PRESIDENT TRUMP BLOCKS CHINESE FIRM'S ACQUISITION OF U.S. SEMICONDUCTOR COMPANY

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Legal Briefings

"*There is credible evidence that leads me to believe that . . . Canyon Bridge Capital . . . through exercising control of Lattice Semiconductor Corporation, a corporation organized under the laws of Delaware (Lattice), might take action that threatens to impair the national security of the United States.*"

– Order Regarding the Proposed Acquisition of Lattice Semiconductor Corporation, September 13 2017

This language appeared in an order issued by President Trump last week, which followed a recommendation by the Committee on Foreign Investment in the United States (CFIUS) that the proposed acquisition of a U.S. semiconductor firm should not be allowed to proceed due to national security concerns. This recent decision sheds light on the Trump administration's attitudes towards some acquisitions of U.S. businesses by Chinese investors. It also provides companies with additional insight on how to navigate the filing and engagement process with respect to CFIUS.

The Parties and the Proposed Deal

Canyon Bridge Capital Partners (Canyon Bridge) is a private equity firm, apparently owned by Chinese state-owned entities. The company manages industrial and venture capital investments and is funded partly by capital from the Chinese central government.

Canyon Bridge had planned to acquire Lattice Semiconductor Corporation (Lattice), a publicly traded Oregon-based company that manufactures programmable logic devices for the consumer, communications, industrial, computing, and automotive markets, for U.S. $1.3 billion.

CFIUS

CFIUS is an interagency committee whose purpose is to review transactions that may result in the control of a U.S. business by a non-U.S. party. Where such a transaction presents national security concerns (and where these concerns cannot be resolved through mitigation efforts), CFIUS will recommend to the President that the transaction be blocked (or unwound if it has already taken place).

Generally, CFIUS review arises once the parties to a transaction jointly file a voluntary notice with the Committee. Filing a voluntary notice triggers a 30 day review period, at the end of which most reviews are concluded. At this point, CFIUS can either clear the transaction outright or initiate a subsequent investigation, which is to be completed within an additional 45 days.

If a transaction still presents national security concerns after this subsequent investigation, CFIUS may enter into an agreement with the parties that requires them to adopt "mitigation" measures to alleviate these concerns (including, for example, deal restructuring that limits non-U.S. control over sensitive technologies). Finally, if the security risks cannot be resolved through an agreement with the parties, CFIUS will refer the case to the President and recommend that the transaction be blocked or unwound.

Presidential action is usually quite rare, however, as most parties will elect to withdraw from a transaction that does not receive clearance from CFIUS.

CFIUS's Recommendation and President Trump's Order

Despite extensive negotiations with CFIUS, the deal parties were unable to secure CFIUS's approval for the transaction.

CFIUS ultimately chose to recommend that the President issue an order prohibiting the proposed transaction, noting that the risks to national security could not be resolved through mitigation.

According to a statement released by Treasury Secretary (and chair of CFIUS) Steven Mnuchin, the "national security risk posed by the transaction relates to, among other things, the potential transfer of intellectual property to the foreign acquirer, the Chinese government's role in supporting this transaction, the importance of semiconductor supply chain integrity to the U.S. government, and the use of Lattice products by the U.S. government."

In a rare move, the companies then decided to put the decision directly before President Trump, making this the first decision of its kind by this President. As expected, President Trump followed the advice of CFIUS and issued an order blocking the deal on September 13. His order was made pursuant to section 721 of the Defense Production Act of 1950, which authorizes the President to suspend or prohibit acquisitions of U.S. businesses by non-U.S. entities where there is evidence that the non-U.S. entity may take action that impairs national security (and where other statutes do not provide sufficient protections to national security). This marks just the fourth time a U.S. president has blocked a deal since the CFIUS process was established in 1975.

The President's order gave the parties 30 days to abandon the proposed transaction. This led Lattice and Canyon Bridge to issue a joint statement announcing that they had terminated the proposed deal.

Reactions to the Decision

In the wake of the decision, Canyon Bridge expressed its disappointment in the order, while China's Commerce Ministry stated that an investigation into national security concerns "should not become a tool for advancing protectionism."

As companies with deals that may be reviewed by CFIUS attempt to interpret the President's recent move, at least two things have become clear. First, while Lattice and Canyon Bridge may have assumed that they could persuade President Trump to approve their deal (and bypass CFIUS's recommendation) by appealing to various mitigating factors, it appears that CFIUS's recommendations will be granted a high level of deference by the President going forward. Second, President Trump's decision signals that, despite his desire to attract overseas investment in the U.S., he remains skeptical of Chinese state-owned enterprises, and therefore any attempt by such enterprises to acquire a U.S. business (particularly one operating in the technology sector) may, depending on the nature of the target's business, encounter CFIUS difficulties. This holds true even in acquisitions that do not involve U.S. deal parties, to the extent such deals would transfer control of U.S. subsidiaries to non-U.S. firms.

It is important that all companies working on deals covered by CFIUS be aware of these trends and act accordingly in order to maximize their chance of obtaining CFIUS clearance.

For more information on CFIUS, including CFIUS best practices, please see the following article, published in January of 2016.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.

JOSEPH FALCONE
PARTNER, NEW YORK

+1 917 542 7805
Joseph.Falcone@hsf.com

JONATHAN CROSS
COUNSEL, NEW YORK

+1 917 542 7824
jonathan.cross@hsf.com

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