of the nine examples we reviewed.

^aFor example, a DOD stakeholder said that a national security risk would be created if a commercial company acquired a defense supplier and closed the production line supporting DOD programs. Industrial Base Policy officials, for their part, consider the national security risk type to be represented

³³DOD, DOD Directive 5000.62, Para. 1.2.a.

by the other risks identified in the policy, even though DOD's M&A policy identifies national security as a separate and distinct risk to be assessed.

^bAccording to DOD stakeholders, a merger or acquisition could create an industrial and technological base effect if, for example, it enabled the companies to offer their customers a wider selection of products or broader range of expertise.

^cDOD stakeholders said a merger or acquisition could affect innovation if, for example, the companies would be able to pool their resources and increase their investment in research and development.

^dOther potential issues include any additional risks to the public interest. Examples of such issues are foreign ownership risks or effects on pre-existing DOD industrial base investments.

Among our illustrative examples, competition risks were the only type of risk or benefit that DOD stakeholders said they assessed in all nine cases. In two of those examples, DOD stakeholders did not assess any other risks or benefits beyond competition. DOD stakeholders also did not identify national security as a specific risk in any of the documentation we reviewed or interviews we conducted for our illustrative examples. One of the DOD stakeholders we spoke with said it did not evaluate national security concerns during its M&A assessments, while two other stakeholders said that risks not related to competition, such as national security risks, are generally not in the scope of their M&A assessments. IBP officials stated that while national security was not specifically assessed as a distinct risk type, as is required by the policy, in practice, they consider every other risk identified to represent a potential national security risk.

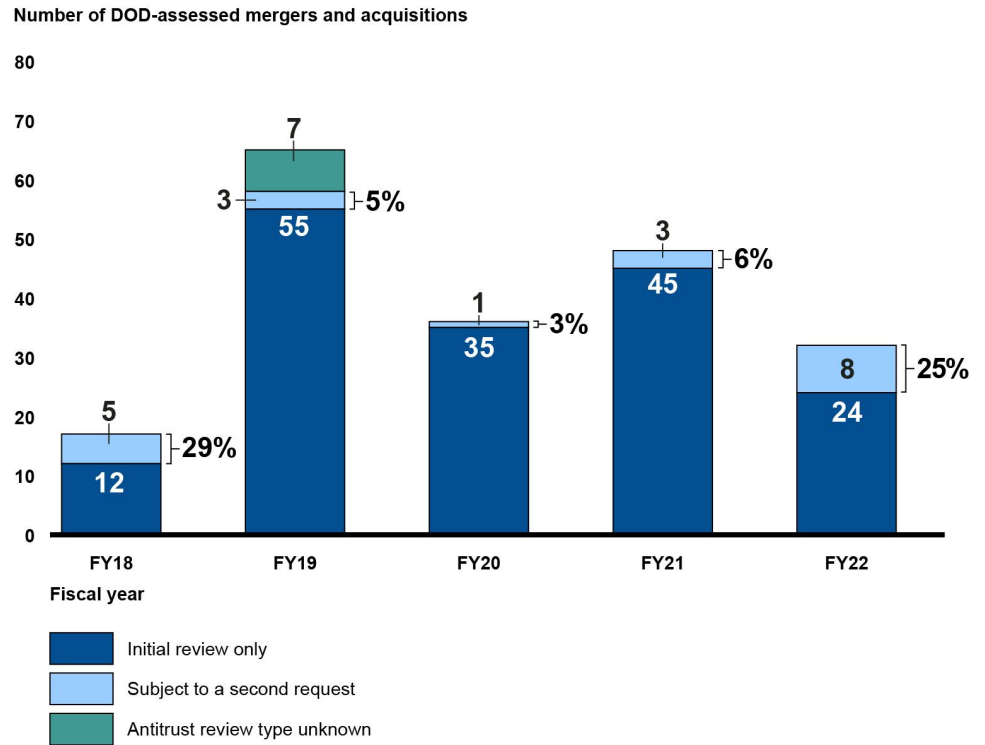
We found that DOD stakeholders do not consistently assess the full range of risks and benefits identified in DOD policy because of direction they receive from IBP to focus on competition risks. IBP officials and some DOD stakeholders said that because DOD's M&A assessments often occur in support of antitrust reviews, this influences how they assess the potential risks. In particular, they focus on competition because this is the only type of risk the antitrust agencies review and can take enforcement action to address.

IBP officials said that when they initiate a DOD M&A assessment in response to an antitrust agency request for input, they have to ensure that the DOD assessment, at a minimum, collects information on potential competition risks that the antitrust agencies requested. The initial phase of an antitrust review is short, so IBP and antitrust agency officials said the antitrust agencies generally request that IBP provide DOD's initial

input within 2 weeks or less.³⁴ Given the limited time available for the DOD assessment, IBP officials said they and DOD stakeholders prioritize their M&A assessment efforts on the competition risks the antitrust agencies asked them to assess. IBP officials and DOD stakeholders said they often save their assessment of potential benefits and risks not related to competition for the second request stage of an antitrust review, if one occurs. Second requests, however, occurred for approximately 10 percent of the M&A that DOD assessed between fiscal years 2018 and 2022, as shown in figure 3. Therefore, in most instances, IBP and DOD stakeholders did not evaluate other types of risks and benefits once their initial assessment was complete.

³⁴The HSR Act generally requires merging companies subject to the premerger notification requirements to wait for 30 days after the antitrust agencies receive notification and before merging, with some exceptions. See 15 U.S.C. § 18a(b)(1). During this period, antitrust agencies review the filing for potential antitrust issues. During the 2 weeks or less that the antitrust agencies generally provide for DOD to submit input on the merger or acquisition under review, IBP officials said they conduct initial research, solicit input from affected DOD stakeholders, and develop a consolidated DOD position to communicate to the antitrust agencies. IBP and DOD stakeholders said the stakeholders generally have 5 to 10 days within this 2-week period to gather information and conduct their analysis.

