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French Authorities Block U.S. Acquisition of French Company

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On December 18, 2020, French authorities declined to allow the U.S. company Teledyne to acquire French company Photonis.¹ This marks the first time the French foreign direct investment (“FDI”) authorities have publically prevented a proposed U.S. acquisition.

Due to the economic impacts of the novel coronavirus and increased economic tension globally, more and more countries around the globe, including the United States, monitor foreign investment transactions to safeguard against potential national security risks, which are broadly construed by regulators, among other risks. This risk is typically evaluated by looking at the “vulnerability” presented by the business and the “threat” presented by the foreign acquiring party. Traditionally, particularly in France and other countries with which the U.S. is a close ally, U.S. acquirers have presented such a low “threat” that an FDI clearance of the transaction was anticipated, even where the business being sold presented a high “vulnerability.”

Photonis, a French high-tech company, specializes in the design, manufacture, and sale of photo-sensor imaging technologies.² Of note, Photonis is the exclusive supplier of night vision cameras to France’s armed forces. This type of business clearly presents a high national security “vulnerability” for France. The would-be acquirer, U.S. company Teledyne Technologies, makes aerospace and defense electronics.³ Typically, we would understand this acquirer to present a low “threat.” However, in this case, French authorities prevented the transaction, despite over a year of negotiations, citing “national strategic interests” and protection of “French economic and industrial defense sovereignty.”⁴ Although Teledyne offered certain safeguards to alleviate the concerns, French FDI authorities did not find those concessions sufficient. The press release issued by the French Ministry of Defense indicates that the Ministry “is now working on an alternative takeover solution with French industrial and financial players active in the optronics sector.”⁵

The veto, even in the aerospace and defense sector, is unusual, especially when considering the historically close strategic relationship between France and the United States. Typically, the blocking of foreign investment based on national strategic considerations targets acquirers from countries with which the FDI authorities are not strategically aligned. For example, the Committee on Foreign Investment in the United States (“CFIUS”) has blocked a number of high-profile Chinese acquisitions of U.S. companies in recent years, and even a non-U.S. joint venture with Chinese partners as recently as this past June.⁶ Likewise, Germany blocked a Chinese company from taking over a German satellite and radar technology firm this past December.⁷

Thus, this French decision, prohibiting a U.S. company without Chinese ownership from acquiring a French company, is unusual.

Overall, this recent French decision signals to U.S. investors the increasing importance of conducting a cross-jurisdictional FDI analysis early in the transaction process to identify potentially required filings, as well as potential national security or other FDI concerns that could scuttle a deal. Paul Hastings has ample experience navigating the French FDI process and assisting clients in obtaining French FDI clearance for their transactions, including U.S. investors acquiring businesses operating in the French defense sector.



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- ¹ Ministère Des Armées, Communiqués Souveraineté des entreprises stratégiques: Florence Parly annonce que L'Etat travaille à une solution alternative de reprise de Photonis, December 18, 2020, available at: https://www.defense.gouv.fr/salle-de-presse/communiqués/communiqués_souverainete-des-entreprises-strategiques-florence-parly-annonce-que-l-etat-travaille-a-une-solution-alternative-de-reprise-de-photonis.
 - ² <https://www.photonis.com/>.
 - ³ <https://www.teledyne.com/en-us>.
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 - ⁵ *Id.*
 - ⁶ David Wang et al., CFIUS extends its Reach to Order the Termination of Ekso Bionics' Role in Joint Venture in China, June 10, 2020, available at: <https://www.paulhastings.com/publications-items/details/?id=39ec7e6f-2334-6428-811c-ff00004cbded>.
 - ⁷ Michael Nienaber, Germany blocks Chinese takeover of satellite firm on security concerns, December 8, 2020, available at: <https://www.reuters.com/article/uk-germany-china-m-a/germany-blocks-chinese-takeover-of-satellite-firm-on-security-concerns-document-idUKKBN28I1U0?edition-redirect=uk>.

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