

CFIUS' Chinese deal reviews have steady 57% 'success' rate under Trump administration – data analysis

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[The following report provides insight into CFIUS/China related deal reviews and dealmaker workarounds. It is based largely around a data set of 50 Chinese outbound deals identified to have faced a CFIUS review after US President Donald Trump's administration came to power in January 2017.]

- Sirtex deal may indicate trend towards addressing CFIUS concerns early
- Dealmakers and deal structures are adapting to evolving US security concerns
- Lack of CFIUS condition appears to correlate with well thought out deals
- 'Board observers' and Chinese shareholder restrictions can help mitigate concerns

The US national security watchdog has been remarkably consistent in its clearance rate for M&A deals involving Chinese bidders over the past 18 months, according to data on 50 deals compiled by this news service.

The recent conditional approval on 6 July from the Committee on Foreign Investment in the US (CFIUS) for **COSCO Shipping Holdings'** [HKG:1919] USD 6.3bn acquisition of container shipper **Orient Overseas (International) Ltd** (OOIL) [HKG:0316] was the agency's eighth clearance this year of a deal involving a Chinese buyer (see [table 1 \(#T1\)](#)).

CFIUS has been responsible for the termination of six deals involving Chinese outbound bidders this year. The most recently blocked deal was the attempted USD 9.9m acquisition of a 45% stake in polymer development company **Akron Polymer Systems** (see [table 2 \(#T2\)](#)).

These 14 CFIUS review outcomes translate into a "success rate" of 57% for deals involving CFIUS reviews with publicly announced decisions in 2018.

Notably, that percentage success rate remains exactly the same when compared to the clearance or CFIUS induced deal collapse rate across the past 18 months (since President Donald Trump was inaugurated on 20 January 2017). This finding somewhat counters the perception, particularly amongst Chinese media, that CFIUS, under the influence of the Trump administration, has been "stepping up (<https://www.yicaiglobal.com/news/selen-sci-tech-abandons-us-polymer-firm-investment-us-government-restrictions>)" restrictions on Chinese companies investing in the US.

In summary, of the 50 Chinese outbound deals identified by this news service to have involved a CFIUS review: 20 have been cleared, 15 have been aborted in the face of a CFIUS objection, six are pending a CFIUS decision (see **table 3 (#T3)**), and nine had outcomes that cannot be clearly linked to the CFIUS review (see **table 4 (#T4)**).

Six of these nine deals were abandoned, whilst there is a lack of clarity around the CFIUS review for the other three (**GLP, Mount Pass, RJR**). (It is worth noting that bidders, in the face of strong CFIUS opposition, will try to walk away from the deal as quietly as possible and do all they can to avoid being branded a national security risk. A good example of this can be found in the circumstances (<http://www.dealreporter.com/intelligence/view/2530325>) around **Canyon Bridge's** failed bid for **Lattice Semiconductor** [NASDAQ:LSCC] in 2017.)

When the six ongoing deals are removed from the data-set, the 20 cleared cases deliver a 45% success rate whilst the 15 CFIUS inflicted terminations accounts for a 34% deal block rate.

Success rate might actually be increasing

Thirty-six of the 50 deals were announced after the Trump administration came to power with 14 being agreed before 20 January 2017. The oldest deal (**Ledvance/MLS** consortium) dates back to 26 July 2016.

Interestingly, of the ten earliest deals, which were all announced in 2016 (ie before Trump's administration), four were cleared and six failed due to opposition from CFIUS. However, of the ten most recent deals to be announced (including and since June 2017) seven have been cleared by CFIUS with just three failing (**Akron Polymer/Shenzen Selen, Cogint/Bluefocus** and **UQM/CNHTC**). This indicates the success rate is actually improving. It also suggests Chinese outbound bidders and advisors are being more careful with their target selection (<http://www.dealreporter.com/intelligence/view/2530796>) and deal structures as visibility around CFIUS' concerns improves.

The full list of CFIUS/China deals is laid out below in four separate tables to enable readers to further evaluate the specific circumstances around each case and assess the deals from different perspectives. Clearly, different deals present differing levels of CFIUS risk. For example, **Zhongyuan Union Cell's** [SHA:600645] acquisition of US-based gene centric research tool provider **OriGene Technologies** was approved by CFIUS on 20 April 2018 but this should be considered in the context that the vendor is a Chinese entity that had bought the target in 2015 following an earlier CFIUS review.