Figure 3: Type of Antitrust Review for DOD-Assessed Mergers and Acquisitions, Fiscal Years 2018-2022



Source: GAO analysis of Department of Defense (DOD) data. | GAO-24-106129

Accessible Data for Figure 3: Type of Antitrust Review for DOD-Assessed Mergers and Acquisitions, Fiscal Years 2018-2022

Category	FY18	FY19	FY20	FY21	FY22	Total
Number of DOD-assessed mergers and acquisitions	17	65	36	48	32	198
Initial review only	12	55	35	45	24	180
Subject to a second request	5 (29%)	3 (5%)	1 (3%)	3 (6%)	8 (25%)	18 (9%)
Antitrust review type unknown		7				7

Source: GAO analysis of Department of Defense (DOD) data | GAO-24-106129

IBP recently made a change in how it solicits input from stakeholder during M&A assessments. During M&A assessments, IBP uses a

questionnaire to request input from DOD stakeholders.³⁵ The questionnaire that IBP used until the end of fiscal year 2022 specifically asked stakeholders to provide information on the potential competition effects the merger or acquisition posed for DOD programs and their suppliers. The questionnaire did not include assessment questions about any of the risks and benefits identified in the policy that are not related to competition. All of the DOD stakeholders we spoke with stated that IBP's competition-focused questionnaire was a major determinant of the types of analysis they conducted to develop their inputs for M&A assessments. We found in our nine illustrative examples that the DOD stakeholders involved in those M&A assessments focused their analysis on identifying competition risks and evaluated the scale and scope of their contracts with the merging companies, the effect on competition dynamics in the relevant market, and the availability of substitute goods or services from competitors, among other competition-related analyses.

In fiscal year 2023, IBP began using a new stakeholder questionnaire during M&A assessments that aligns more closely with DOD's policy and prompts stakeholders to consider all types of risks and benefits identified in DOD's M&A policy. In addition to questions about potential competition risks, the new questionnaire now also asks stakeholders to discuss potential national security effects, innovation effects, cost risks, and potential benefits, among other things. For example, the new questionnaire prompts stakeholders to describe potential effects of the merger or acquisition that could impair or enhance national security.

IBP officials said they are also developing a new DOD instruction to help improve the implementation of DOD's M&A assessments, but do not have an estimate of when it will be completed. IBP officials have not yet finalized this new instruction, but they plan for it to supplement DOD's existing M&A policy and provide additional guidance on how to operationalize the assessment requirements established in the policy. According to IBP officials, they intend for this instruction to increase the standardization and rigor of DOD's M&A assessments, including how they and DOD stakeholders assess all of the potential risks and benefits identified in the policy.

IBP's efforts to revise their stakeholder questionnaire and create a new DOD instruction demonstrate IBP's recognition that DOD needs to do

³⁵IBP uses the same questionnaire regardless of whether the DOD assessment is being carried out in support of an antitrust review or on DOD's own initiative.

more to assess the full range of risks and benefits identified in DOD policy. The new DOD instruction that IBP is currently developing may be able to provide this additional direction, but it is too soon to tell what will be in that instruction and how IBP and DOD stakeholders will implement it. Until IBP and DOD stakeholders routinely assess the full range of risks and benefits identified in DOD policy during their M&A assessments, there will continue to be a chance that they are missing potential M&A risks that DOD needs to address.

DOD's Supporting Role to Antitrust Agencies Influences How It Conducts M&A Assessments

DOD has a supporting role in antitrust reviews, which affects the information it has access to when conducting its M&A assessments and its ability to determine how competition risks are mitigated. When developing DOD's inputs for antitrust reviews, IBP and DOD stakeholders are generally not able to access the large amounts of information the antitrust agencies collect on the merging companies and the markets in which they operate. IBP and DOD stakeholders can, however, leverage a number of DOD and publicly available information sources, such as contracting data and insights from DOD subject matter experts. DOD also does not determine the outcome of an antitrust review, such as deciding if an enforcement action is warranted to prevent competitive harm. Instead, DOD's input during antitrust reviews is focused on identifying potential competition effects. IBP and DOD stakeholders occasionally provide feedback on potential enforcement actions being considered by the antitrust agencies to mitigate those risks, when the antitrust agencies request they do so.

DOD Does Not Have Access to All Information Available to Antitrust Agencies When Conducting Its M&A Assessments

When conducting M&A assessments, IBP and DOD stakeholders collect data from a number of internal DOD and external publicly available information sources. Officials from IBP and DOD stakeholder organizations, such as the military departments and Defense Contract Management Agency (DCMA), said the information sources they leverage during their M&A assessments include DOD contracting data, internal data on suppliers, institutional knowledge of subject matter experts, and public data sources such as financial analysis subscription services. IBP

and DOD stakeholder officials explained that contracting data, for example, help them determine the potential scope and magnitude of DOD's risk exposure. In particular, IBP and DOD stakeholders are able to use contracting data to assess the programs that could be affected by the M&A, whether there was competition for the companies' contracts, and the size of the companies' contracts. Additionally, IBP officials and stakeholders in the military departments said that DOD subject matter experts provide key insights during M&A assessments. These insights include information on the potential effects for acquisition programs, the dynamics of particular sectors of the defense industrial base, the state of competition in specific markets, and future DOD acquisition needs.

We found that the information available to IBP and DOD stakeholders drives the nature and extent of their analyses during M&A assessments. For example, since IBP and DOD stakeholders rely on DOD's internal contracting and supplier data, their insights into DOD's potential risk exposure is dependent upon where the merging companies are in DOD's supply chains. Officials from IBP, the military departments, and DCMA said that while they have robust information on prime contractors, they have less information on most of the sub-tier suppliers in the supply chains supporting DOD programs. Additionally, IBP and DOD stakeholders said DOD's contracting data help them assess how much business DOD programs have with the merging companies, but these data do not provide them with broader insights into the merging companies' shares of the relevant market. As a result, DOD stakeholder officials with whom we spoke said they do not have complete market share information and therefore cannot use the Herfindahl-Hirschman Index during their assessments.³⁶ This index is a widely accepted metric used to evaluate the level of consolidation in a given market and assess how a merger or acquisition would affect future consolidation.

