Foreign Investment Review

Contributing editor
Oliver Borgers

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McCarthy Tétrault LLP

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Preface

Foreign Investment Review 2019

Eighth edition

Getting the Deal Through is delighted to publish the eighth edition of *Foreign Investment Review*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes a new article on the European Union.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Oliver Borgers of McCarthy Tétrault LLP, for his continued assistance with this volume.

London
December 2018

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United States

Paul Marquardt, Chinyelu Lee and Nathanael Kurcab
Cleary Gottlieb Steen & Hamilton LLP

Law and policy

1 What, in general terms, are your government's policies and practices regarding oversight and review of foreign investment?

The US federal government balances an open policy towards foreign direct investment (FDI) with scrutiny of incoming investment for national security concerns. The current US FDI oversight regime dates to 1975 with the establishment of the interagency Committee on Foreign Investment in the United States (CFIUS) by President Ford. Congress initially formalised CFIUS's processes and procedures in the 1980s. Controversial foreign acquisitions in the mid-2000s, in particular the 2006 acquisition of a US firm managing terminal operations at six US ports by a Dubai state-owned entity, led Congress to pass the Foreign Investment and National Security Act of 2007, which increased scrutiny of FDI resulting in foreign control over US 'critical infrastructure' or control of a US business by a foreign government. Recently, Congress passed the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA) to address concerns that CFIUS did not possess the requisite tools to confront strategic investment by foreign governments in sensitive sectors or locales.

FIRRMA expands CFIUS's jurisdiction to a broader range of non-controlling foreign investment involving sensitive personal data of US citizens, US critical technology and US critical infrastructure, and authorises filing fees, mandatory filings and draconian penalties. As this chapter went to press, CFIUS had initiated a pilot programme implementing mandatory filings for non-passive investments in US critical technology companies operating in 27 sensitive industries. The debut of mandatory filings is a clear change from prior practice, but many of FIRRMA's changes merely codify practices in place since the later years of the Obama administration. Overall, the basic approach remains unchanged.

In CFIUS practice, the questions of 'who' and 'what' matter. CFIUS analyses the national security risk of a specific investment as a function of the interaction between the potential threat (ie, whether the foreign actor has the capability or intent to cause harm to US national security) and vulnerability (ie, whether control over the specific US business entails any potential harm for US national security). Each transaction is reviewed on its individual facts and circumstances. 'National security' is not defined in the statute or regulations but is understood broadly to include issues related to homeland security, critical infrastructure, and commercial and governmental espionage as well as traditional defence-related issues.

2 What are the main laws that directly or indirectly regulate acquisitions and investments by foreign nationals and investors on the basis of the national interest?

The US president has the authority to review acquisitions or investments in US businesses by foreign persons under section 721 of the Defense Production Act of 1950 (50 USC section 4565), as amended, and may block or unwind such transactions. This review authority has been delegated to CFIUS. Implementing regulations are located at 31 Code of Federal Regulations Part 800 (and Part 801 for the temporary pilot programme).

3 Outline the scope of application of these laws, including what kinds of investments or transactions are caught. Are minority interests caught? Are there specific sectors over which the authorities have a power to oversee and prevent foreign investment or sectors that are the subject of special scrutiny?

CCFIUS can review any investment or acquisition that could result in a foreign person acquiring 'control' (ie, the affirmative or negative power to determine important decisions) over any person or entity engaged in interstate commerce in the United States from any other person (including from a foreign person). Joint ventures involving contributions of an existing business and certain investments involving real estate (to be defined by future regulation) are also covered, but other 'green field' investments and purchases of assets that do not result in control of a business are not. 'Control' is used in a broad sense; in practice, CFIUS views any non-passive transaction of greater than 10 per cent as potentially reviewable. CFIUS may deem a transaction an acquisition of control based on factors such as the voting nature of the interest, arrangements to cooperate with other investors and the ability of the investor to influence key corporate decisions (eg, sale of assets, reorganisation, closing or moving facilities, major expenditures and entering into significant contracts). However, certain limited minority shareholder rights are not considered independently sufficient to provide control (eg, the power to prevent the sale of all or substantially all assets and the power to prevent voluntary filing for bankruptcy or liquidation). There is a safe harbour for 'passive' investments of less than 10 per cent of the voting interests in a US business where the investor 'does not intend to exercise control, does not possess or develop any purpose other than passive investment, and does not take any action inconsistent with passive investment'. As a practical matter, CFUS tends to view any transaction outside the safe harbour (which itself is not absolute) as potentially reviewable.

