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International Trade Alert

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Key Points

- President Trump issued an order prohibiting the proposed $1.3 billion takeover of Lattice Semiconductor Corporation, a U.S. company, by Canyon Bridge Capital Partners, Inc., a private equity firm funded by Chinese investment, consistent with the recommendation of CFIUS.
- This order marks the first time that President Trump has formally blocked a transaction on national security grounds under his statutory authority to review foreign investment in the United States and only the fourth time that any president has done so.
- The President's decision in this case may discourage parties in future transactions from allowing a transaction to proceed to presidential review in the face of an adverse CFIUS recommendation and encourage them to abandon a transaction in similar circumstances rather than force a formal decision by the president.

President Trump Blocks Chinese-Funded Acquisition of U.S. Semiconductor Company

On September 13, President Trump issued an order prohibiting the proposed $1.3 billion acquisition of Lattice Semiconductor Corporation ("Lattice") by Canyon Bridge Capital Partners, Inc. ("Canyon Bridge") (hereinafter, the "Proposed Transaction"), consistent with the recommendation of the Committee on Foreign Investment in the United States (CFIUS or the "Committee"). This decision follows CFIUS's 10-month review of the deal in which it identified national security concerns associated with the Proposed Transaction that it could not resolve through mitigation with the parties. The order stated that the President found credible evidence that Canyon Bridge "might take action that threatens to impair the national security of the United States." This is the first time that President Trump has formally blocked a transaction under the CFIUS statute and only the fourth time that any president has done so.

CFIUS Background

CFIUS is an interagency committee, chaired by the Treasury, with the authority to review certain foreign investments in the United States for national security considerations. Specifically, the Committee has authority to review "covered transactions" that could result in a non-U.S. person's gaining control over a U.S. business. CFIUS review of a transaction is ordinarily initiated by the parties' submission of a joint written notice to the Committee that describes the proposed transaction and responds to information requirements in the CFIUS regulations. Thereafter, the CFIUS review process involves a 30-day review period, followed by a 45-day investigation if CFIUS identifies potential national security concerns associated with the transaction.

During its review and investigation, CFIUS may require the parties to adopt mitigation measures as a condition to its clearance of the proposed transaction. It may also direct parties to withdraw and refile their notice to allow the Committee more time to address any national security concerns. In the event that the Committee cannot mitigate any identified national security concerns, it may recommend that the President block a pending transaction, or unwind a completed transaction. Under such circumstances, the President has 15 calendar days to decide whether to block a proposed transaction. Typically, in order to avoid negative publicity, parties will withdraw their notice and abandon the proposed transaction before CFIUS makes a formal adverse recommendation to the President.

Overview of Transaction

In November 2016, Canyon Bridge entered into an agreement to acquire Lattice. Canyon Bridge is a private equity fund with offices in Silicon Valley and Beijing that reportedly has received significant funding from state-owned investors in China, including the China Venture Capital Fund Corporation Ltd. Lattice is an Oregon-based semiconductor company, specializing in making programmable logic chips that have a wide variety of uses, including functionality in the consumer, communications, industrial, computing and automotive markets. In addition to their commercial uses, the chips, known as field-programmable gate arrays, reportedly have military applications.

According to Securities and Exchange Commission (SEC) filings, Canyon Bridge and Lattice submitted a joint voluntary notice to CFIUS in December 2016 regarding the Proposed Transaction. Soon thereafter, U.S. lawmakers voiced opposition to the deal, sending letters to then-Treasury Secretary Jacob Lew that urged the rejection of the proposed acquisition. Despite political pressure, the companies proceeded to withdraw and refile their notice with CFIUS twice over the following months in an attempt to allow the Committee additional time to complete its review and to mitigate national security concerns.

On September 1, 2017, Lattice disclosed that CFIUS had decided to recommend that President Trump block the deal. Despite the parties’ reported appeals to the White House regarding the U.S. job creation benefits of the Proposed Transaction, President Trump accepted CFIUS’s recommendation and issued an order on September 13, prohibiting the Proposed Transaction and “any substantially equivalent transactions.” The order gave the parties 30 days to abandon the deal. In a separate statement, the White House explained that “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 United States Government, and the use of Lattice products by the [U.S.] Government.”

Implications

The President’s decision to block Canyon Bridge’s acquisition of Lattice continues the trend over the last decade of significant CFIUS scrutiny of Chinese investments in U.S. technology companies, particularly in the semiconductor industry. This case is noteworthy, and it is distinct from other recent transactions that have not survived CFIUS review because it was President Trump's first opportunity to weigh in on a recommendation from CFIUS. The President's decision to accept CFIUS's recommendation demonstrates his apparent deference to the Committee and is consistent with the current and past administrations' concerns about deals potentially allowing the Chinese government access to sensitive U.S. technology. The President's order blocking the Proposed Transaction may discourage parties in future transactions from forcing a formal decision from President Trump in the face of an adverse recommendation from CFIUS and encourage them to abandon a transaction in similar circumstances.

Moreover, this decision comes at a dynamic time for CFIUS, which is on track to review a record 250-plus cases this year, many of which involve Chinese investments, while Congress is working on legislation to reform the scope of CFIUS review. On the global stage, President Trump has been ratcheting up economic pressure on China to compel the country to do more on the North Korean nuclear standoff, among other issues. In light of this evolving environment, it is increasingly important for companies to develop a proactive strategy for managing CFIUS risk that considers not only the feasibility of the transaction, but also the shifting political climate and trends.

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