While the antitrust agencies collect a substantial amount of information during their antitrust reviews, antitrust and IBP officials said the antitrust agencies generally cannot share all of this information with DOD due to

³⁶The Herfindahl-Hirschman Index is based on market share analyses and provides one way to evaluate if a merger or acquisition may raise competitive concerns. The higher the post-merger index and the higher the increase in the index, the greater the potential for competitive concerns.

confidentiality restrictions established in statute.³⁷ The information collected by the antitrust agencies during an antitrust review can include the structure of the merger or acquisition, certain company financial data, the types of products and services the companies provide, the geographic areas in which they operate, and their history of M&A, among other things. The antitrust agencies may also collect information such as customer lists, sales data, market share data, research and development plans, production information, and competition assessments. The antitrust agencies can use this information in their own analyses to evaluate potential competition risks from the proposed M&A and to supplement the inputs provided by DOD and other interested parties. For example, the antitrust agencies often use their access to market share data collected from the merging companies and other companies in the industry to calculate the Herfindahl-Hirschman index.

DOD Does Not Decide How Competition Risks Will Be Mitigated by Antitrust Agencies

IBP and DOD stakeholders have largely focused on evaluating competition risks during their M&A assessments, as discussed above, but they do not have a decision-making role in determining how these competition risks will be mitigated by the antitrust agencies. DOD participates in antitrust reviews in the role of an affected “customer” of the companies involved in the M&A, rather than in a decision-making role. In this supporting role, DOD provides input to the antitrust agencies on the M&A’s potential competition risks for the defense industrial base and DOD programs. The antitrust agencies then decide if the M&A under

³⁷The HSR Act provides that any information or documentary material filed with FTC or the Assistant Attorney General is exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552), and the information may not be made public except as may be relevant to an administrative or judicial action or proceeding. See 15 U.S.C. § 18a(h). According to DOJ officials, statutes that govern information the antitrust agencies gather from other interested parties also restrict the agencies’ ability to share the information with outside parties. Antitrust agency and IBP officials said there are occasionally special circumstances under which the merging companies will sign a confidentiality waiver to permit the antitrust agencies to share their information with DOD, such as during an antitrust review involving a large defense prime contractor. In these special cases, antitrust officials said the information sharing would be limited to IBP officials; DOD stakeholders would still not have access to the information. DOD’s M&A policy directs DOD to conduct M&A assessments under strict confidentiality with regard to proprietary information and in accordance with any confidentiality agreements between DOD’s Office of the General Counsel and the major defense suppliers or other interested parties.

review will be subjected to enforcement action. In a 2016 joint statement on preserving competition in the defense industry, the antitrust agencies noted that DOD is in a unique position to assess the potential implications of defense M&A, and that they give DOD's input substantial weight during their reviews. According to the antitrust agencies, DOD's perspective is valuable because it is often the only customer for products and services offered by defense companies. The antitrust agencies noted in their joint statement, however, that they ultimately determine whether a defense merger or acquisition should be challenged, not DOD.³⁸

At the conclusion of an antitrust review, the antitrust agencies determine if any of the identified competition risks—including those risks identified by IBP and DOD stakeholders—are significant enough to warrant enforcement action to mitigate their effects. The antitrust agencies' enforcement actions could include, for example, seeking an injunction to block the M&A or negotiating a settlement with the companies that requires them to divest certain lines of business to other companies to remedy the competition risk.

According to DOD's M&A policy, DOD can recommend actions to mitigate the risks of a merger or acquisition if requested to do so by the antitrust agencies.³⁹ According to IBP and DOD stakeholder officials, however, it is rare for the antitrust agencies to request an official DOD recommendation on specific enforcement actions to mitigate the risks from a merger or acquisition. IBP officials said DOD typically defers to the antitrust agencies' expertise and experience in determining the best course of action to mitigate the risks that they and DOD stakeholders identified during their M&A assessments. Instead, DOD and antitrust agency officials said the antitrust agencies will often discuss potential enforcement actions antitrust officials are considering with IBP and DOD stakeholders and ask for their feedback on the extent to which such measures would address the risks they identified.

Officials from IBP and DOD stakeholder organizations also said the antitrust agencies have not consistently notified DOD about the final outcome of their antitrust reviews and the enforcement actions they decided to pursue to mitigate the risks DOD identified, if any. IBP officials

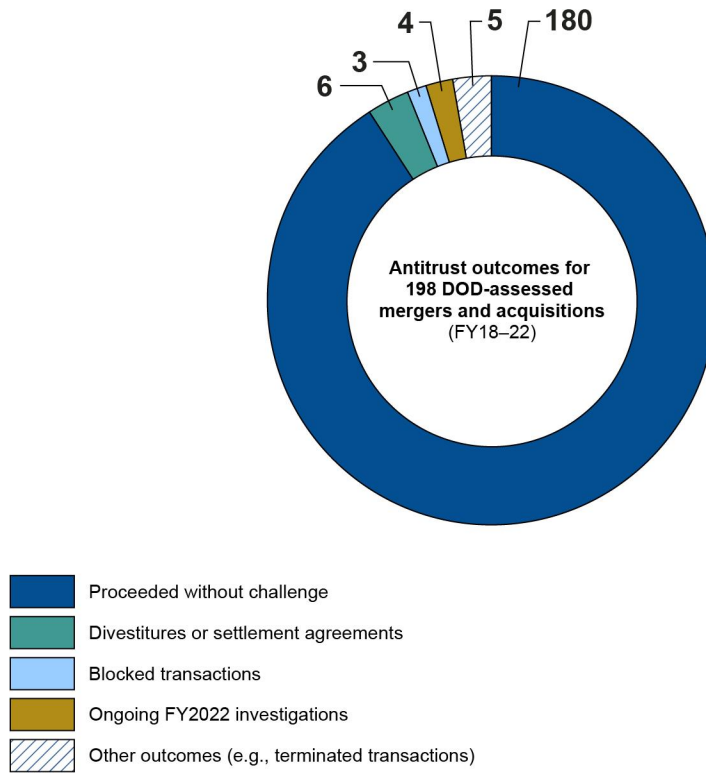
³⁸Department of Justice and Federal Trade Commission, *Joint Statement of the Department of Justice and the Federal Trade Commission on Preserving Competition in the Defense Industry*, Matter Number P130500 (Washington, D.C.: Apr. 12, 2016).