FIRRMA created mandatory filing requirements for certain investments involving critical technologies, critical infrastructure and sensitive personal data, as well as expanding CFIUS's jurisdiction over non-controlling investments in these sectors to include any investment not strictly passive (which may include minority stakes with no rights other than voting an insufficient quantity of shares to determine any matter or passive loan portfolio positions in investment funds). As of the date of writing, FIRRMA's implementing regulations are incomplete and only a pilot programme covering critical technology transactions exists. Pursuant to the pilot programme, any investment in which a foreign person receives any explicit or implicit governance rights in a US business that produces or develops technology subject to certain export controls for use in one of 27 industries must be notified to CFIUS at least 45 days prior to closing. A new short-form notification was also created. It is expected that similar rules will apply to the other two categories (which are yet to be fully defined), possibly with triggers tied to foreign government ownership.

Investments in critical infrastructure or involving foreign government ownership are also subject to a presumption of a second-stage, in-depth review, although senior officials may waive the review.

4 How is a foreign investor or foreign investment defined in the applicable law?

Under CFIUS regulations, a 'foreign person' is any foreign national, foreign government or foreign entity, or any US entity controlled by a

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foreign person. A foreign entity includes any entity organised under the laws of a foreign state if either its principal place of business is outside the United States or its equity securities are primarily traded on one or more foreign exchanges, unless the entity can prove US nationals own a majority of its equity.

5 Are there special rules for investments made by foreign state-owned enterprises (SOEs) and sovereign wealth funds (SWFs)? How is an SOE or SWF defined?

Under the CFIUS regulations, a foreign government includes both national and subnational governments and their respective departments, agencies and instrumentalities. Both SOEs and SWFs fall within these definitions. Acquisitions by foreign government-controlled entities are presumptively subject to an in-depth investigation unless senior officials determine that there is no national security issue. Further, upon the issuance of implementing regulations for FIRRMA, foreign parties in which a foreign government has a 'substantial interest' (currently undefined) must file a short-form declaration or full notice when acquiring, directly or indirectly, a substantial interest in a US business with specified dealings in critical infrastructure, critical technologies or sensitive US personal data.

6 Which officials or bodies are the competent authorities to review mergers or acquisitions on national interest grounds?

The US president has delegated FDI reviews to CFIUS, which is chaired by the US Department of the Treasury. The Treasury also maintains a permanent CFIUS staff in its Office of Investment Security and works with the other statutory members of CFIUS, including the departments of Homeland Security, Commerce, Defense, State, Energy and Labor, as well as the Attorney General, the Director of National Intelligence and the heads of any other executive department, agency or office the president deems appropriate. In 2008, the US trade representative and the director of the Office of Science and Technology Policy became CFIUS members. The secretary of the Treasury appoints a lead agency for each CFIUS review, based on the equities involved in the particular transaction.

7 Notwithstanding the above-mentioned laws and policies, how much discretion do the authorities have to approve or reject transactions on national interest grounds?

The US president has broad discretion to determine if a transaction threatens national security and may block a transaction if he or she finds that there is credible evidence that leads him or her to believe that the foreign interest proposing to acquire a US business 'might' take action that 'threatens to impair the national security'. The President's determination of whether a threat to national security exists is not reviewable by any court.

Procedure

8 What jurisdictional thresholds trigger a review or application of the law? Is filing mandatory?

Filing is currently mandatory for critical technology transactions covered by the pilot programme. Regulations specifying critical infrastructure and personal data transactions subject to mandatory filing are due shortly. Otherwise, CFIUS filings are voluntary, but CFIUS may initiate a review in the absence of a voluntary filing, either before or after closing. Because of the risk of post-closing review resulting in mandatory remedies or divestiture, it is prudent for parties to seek CFIUS clearance for any transaction that meets the jurisdictional requirements and is likely to raise national security concerns.

9 What is the procedure for obtaining national interest clearance of transactions and other investments? Are there any filing fees?