CFIUS' lengthy review timelines

The approximately 480 days that it took **China Oceanwide** to secure CFIUS approval for its ongoing acquisition of **Genworth Financial** [NYSE:GNW] presents one extreme example of a potentially lengthy CFIUS review timeline involving multiple attempts of withdrawal and refiling. Meanwhile the swiftest CFIUS review appears to have been seen in **NAURA Technology Group's** [SHE:002371] acquisition (<http://www.dealreporter.com/intelligence/view/2563863>) of **Akronion**, a US-based semiconductor production equipment provider, which cleared CFIUS in less than 75 days.

One lawyer recently told this news service that his firm's "conservative" recommendation is that five to six months should be allocated for a CFIUS review. "This [timeline] is not related to deals with substantive issues. This is just a minimum timeline for a CFIUS review. Even deals that do not have substantive issues are still seeing several pull and refiles," said the legal source, as reported (<http://www.dealreporter.com/intelligence/view/2662971>).

Table 1: Chinese transactions cleared by CFIUS (since 20 Jan 2017)

No	target	Chinese buyer	clearance date	sector	notes
					<ul style="list-style-type: none"> The deal was announced on 9 Jul 2017; COU has a terminal facility at California's Long Beach port;

1	Hong Kong based container shipper OOIL	state-owned COSCO	2018-07-06	shipping	<ul style="list-style-type: none"> •OOIL has a terminal facility at California's Long Beach port; •Major concern: port infrastructure; •Mitigation: divesting OOIL's Long Beach Terminal.
2	Small industrial motor unit of US-based General Electric	Wolong Electric	2018-06-25	industrial products	<ul style="list-style-type: none"> •The deal was announced on 26 Dec 2017; •The target primarily consists of Mexico-based assets.
3	45% stake in US-based automobile company Faraday Future	Evergrande Health	2018-06-18	automobile	<ul style="list-style-type: none"> •The original deal was signed on 30 Nov 2017; •The target is a smart mobility ecosystem builder founded by Chinese entrepreneur Yueting Jia.
4	US-based insurer Genworth Financial	China Oceanwide	2018-06-09	financial services	<ul style="list-style-type: none"> •The deal was announced on 23 Oct 2016; •Cleared after three attempts of re-filing; •Major concern: personally identifiable information; •Mitigations: third-party monitoring, ceding Genworth majority board seats, no access to PII
5	US-based gene-centric research tool provider OriGene Technologies	Zhongyuan Union Cell	2018-04-20	biotech	<ul style="list-style-type: none"> •The deal was signed on 4 Jan 2018; •OriGene's sale to a Chinese entity in 2015 had been conditionally cleared by CFIUS at that time. Zhongyuan was buying OriGene from the Chinese entity.
6	US-based RF/microwave solutions provider Anaren Holding	US-based TTM Technologies (9.6% owned by two HK citizens)	2018-04-18	semiconductor	<ul style="list-style-type: none"> •The deal was signed on 1 Dec 2017 and closing required CFIUS approval; •Anaren provides mission-critical RF/microwave solutions for space, defense and wireless infrastructure; •TTM announced completion on 18 Apr 2018; •TTM had established a Special Security arrangement in 2010 which denied the 9.6% HK owner of any access to sensitive businesses involving classified info or contracts.
7	Japan-based automotive safety system provider Takata	Key Safety Systems	2018-04-12	automobile	<ul style="list-style-type: none"> •The deal was signed on 21 Nov 2017; •US-based KSS is owned by China-based Ningbo Joyson. Ningbo Joyson IR said CFIUS clearance was granted in 2018.
8	Germany-based plasma producer Biotest	Creat Group	2018-01-19	biotech	<ul style="list-style-type: none"> •The deal was announced on 7 Apr 2017; •Biotest operates plasma collection facilities in the US; •Major concern: PII; •Mitigation: divest of Biotest US business.
9	US-based semiconductor processing equipment provider Aktron	state-owned Naura Technology Group	2017-12-22	semiconductor equipment	<ul style="list-style-type: none"> •The deal was announced on 8 Aug 2017; •Cleared within 75 days.
10	80% stake in US-based clinics operator Mivip Healthcare	Shanghai Hongxiao	2017-12-19	healthcare	<ul style="list-style-type: none"> •19 Dec 2017 is CFIUS clearance announcement date. The definitive deal agreement was signed on 17 Jan 2017.
11	Starter and generator unit of Germany-based Robert Bosch	Zhengzhou Coal Mining, CRCI	2017-12-09	industrial products	<ul style="list-style-type: none"> •The deal was signed on 2 May 2017.
12	Majority stake in US-based content distributor Cinedigm	Bison Holding Company	2017-11-20	content	<ul style="list-style-type: none"> •The deal was announced on 29 Jun 2017; •Bison Holding is owned by a Hong Kong-based investment company; •CFIUS approval was a condition to closing, but the condition was waived, and the transaction was completed 1 Nov 2017; •The CFIUS clearance was obtained after deal completion.
13	US-based flying car start-up Terrafugia	Geely	2017-11-13	automobile	<ul style="list-style-type: none"> •Deal signing date is not disclosed; •13 Nov 2017 is CFIUS clearance announcement date.
14	24.95% stake in UK-based OM Asset Management	HNA Group	2017-11-10	financial services	<ul style="list-style-type: none"> •The deal was announced on 24 Mar 2017; •10 Nov 2017 is the deal completion date; •In tranche one of the deal, HNA acquired 9.95% stake in the target and subsequently in tranche two, HNA bought additional stake which increased its stake in OM to 24.95%. The second tranche required CFIUS approval.
15	51% stake in US-based optical circuit switching technology company CALIENT Technologies	Suzhou Chunxing Precision Mechanical	2017-05-15	networking technology	<ul style="list-style-type: none"> •The buyer is a China-based listed industrial equipment maker; •CFIUS clearance was achieved before the parties signed definitive agreement on 18 Aug 2017.
16	US-based advanced semiconductor sensors and multi-sensor system solution provider MEMSIC	HC Semitek	2017-05-09	semiconductor	<ul style="list-style-type: none"> •The MEMSIC/Hexie deal (as phase-1 of the whole transaction) was signed on 13 Oct 2016; •MEMSIC was being acquired by Chinese fund Hexie Optoelectronics subject to CFIUS approval and meanwhile Hexie agreed to sell the target to Chinese A-share listed HC Semitek, also subject to CFIUS nod; •They jointly filed with CFIUS for the two transactions and obtained clearance on 9 May.