³⁹DOD, DOD Directive 5000.62.

and DOD stakeholders said they instead try to learn about the outcomes and any enforcement actions to mitigate identified risks through news reports or public announcements made by the antitrust agencies and the companies. Among our five illustrative examples for which there was a related antitrust review, DOD officials learned of the review's outcome from a public information source in all but one case. DOD and antitrust officials said that DOD has historically not been privy to this decision information due to antitrust agencies' concerns about the confidentiality of the information. FTC officials also said their internal processes—in which the outcome of an antitrust review is not decided until the FTC Commissioners vote on it—limits their ability to notify DOD before the commissioners publicly announce their decision. However, IBP officials said that DOJ, which is the antitrust agency with which DOD most frequently interacts, recently agreed to start sharing information about the outcomes of defense-related antitrust reviews with DOD.

Among the defense-related M&A that DOD assessed in the past 5 years, few were subjected to an enforcement action by the antitrust agencies. Figure 4 summarizes the outcomes for the M&A that DOD assessed from fiscal years 2018 through 2022.

Figure 4: Outcomes for Mergers and Acquisitions Assessed by the Department of Defense (DOD), FY 2018-2022



Source: GAO analysis of Department of Defense data. | GAO-24-106129

Accessible Data for Figure 4: Outcomes for Mergers and Acquisitions Assessed by the Department of Defense (DOD), FY 2018-2022

Category	Total
Mergers and acquisitions assessed by DOD	198
Allowed to proceed	180
Divestitures or settlement agreements	6
Blocked transactions	3
Ongoing FY 2022 investigations	4
Other outcomes (e.g. terminated transactions)	5

Source: GAO analysis of Department of Defense data. | GAO-24-106129

Note: As of May 2023, DOD officials said they did not yet know the outcome of four of the M&A that DOD assessed in fiscal year (FY) 2022 and they were likely still under review by the antitrust agencies.

As shown in figure 4 above, more than 90 percent of the M&A that DOD assessed between fiscal years 2018 and 2022 were not challenged by

the antitrust agencies. IBP officials said that in the uncommon cases where the antitrust agencies pursued enforcement action, the antitrust agencies usually determined that divestitures were the most effective means to mitigate the identified competition risks. When FTC filed a suit against an acquisition involving two defense contractors in 2022, it stated in a press release that it was the first defense-related case FTC had litigated in decades.⁴⁰

DOD Generally Does Not Monitor the Effects of Completed M&A on the Industrial Base

DOD has limited efforts underway to monitor the effects of M&A on the defense industrial base and determine if any of the potential risks identified by IBP or DOD stakeholders during their assessments were realized. According to IBP officials and stakeholders from the military departments that we met with, they monitor the outcome of M&A only if the antitrust agencies ask them to do so, which is rare. In the past 10 years, the antitrust agencies have asked DOD to monitor the outcomes of two M&A out of all the antitrust reviews for which DOD has provided input. DOD and antitrust agency officials we met with said there are particular circumstances under which the antitrust agencies will ask DOD to assist with the monitoring of M&A—namely, when an antitrust review results in a long-term agreement for a defense company to engage in certain behaviors to maintain competition.⁴¹ Since antitrust reviews focus exclusively on competition risks, these monitoring efforts are limited to a merger or acquisition's effect on competition in the defense industrial base. Other types of risks and benefits—such as the merger or acquisition's effect on national security—are not the focus of DOD's monitoring in these cases.

⁴⁰Federal Trade Commission, *For Release: FTC Sues to Block Lockheed Martin Corporation's \$4.4 Billion Vertical Acquisition of Aerojet Rocketdyne Holdings Inc.* (Washington, D.C.: Jan. 25, 2022).

⁴¹The antitrust agencies refer to these types of long-term agreements between the government and the merging companies as behavioral remedies. The structure of the behavioral remedy depends on the circumstances of each M&A and the competition risks that need to be mitigated. For example, if one company is acquiring a key supplier in its and its competitors supply chains, the antitrust agencies may negotiate a behavioral remedy that requires the acquiring company to maintain its competitors' access to the supplier or to separate the management of the supplier from the management of the larger company to preserve the supplier's independence.

In the two cases in which antitrust agencies asked DOD to monitor the outcome of an antitrust review, DOD helped monitor compliance with the agreement negotiated by the antitrust agency to mitigate identified competition risks. For example, in one of these cases, FTC asked DOD to participate in the monitoring effort for a 2018 agreement involving two defense companies in the missile sector.⁴² In this case, a large company was acquiring a critical supplier of missile components and FTC determined there was a risk the acquiring company would restrict or disadvantage its competitors' access to the supplier, thereby reducing their ability to compete. For a period of 20 years, designated officials within DOD will monitor the behavior of the acquiring company to see if it unfairly disadvantages its competitors by restricting their access to the goods, services, and information of the critical supplier.⁴³ To carry out this monitoring, DOD will be able to review compliance reports from the companies involved in the acquisition, conduct interviews with relevant company personnel, inspect company documents and facilities, and review complaints made by the companies' competitors or other outside parties, among other things.

Beyond these two monitoring efforts, however, IBP officials and stakeholders in the military departments said they do not proactively monitor the effects of M&A to determine if the potential risks they assessed were realized. For all nine of our illustrative examples, the IBP and DOD stakeholder officials we spoke with confirmed they did not monitor the effects of the merger or acquisition once they concluded their assessment. This was the case even in two examples where IBP or DOD stakeholder officials determined during the assessment that further monitoring was warranted because potential risks existed. In these two examples, some stakeholders found in their initial M&A assessments that ongoing consolidation was creating potential competition risks in the relevant market. In both of these cases, the antitrust agency, IBP, and stakeholder officials eventually concluded upon further analysis that the competition risks associated with the merger or acquisition were not significant enough to merit antitrust intervention or DOD mitigation efforts at that time. Instead, the DOD and antitrust agency officials noted a need for DOD to monitor these M&A for evidence of future competition

⁴²In the other case, DOD helped FTC monitor a 2007 agreement involving two aerospace companies that were forming a joint venture. That antitrust agreement terminated in 2017, so DOD is no longer monitoring it.

⁴³According to IBP officials, IBP currently leads the DOD monitoring of this agreement, with support from DOD General Counsel and other DOD stakeholders, as appropriate.

concerns or additional consolidation involving the companies. According to the IBP and DOD stakeholder officials we spoke with, however, they did not monitor either of these M&A to determine if the risks they were concerned about were realized.