Parties file a joint notice to CFIUS detailing the material terms of the transaction. US targets must also submit information about their business and, in particular, any government contracts. Foreign investors must provide information about their parents and their parents' directors, officers and significant shareholders. There is no standard form for the filing; however, the CFIUS regulations specify the information that must be included in the filing. Throughout the review process, CFIUS may require the disclosure of additional information from the parties, even on issues that are not covered in the regulations. Interim regulations specify the information that parties must submit to CFIUS for pilot programme covered transactions.

Either the transaction parties or CFIUS itself (or one of its members) may initiate review of a transaction, and there are currently no filing fees required. FIRRMA permits CFIUS to impose filing fees of up to the amount of the lesser of 1 per cent of the value of the transaction or US$300,000 (adjusted annually for inflation), and final regulations are expected to include a filing fee.

10 Which party is responsible for securing approval?

Generally, the US target and the foreign investor must make CFIUS filings jointly, and mandatory filing obligations fall on both parties. Parties to the transaction are required to submit all information called for by the regulations, and CFIUS may reject notices if the parties do not fully comply with these regulatory requirements or if they do not respond promptly to follow-up inquiries from CFIUS. In addition, both filing parties must have a senior official certify that the submitted information is complete and accurate in all material respects to the best of his or her knowledge.

A single party can file a notice in cases such as hostile takeovers, but CFIUS tends to seek information from both parties, even in these cases.

11 How long does the review process take? What factors determine the timelines for clearance? Are there any exemptions, or any expedited or 'fast-track' options?

CFIUS is required to review draft filings and provide comments within two weeks, but the formal timeline does not start until CFIUS accepts a filing. CFIUS then has 45 days for its initial review. At the end of this period, CFIUS will either clear the transaction or initiate a second-stage investigation lasting an additional 45 days with one 15-day extension possible if any CFIUS member agency 'believes that the transaction threatens to impair US national security and the threat has not been mitigated'. Transactions involving foreign-government controlled entities and transactions that would result in a foreign person controlling critical infrastructure face heightened scrutiny and a default presumption of a second stage of review. At the conclusion of the investigation, CFIUS will issue a letter clearing the transaction or refer the transaction (with or without recommendation) to the President, who then has 15 days to rule on the transaction. The President typically accepts CFIUS's recommendations.

In practice, the clearance process takes longer than the statutory timeline. CFIUS often delays acceptance of the formal filing. At the end of the process, CFIUS has often pressured parties to 'voluntarily' withdraw and resubmit notices in complex cases, which restarts the statutory clock at the initial 45-day review.

Transactions subject to mandatory filing under the pilot programme for critical technologies may submit a short-form declaration. It is expected that critical infrastructure and personal data transactions, and perhaps others, will also have the option of a short-form declaration. Once a declaration is received, CFIUS will be required to either (i) clear the transaction, (ii) request a full notice, (iii) inform the parties that CFIUS cannot conclude review based on the submitted declaration or (iv) initiate a unilateral review within 30 days. Although a CFIUS filing generally is not suspensive, a short-form declaration must be submitted at least 45 days prior to closing.

12 Must the review be completed before the parties can close the transaction? What are the penalties or other consequences if the parties implement the transaction before clearance is obtained?

Parties generally may close a transaction, at the buyer's risk, before obtaining CFIUS clearance. However, the President retains the power to block or unwind a covered transaction unless or until it is cleared by CFIUS. CFIUS discourages parties from closing over a pending review and has the power to prohibit it (though rarely exercised).

A transaction subject to mandatory filing under the pilot programme must file the short-from notification (or, in the alternative, a full filing) at least 45 days prior to closing. Failure to file can result in a civil monetary penalty of up to the value of the transaction. We expect that similar provisions will be attached to other mandatory filings in the final regulations.

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13 Can formal or informal guidance from the authorities be obtained prior to a filing being made? Do the authorities expect pre-filing dialogue or meetings?

CFIUS regulations formalised the submission of a pre-filing draft notice to CFIUS. However, it is generally difficult to get meaningful feedback pre-filing.

14 When are government relations, public affairs, lobbying or other specialists made use of to support the review of a transaction by the authorities? Are there any other lawful informal procedures to facilitate or expedite clearance?