17	US-based miner Stillwater Mining	Sibanye Gold (19.46% owned by Chinese SOE Baiyin Nonferrous Group)	2017-04-14	mining	<ul style="list-style-type: none"> •The deal was announced on 9 Dec 2016; •Stillwater Mining is the only U.S. miner of PGMs and the largest primary producer of PGMs outside of South Africa and the Russian Federation. PGMs are rare precious metals used in a wide variety of applications.
18	US-based CRO J-STAR Research	Porton Fine Chemicals	2017-04-17	pharmaceutical	<ul style="list-style-type: none"> •The deal was announced on 25 Jan 2017; •Completion of the deal required CFIUS approval; •The deal was closed in Apr 2017.
19	US-based cloud services company Grid Dynamics	Automated Systems Holdings	2017-03-27	cloud computing	<ul style="list-style-type: none"> •The deal was signed on 16 Dec 2016. The buyer is a Hong Kong listed company controlled by a Chinese entity.
20	Germany-based intelligent and connected lighting solutions company Ledvance	Chinese consortium including MLS	2017-02-11	semiconductor	<ul style="list-style-type: none"> •The deal was signed on 26 July 2016; •Ledvance has business in the US.

(<https://cdn.mmcache.net/editorial-content/live/document-repository/document/B13gHduEm>)

Table 2: Chinese transactions terminated due to CFIUS (since 20 Jan 2017)