In the absence of dedicated monitoring efforts, IBP officials and stakeholders in the military departments we spoke with said they sometimes learn about realized negative effects on the industrial base if a program office encounters issues with the merged company, such as rising costs or declining quality. In such cases, officials said the affected program will raise the challenges they are experiencing through DOD's acquisition oversight process, which is a separate process from DOD's M&A assessments. For instance, in one of our illustrative examples, DOD stakeholders said they learned that the potential risks they had identified during an M&A assessment were actually occurring when acquisition programs and contract administration offices working with the relevant companies began observing and reporting quality and production issues.

We found that officials in IBP and stakeholders in the military departments are generally not monitoring the actual effects of M&A unless asked by the antitrust agencies because there is not a requirement for them to do so in DOD's M&A policy or in military department guidance we reviewed. Instead, as described above, IBP focuses DOD's efforts on assessing high-value M&A in response to antitrust agency requests for input. According to *Standards for Internal Control in the Federal Government*, government agencies should design and implement control activities to achieve objectives and respond to risks. This includes, for example, monitoring the status of risks and documenting responsibility for monitoring in policy.⁴⁴ Although DOD has an M&A assessments policy and some of the military departments told us they have additional guidance to supplement the DOD policy, this policy and guidance primarily outline how DOD should conduct assessments to identify potential risks. We found that neither IBP nor the military departments have a requirement in DOD's M&A policy or the additional guidance we reviewed to monitor the actual effects of M&A after they complete their assessments to determine if any of the risks they identified were realized.

DCMA officials were the only stakeholders with whom we spoke who said they attempt to monitor the risks identified in the M&A assessments in which they participated. DCMA officials said they conduct such monitoring

⁴⁴[GAO-14-704G](#).

because their guidance requires it. In particular, DCMA guidance for defense industrial base monitoring and reporting assigns DCMA's Industrial Analysis Division with responsibility for monitoring the effectiveness of industrial base risk mitigation measures, including those related to M&A.⁴⁵ DCMA Industrial Analysis Division officials said their subject matter experts are tasked with maintaining awareness of the potential risks identified in M&A assessments and how these risks are affecting DOD programs. To determine if any of the identified risks have been realized and affected DOD programs, DCMA officials said these subject matter experts collect information from several sources, including the program offices affected by the merger or acquisition, other DCMA offices, the companies involved in the M&A, and publicly available sources. DCMA's monitoring, however, is limited to only those M&A assessments in which it participated. According to DCMA officials, they generally participate in M&A assessments that involve suppliers for major weapon systems, but do not participate in assessments for other types of suppliers, such as those in the information technology or services sectors. For example, DCMA participated in four of nine of our illustrative examples.

As a result of DOD's limited monitoring efforts, IBP and DOD stakeholders have incomplete insight into the actual effects of defense-related M&A. In the rare cases in which IBP or DOD stakeholders have conducted monitoring, these efforts have been focused on monitoring a merger or acquisition's effect on competition. IBP officials with whom we spoke said that conducting more robust monitoring would help support their efforts to manage M&A risks and there is an opportunity for them to better track the potential risks they and DOD stakeholders identified during their assessments.

Until DOD updates its M&A policy to require monitoring when its assessments identified risks, IBP and DOD stakeholder officials will miss opportunities to determine if the potential risks they identified actually occurred and, in turn, whether there are adverse effects on the defense industrial base that need to be addressed.

⁴⁵Defense Contract Management Agency, *Defense Industrial Base Monitoring and Reporting*, DCMA Manual 3401-05 (Dec. 6, 2018) (incorporating change 1, Dec. 22, 2020).

Conclusions

DOD has not effectively aligned its concerns about continued industrial base consolidation with the resources and robustness of its efforts to assess M&A risks to its industrial base. In all stages of the M&A assessment process—identifying M&A of potential concern, assessing the risks and benefits, and monitoring the outcomes on the defense industrial base—IBP and DOD stakeholders largely react and respond to requests from the antitrust agencies. This approach is not proactive and does not analyze the full range of risks that defense-related M&A pose to the defense industrial base. This is due, in part, to the fact that DOD has not devoted adequate resources to this high-priority and high-risk area of work. It is also driven by the fact that DOD's policy for M&A assessments does not provide clear direction on which major defense suppliers' M&A DOD should prioritize for assessment. In addition, IBP and DOD stakeholders do not have clear direction on DOD's expectations for assessing the potential risks and benefits of M&A, beyond the competition risks of interest to the antitrust agencies and DOD. Furthermore, DOD's M&A policy does not require IBP and DOD stakeholders to monitor completed M&A and check if any of the potential risks they identified during their assessments were realized. With its current reactive approach, DOD is missing opportunities to proactively identify risky M&A in the defense industrial base and to manage the full range of risks they present for DOD programs.

Recommendations for Executive Action

We are making the following four recommendations to DOD:

The Secretary of Defense should ensure that the Assistant Secretary of Defense for Industrial Base Policy provides clear direction as to which major defense suppliers IBP should prioritize for the purposes of conducting M&A assessments. (Recommendation 1)

The Secretary of Defense should ensure that the Assistant Secretary of Defense for Industrial Base Policy assesses whether its M&A office is adequately resourced to consistently carry out its responsibilities. (Recommendation 2)

The Secretary of Defense should ensure that the Assistant Secretary of Defense for Industrial Base Policy provides the Office of Industrial Base

Policy and DOD stakeholders with additional direction on assessing the full range of risks and benefits identified in DOD's M&A policy, such as national security effects, when developing the new DOD instruction or other appropriate guidance. (Recommendation 3)

The Secretary of Defense should ensure that the Assistant Secretary of Defense for Industrial Base Policy revises DOD's M&A policy to direct the Office of Industrial Base Policy, with support from relevant DOD stakeholders, to monitor the effects of concluded mergers or acquisitions in cases in which DOD identified risks during its assessment, to determine if risks were realized or if additional action is needed. (Recommendation 4)

Agency Comments

We provided a draft of this report to DOD, DOJ, and FTC for review and comment. DOD concurred with all four recommendations and described its plans to address them. DOD also provided technical comments, which we incorporated, as appropriate. DOJ did not have any comments on the report. FTC provided technical comments, which we incorporated, as appropriate.

We are sending copies of this report to the appropriate congressional committees, the Secretary of Defense, the Attorney General, and the Chair of the FTC. In addition, the report is available at no charge on the GAO website at <https://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-4841 or russellw@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix III.



