

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Deborah Platt Majoras, Chairman**
 Pamela Jones Harbour
 Jon Leibowitz
 William E. Kovacic
 J. Thomas Rosch

In the Matter of

GENERAL DYNAMICS CORPORATION,
a corporation.

Docket No. C-4181
[Public Record Version]

ORDER TO HOLD SEPARATE

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Respondent General Dynamics Corporation (“GD” or “Respondent”) of SNC Technologies, Inc. and SNC Technologies Corp. (collectively, “SNC”), and Respondent having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having determined to accept the executed Consent Agreement and to place such Consent Agreement containing the Decision and Order on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues this Order to Hold Separate (“Hold Separate”):

1. Respondent GD is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 2941 Fairview Park Drive, Suite 100, Falls Church, Virginia 22042.

2. SNC Technologies, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 65 Sandscreen Street, Avon, Connecticut 06001. SNC Technologies Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 65 Sandscreen Street, Avon, Connecticut 06001.

3. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Hold Separate, the following definitions, and all other definitions used in the Consent Agreement and the proposed Decision and Order (and when made final, the Decision and Order), shall apply:

- A. “GD” or “Respondent” means General Dynamics Corporation, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by General Dynamics Corporation (including, but not limited to, General Dynamics Ordnance and Tactical Systems, Inc. (“GD-OTS”)), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition Date, the term “GD” shall include SNC.
- B. “SNC” means, individually and collectively, SNC Technologies, Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by SNC Technologies, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each; and SNC Technologies Corp., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by SNC Technologies Corp., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Commission” means the Federal Trade Commission.
- D. “Acquisition” means the acquisition of SNC by GD.

- E. "Acquisition Agreement" means the Share Purchase Agreement by and among General Dynamics Land Systems - Canada Inc., General Dynamics Ordnance and Tactical Systems, General Dynamics Corporation, SNC-Lavalin Group Inc. and The SNC-Lavalin Corporation, dated February 23, 2006, whereby GD proposes to acquire SNC.
- F. "Acquisition Date" means the earlier of the following dates:
 - 1. the date the Respondent closes on the Acquisition Agreement; or
 - 2. the date the merger contemplated by the Acquisition Agreement becomes effective by filing articles of merger with the Secretary of State of the State of Delaware.
- G. "AO" means American Ordnance LLC, a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, a joint venture between GD-OTS and Mason & Hanger Corporation, a subsidiary of DZI.
- H. "AO Agreement" means the Formation Agreement by and between GD and Mason & Hanger Corporation, a subsidiary of DZI, dated July 21, 1998, and all amendments, exhibits, attachments, agreements, and schedules thereto, including, but not limited to, the Operating Agreement. The AO Agreement is attached to this Order as non-public Appendix I.
- I. "Closing Date" means the date on which Respondent (or a Divestiture Trustee) and a Commission-approved Acquirer consummate a transaction to divest GD's interest in AO.
- J. "Commission-approved Acquirer" means an entity that receives the prior approval of the Commission to acquire GD's interest in AO.
- K. "Confidential Business Information" means competitively sensitive, proprietary and all other business information of any kind that is not in the public domain owned by or pertaining to AO or GD, as the case may be (including, but not limited to, financial statements, financial plans and forecasts, operating plans, price lists, cost information, supplier and vendor contracts, marketing analyses, customer lists, customer contracts, employee lists, salary and benefits information, technologies, processes, and other trade secrets), except for any information that the recipient demonstrates (i) was or becomes generally available to the public other than as a result of a disclosure by the recipient, or (ii) was available, or becomes available, to the recipient on a non-confidential basis, but only if, to the knowledge of the recipient, the source of such information is not in breach of a contractual, legal, fiduciary, or other obligation to maintain the confidentiality of the information.
- L. "Decision and Order" means the:
 - 1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance and service of a final Decision and Order by the Commission; and

2. Final Decision and Order issued by the Commission following the issuance and service of a final Decision and Order by the Commission.
- M. “Divestiture Trustee” means a trustee appointed by the Commission pursuant to the relevant provisions of the Decision and Order.
- N. “DZI” means Day & Zimmermann, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, having its principal place of business located at 1818 Market Street, Philadelphia, Pennsylvania, 19103.
- O. “Hold Separate” means this Order to Hold Separate.
- P. “Hold Separate Period” means the time period during which the Hold Separate is in effect, which shall begin on the Acquisition Date and terminate pursuant to Paragraph VII hereof.
- Q. “Interim Monitor” means the person appointed pursuant to Paragraph III of this Hold Separate.
- R. “Orders” means the Decision and Order and this Hold Separate.