No	target	Chinese buyer	termination date	sector	notes
1	45% stake in Akron Polymer Systems	Shenzhen Selen Science and Technology	2018-05-10	new material	<ul style="list-style-type: none"> • Deal was announced on 12 Dec 2017; Akron is involved in certain military purpose material program in the US, according to Selen Chinese filing. • Buyer terminated deal on 10 May 2018 due to unresolvable CFIUS concerns. • The US-based target is engaged in high performance polymer business.
2	34% stake in US-based automotive system provider UQM Technologies	State-owned China National Heavy Duty Truck Group (CNHTC)	2018-05-09	automobile	<ul style="list-style-type: none"> • The deal was signed on 25 Aug 2017; Buyer is a Chinese SOE. • CNHTC structured the 34% stake acquisition as two-step transactions. 9.9% was acquired in Sep 2017 without filing with CFIUS. The second tranche, if completed, would enable the buyer to increase its stake in UQM to 34% and obtain three board seats, but finally was terminated as they failed to obtain CFIUS approval. • Before CNHTC, HK-listed Hybrid Kinetic Group attempted acquisition of 54% of UQM, subject to CFIUS and shareholder approval. But the deal fell apart in 2016 as they failed to obtain requisite shareholder approval.
3	US-based hog genetics company Waldo Farms	Beijing Dabeinong Technology Group	2018-03-03	biotech	<ul style="list-style-type: none"> • The deal was announced on 18 Mar 2017. On 3 Mar 2018 the deal was terminated as they could not obtain CFIUS approval.
4	US-based semiconductor testing equipment provider Xcerra	Sino IC Capital	2018-02-22	semiconductor equipment	<ul style="list-style-type: none"> • The deal was signed on 7 Apr 2017; • Deal terminated after they were informed by CFIUS that its approval for the deal was highly unlikely; • The buyer is a state-backed semiconductor investment fund.
5	63% stake in US-based Cogint	Bluefocus	2018-02-20	digital marketing	<ul style="list-style-type: none"> • The deal was announced on 7 Sep 2017; • The parties terminated the deal in Feb 2018 as "CFIUS has indicated its unwillingness to approve the transaction"; • Cogint is a data and analytics company providing cloud-based, mission-critical information and performance marketing solutions.
6	MoneyGram	Ant Financial	2018-01-02	financial service	<ul style="list-style-type: none"> • Deal agreement was signed on 26 Jan 2017; • Major concerns around personally identifiable information; • Deal was terminated as they were advised CFIUS approval "will not be forthcoming"; • The deal had been refiled with CFIUS for several times.
7	19.99% stake in US-based asset management company Cowen	CEFC China Energy Company (CEFC)	2017-11-24	financial service	<ul style="list-style-type: none"> • The deal was announced on 29 Mar 2017; • On 24 Nov 2017, "they mutually agree to withdraw from the current filing with CFIUS and not to pursue the previously announced transaction associated with the filing due to delays and uncertainty in securing approval from CFIUS."
8	US-based mobile advertising company AppLovin	Orient Securities Capital	2017-11-21	digital marketing	<ul style="list-style-type: none"> • The deal was announced on 26 Sep 2016; • In Nov 2017 the parties abandoned the deal due to CFIUS, according to a Reuters report cited on AppLovin's website. Instead, they amended the transaction under which Orient bought 9.98% of AppLovin.
9	US-based aluminum producer Aleris	Zhongwang	2017-11-12	industrial product	<ul style="list-style-type: none"> • The deal was announced on 29 Aug 2016; • The deal was terminated on 12 Nov 2017 as the parties could not secure CFIUS clearance.
10	10% stake in Netherlands-based mapping service provider HERE	Navinfo, Tencent (and GIC)	2017-09-27	Internet, mapping service	<ul style="list-style-type: none"> • The deal was announced on 27 Dec 2016; • Navinfo and HERE responded to more than 10 rounds of inquiries from CFIUS and the two companies had been willing to engage with the regulator and propose revisions to deal plan. But they failed to obtain CFIUS approval so they decided to terminate deal in Sep 2017.
	19.9% in US-based				

11	energy storage and power delivery solution provider Maxwell Technologies	SDIC Fund Management	2017-09-20	energy storage	<ul style="list-style-type: none"> •The deal was signed on 10 Apr 2017; •The deal was terminated after they withdraw their CFIUS filing in Aug 2017; •SDIC Fund is a Chinese state-back private equity fund.
12	US-based FPGA provider Lattice Semiconductor	Canyon Bridge	2017-09-13	semiconductor	<ul style="list-style-type: none"> •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 U.S. government, and the use of Lattice products by the U.S. government; •The deal was signed on 3 Nov 2016 and underwent several rounds of withdrawal and refiling before it was finally escalated to President Trump who rejected the transaction; •Canyon Bridge is a US-based private equity fund but its key LP is backed by Chinese SOE.
13	Oil and gas assets in US state Texas	IDG Energy Investment	2017-08-03	energy	<ul style="list-style-type: none"> •The deal was signed 21 Nov 2016; •The buyer failed to obtain CFIUS approval by the end date; •IDG Energy is a Hong Kong listed company.
14	9.9% stake in US-based inflight entertainment and connectivity provider Global Eagle Entertainment	Shareco (an HNA subsidiary)	2017-07-25	Internet	<ul style="list-style-type: none"> •The 9.9% acquisition was signed on 8 Nov 2016; •Closing was subject to CFIUS. Shareco has the rights to nominate an observer to GEE board upon closing of this first stage deal; •The parties also negotiated potential second stage investment which following the completion of the 9.9% stake purchase would increase Shareco's stake in GEE to 34.9% and provide Shareco with board seat at GEE; •However, the 9.9% stake acquisition was terminated as the parties failed to clear CFIUS.
15	Mobile Wi-Fi business Novatel Wireless of US-based Inseego	TCL	2017-06-07	networking technology	<ul style="list-style-type: none"> •The deal was signed on 21 Sep 2016. The parties terminated the transaction after multiple failed attempts to clear CFIUS.

