Client: BonelliErede
Source: FDI (Foreign Direct Investment)
Date: 02/02/2020
Page: 54
Reach: 15740
Value: 22776

B&P Barabino & Partners

I EXPECT PARTIES TO SPEND MORE TIME ON THE FRONT END OF FOREIGN INVESTMENT TRANSACTIONS TO EVALUATE CFIUS RISKS

To screen and protect

AUTHORITIES IN THE US, THE EU AND ACROSS THE DEVELOPED WORLD ARE STEPPING UP EFFORTS TO SCRUTINISE FOREIGN INVESTMENT ON THE GROUNDS OF BOTH NATIONAL SECURITY AND TECH SOVEREIGNTY. **JACOPO DETTONI** REPORTS

The rise of China as an economic superpower has prompted a major shift in the attitude of countries around the world towards foreign investment. Once hailed as a pillar of globalisation, foreign investment – at least, the rapid expansion of foreign investment from China – is now less welcome. The US and major EU countries have repeatedly voiced concerns over the nature of Chinese investors, their ties with the political elite in Beijing and what is frequently alleged to be a hidden agenda.

Barriers to foreign investment from China, as elsewhere, have been raised by many developed economies, and the budget of local authorities tasked with scrutinising such foreign investment has increased significantly. Until now, countries have carried out such screening mainly on the grounds of national security, but the rise of new technologies – and their key role in the future success of individual economies – is expanding the scope of the vetting they are now undertaking.

With policymakers on both sides of the Atlantic Ocean continuing to tighten FDI regulations, the authorities responsible for investment screening have already stepped up their review activity, as official data has confirmed.

The US leads

The Committee on Foreign Investment in the United States (CFIUS) has gone from a little-known agency to today's mandatory point of entry for any investment into the US considered sensitive on the grounds of national security. In the past, the agency used to receive numerous voluntary notices of sensitive foreign investment transactions, but up until the mid-2010s at least, these seldom resulted in an official investigation. For example, in 2007, CFIUS reviewed 138 notifications, but proceeded with an investigation in just five cases, according to official data. A decade later, during the first year of Donald Trump's presidency, the agency reviewed 237 notifications and opened 172 investigations – both record numbers.

If CFIUS has increased its screening activity significantly in the past decade, its investigators will be as busy as ever in the next 10 years as Mr Trump has expanded the agency's powers and its budget with the approval of the Foreign Investment Risk Review Modernization Act (Firrma), which sharply expands the reach of CFIUS's screening activity in the direction of, among other things, operations structured through private equities, even of minority interests.

"Firrma represents a major overhaul of CFIUS processes, particularly in technology, infrastructure and data, as well as real estate in sensitive locations," says Farhad Jalinous, a partner at law firm White & Case in New York. "I expect parties to spend more time on the front end of foreign investment transactions to evaluate CFIUS risks, [particularly] the risks of not filing a voluntary notice. Overall, I don't expect a deterrent effect on investment from, say, Europe or the Americas, but I certainly [do] on Chinese investment in tech industries."

Germany tightens rules

CFIUS has increasingly focused on cyber security and tech industries, and countries in Europe have followed suit, particularly in the wake of a mounting wave of Chinese investment that caught them off-guard after the 2007/08 global financial crisis.

Germany has been at the forefront of these moves. After the takeover by China's largest home appliances manufacturer, Midea, of German robot-maker Kuka in 2016, the German government tightened screening regulations on foreign investment in different stages. This resulted in a rapid rise in the number of investments reviewed by the Federal Ministry of Economics and Technology (BMWi) to 78 in 2018, from 42 just two years earlier.

The German government remains committed to further regulation of foreign investment, to the extent that it appears ready to go beyond the typical criteria of national security.

KANTAR MEDIA
Coverage is reproduced under license from the NLA, CLA or other copyright owner. No further copying (including the printing of digital cuttings) digital reproductions or forwarding is permitted except under license from the NLA, http://www.nla.co.uk (for newspapers) CLA http://www.cla.co.uk (for books and magazines) or other copyright body.
+44 (0) 20 7264 4700
services@kantarmedia.com
www.kantarmedia.com

Client: BonelliErede
Source: FDI (Foreign Direct Investment)
Date: 02/02/2020
Page: 54
Reach: 15740
Value: 22776

B&P
Barabino & Partners

Strong arm: German robotics specialist Kuka was taken over by Chinese home appliances manufacturer Midea

KANTAR MEDIA

Coverage is reproduced under license from the NLA, CLA or other copyright owner. No further copying (including the printing of digital cuttings) digital reproductions or forwarding is permitted except under license from the NLA, http://www.nla.co.uk (for newspapers) CLA http://www.cla.co.uk (for books and magazines) or other copyright body.

+44 (0) 20 7264 4700
services@kantarmedia.com
www.kantarmedia.com

Client: BonelliErede
Source: FDI (Foreign Direct Investment)
Date: 02/02/2020
Page: 54
Reach: 15740
Value: 22776

B&P Barabino & Partners

"Technological autonomy is a key foundation for the functioning of our highly developed industrial society. It can only be maintained in the long term if the relevant industrial substance is available and controllable in Germany and Europe," says the 2030 Industrial Strategy published by BMWi in 2019.

Kuka was a wake-up call for German policymakers, who are rushing to protect the prowess of their industries right at a time when technology (often German) is changing the way the world both produces and consumes. They are now working on a new paper that proposes adding more sectors to those already subject to FDI scrutiny, in order to protect technological sovereignty in AI, robotics, semiconductors, biotech, dual-use and quantum technology, sources tell **fDi**.

"My view is that we are witnessing a departure from traditional foreign investment screening insofar as the term 'national security' is being interpreted more and more broadly. What the BMWi seems to suggest is that technological autonomy is key for public order and national security," says Daniel Wiedmann, an associate partner at law firm P+P Pöllath + Partners in Frankfurt.

Developed countries push

Italy has also moved towards greater protection of its hi-tech industries, extending the government's power to scrutinise foreign investment to foundational technologies in 2017, although a fully detailed list has yet to be published. In 2018, the government reviewed 46 operations, a jump from just eight reviews in 2014, the first full year of implementation of the 'Golden Power' legislation. Despite this jump, in Italy, as well as in Germany, most of these reviews have not led to a veto of operations, with just a handful being vetoed across the two countries.

However, changes and adjustment often occur in the negotiation phase to anticipate and pre-empt a decision by the relevant authority, according to Alberto Saravalle, a partner at law firm Bonelli Erede in Milan, highlighting the power of the screening mechanism to dissuade the parties involved.

From January 2011 to September 2019, at least 13 countries introduced new regulatory frameworks for dedicated national security-related screening mechanisms for foreign investment. Most are EU members, in a move that prompted the EU to act on a regional level by approving a regional framework for the screening of sensitive foreign investment.

The presidency of Mr Trump – along with the rise of other protectionist leaders in major trading countries – has turned the page on years that were characterised by a global drive towards market liberalisation, opening a new chapter in which market forces will take second place to domestic policy interests, with the screening of foreign investment becoming instrumental in that process. ■

For more on investment screening, see our Think Tank article on page 80.

KANTAR MEDIA

Coverage is reproduced under license from the NLA, CLA or other copyright owner. No further copying (including the printing of digital cuttings) digital reproductions or forwarding is permitted except under license from the NLA, http://www.nla.co.uk (for newspapers) CLA http://www.cla.co.uk (for books and magazines) or other copyright body.

+44 (0) 20 7264 4700
services@kantarmedia.com
www.kantarmedia.com