

M&A Watch

Ant Financial and MoneyGram Terminate Merger Agreement Due to CFIUS Concerns


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BACKGROUND

MoneyGram International Inc. and Ant Financial Services Group recently announced the termination of their agreement providing for the acquisition of Texas-based money transfer company MoneyGram by China-based Ant Financial because they were unable to receive approval from the Committee on Foreign Investment in the United States (CFIUS). The decision by the parties to terminate Ant Financial's proposed acquisition of MoneyGram was reportedly reached after CFIUS rejected proposals by the companies to mitigate national security concerns raised by the transaction. The apparent willingness of CFIUS to block the transaction, had it moved forward, can be traced to two general national security concerns that extend beyond CFIUS, which are also the focus of proposed legislation in Congress. The first is an intensified focus on Chinese investments in U.S. companies, especially in the high-tech sector. The second is a concern about any foreign investment in U.S. companies that would give access to personal or health-related data of U.S. citizens.

OUR VIEW

The focus on China, especially on investments in the semiconductor and related industries, is well established. The Obama Administration blocked the acquisition of the U.S. subsidiaries of German semiconductor-equipment supplier AIXTRON SE by Chinese investors in 2016, and had a general policy of closely scrutinizing Chinese acquisitions in this sector. More recently, the Trump Administration stopped the acquisition of Lattice Semiconductor Corporation, an Oregon-based company, by a Chinese investor in September 2017, and senior officials have expressed concern about whether current U.S. laws on foreign investment are adequate to protect U.S. national security.



At the same time, CFIUS has over the past several years increased its focus on acquisitions of U.S. companies that have access to the personal information of U.S. citizens. The MoneyGram deal would have given Ant Financial access to the financial transactions of a considerable number of Americans. Concerns have been raised both within the Trump Administration and in Congress about whether such information would be adequately protected by foreign companies or used by foreign governments for geopolitical advantage.

Both of the factors mentioned above are key components of new proposed legislation in both houses of the U.S. Congress, where in November 2017 a bipartisan group of lawmakers introduced bills that would result in closer scrutiny of investments by China, as well as investments generally in the technology sector and in companies that handle personal identifier information of U.S. citizens. The bills' sponsors have pointed to what they believe is a Chinese policy to structure deals to avoid CFIUS and thereby acquire U.S. technology with potential military applications. The Senate bill, called the Foreign Investment Risk Review Modernization Act, was introduced by Sen. John Cornyn (R-Texas), Sen. Dianne Feinstein, (D-California) and Sen. Richard Burr (R-North Carolina). Cornyn, Feinstein and Burr are senior lawmakers with considerable power, giving the bill a good chance of becoming law. In a June 2017 speech, Sen. Cornyn complained about "China's steady investment in American technology companies, many with dual-use military and civilian applications," which he characterized as insidious and problematic. The proposed legislation, in many ways, gives CFIUS more authority to accomplish what it already has been doing, which is rejecting Chinese investments in U.S. high-tech companies, especially in the semiconductor sector.

We will continue to monitor CFIUS-related developments, and we are happy to discuss any questions you may have on this topic.



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This memorandum is intended only as a general discussion of these issues. It should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired.

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