Typically, the clearance process is handled by specialist legal advisers of the parties. Other advisors may assist depending on the nature of the businesses involved (such as industry analysts for transactions involving sensitive technology). Public affairs specialists and lobbyists may also be involved in a CFIUS clearance effort where an investment or acquisition is controversial or has attracted the interest of lawmakers. Parties may also consider contacting any US government customers of the target US business to address concerns before making a formal filing. In difficult cases, parties may want to contact members of Congress who sit on committees with jurisdiction over CFIUS and their staff.

15 What post-closing or retroactive powers do the authorities have to review, challenge or unwind a transaction that was not otherwise subject to pre-merger review?

The President retains the power to block or unwind any transaction within CFIUS's jurisdiction that threatens to impair US national security and has not received CFIUS clearance. CFIUS retains authority to rescind an earlier approval and reopen a review where any transaction party fails to conform to a material term of a mitigation agreement or condition and the Committee finds that no other enforcement mechanisms exist. CFIUS may also re-open a review if material misrepresentations were made.

Substantive assessment

16 What is the substantive test for clearance and on whom is the onus for showing the transaction does or does not satisfy the test?

To block or unwind a transaction, the president must find 'credible evidence' that a 'foreign interest exercising control over a US business might take action that threatens to impair the national security' of the United States, and provisions of other laws do not provide 'adequate and appropriate authority to protect the national security'. The term 'national security' is not defined in either the statute or the CFIUS regulations and is interpreted broadly.

There is no formal legal burden on the parties to a transaction to demonstrate the absence of a national security threat; however, the President's determination is discretionary and cannot be judicially reviewed. Because CFIUS also has broad discretion in making a recommendation to the President and the President has typically followed CFIUS's recommendation, the parties effectively must persuade CFIUS that the transaction does not pose a national security threat. As such, parties should present available evidence in their filing that the transaction is commercially motivated and does not pose a threat to national security.

17 To what extent will the authorities consult or cooperate with officials in other countries during the substantive assessment?

The CFIUS statute now permits information sharing with foreign governmental entities (subject to confidentiality and classification requirements). We are aware of prior consultations and note CFIUS intends to increasingly consult with international partners on perceived threats.

18 What other parties may become involved in the review process? What rights and standing do complainants have?

Under the statute, the members of CFIUS consist of the heads of the following departments and offices:

- the Department of the Treasury;
- the Department of Justice;
- the Department of Homeland Security;
- the Department of Commerce;
- the Department of Defense;
- the Department of State;
- the Department of Energy;
- the Office of the US Trade Representative;
- the Office of Science and Technology Policy;
- the Department of Labor (non-voting); and
- the Director of National Intelligence (non-voting).

The president may also appoint the heads of other executive departments, agencies or offices to participate in CFIUS reviews on a case-by-case basis, depending on the equities of the particular case. The Office of Management and Budget, the Council of Economic Advisors, the National Security Council, the National Economic Council and the Homeland Security Council may also observe and participate in CFIUS reviews.

Competitors, customers and Congress do not have a formal role in pending reviews, and CFIUS is forbidden to disclose information in a filing or even publicly acknowledge that a filing has been made (unless the parties disclose the information first). Nevertheless, CFIUS is aware of political and media pressure and, though such pressure is unlikely to determine the outcome of the national security review, it may make CFIUS aware of potential issues and lead CFIUS to be more cautious in anticipation of later oversight.

19 What powers do the authorities have to prohibit or otherwise interfere with a transaction?

Once the President finds credible evidence that an investment or acquisition poses a national security threat, he or she has statutory authority to suspend or prohibit the investment. CFIUS has authority to suspend transactions and to negotiate or impose conditions on transactions, though technically does not have authority to block or unwind transactions without presidential action. Presidential action to date has, however, followed CFIUS's recommendations.

20 Is it possible to remedy or avoid the authorities' objections to a transaction, for example, by giving undertakings or agreeing to other mitigation arrangements?