(https://cdn.mmcache.net/editorial-content/live/document-repository/document/BkcNH_dEm)

Table 3: Chinese transactions pending CFIUS approval (since 20 Jan 2017)

No	target	Chinese buyer	CFIUS status	sector	notes
1	Australia-based liver cancer treatment company Sirtex	CDH, China Grand Pharmaceutical	pending	pharmaceutical	<ul style="list-style-type: none"> •The deal was signed in Jun 2018; •Sirtex has businesses in the US; •Chinese bidders agreed to pay large sum of break fee if deal fails due to their withdrawal of CFIUS notification; •Bidders had agreed to accept various potential mitigation actions if required by CFIUS.
2	Portugal-based electric power company Energias de Portugal	China Three Gorges	pending	energy	The buyer is China's major SOE in hydropower sector. Deal was announced in early May 2018. The launching of its general offer is subject to CFIUS approval among others.
3	40.1% stake in US-based drugstore chain GNC	Harbin Pharmaceutical	pending	pharmaceutical, retailing	<ul style="list-style-type: none"> •Definitive agreement was signed in early Feb 2018. Closing is subject to CFIUS.
4	12.34% stake in US-based in-wheel electric drive system Protean	Weifu High-technology Group	pending	automotive	The buyer proposed to buy 12.34% stake via subscription to the target's series E preference shares in two steps. Through the first tranche completed in May 2018, the buyer has acquired 8% stake and a board observer position, which will be converted into board seat upon CFIUS approval as part of the second tranche. CFIUS approval is still outstanding.
5	Canadian Solar's three solar power station assets in the US	Shenzhen Energy Group	pending	energy	<ul style="list-style-type: none"> •Deal announced in Oct 2017. Closing subject to CFIUS approval; •On 17 Jul 2018 IR at Shenzhen Energy said CFIUS process is ongoing.
6	51% stake in Glencore's petroleum products storage and logistics businesses	HNA Innovation Finance Group	pending	energy	<ul style="list-style-type: none"> •The deal was signed in Mar 2017; •CFIUS approval is required. On 29 Dec 2017, the parties announced initial completion of the deal and disclosed a second agreement under which three of the original transaction assets located in the USA will be transferred into the target in 2018, subject only to receipt of satisfactory CFIUS clearance.

(<https://cdn.mmcache.net/editorial-content/live/document-repository/document/SJsXSud4X>)

Table 4: Other Chinese transactions where clarity around the CFIUS review is lacking (since 20 Jan 2017)

