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# M&A Lessons Learned from the Blocked Chinese Acquisition of Lattice Semiconductor

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Last week, President Trump issued an **Executive Order** prohibiting the acquisition of Lattice Semiconductor Corporation (Lattice), a US computer chip manufacturer, by a Chinese investor. The president's order blocking the transaction was based on a recommendation by the Committee on Foreign Investment in the United States (CFIUS), an interagency committee of the US government with jurisdiction to review foreign investments in US businesses for national security concerns. During its review of the Lattice transaction, CFIUS identified unresolved national security concerns, which the President determined threatened to impair US national security.

The fate of the Lattice transaction illustrates a number of distinct issues with respect to the regulation of foreign investment in the United States. First, the US government is willing to actively intervene to modify or even prohibit foreign investments that it deems threatening to national security. Second, the concept of what constitutes "national security" is broad and evolving and is not limited to military- or intelligence-related activities or the acquisition of export-controlled technology. Third, the CFIUS process can be unpredictable and opaque, both with respect to the outcome and the timeline for review.

For these reasons, it is important for parties to understand prior to a foreign transaction when and under what circumstances the transaction may be subject to CFIUS jurisdiction and to consider how to assess and allocate potential CFIUS risks.

## Lattice and Canyon Bridge

Lattice produces field-programmable gate array (FPGA) computer chips and associated technology, software and design kits. Lattice's FPGA products and technology are used in a variety of commercial products, from communications networking gear to digital cameras and smartphones, including the iPhone. Lattice's customers include the US military, although at the time of its proposed sale it had reportedly "largely exited" the defense business.

Lattice searched for more than a year to identify a buyer for its business before selecting Canyon Bridge Capital Partners (Canyon Bridge), a newly formed firm backed by Chinese investors, including the Chinese government-controlled China Venture Capital Fund Corporation (CVCF). Lattice reportedly considered other buyers, including a US company, but ultimately selected Canyon Bridge because of its "significantly" higher purchase offer of $1.3 billion.

Lattice and Canyon Bridge agreed to voluntarily submit their transaction to CFIUS review before closing and included the receipt of CFIUS approval as a closing condition.

## CFIUS Review

The CFIUS review of the Lattice transaction lasted more than nine months, including an initial 30-day review and three consecutive 45-day investigations, during which CFIUS was unable to resolve various national security concerns with the deal. Based on a **statement** from the White House and other press reports regarding the transaction, these concerns included:

- **Transfer of intellectual property and technology:** The Executive Order and White House press release specifically referenced concerns regarding the transfer of semiconductor-related IP and technology to a foreign buyer. President Obama cited this same concern as the basis for his December 2016 **Executive Order** blocking the acquisition of the US business of Aixtron SE, a German semiconductor company, by another Chinese investor, Fujian Grand Chip Investment Fund LP.
- **Chinese government connections:** The White House also specifically referenced CVCF's involvement in the transaction and the fact that CVCF is controlled by Chinese state-owned entities. Observers noted that these state-owned entities are linked to China's space program.
- **Integrity of the semiconductor industry:** In recent years, the national security community has come to regard the semiconductor industry as particularly sensitive, in part due to concerns over the integrity of the domestic supply chain for computer chip technology. In addition to the Aixtron deal discussed above, other recent deals involving Chinese investment in semiconductor technology have been abandoned due to concerns raised during the CFIUS review process.
- **Sales to the US military:** Although Lattice's sales to the US military reportedly had diminished in recent years, the White House press release cited US government use of Lattice products as a reason for blocking the transaction. In addition to being concerned with potential disruption of the supply of items critical to the US government, CFIUS also is wary of foreign buyers gaining access to details regarding the operations and interests of the US military and other government agencies with national security responsibilities.
- **Other political scrutiny:** In December 2016, the same month President Obama blocked the Aixtron acquisition, 22 members of Congress sent a **letter** to former Secretary of Treasury Jack Lew encouraging CFIUS to recommend that the Lattice acquisition also be blocked. This is one of several recent efforts by Congress to intervene in the CFIUS review process, and it coincides with discussion of proposed legislation to reform CFIUS and its jurisdiction to focus on specific, emerging national security concerns such as Chinese investment in the high-technology field.

## Key Takeaways

For M&A transactions involving foreign investors, the failure of the Lattice deal is instructive both for what it signifies and for what it does not. For example, it is *not* indicative of a general policy banning Chinese investment in US businesses. Last year, Chinese investment in the United States totaled $46 billion, a threefold increase from 2015. Already in 2017, there have been a record-breaking 87 announced acquisitions of US companies by Chinese firms.

The Lattice example does, however, illustrate some of the complex – and often overlapping – factors that inform the government's analysis of national security considerations in connection with a CFIUS review. These considerations impact all stages of transactions involving foreign investment in US businesses, from selecting investment opportunities, to structuring the terms of the transaction, to deciding whether to submit to or forego CFIUS review, to proactively identifying and implementing mitigation measures to address potential security concerns.

Cooley's government contracts practice group assists clients in navigating these challenging issues to ensure a successful outcome. If you would like to discuss these issues further or have questions about this alert, please contact one of the attorneys listed here.

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