W. William Russell
Director, Contracting and National Security Acquisitions

List of Committees

The Honorable Jack Reed
Chairman
The Honorable Roger Wicker
Ranking Member
Committee on Armed Services
United States Senate

The Honorable Jon Tester
Chair
The Honorable Susan Collins
Ranking Member
Subcommittee on Defense
Committee on Appropriations
United States Senate

The Honorable Mike Rogers
Chairman
The Honorable Adam Smith
Ranking Member
Committee on Armed Services
House of Representatives

The Honorable Ken Calvert
Chair
The Honorable Betty McCollum
Ranking Member
Subcommittee on Defense
Committee on Appropriations
House of Representatives

Appendix I: Objectives, Scope, and Methodology

The Joint Explanatory Statement accompanying the National Defense Authorization Act (NDAA) for Fiscal Year 2022 and the Senate Armed Services Committee Report accompanying a bill for the James M. Inhofe NDAA for Fiscal Year 2023 included provisions for GAO to evaluate Department of Defense (DOD) efforts to monitor and assess the effects of potential mergers and acquisitions (M&A) on the defense industrial base, as well as DOD's oversight processes for vetting potential M&A within the defense industrial base.¹ This report addresses (1) the extent to which DOD has insight into defense-related M&A; (2) how DOD's role as a stakeholder to the antitrust agencies affects how it conducts M&A assessments; and (3) the extent to which DOD monitors the effects of M&A on the defense industrial base.

To address the extent to which DOD has insight into defense-related M&A, we reviewed DOD's M&A policy to determine DOD's requirements for identifying and assessing M&A in the defense industrial base.² We also reviewed guidance specific to DOD stakeholders, as available, to determine what direction DOD stakeholders have to identify M&A for assessment. To compare DOD's actual implementation of M&A assessments to the requirements established in agency policy, we interviewed DOD officials about methods they use to identify defense M&A and any challenges they encounter in doing so. We also compared DOD's efforts to identify and assess M&A to *Standards for Internal Control in the Federal Government* to evaluate the extent to which its

¹The Joint Explanatory Statement accompanying the NDAA for Fiscal Year 2022 included a provision for GAO to assess DOD's actions to monitor and assess the effects of potential mergers and acquisitions on its defense industrial base. See NDAA for Fiscal Year 2022: Legislative Text and Joint Explanatory Statement to Accompany S. 1605, Public Law 117-81 (Dec. 2021). The Senate Armed Services Committee report accompanying a bill for the James M. Inhofe NDAA for Fiscal Year 2023 included a provision for GAO to evaluate DOD's oversight processes for vetting proposed mergers and acquisitions within the defense industrial base. See S. Rep. No. 117-130, at 204 (2022).

²Department of Defense, *Review of Mergers, Acquisitions, Joint Ventures, Investments, and Strategic Alliances of Major Defense Suppliers on National Security and Public Interest*, DOD Directive 5000.62 (Feb. 27, 2017).

policy and practices aligned with internal control standards for federal entities.³

Furthermore, we analyzed Industrial Base Policy (IBP) data on DOD M&A assessments to evaluate how many M&A DOD assessed, how many were in response to antitrust reviews, and the outcome of those reviews, among other things. Our analysis of these data covered fiscal years 2018 through 2022, the years for which IBP officials stated they had complete data on the M&A that DOD assessed. We determined IBP's data were sufficiently reliable for the purposes of determining which M&A DOD had assessed in these years. We assessed the reliability of these data through manual data testing, comparisons to commercially available M&A data from Bloomberg, and interviews with DOD officials.⁴

We used commercially available data from Bloomberg to determine how many defense-related M&A occurred in fiscal years 2018 through 2022. We analyzed information from this commercially available data source in an attempt to validate DOD estimates of the number of defense-related M&A that occur annually. When selecting which database to use for this analysis, we considered using government contracting data sources such as the Federal Procurement Data System and SAM.gov databases, as well as other commercial M&A data sources, such as S&P's Capital IQ. We found that none of the available options, including Bloomberg, has readily available information to capture the universe of M&A in the defense industrial base at both the prime contractor and subcontractor level. We chose to use the Bloomberg database due to its demonstrated data reliability through its use in prior GAO reports and additional data reliability testing conducted for this report.

In attempting to determine how many defense-related M&A occurred in fiscal years 2018 through 2022 to validate DOD's data, we used the Bloomberg M&A database's "aerospace & defense" industry classification to collect data on defense M&A. We focused our analysis on M&A where Bloomberg categorized at least one of the companies involved in the M&A as part of the aerospace and defense sector. We used these data to determine a minimum estimate of how many M&A occurred amongst defense-related suppliers in each fiscal year. These data indicated that,

³GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept.10, 2014).

⁴DOD officials told us that data from fiscal years before 2018 may be incomplete in part due to problems arising from a server migration and changes in data collection practices.

on average, there were at least 147 defense-related M&A occurring annually in this period. Bloomberg’s aerospace & defense industry classification, however, does not include all defense suppliers. Companies that supply both DOD and commercial customers may be included under other industry classifications. For example, we found that while the aerospace & defense category includes some naval shipbuilders, it does not include other shipbuilders that supply both DOD and commercial markets. As a result, our estimate of the number of defense M&A in fiscal years 2018 through 2022 is a minimum estimate and does not account for M&A among companies that support both defense and commercial customers, such as shipbuilders or semiconductor companies. Given these limitations, we determined that DOD’s most recent estimates of the number of defense-related M&A, as reported in the *Fiscal Year 2017 Annual Industrial Capabilities* report, were a more comprehensive estimate. As such, we are using DOD’s estimate for the purposes of this report.

We also compared Bloomberg data on aerospace and defense M&A to IBP’s data on DOD assessments to assess the extent to which DOD assessed M&A involving aerospace and defense companies in fiscal years 2018 through 2022. Through this analysis, we identified a number of defense-related M&A that DOD did not assess. Since the Bloomberg data did not include all defense suppliers, as noted above, this analysis identified a minimum number of defense-related M&A that DOD did not assess, but is not comprehensive. As a result, when discussing the results of this analysis, we use terms such as “at least” to note that these figures are minimum estimates. After identifying M&A with defense equities that DOD did not assess, we interviewed IBP officials again to discuss why they may not have been aware of such M&A. For M&A that had values that surpassed the applicable Hart-Scott-Rodino Antitrust Improvements (HSR) Act transaction threshold, we also reached out to the antitrust agencies to confirm if DOD had a role in any HSR reviews that may have occurred for such M&A.