No	target	Chinese buyer	termination/completion date	sector	notes
1	Electric battery business of Japan-based Nissan	GSR Capital	2018-07-02	automotive	<ul style="list-style-type: none"> The deal was signed on 8 Aug 2017; The acquisition was subject to CFIUS approval. On 2 Jul, Nissan said the deal was terminated because GSR was unable to fund the deal. It is unclear whether CFIUS was notified.
2	Majority stake in US-based hedge fund Skybridge Capital	HNA Capital	2018-04-30	financial services	<ul style="list-style-type: none"> The deal was signed on 17 Jan 2017; In April 2018, the parties said CFIUS "offered a path to approval subject to certain mitigation measures", but they decided to terminate "given that significant time has passed since the transaction was first announced and the uncertain timing of the approval process going forward".
3	US-based EV charging station maker EVTRAN	Zhejiang VIE Science & Technology	2018-03-20	automotive	The buyer, which owned 16.14% of EVTRAN, in Nov 2017 proposed to acquire all of EVTRAN's assets or its 83.86% stake, subject to CFIUS approval. The buyer terminated the deal citing disagreement over valuation. It is unclear whether CFIUS was notified.
4	Singapore-based logistics solutions provider Global Logistics Properties	GLP CEO Ming Mei, Hopu, HillHouse, Bank of China Group Investment, Vanke Real Estate	2018-01-10	logistics	<ul style="list-style-type: none"> The deal was signed in Jul 2017. CFIUS approval is not a condition for deal closing; The buyer group shall "take any and all actions necessary" including various potential mitigation measures to ensure closing of the deal faces no regulatory hurdle on CFIUS front; The deal was completed in Jan 2018. It is unclear whether or when CFIUS granted its approval.
5	Digital product engineering unit Jersey Holdings of US-based Ness Technologies	Pactera (a HNA subsidiary)	2017-12-05	IT services	<ul style="list-style-type: none"> The deal was signed in Mar 2017; Completion of the deal requires CFIUS approval; The parties made several notifications with CFIUS but according to Ness these filings were not accepted by CFIUS as the agency deemed them to be incomplete; Ness terminated the deal blaming Pactera for failing to make reasonable best efforts to file with CFIUS. Pactera denied all these allegations.
6	53.68% stake in US-based energy company Pacific Energy Development	HK investors - Dragon Gem Limited and Absolute Frontier Limited	2017-10-04	energy	<ul style="list-style-type: none"> The deal was signed in Aug 2017; The deal was terminated as investors were unwilling to extend the outside closing date to accommodate the time required for receipt of CFIUS approval, which was jointly sought by the parties on 17 Sep 2017.
7	US-based surveillance camera provider Arecont Vision	NetPosa Technologies	2017-09-03	security technology	<ul style="list-style-type: none"> The deal was signed in Mar 2017; Buyer terminated the deal on 3 Sep 2017 on grounds that the CFIUS process has lasted too long and there is regulatory hurdle which would produce material effects on the operation of the target company; Whilst the target in a legal complaint alleged that the real reason behind NetPosa's termination is the declining financial performance of the target.
8	US-based rare earth mine Mountain Pass	Shenghe Resources Holding	2017-07-12	mining	<ul style="list-style-type: none"> The bidder announced its intention to bid in May 2017; Rare earth is a strategic natural resource; In its deal announcement, the buyer said the deal might be subject to CFIUS. The deal was completed in early Jul 2017; When asked, Shenghe Resources would not comment whether they filed with CFIUS, but said "so far they have seen no regulatory hurdle" with regard to CFIUS.
9	Joint investment with US-based semiconductor packaging solution provider RJR Technologies	JAC Capital	N/A	semiconductor	<ul style="list-style-type: none"> On 22 Sep 2017 the two parties announced agreement on investment and JV matters, subject to CFIUS approval, according to media report. No further details about the deal structure is available.

(<https://cdn.mmglcache.net/editorial-content/live/document-repository/document/Bk5zruOV7>)

Dealmakers react to US concerns about China and PII

As widely reported, the US government is concerned about investments from Chinese that it believes could erode the country's technological leadership. Such concerns are evidenced in the national security reform legislation (<http://www.dealreporter.com/intelligence/view/2679026>) designed to strengthen CFIUS and has been demonstrated in President Trump's order (<http://www.dealreporter.com/intelligence/view/2501191>) to block the Lattice deal (the company has FPGA - a semiconductor technology widely used in military and industrial applications), and, in an even more high profile case, his decision to pre-emptively (<http://www.dealreporter.com/intelligence/view/2601869>) prevent Singapore-based **Broadcom** [NASDAQ:AVGO] from making an attempt to buy US's semiconductor champion **Qualcomm** [NASDAQ:QCOM]. Trump blocked Broadcom's bid on the grounds that it may detriment (<http://www.dealreporter.com/intelligence/view/2601869>)

<https://www.wsj.com/articles/in-letter-cfius-suggests-it-may-soon-recommend-against-broadcom-bid-for-qualcomm-1520869867>)Qualcomm's capacity to compete against China's **Huawei** in the two countries' fierce arms race in 5G technology.

