Portfolio Media. Inc. | 111 West 19th Street, 5th Floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

CFIUS Approval Of Chip Deal Gives Hope To Foreign Cos.

By **Benjamin Horney**

Law360, New York (January 30, 2018, 3:38 PM EST) -- The Committee on Foreign Investment in the United States is notoriously tough on overseas deals, especially those involving China, but the recent approval of a Chinese company's acquisition of a U.S. semiconductor equipment maker shows that because CFIUS considers each investment individually, there's hope even for foreign chipmakers looking to do deals.

CFIUS has historically looked at deals involving chipmakers and other technologies with a wary eye, due to the potential for foreign entities to use such transactions as a way to get a hold of critical U.S. data, technology and intellectual property. In recent months, meanwhile, lawmakers and experts alike have posited that China, specifically, is engaged in an active attempt to usurp the U.S. as the world's No. 1 superpower, and that one of the ways the country is doing so is by seeking to gain access to critical information and technology by way of mergers and acquisitions. Worries related to China's intentions have been a major talking point in a recent series of congressional hearings examining proposed legislation that seeks to update and modernize the CFIUS mandate.

With all that in mind, it may have been surprising to some to see that CFIUS earlier this month greenlighted the roughly $15 million acquisition of Pennsylvania-headquartered Akrion Systems LLC by China-based Naura Microelectronics Equipment.

Those that were surprised by the approval, however, have not been paying close enough attention to the way that CFIUS has operated since its formation in 1975, according to Daniel "DJ" Rosenthal, co-chairman of the CFIUS advisory practice at investigative firm Kroll Associates.

"That deal shows that people need to take a breath," Rosenthal told Law360. "The Naura deal shows that just because a deal involves a Chinese company and semiconductors, it doesn't mean the deal won't go through."

The approval of the deal between Naura and Akrion serves as a reminder that CFIUS is not overly biased against China, nor is it in the business of blindly blocking every deal that involves companies with a connection of some kind to the world of chipmaking.

According to Rosenthal, there had been a sentiment in the M&A world that chipmaking deals involving Chinese buyers were off-limits ever since President Donald Trump blocked the anticipated $1.3 billion acquisition of chipmaker Lattice Semiconductor Corp. by private equity firm Canyon Bridge Capital Partners LLC in September of last year.

In that case, Trump sided with CFIUS' decision that the involvement of Chinese investors presented a national security problem.

The president prohibited the transaction due to the involvement of the Chinese government in the transaction, according to a statement from the White House press secretary. The statement specifically pointed to the involvement of China Venture Capital Fund Corp. Ltd., which is a Chinese company backed by state-owned entities.

The decision to block the agreement came nearly a year after the transaction was announced in November 2016. Under the terms of the now-defunct deal, Canyon Bridge agreed to pay $8.30 per Lattice share to buy the company. The deal was valued at around $1.3 billion, including debt.

"After the Canyon Bridge block, people felt there was no prospect of getting deals through involving China," Rosenthal said. "The [Naura] approval shows that's not the case. CFIUS continues to employ case-by-case, fact-specific determinations about transactions."

Joseph Falcone, a disputes partner working out of Herbert Smith Freehills LLP's New York office who leads the firm's efforts to advise clients about the potential impact of CFIUS and related issues on proposed U.S. acquisitions or investments, told Law360 that while the decision to allow the Naura-Akrion transaction doesn't necessarily provide a specific blueprint for foreign buyers looking to swing deals in the chipmaking space, it does allow for a sigh of relief for those that had become resigned to the belief that CFIUS would likely block any such deal that came across its desk.

"This is probably being perceived as a positive development by non-U.S. buyers, including Chinese-based buyers, insofar as there may have been a perception that deals from that part of the region could not be approved," Falcone said. "In this case, we see that CFIUS is willing to look at the merits of a transaction and, if warranted in CFIUS' view, approve the deal."

The approval may not explicitly show how to get future deals approved, since CFIUS looks at each deal individually, but there are takeaways for attorneys and their clients. For instance, it may be the case that Naura's takeover of Akrion was not viewed as a major threat to U.S. national security because of the specifics of Akrion's business.

The company mainly makes so-called wet stations that are used for cleaning processing equipment, and it also has produced a line of packaging equipment for semiconductor products, according to its website. That stands in contrast to Lattice, which makes high-performance programmable logic devices such as field programmable gate array devices.

"It's certainly true that the critical technology arena has been an area of significant focus for CFIUS in recent years," Falcone said. "Per its website, Akrion makes equipment that makes semiconductors, but doesn't make the semiconductors itself."

Thus, it's not outrageous to glean from the approval of the Naura-Akrion deal that transactions involving chipmaking-adjacent businesses have a better chance of getting the green light than agreements that involve the actual chipmakers.

Still, attorneys should be careful not to take too much away from this, or any decision made by CFIUS, according to Giovanna M. Cinelli, leader of the international trade, national security and economic sanctions practice at Morgan Lewis & Bockius LLP.

For example, there has been speculation in media reports that the Naura-Akrion deal may have been approved, in part, because of the relatively small dollar figure. At $15 million, the transaction is worth far less than many of the deals that have been blocked in the past.

Cinelli rebutted that idea, saying the value of a given deal has no impact on whether CFIUS will determine it should be allowed.

“The value of the deal is not a primary factor when deciding whether to submit a CFIUS notice,” Cinelli said. “Whether it’s $1 million or $6 billion, the government examines the technology and parties involved and makes an assessment on whether the deal being pursued should be allowed.”

--Additional reporting by Chelsea Naso. Editing by Rebecca Flanagan and Aaron Pelc.