To further assess DOD’s insight into defense-related M&A, we evaluated the extent to which IBP and DOD stakeholders conducted M&A assessments in alignment with DOD’s M&A policy. We reviewed the policy to determine which DOD organizations have a role in conducting M&A assessments and the types of risks and benefits they are expected to assess.⁵ We analyzed the questionnaires that IBP used to solicit DOD

⁵DOD, DOD Directive 5000.62.

stakeholder inputs during M&A assessments from fiscal years 2018 to 2023 to determine what risk and benefit information they requested. We also conducted interviews with IBP officials and DOD stakeholders in the military departments and Defense Contract Management Agency (DCMA) to understand how they implement DOD’s M&A assessments in practice.

To further compare the implementation of DOD’s M&A assessments to the requirements in policy, we selected a nongeneralizable sample of nine M&A that DOD assessed between fiscal years 2018 through 2022 as illustrative examples. We selected these examples from a DOD-provided list of all M&A assessments it conducted during these fiscal years, including assessments DOD initiated in response to an antitrust request or on its own initiative. For each example, we analyzed agency documentation and interviewed IBP officials and DOD stakeholders to understand how they conducted these assessments. This included analyzing which stakeholders participated, the types of risks and benefits DOD stakeholders assessed and reported to IBP, and the information sources and analyses they leveraged, among other things. In doing so, we evaluated the extent to which IBP and DOD stakeholders’ actual assessment activities aligned with the requirements in DOD’s M&A policy, which IBP officials told us is the key policy that guides their assessments. Our selection was generated using several criteria, including representation of a variety of outcomes (proceeded without further review, remedied, or blocked), merger values, and fiscal year of assessment.

Table 3 includes an overview of the nine illustrative examples we selected. The company names are sensitive information and are not included in the table.

Table 3: DOD Merger and Acquisition (M&A) Assessments Selected as Illustrative Examples

Category	Fiscal year of M&A assessment	Industrial base sector	M&A value above or below transaction thresholds for Hart-Scott-Rodino antitrust review	M&A outcome
Illustrative example 1	2021	Aerospace/Aviation	Above	Antitrust agency sued to block
Illustrative example 2	2018	Industrial Gas	Above	Divestiture of certain lines of business, then allowed to proceed
Illustrative example 3	2019	Aerospace and Defense	Above	Divestiture of certain lines of business, then allowed to proceed

Appendix I: Objectives, Scope, and Methodology

Category	Fiscal year of M&A assessment	Industrial base sector	M&A value above or below transaction thresholds for Hart-Scott-Rodino antitrust review	M&A outcome
Illustrative example 4	2020	Protective Gear	Above	Proceeded without challenge
Illustrative example 5	2021	Logistics	Above	Proceeded without challenge
Illustrative example 6	2019	Engineered Products	Below	Proceeded without challenge
Illustrative example 7	2020	Systems Engineering	Below	Proceeded without challenge
Illustrative example 8	2022	Navigation and Inertial Sensing	Below	Proceeded without challenge
Illustrative example 9	2022	Aerospace	Below	Proceeded without challenge

Source: GAO analysis of Department of Defense (DOD) data. | GAO-24-106129

To address how DOD’s role as a stakeholder to the antitrust agencies affects its conduct of M&A assessments, we reviewed DOD and antitrust agencies’ policy and guidance to determine how DOD is expected to support antitrust reviews led by the Department of Justice (DOJ) and Federal Trade Commission (FTC). This included assessing what information DOD is able to access and its role in determining the outcome of an antitrust review. For example, we reviewed DOD’s M&A policy and FTC guidance on antitrust reviews conducted under the HSR premerger notification program.⁶ We also reviewed federal antitrust statutes to understand how DOJ and FTC’s role as enforcement agencies in the antitrust process differs from DOD’s role as an interested party affected by the M&A. Furthermore, we reviewed a joint DOJ/FTC statement on DOD’s role in antitrust reviews of defense-related M&A.⁷ We interviewed DOD and antitrust agency officials to further our understanding of DOD and the antitrust agencies’ respective roles and responsibilities, as well as to discuss how DOD’s inputs are used in antitrust reviews. We analyzed information from our nine illustrative examples to demonstrate how DOD and the antitrust agencies interacted and shared information during those M&A assessments.

⁶DOD, DOD Directive 5000.62. Federal Trade Commission, *Introductory Guide I: What is the Premerger Notification Program?* (March 2009).

⁷Department of Justice and Federal Trade Commission, *Joint Statement of the Department of Justice and the Federal Trade Commission on Preserving Competition in the Defense Industry*, Matter Number P130500 (Apr. 12, 2016).

To address the extent to which DOD monitors the effects of M&A on the defense industrial base, we reviewed DOD policy and guidance to determine IBP and DOD stakeholders' requirements for monitoring the effects of M&A, if any. This included, for example, DOD's M&A policy and DCMA Manual 3401-05.⁸ To further our understanding, we interviewed IBP officials and DOD stakeholders in the military departments and DCMA about the nature and extent of their M&A monitoring activities. During these interviews, we discussed their monitoring efforts in general and in the context of our nine illustrative examples. We learned that the antitrust agencies can assign DOD officials a role in monitoring long-term behavioral agreements negotiated during antitrust reviews, so we collected a list of DOD's monitoring assignments from fiscal years 2012 through 2022 from the antitrust agencies. For these antitrust monitoring assignments, we reviewed the terms of the final agreement between the antitrust agency and the merging companies to determine DOD's responsibilities for monitoring compliance with the long-term behavioral agreement. We interviewed IBP and stakeholder officials involved in these antitrust monitoring assignments to determine how DOD conducts monitoring and ensures compliance with the antitrust agencies' behavioral agreements. Finally, we compared DOD's monitoring activities to *Standards for Internal Control in the Federal Government* to evaluate the extent to which DOD monitoring practices aligned with internal control standards for federal entities.⁹

We conducted this performance audit from June 2022 to October 2023 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

⁸DOD, DOD Directive 5000.62. Defense Contract Management Agency, *Defense Industrial Base Monitoring and Reporting*, DCMA Manual 3401-05, Change 1 (Dec. 22, 2020).