While infrastructure proximity to critical infrastructure (OOIL/Cosco) has long been at the top of CFIUS' list of concerns it has also become increasingly apparent over the past twelve months that personally identifiable information (<http://www.dealreporter.com/intelligence/view/2678262>)(PII) is also an extremely sensitive issue. The extent of this can be seen in CFIUS' recent handling of the **Genworth/China Oceanwide** deal and **Biotest/Creat** as well as the extensive upfront potential mitigation (<http://www.dealreporter.com/intelligence/view/2662971>)actions the Chinese bidders for **Sirtex Medical** [ASX:SRX] have said they are prepared to take.

The upfront disclosure of potential mitigation options in the Sirtex deal differs significantly from how **Creat** approached the acquisition of **Biotest** [ETR:BIO/ETR:BIO3] last year and from how HNA subsidiary **Tianjin Tianhai** [SHA:600751] approached its bid (<http://www.dealreporter.com/intelligence/view/2242979>) for **Ingram Micro** in 2016. In both previous cases the deal parties strongly downplayed the CFIUS risk before facing a more extensive review than they initially *seemed* to expect.

Mitigation actions in many of the more recent aforementioned cases have been significant: COSCO agreed to divest OOIL's Long Beach Terminal, which is reportedly worth around 20% of the USD 6.3bn deal value; Creat agreed to sell Biotest's US blood plasma donor business; China Oceanwide agreed to install third-party monitorship to ensure logical and physical separation of Genworth's data center and IT infrastructure from China Oceanwide and even agreed to having only three of nine seats on Genworth's board.

The ongoing Sirtex deal is also instructive. The structure and terms of the transaction appear to leave the Chinese bid group with little "walk away" optionality should the deal encounter stiff resistance from CFIUS. This is very different from the structure of OOIL/Cosco deal, which allowed the parties to potentially use China's antitrust regulator as a "get-out" option, as reported (<http://www.dealreporter.com/intelligence/view/2587339>).

Similar to the GLP and OOIL deals, the Sirtex deal is not actually conditional on CFIUS clearance (<http://www.dealreporter.com/intelligence/view/2673685>), which might be becoming a trend one can associate with the most well thought out and well-structured deals, this news service observes. It is interesting to note that Canyon Bridge, following its experience with Lattice, structured its bid for the UK's Imagination Technologies in such a way that actually avoided a CFIUS review altogether (<http://www.dealreporter.com/intelligence/view/2509564>).

Sensitive sectors and subsectors

While CFIUS is currently perceived among Chinese investors in China as being too belligerent, two US-based lawyers familiar with US national security reviews, one of whom previously worked for China's Ministry of Commerce, argued that the Committee has shown prudence in its review of Chinese investments, and has strictly adhered to its current legal mandate.

This view is somewhat supported by the relatively steady CFIUS "success rate" as shown by the data-set, and the fact that CFIUS has both approved and restricted transactions in the following sectors: financial services, biotech, semiconductor, and automobile.

Lawrence Ward, a partner with practice in CFIUS matter at the international law firm Dorsey & Whitney, said there are a certain few specific areas which very clearly the US government is currently concerned about. The sensitivity around semiconductors is well appreciated but another sector of concern is telecommunications generally, and 5G specifically, he added.

Artificial intelligence (AI), machine learning, Internet of things (IoT) are also closely watched and, within AI and IoT, heightened concern is expected around autonomous vehicles – not just autonomous aircraft but also autonomous cars, said Ward. PII, genetic or financial information about US persons, are also highly sensitive, he added.

The second lawyer said CFIUS has a good track record of being scrupulous in conducting national security reviews and has no reason beyond national security concerns to make a fuss about Chinese buyers. “Had there been one or two false positives where an overly meticulous CFIUS review reached the wrong decision? It is possible. But generally speaking, CFIUS has not been known to be abusing its power to deliberately make it harder for Chinese buyers to invest in the US”.

The lawyer referred to a recent eye-catching headline in Chinese media - “Even hog breeding acquisition got blocked by CFIUS” – to highlight the perception, in some quarters, that CFIUS is anti-Chinese. The headline referred to the termination in March of **Dabeinong’s** [SHE:002385] acquisition of US-based hog genetics provider **Waldo Farms**. But the lawyer said genetics technologies are obviously high tech and this might explain why the buyer could not obtain CFIUS approval.

