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Senator wants Twitter probe by CFIUS. Does it have jurisdiction?

In a letter to Treasury Secretary Janet Yellen, U.S. Senator Chris Murphy (D-Conn.) has urged CFIUS “to immediately conduct a review” of changes to Twitter’s ownership and governance. The letter notes that approximately 5% of the financing for Elon Musk’s acquisition came from Saudi Arabia and Qatar.

Here are all the details:

WHAT HAPPENED

U.S. Senator Chris Murphy (D-Conn.) sent a [letter](#) to Treasury Secretary Janet Yellen calling on CFIUS “to immediately conduct a review of the recent changes in Twitter’s ownership and governance.”

THE DEAL

According to Sen. Murphy, approximately \$1.9 billion of the financing raised by Elon Musk for the acquisition of Twitter “was secured from members of the Saudi Arabian royal family.” Another \$375 million came from the Kingdom of Qatar,



U.S. Senator Chris Murphy

said Sen. Murphy. “Collectively, these stakes account for approximately 5% of the new ownership of Twitter.”

The data cited by Sen. Murphy came from a [report](#) in early October that specified the participants in the financing; key funders included an investment firm founded by the Qatar Investment Authority, and Saudi Arabian investor Prince Alwaleed bin Talal. Other investors included mainstream financial-services and venture-capital firms such as Fidelity Investments, Sequoia Capital, and Andreessen Horowitz.

THE LETTER

Sen. Murphy cites two reasons for the requested investigation.

First, he states that CFIUS, among other things, is responsible for reviewing non-controlling investments in certain U.S. businesses, “including companies that develop critical technologies and businesses that possess sensitive personal data on US [sic] citizens.” He notes that Twitter has “vast stores of data” on American citizens.

Second, Sen. Murphy argues that Twitter’s foreign ownership “will result in increased censorship, misinformation, or political violence.”

The Senator specifically cited a case in 2019, in which federal prosecutors alleged that Saudi Arabia recruited employees of Twitter “to spy on users in order to carry out surveillance and smear campaigns against dissidents.” According to Sen. Murphy, an internal investigation by Twitter also “resulted in the suspension of 88,000 accounts tied to a disinformation campaign backed by the Saudi government, targeting both domestic and international audiences.”

JURISDICTION?

Experts question whether CFIUS would even have jurisdiction over this transaction. “The Committee would not have jurisdiction here, especially since there weren’t any

special rights obtained as part of the investment,” said one CFIUS expert who couldn’t talk on the record due to his relationship with one of the parties.

Tyler McGaughey, who served as the Deputy Assistant Secretary for Investment Security at the Treasury Department, agrees. “For CFIUS to have jurisdiction, you need an equity investment plus rights,” he says. “I haven’t seen anything making it clear whether foreign investors received the rights that would trigger CFIUS jurisdiction.”



Winston & Strawn partner Tyler McGaughey, who previously served as the Deputy Assistant Secretary for Investment Security at the Treasury Department, where he was responsible for managing the day-to-day operations of Treasury’s CFIUS team.

In addition, McGaughey assumes that the foreign investors are represented by sophisticated CFIUS counsel; if anything, he says, “they probably have agreements that make explicitly clear that they are not getting any of the rights that would trigger CFIUS jurisdiction.”

Experts don’t even expect the non-notified team to take a look at the transaction. “I would expect that the CFIUS non-notified team would look at this transaction if it hasn’t already done so, and determine it’s not a covered transaction,” says Vinson & Elkins partner Rick Sofield, who previously was Director of the Foreign Investment Review Staff for the National Security Division at the U.S. Department of Justice, where he oversaw the DoJ’s participation in CFIUS.

McGaughey, now at Winston & Strawn, agrees. “My guess is that the non-notified team is going to have to do some preliminary due diligence to figure out whether CFIUS even has jurisdiction,” he says. “My best guess is that CFIUS probably doesn’t have jurisdiction.”

McGaughey adds that, even if the Committee does have jurisdiction, he doubts the non-notified team would call it in. “They won’t want to risk claims that CFIUS is being weaponized against political opponents,” he

says. “Musk is a U.S. citizen, and CFIUS doesn’t have jurisdiction over transactions where a U.S. citizen buys a U.S. business.” Even if CFIUS determines that one of the foreign investors tripped CFIUS jurisdiction, he doubts it would impact Musk.

Others suspect the non-notified team has already been looking at the deal (see below).

NEXT STEPS

According to [media](#) reports, the Treasury Department has already contacted Twitter to learn more about the structure of its new ownership, as well as “the confidential agreements Musk struck with his foreign investors.” That inquiry, likely by the non-notified team at CFIUS, apparently not only included the Saudi and Qatari ownership stakes, but those of Chinese cryptocurrency exchange Binance, which also provided Musk with capital for the acquisition.

As most Foreign Investment Watch readers know, all CFIUS deliberations are confidential, so the alleged inquiry could not be confirmed.

MORE INFORMATION

The [letter](#) from Sen. Murphy to Treasury Secretary Yellen is available for download.

We also have aggregated all our [coverage of letters](#) related to CFIUS that have been submitted to the Treasury Secretary, the President, and other parties.

Our readers are pretty plugged-in, so if you have any intel contact editor Scott Cohen at scott@foreigninvestmentwatch.com (can be off-the-record or on background only).

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