CFIUS may condition clearance on parties entering into an agreement (or impose an agreement) with the US government to address or mitigate national security concerns raised by the transaction. Either CFIUS or the lead agency for a particular transaction may negotiate mitigation agreements and establish conditions for monitoring and enforcing them. The parameters of such agreements depend on transaction-specific concerns. Mitigation provisions vary widely but, as examples, might include:

- the requirement that a US citizen be appointed as a security officer for the US business;
- an agreement that only US persons will sit on certain committees, such as security committees;
- periodic government reviews of export control and security policies and procedures in place at the US business;
- the isolation or ring-fencing of certain businesses or assets so that foreign persons do not have access to them, including in some cases the formation of a US subsidiary managed by independent directors with limited parent involvement;
- requirements that the government receive notice of or approve changes in business processes, procedures or the locations of activities;
- an agreement prohibiting foreign parties from accessing certain technologies; and
- an agreement to institute a cybersecurity plan.

CFIUS is most likely to impose such requirements in deals involving classified information, presence in the supply chain for a national security industry, or critical technologies such as telecommunications or energy. A CFIUS decision to pursue a mitigation agreement must be based on a written risk-based analysis of the proposed transaction's threat to national security, and CFIUS must believe that the measures imposed are reasonably necessary to address that risk. Where parties materially breach a mitigation agreement, CFIUS may reopen the investigation or apply penalties of up to US$250,000 per violation or the value of the transaction. A mitigation agreement may also provide for liquidated damages if the transaction parties violate the agreement.

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Update and trends

FIRRMA marks the first significant formal revision of US foreign investment review in a decade. Although FIRRMA's changes at first glance appear significant, in reality, many of the changes simply aligned the statute with existing practices. The more fundamental changes are those making some CFIUS notices mandatory and dedicating additional resources to the CFIUS staff, both of which will make CFIUS reviews a more routine occurrence. However, FIRRMA did not shift the fundamental focus of CFIUS's review; rather, the statute now reflects the past several years of reality.

FIRRMA also empowers CFIUS to impose mitigation conditions while a review is ongoing or after a transaction has been abandoned.

21 Can a negative decision be challenged or appealed?

By statute, neither the President's finding of a national security threat nor the selection of remedies is subject to judicial review. Typically, when faced with a potential negative recommendation from CFIUS, transaction parties will request to withdraw their CFIUS notice, and CFIUS usually grants such requests.

In *Ralls Corp v CFIUS* 758 F. 3d 296 (DC Cir 2014), a federal appeals court ruled that parties to a CFIUS review have certain due process rights during the process leading up to a presidential decision. These rights include access to the unclassified information upon which CFIUS relies in making its recommendation. Implicitly, other matters outside of those explicitly immunised from judicial review, such as whether a transaction is within CFIUS's jurisdiction, might also be open to challenge.

22 What safeguards are in place to protect confidential information from being disseminated and what are the consequences if confidentiality is breached?

Information submitted to CFIUS during the filing process is deemed confidential business information that may not be released to the public, including under a Freedom of Information Act request. The CFIUS statute specifically forbids the releasing of information obtained in a filing outside of the consent of the parties, subject to certain narrow exceptions related to national security and intergovernmental cooperation with adequate safeguards for confidentiality; this protection extends to information provided in relation to withdrawn notices and pre-notice consultations. Wrongful disclosure is a criminal violation and punishable by fines or imprisonment.

Recent cases

23 Discuss in detail up to three recent cases that reflect how the foregoing laws and policies were applied and the outcome, including, where possible, examples of rejections.

CFIUS reviews are confidential and neither the outcome nor the reasoning is released to the public, so all discussion of recent cases is limited to information that has been identified in judicial proceedings or publicly discussed by parties or media accounts.

Ralls Corp

In 2012, President Obama ordered Ralls Corporation, a Delaware entity owned by Chinese nationals associated with the construction and heavy machinery company Sany Group, to divest its interest in four wind farm project companies in Oregon because of the proximity of the wind farms to US Navy-restricted airspace. Ralls did not notify CFIUS when it initially entered into the US$6 million deal to acquire the four companies in March 2012. In June 2012, after learning of the acquisition, CFIUS informed Ralls that the Department of Defense would initiate a review of the transaction if Ralls did not file a voluntary notice with CFIUS. CFIUS reviewed the transaction and issued orders limiting Ralls' use of, access and ability to sell, the wind farm properties. On 28 September 2012, President Obama issued an order requiring Ralls to divest all of its interests in the companies.

