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Alert | Export Controls & Economic Sanctions

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President Trump and CFIUS Block $117 billion Takeover of Qualcomm Inc. by Singaporean Competitor

On March 12, 2018, acting on the recommendation of the Committee on Foreign Investment in the United States (CFIUS), President Trump blocked the proposed hostile takeover of U.S.-based Qualcomm Inc. (Qualcomm) by Singaporean chipmaker, Broadcom Ltd. (Broadcom). Citing national security concerns, President Trump's decision to block the proposed transaction is the second time in recent months that he has taken such action, exercising authority previously utilized on rare occasions.

The CFIUS Process

President Trump's decision was the culmination of the CFIUS review process, under which the president has the authority to investigate, restrict, prohibit, and even unwind foreign investment transactions in the United States when unresolved national security issues have been identified. Parties to transactions involving proposed foreign ownership or control (including investment) of a U.S. entity may submit a pre-closing voluntary notification to CFIUS, seeking CFIUS "safe harbor" or clearance for the proposed deal. The CFIUS review process typically concludes with CFIUS clearing the proposed transaction or, in instances where national security concerns have been identified, requesting the imposition of mitigation measures. In some cases, CFIUS may refer a final decision regarding a particular transaction to the president, as it did in this particular instance.

The Blocked Transaction

The decision comes after CFIUS previously expressed its concerns that allowing the Singaporean chipmaker Broadcom to proceed with the hostile takeover of Qualcomm would hinder research and development in the wireless technology sector, ultimately benefiting companies in China and elsewhere, and weakening the U.S.'s position in this field against other nations. In addition, Qualcomm is an important national supplier of telecommunications equipment to federal defense agencies.

President Trump's decision stated that Broadcom should "immediately and permanently abandon the proposed takeover." This is the second time that President Trump has blocked a transaction with a Chinese nexus in the past six months. In September 2017, the president took a similar action when he rejected the efforts of a private equity firm with Chinese ties to buy U.S.-based Lattice Semiconductor Corp.

Takeaways for U.S. Companies and Potential Foreign Investors

For companies evaluating new M&A opportunities, particularly those involving foreign investment in the United States, it is critical to consult with counsel to initiate a CFIUS analysis of the proposed transaction as early in the process as possible. Key considerations include buyer and seller ownership structures and whether and to what extent the U.S. target engages in any sensitive business activities that could trigger CFIUS interest in the transaction. Importantly, the Broadcom-Qualcomm decision illustrates how CFIUS is increasingly wary of deals with potential national security ramifications, particularly if the transaction is linked to sensitive buyers. Parties to a proposed transaction should also understand that foreign investment in cutting edge technology companies may be viewed by CFIUS as a national security concern.

Finally, parties should anticipate increasingly extended CFIUS review timeframes. As political sensitivities surrounding foreign investment in the United States have grown, CFIUS' caseload has expanded significantly. Parties that anticipate CFIUS review of a proposed transaction should consider building in ample time for CFIUS to complete its review.

Greenberg Traurig's Export Controls & Economic Sanctions team has wide-ranging CFIUS experience, counseling both potential foreign investors as well as the U.S. targets of investment from the initial stages of proposed transactions through the conclusion of a CFIUS review. The team provides integrated CFIUS advice, taking into account operational and deal objectives, as well as transactional timelines, all the while anticipating U.S. government regulatory requirements and policy concerns. In addition, the team helps clients to design and implement mitigation measures.

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Based in Washington, D.C. and Europe our Export Controls & Economic Sanctions team advises and represents clients on the full range of international goods, software and technology transfer issues. We have broad experience providing export controls and related regulatory counsel to both U.S. and foreign businesses. Our industry-specific experience includes assisting companies in a wide range of industries such as aerospace, defense, firearms and ammunition, electronics, software and information technology, financial services, energy, food, consumer products, biotechnology, medical device and engineering services.

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