Insights: Alerts

Reported Clearance of ChemChina's $43 Billion Deal for Syngenta Underscores Need for Chinese Companies to Take a Proactive Approach to CFIUS

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The Committee on Foreign Investment in the United States (CFIUS), which reviews transactions for potential national-security issues, has reportedly cleared state-owned China National Chemical Corp's (ChemChina) planned $43 billion takeover of Syngenta, which supplies about 10% of soybean seeds to U.S. farmers and 20% of pesticides worldwide. The reported clearance is significant as it would be the biggest overseas deal for a Chinese company to date.

Earlier this year, Syngenta said that it had not identified any obvious national-security concerns during due diligence but would nevertheless make a voluntary filing with CFIUS. While the ChemChina/Syngenta transaction is not a done deal (the parties must obtain antitrust approval in the U.S. and abroad), the recent clearance is a positive development for Chinese companies seeking to acquire controlling interests in U.S. companies – at least in the food and agriculture sectors. Significantly, CFIUS had recently shot down much smaller potential Chinese acquisitions in electronics and manufacturing (lightbulbs) arenas and several high-profile transactions in the manufacturing and technology sectors reportedly fell apart because of concerns about obtaining CFIUS approval.

Chinese investments in the U.S. undoubtedly attract additional CFIUS scrutiny. The vast majority of them, however, have been approved by, or don't require the approval of, CFIUS. CFIUS' clearance of the ChemChina/Syngenta transaction should encourage Chinese companies seeking to acquire U.S. companies or controlling interest in them while also underscoring the need for Chinese companies to plan ahead, notify CFIUS of proposed transactions that may (or may not) have national security implications as early as possible in a transaction, account for a timely and efficient review, and hopefully avoid the wasted time and expense of a forced divesture and mitigation requirements later in the transaction. This proactive approach is absolutely critical for transactions involving technology, infrastructure, or entities located near U.S. government facilities or receiving U.S. government funding.

In short, parties to a transaction involving potential Chinese ownership or investment must analyze the potential impact of CFIUS, create a strategy for CFIUS review, and protect themselves contractually if CFIUS blocks the transaction.

For additional information or assistance regarding CFIUS, please contact one of the authors or your regular Kilpatrick Townsend contact.

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