Two weeks before the president's order, Ralls brought a suit against CFIUS, challenging both the process by which the Committee reaches its recommendations and its authority to issue orders prohibiting implementation of a transaction before a decision by the president. Under CFIUS's statute, neither the national security findings of the president nor a decision by the president to block a covered transaction are reviewable by federal courts. The government further argued that the entire CFIUS process was exempt from judicial review. In the *Ralls* suit, however, the federal appeals court ruled that this prohibition does not extend to constitutional claims challenging the CFIUS review process leading to the presidential action. Additionally, the court ruled that the CFIUS review process violated Ralls' constitutional due process rights because CFIUS failed to provide access to the unclassified material on which it based its decision and to offer the parties a chance to rebut that material, and remanded to the trial court, which also permitted Ralls to challenge the CFIUS orders made prior to the president's decision.

In November 2014, CFIUS produced the unclassified materials from its review. Ralls ultimately settled the case and divested the assets. Thus, while Ralls won on paper, it derived little benefit from the victory. The case remains interesting, though, for the court's rejection of the government's blanket assertion of immunity and could lead to more interesting challenges on issues such as jurisdiction.

The *Ralls* case also highlights the importance of proximity to sensitive sites as a factor in CFIUS's analysis. Although the wind farms themselves did not present a national security threat in the *Ralls* case, their proximity to US Navy-restricted airspace raised concerns with the Department of Defense. Ralls previewed the expansion of CFIUS's jurisdiction in FIRRMA to include real estate transactions involving or near sensitive sites.

Lattice Semiconductor Corporation

On 13 September 2017, President Trump blocked the US$1.3 billion proposed acquisition of US chip manufacturer Lattice Semiconductor Corporation by Canyon Bridge Capital Partners, a US-headquartered private equity firm. The Canyon Bridge investment group included a company with ties to Chinese state-owned entities. The Trump administration's statement announcing the decision specifically referenced Chinese government involvement in the transaction, among other national security concerns, as a reason for blocking the transaction.

Canyon Bridge and Lattice filed a formal joint notice with CFIUS in late December 2016. Over the next eight months, the proposed transaction went through three 75-day CFIUS review cycles. Finally, Lattice disclosed that CFIUS was poised to recommend that President Trump block the transaction. Lattice and Canyon Bridge opted to have President Trump review the proposed acquisition directly instead of abandoning it as is typically the case when CFIUS recommends that the president block a transaction.

Despite the parties' numerous offers to undertake mitigation, on 13 September 2017, President Trump blocked the proposed transaction. Concurrent statements on the decision by President Trump and Treasury Secretary Steven Mnuchin cited four national security justifications for the decision: the risk posed by the potential transfer of intellectual property to a foreign party, the Chinese government's role in the proposed acquisition, the importance of the semiconductor supply chain to the US government and US government use of Lattice products.

The *Lattice* decision was somewhat counter-intuitive because of the extended time CFIUS took to reach a decision and the seemingly low-tech nature of Lattice's products, but it demonstrated the importance of supply chain integrity (the reliability of even low-tech suppliers) to CFIUS.

Qualcomm Incorporated

On 12 March 2018, President Trump blocked the proposed US$117 billion hostile acquisition of Qualcomm Incorporated, a US chipmaker, by Broadcom Limited, a Singapore-incorporated company headquartered in the United States. Although Broadcom is based in Singapore, it is not obviously a foreign acquirer under CFIUS's regulations because its primary stock exchange and principal place of business are within the United States. CFIUS moved with unprecedented aggressiveness to block the deal before it was signed and before Broadcom reincorporated in the United States. President Trump blocked the deal by executive order days before Qualcomm shareholders were set to replace a majority of directors with persons nominated by Broadcom.

CFIUS's reasoning supporting the conclusion that the acquisition would impair US technological competitiveness was also unprecedented. The parties released a letter from the Treasury stating that

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CFIUS was concerned that acquisition by Broadcom would weaken Qualcomm's research and development given the former's 'private equity style approach' and reputation for cost-cutting. CFIUS's stated justification was that this would reduce Qualcomm's long-term competitiveness and thus leave an opening for China to take the lead in 5G technology standards. Surprisingly, other than a passing reference to Broadcom's relationship with unnamed foreign third parties, the Treasury letter did not set out any traditional national security concerns. Instead, the Committee appears to have focused on whether or not the proposed business plan for an entity would be successful. This move and the rationale behind it marks new territory for an entity not historically concerned with industrial policy.

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