

International Trade Alert

March 7, 2017

CFIUS Effectively Blocks German Acquisition of U.S. Technology Company

Key Points

- This transaction highlights the U.S. Committee on Foreign Investment in the United States' (CFIUS) focus on deals involving sensitive technology, particularly in the semiconductor sector.
- Since 2016, CFIUS or the President has effectively blocked a number of other transactions in the semiconductor industry involving Chinese buyers.
- With this latest outcome, CFIUS has indicated that these potential national security concerns are not limited to Chinese buyers and can arise in transactions with companies from closely allied countries.



Cree Inc. (“Cree”), the U.S.-based LED lighting and semiconductor company, announced last month that it is terminating its agreement to sell its Wolfspeed Power & RF division (“Wolfspeed”) to Infineon Technologies AG of Germany (“Infineon”) for USD \$850 million. The decision to terminate the deal came shortly after Cree announced that CFIUS raised objections to the acquisition and that the parties were working within the deal structure to mitigate CFIUS’ concerns. This outcome underscores that CFIUS risk can exist in transactions involving buyers from countries that are closely allied to the United States.

As background, CFIUS is an interagency committee with the authority to review certain foreign investments in the United States for national security considerations. Specifically, CFIUS has the authority to review “covered transactions” that could result in the transfer of control over a U.S. business to a non-U.S. person. The CFIUS review process involves a 30-day review period and then a more in-depth 45-day investigation if CFIUS identifies potential national security concerns. Following its review and/or investigation, CFIUS may require the parties to adopt mitigation measures as a condition to its approval and may also direct parties to withdraw and refile their notice to allow for more time to address potential national security concerns. If these concerns are not addressed, CFIUS may recommend that the President block a pending transaction or unwind a completed transaction.

After Cree and Infineon reached an agreement to sell Wolfspeed in July 2016, the parties reportedly submitted a joint notice to CFIUS in November 2016. On February 8, 2017, Cree announced that the transaction in its existing form was unlikely to be approved by CFIUS, and the parties indicated that they

were considering mitigation measures, including the potential divestiture of some of the Wolfspeed business.

Although its deliberations are confidential, CFIUS may have had concerns about Wolfspeed's silicon carbide ("SiC") technology, which is used in compound semiconductors. In particular, Wolfspeed has developed Radio Frequency (RF) devices that include Gallium Nitride on Silicon Carbide ("GaN-on-SiC"), which is a technology that has reportedly caused CFIUS to recommend blocking other transactions. Wolfspeed has stated that its RF technology is used in electron mobility transistors and monolithic microwave integrated circuits in both civilian and military markets. In April 2016, Wolfspeed's GaN-on-SiC RF power transistors successfully completed testing for compliance with NASA reliability standards for satellite and space systems, giving its customers, according to Wolfspeed, "the ability to specify [Wolfspeed's] GaN RF devices in the most critical aerospace, military, and satellite electronics systems."

On February 16, 2017, Cree announced that the parties were unable to identify mitigation measures to satisfy CFIUS' concerns. Consequently, the parties decided to terminate the transaction, which reportedly triggered a \$12.5 million termination fee that Infineon must pay to Cree.

This transaction highlights CFIUS' focus on deals involving sensitive technology, particularly in the semiconductor sector. Since 2016, CFIUS or the President has effectively blocked a number of other transactions in the semiconductor industry involving Chinese buyers, including Aixtron-Fujian Grand Chip, GCS-San'an and Lumileds-GO Scale. With this latest outcome, CFIUS has indicated that these potential national security concerns are not limited to Chinese buyers and can arise in transactions with companies from closely allied countries.

Contact Information

If you have any questions regarding this alert, please contact:

Thomas J. McCarthy

Partner

tmccarthy@akingump.com

+1 202.887.4047

Washington, D.C.

Christian C. Davis

Counsel

chdavis@akingump.com

+1 202.887.4529

Washington, D.C.

Jung Hwa Song

Associate

jsong@akingump.com

+1 202.887.4431

Washington, D.C.