II.

IT IS FURTHER ORDERED that:

- A. During the Hold Separate Period, Respondent shall hold AO separate, apart, and independent as required by this Hold Separate and shall vest AO with all rights, powers, and authority necessary to conduct its business. Respondent shall not exercise direction or control over, or influence directly or indirectly, AO or any of its operations, or the Interim Monitor, except to the extent that Respondent must exercise direction and control over AO to assure compliance with this Hold Separate, the Consent Agreement, the Decision and Order, and all applicable laws.
- B. During the Hold Separate Period, Respondent shall:
1. Take such actions (consistent with GD’s rights and responsibilities under the AO Agreement) as are necessary to maintain the full economic viability, marketability and competitiveness of AO and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets of AO except for ordinary wear and tear; and
 2. Not sell, transfer or encumber any interest in AO or otherwise impair the full economic viability, marketability or competitiveness of AO.

- C. From the date Respondent executes the Consent Agreement until the Hold Separate Period begins, Respondent shall take such actions as are necessary to maintain and assure the continued maintenance of the full economic viability, marketability and competitiveness of AO, and prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets of AO, except for ordinary wear and tear.
- D. Not later than three (3) days after the Acquisition Date, Respondent shall delegate to DZI all its rights and authority to appoint the Ordnance Systems Managers pursuant to Section 5.1(a) of the Operating Agreement, with the limitation that DZI not appoint any person who is, or at any time during the year prior to the issuance of this Hold Separate has been, an officer, director, employee, agent, partner, or limited liability company member of Respondent or a person who controls, directly or indirectly, more than 1% of the outstanding capital stock of Respondent or of any affiliate of Respondent to serve as an Ordnance Systems Manager. During the Hold Separate Period, Respondent shall not permit any of its employees, officers, or directors to be involved in the operations of AO.
- E. Respondent shall only remove the Treasurer of AO for cause, and any replacement Treasurer shall be a person who is not, and at no time during the year prior to appointment has been, an officer, director, employee, agent, partner, or limited liability company member of Respondent or a person who controls, directly or indirectly, more than 1% of the outstanding capital stock of Respondent or of any affiliate of Respondent.
- F. Except as necessary to fulfill the requirements of the Orders, Respondent shall not provide any services to AO, including, but not limited to, any marketing services pursuant to Section 2.1 of the Ordnance Systems Services Agreement, Exhibit F to the AO Agreement.
- G. Respondent's employees shall not receive, or have access to, or use or continue to use any Confidential Business Information of AO not in the public domain except:
 - 1. as required by law; and
 - 2. to the extent that necessary information is exchanged:
 - a. in negotiating agreements to divest assets pursuant to the Decision and Order and engaging in related due diligence;
 - b. in complying with the Orders;
 - c. in obtaining legal advice; or
 - d. as necessary in connection with any existing contracts between GD and AO.

Nor shall Respondent allow or permit AO employees to receive or have access to, or use

or continue to use, any Confidential Business Information not in the public domain about Respondent and relating to Respondent's businesses, except such information as is necessary to maintain and operate AO. Respondent may receive aggregate financial and operational information relating to AO only to the extent necessary to allow Respondent to comply with the requirements and obligations of the laws of the United States and other countries, to prepare consolidated financial reports, tax returns, reports required by securities laws, and personnel reports, and to comply with this Hold Separate. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph.