9.9% stake bids, two-step deals and “board observers”

Current CFIUS regulation stipulates (<https://www.law.cornell.edu/cfr/text/31/800.302>) that an acquisition is not a covered transaction if the deal is for less than a 10% stake and is a purely passive investment. As a result there was some initial surprise when in September 2017 CFIUS restrictions resulted in the collapse of the joint bid by **NavInfo** [SHE:002405], **Tencent** [HKG:0700] and Singapore’s **GIC** for a 10% stake in Netherlands-based mapping service provider **HERE Technologies**. However, it later became clear (<http://www.dealreporter.com/intelligence/view/2517951>) that the buyer group – who are not all Chinese - had actually been seeking a board seat.

There are numerous past and ongoing cases to examine for more insight into how CFIUS approaches such deals and how bidders try to navigate the restrictions via staggered deals and “board observer” rather than “board seat” arrangements. These cases, some of which are described below, could become particularly useful to review if heightened passivity criteria are introduced as part of the ongoing CFIUS reform, as noted in a recent law firm report (<https://www.clearygottlieb.com/-/media/files/alert-memos-2018/congress-set-to-expand-scrutiny-of-foreign-investment-in-the-united-states.pdf>).

In September 2017 state-owned **China National Heavy Duty Truck Group** (CNHTC) acquired 9.9% of US-based automotive system provider **UQM Technologies** without a CFIUS filing. But the Chinese buyer’s subsequent attempt to increase its stake in UQM to 34% and obtain three board seats failed early this year after the parties failed to obtain CFIUS approval.

A similarly staggered investment approach was used by **HNA Group** for its successful acquisition of 24.95% stake in UK-based **OM Asset Management** [NYSE:BSIG]. On 12 May 2017 HNA purchased 9.95% stake and on 10 November 2017 bought an additional 15% stake after gaining CFIUS clearance.

An ongoing case involves **Weifu High-technology Group’s** [SHE:000581] acquisition of 12.34% stake in US-based in-wheel electric drive system **Protean**. In May 2018 the buyer acquired an 8% stake in Protean and a board observer position, which will be converted into board seat upon CFIUS approval as part of the planned acquisition of the remaining 4.34%.

In another situation, certain arrangements established years ago facilitated CFIUS’ clearance of the sale of US-based RF/microwave solutions provider **Anaren Holding** to US-based **TTM Technologies** [NASDAQ:TTMI], which is 9.6% owned by two Hong Kong citizens. The target operates in sensitive sectors as it has client base in space,

defense and wireless infrastructure, but TTM, which also is a supplier to US government, had established a special security arrangement in 2010 that denied the Hong Kong owners any access to its own sensitive businesses involving classified information or contracts, according to TTM regulatory filings.

CFIUS reform bill heads towards Trump's desk

President's Trump's administration had at one point threatened new restrictions on Chinese investments in "industrially significant technology", but later Trump reportedly indicated his preference of using CFIUS to curb Chinese investments in sensitive sectors.

"The fact remains that the CFIUS review and investigation process has worked well to protect US national security while still allowing foreign direct investment when it makes good business sense to the US seller and the foreign buyer", Dorsey & Whitney's Ward commented.

"CFIUS takes its task with the utmost seriousness and it is seemingly wholly unnecessary to set up a new regulatory regime to monitor Chinese investment, particularly when the revisions to Section 721 through FIRRMA (Financial Investment Review Reform Modernization Act) address concerns that the legislative branch has had in recent years with the CFIUS process," Ward continued.

FIRRMA is expected to be passed this year as long as it continues to be attached to the National Defense Authorization Act (NDAA), which gets passed on an annual basis because it funds the Department of Defense, he noted. Considering CFIUS will then need some time to revise its policies and practices, next year will be a more likely timeframe for the new CFIUS regime to take effect, he added.

As reported (<http://www.dealreporter.com/intelligence/view/2679026>), lawmakers voted yesterday to pass the annual defense bill that includes measures to modernize and strengthen the CFIUS to guard against national security risks. The NDAA is set to be sent to the Senate, where it is expected to be voted on as early as next week. If it passes, the bill will go on to the president's desk.

by George Shen in Shanghai

Grade: Strong evidence

TARGETS

Orient Overseas (International) Limited

Financial advisor

HSBC Holdings (headquarters building)

JPMorgan

BIDDERS

Shanghai International Port (Group) Co., Ltd.

Cosco Shipping Holdings Co., Ltd.

Financial advisor

UBS Investment Bank

USA

Computer: Semiconductors

Topics: Data Analytics, Mergers and Acquisitions, Antitrust/Regulatory

Intelligence ID: prime-2679384

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