Financial Times Article: Left in the cold: Foreign bidders find themselves out of favour

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Jamie Gorelick discusses what it takes to work with Cfius and other government powers in foreign investment and other transactional deals

The commonly held wisdom for foreign investors, gleaned from the blocked 2006 attempt by Dubai's DP World to buy US port operations, is that the administration of President George W. Bush - which approved the deal and vociferously defended it - is a more rational actor than Congress when it comes to foreign investment, writes Stephanie Kirchgaessner.

The reality is more complex. The Treasury department is the public face of the administration on the issue, chairing the Committee on Foreign Investment in the US (Cfius), the executive branch panel that investigates deals on national security grounds. But, behind closed doors, companies face the toughest scrutiny from defence and intelligence agencies on the committee, including the Department of Homeland Security (DHS), which is beefing up its expertise on foreign investment and is increasingly taking a lead in investigating sensitive deals.

"Treasury would very much like to state clearly that it's open to investment but the Department of Homeland Security, burnt by the likes of DP World, is institutionally going to be much more risk-averse. There are inherent institutional tensions," says Jamie Gorelick, a partner at WilmerHale who served as deputy attorney-general during the presidency of Bill Clinton.

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