- H. The purpose of this Hold Separate is to: (1) preserve AO as a viable, competitive, and ongoing business independent of Respondent until the divestiture required by the Decision and Order is achieved; (2) assure that no Confidential Business Information is exchanged between Respondent and AO, except in accordance with the provisions of this Hold Separate; (3) prevent interim harm to competition pending the relevant divestiture and other relief; and (4) maintain the full economic viability, marketability and competitiveness of all of the business(es) associated with AO, and prevent the destruction, removal, wasting, deterioration, or impairment of any of AO's assets except for ordinary wear and tear.

III.

IT IS FURTHER ORDERED that:

- A. At any time after Respondent signs the Consent Agreement in this matter, the Commission may appoint a monitor ("Interim Monitor") to assure that Respondent expeditiously complies with all of its obligations and performs all of its responsibilities as required by this Order.
- B. The Commission shall select the Interim Monitor, subject to the consent of Respondent, which consent shall not be unreasonably withheld. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed Interim Monitor, Respondent shall be deemed to have consented to the selection of the proposed Interim Monitor.
- C. Not later than ten (10) days after the appointment of the Interim Monitor, Respondent shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondent's compliance with the relevant requirements of this Order in a manner consistent with the purposes of this Order.
- D. If an Interim Monitor is appointed, Respondent shall consent to the following terms and

conditions regarding the powers, duties, authorities, and responsibilities of the Interim Monitor:

1. The Interim Monitor shall have the power and authority to monitor Respondent's compliance with the requirements of this Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner consistent with the purposes of this Order and in consultation with the Commission.
2. The Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission.
3. The Interim Monitor shall serve until the day after the Closing Date. *Provided, however,* that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of this Order.
4. Subject to any demonstrated legally recognized privilege, the Interim Monitor shall have full and complete access to Respondent's and to AO's personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to Respondent's compliance with its obligations under this Order, including, but not limited to, its obligations related to the relevant assets. Respondent shall cooperate with any reasonable request of the Interim Monitor and shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondent's compliance with this Order.
5. The Interim Monitor shall serve, without bond or other security, at the expense of Respondent on such reasonable and customary terms and conditions as the Commission may set. The Interim Monitor shall have authority to employ, at the expense of the Respondent, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.
6. Respondent shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Interim Monitor.
7. Respondent shall report to the Interim Monitor in accordance with the requirements of this Order and/or as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by

Respondent, and any reports submitted by the Commission-approved Acquirer with respect to the performance of Respondent's obligations under this Order. Within thirty (30) days from the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning performance by Respondent of its obligations under this Order.

8. Respondent may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Interim Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Interim Monitor's duties.
- F. If the Commission determines that the Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided in this Paragraph.
- G. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.
- H. The Interim Monitor appointed pursuant to this Order may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of the Decision and Order.

IV.

IT IS FURTHER ORDERED that:

- A. Within five (5) days of the Acquisition, Respondent shall submit to the Commission a letter certifying the date on which the Acquisition occurred.
- B. Within thirty (30) days after the date this Order becomes final, and every sixty (60) Days thereafter until the end of the Hold Separate Period, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Hold Separate. Respondent shall submit at the same time a copy of its report concerning compliance with this Hold Separate to the Interim Monitor, if any Interim Monitor has been appointed. Respondent shall include in its reports, among other things that are required from time to time, a full

description of the efforts being made to comply with this Hold Separate.

V.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to:

A. any proposed dissolution of such Respondent;

B. any proposed acquisition, merger or consolidation of Respondent;

C. any proposed dissolution of AO; or

D. any other change in the Respondent, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

VI.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondent made to its principal United States offices, Respondent shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondent related to compliance with this Order; and
- B. Upon five (5) days' notice to Respondent and without restraint or interference from Respondent, to interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

VII.

IT IS FURTHER ORDERED that this Hold Separate shall terminate at the earlier of:

- A. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. The day after the Closing Date.

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED: December 27, 2006

**APPENDIX I
NON-PUBLIC**

AO AGREEMENT

[Redacted From Public Record Version But Incorporated By Reference]