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BLOG

President Trump Accepts CFIUS's Recommendation – Orders TikTok's Chinese Owner to Divest

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On August 14, 2020, President Trump issued an Executive Order (EO) formally ordering ByteDance, the Chinese owner of the video-sharing app TikTok, to divest its U.S. assets within 90 days. This EO comes after a unanimous recommendation by the Committee on Foreign Investment in the United States (CFIUS) to prohibit the 2017 acquisition of American lip-syncing app Musical.ly. In 2018, ByteDance merged Musical.ly and TikTok to create a single integrated social media application operated under the name TikTok. According to a statement by Treasury Secretary Steven Mnuchin, the CFIUS chairman, "[t]he order directs ByteDance to divest all interests and rights in any assets or property used to enable or support the operation of TikTok in the United States, and any data obtained or derived from TikTok or Musical.ly users in the United States."

Although the underlying acquisition occurred almost three years ago, CFIUS has the authority to review closed transactions involving the foreign acquisition of U.S. businesses if the transaction was not previously cleared by CFIUS. In this case, CFIUS's review process began in 2019 after concerns were raised regarding China's access to the sensitive personal data of the app's users. An additional concern raised by Senator Marco Rubio was the Chinese government's potential censorship of content on the TikTok platform that is "not in line with the Chinese Government and Communist Party directives." You can read more about CFIUS's decision to review the Musical.ly transaction in our prior blog.

This Executive Order is the latest in a series of actions by the Trump Administration targeting TikTok due to national security concerns. On August 6, the President issued a separate EO pursuant to his authorities under the International Emergency Economic Powers Act. The August 6 EO prohibits, beginning 45 days after August 6, transactions by any person or with respect to any property subject to U.S. jurisdiction with ByteDance Ltd. (a.k.a. Zìjié Tiàodòng), Beijing, China, or its subsidiaries, in which any such company has any interest, as identified by the Secretary of Commerce. The EO calls for such interests to be identified by the Department of Commerce after 45 days. You can read more about the August 6 EO in our prior blog.

The willingness of CFIUS to force divestiture of closed deals means companies should carefully consider whether to voluntarily file a CFIUS notice in connection with their transaction even if a filing is not required under the regulations. Filing a notice voluntarily will allow the parties to obtain a safe harbor letter from the government and avoid the possibility that the government later decides on its own to investigate the transaction. Filing a CFIUS notice and obtaining the safe harbor letter up front will save the hassle, and possible delays, an investigation initiated by the government might cause.

For more information about CFIUS's review process or the government's recent actions against TikTok, please contact Cari Stinebower (CStinebower@winston.com, 202-282-5788).
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