⁹[GAO-14-704G](#).

Appendix II: Comments from the Department of Defense

**Appendix II: Comments from the Department
of Defense**



ACQUISITION
AND SUSTAINMENT

THE UNDER SECRETARY OF DEFENSE
3010 DEFENSE PENTAGON
WASHINGTON, DC 20301-3010

SEP 22 2023

Mr. Bill Russell
Director, GAO Contracting and National Security Acquisition
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Russell:

Attached please find the Department of Defense (DoD) response to GAO Draft Report GAO-23-106129, "Defense Industrial Base: DoD Needs Better Insight Into Risks From Mergers and Acquisitions" dated September 2023 (GAO Code 106129).

The Department has conducted a security review of the draft GAO report and found no issues with public release of the draft report.

Sincerely,

A handwritten signature in blue ink, appearing to read "W A LaPlante".

William A. LaPlante

GAO DRAFT REPORT DATED SEPTEMBER 2023
GAO-23-106129 (GAO CODE 106129)

“DEFENSE INDUSTRIAL BASE: DOD NEEDS BETTER INSIGHT INTO RISKS
FROM MERGERS AND ACQUISITIONS”

DEPARTMENT OF DEFENSE COMMENTS
TO GAO RECOMMENDATIONS

RECOMMENDATION 1: The GAO recommends that the Secretary of Defense ensure that the Assistant Secretary of Defense for Industrial Base Policy (IBP) provides clear direction as to which major defense suppliers IBP should prioritize for the purposes of conducting mergers and acquisitions (M&A) assessments.

DoD RESPONSE: Concur. IBP intends to promulgate a new Department of Defense Instruction (DoDI) to provide guidance on conducting assessments of M&A transactions. This new DoDI will incorporate direction on prioritizing assessments.

RECOMMENDATION 2: The GAO recommends that the Secretary of Defense ensures that the Assistant Secretary of Defense for Industrial Base Policy assesses whether its M&A team is adequately resourced to consistently carry out its responsibilities.

DoD RESPONSE: Concur. IBP currently executes the M&A mission without dedicated funding. This includes M&A assessments, due diligence, and serving as the Compliance Officer and Government Compliance Team lead on the monitoring of an FTC consent order. However, IBP has developed issue papers and is requesting dedicated funding in support of DoD’s Fiscal Year 2025 Program Objective Memorandum (POM) and annual increases thereafter that will allow IBP to increase M&A workforce and resources. IBP plans to conduct an additional assessment on the resources required to fulfill GAO’s recommendation to expand DoD M&A activities.

RECOMMENDATION 3: The GAO recommends that the Secretary of Defense ensures that the Assistant Secretary of Defense for Industrial Base Policy provides the Office of Industrial Base Policy and DoD stakeholders with additional direction on assessing the full range of risks and benefits identified in DoD’s M&A policy, such as national security, when developing the new DoD instruction or other appropriate guidance.

DoD RESPONSE: Concur. DoD’s policy on M&A reviews, DoDD 5000.62 effective 27 February 2017, provides 13 factors that it must consider when assessing the potential implications of covered M&A transactions. IBP intends to provide more detailed guidance in the forthcoming DoDI as to assessing the full range of risks and benefits to the DoD. IBP will also update its processes and tools to ensure that it is consistent with any revision to policy. IBP expects to complete a draft of the DoDI in the next few months and begin coordination shortly thereafter.

RECOMMENDATION 4: The GAO recommends that the Secretary of Defense ensure that the Assistant Secretary of Defense for Industrial Base Policy revises DoD's M&A policy to direct the Office of Industrial Base Policy, with support from relevant DoD stakeholders, to monitor the effects of conducted mergers or acquisitions in cases in which DoD identified risk during its assessment to determine if risks were realized or if additional action is needed.

DoD RESPONSE: Concur. DoD currently supports the Federal Trade Commission (FTC) in monitoring a major defense firm in its compliance of an FTC Consent Order governing the terms of its acquisition of a key component supplier. DoD does not currently monitor transactions beyond those identified by the FTC or the Department of Justice, but concurs with GAO's recommendation and will assess the design and implementation of a M&A monitoring mission and resources needed to support it to include those transactions with identified risks. The forthcoming DoDI will incorporate guidance on evaluating identified risks after transactions have closed.

Accessible Text for Appendix II: Comments from the Department of Defense

SEP 22 2023

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U.S. Government Accountability Office
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Washington, DC 20548

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William A. LaPlante

GAO DRAFT REPORT DATED SEPTEMBER 2023 GAO-23-106129 (GAO CODE 106129)

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Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact

W. William Russell, (202) 512-4841 or russellw@gao.gov

Staff Acknowledgments

In addition to the contact named above, Justin Jaynes (Assistant Director), Jillian Schofield (Analyst-in-Charge), Peter Anderson, Vinayak Balasubramanian, Brandon Booth, Donna Calderone, Gioia Chaouch, Lorraine Ettaro, Kurt Gurka, Anne Kolesnikoff, Alec McQuilkin, Pamela Snedden, Alyssa Weir, and Adam Wolfe made key contributions to this report.

Seto Bagdoyan, Michael E. Clements, Joseph Cruz, Kimberly Gianopoulos, Gretta Goodwin, Heather Dunahoo, Julia Vieweg, and Christina Werth also provided support to this report.

Related GAO Products

High-Risk Series: Efforts Made to Achieve Progress Need to Be Maintained and Expanded to Fully Address All Areas. [GAO-23-106203](#). Washington, D.C.: April 20, 2023.

Defense Industrial Base: DOD Should Take Actions to Strengthen Its Risk Mitigation Approach. [GAO-22-104154](#). Washington, D.C.: July 7, 2022.

Weapon Systems Annual Assessment: Challenges to Fielding Capabilities Faster Persist. [GAO-22-105230](#). Washington, D.C.: June 8, 2022.

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Committee on Foreign Investment in The United States: Action Needed to Address Evolving National Security Concerns Facing the Department of Defense. [GAO-18-494](#). Washington, D.C.: July 10, 2018.

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