

## CFIUS Annual Report Shows Increased Transactions, Increased Resort to Mitigation Measures

2011-12-12

The Committee on Foreign Investment in the United States (CFIUS), the federal government's interagency committee charged with reviewing foreign investments in US businesses for potential effects on national security, recently released its Annual Report to Congress. The report covers CFIUS activity during calendar year 2010.

Some highlights:

- an increase in the number of CFIUS filings during calendar year 2010 as compared with 2009, largely reflecting increased activity in the mergers and acquisitions market; the number of filings, however, remained below 60% of pre-recession 2008 levels;
- no transactions were suspended or blocked in 2010, though some filing parties withdrew their notices during either the review or the investigation stage;
- the percentage of filings that proceeded past the review stage to the investigations stage remained steady at 38%, a level significantly higher than in years prior to the strengthening of the CFIUS process in the 2007 Foreign Investment and National Security Act; and
- a continuing increase in the number of transactions in which the Committee has required acquiring parties to agree to ongoing measures designed to mitigate national security concerns, such as restrictions with respect to government contracting, notification obligations relating to changes in product or services, and establishment of a Corporate Security Committee to ensure compliance.

The report also reveals a few trends about the industries that have constituted a large share of the transactions reviewed by CFIUS. Transactions in the Manufacturing sector and the Finance, Information, and Services sector composed a larger percentage of the total number of CFIUS-reviewed transactions than in 2009. There were relatively fewer covered transactions in the Mining, Utilities, and Construction sector than in 2009, but these transactions constituted the same percentage of the total number of transactions as they did in 2008. Over the last three years combined, relatively large numbers of the CFIUS-reviewed transactions involved US technology businesses, such as computers and computer products manufacturing (62 covered transactions) and computer systems design and related services (23), but other industrial subsectors were

popular as well. There were 28 covered transactions during the three-year period involving US utilities, and 22 involving US electric power generation, transmission, and distribution businesses.

The Committee also analyzes which countries are home to the foreign parties involved in covered transactions. As it did in 2008 and 2009, the United Kingdom led other countries as home to foreign acquirers of US businesses. Other countries with a large number of companies involved in covered transactions in the 2008-2010 period included Canada, France, and Israel—each with more than 20 CFIUS-reviewed transactions. Japan, China, Australia, and the Russian Federation all had more than 10 CFIUS-reviewed transactions. The Committee also reported that there were no clear indications that any one country's investors had attempted to target particular US industries for investment in 2010.

WilmerHale attorneys represent clients at every stage of the CFIUS process, including providing pre-filing advice, transaction structuring, preparing and submitting filings to the Committee, and in complying with post-filing requirements such as mitigation measures. Some representative recent engagements include:

- representation of NYSE Euronext, operator of the New York Stock Exchange and other entities, with respect to its merger with Deutsche Börse AG;
- representation of Teledyne Technologies in the sale of Teledyne Continental Motors, a manufacturer of aviation engines, to Aviation Industry Corporation of China International (AVIC International);
- representation of Chesapeake Energy Corporation, the second largest US producer of natural gas, in sale of its assets in the Fayetteville Shale area to BHP Billiton Petroleum (North America1) LLC;
- representation of a California developer of mass spectrometry technologies in its acquisition by a US-based company majority owned by a French parent; and
- representation of a subsidiary of Smiths Group plc, of the United Kingdom, in its acquisition of Power Holdings, Inc., a producer and distributor of electrical power distribution, monitoring, and switching equipment.

---

## Authors



**Jamie Gorelick**

**PARTNER**

Chair, Regulatory and  
Government Affairs Department

✉ [jamie.gorelick@wilmerhale.com](mailto:jamie.gorelick@wilmerhale.com)

☎ +1 202 663 6500



**Ambassador  
Robert M. Kimmitt**

**SENIOR INTERNATIONAL  
COUNSEL**

Co-Chair, Crisis Management  
and Strategic Response Group

✉ [robert.kimmitt@wilmerhale.com](mailto:robert.kimmitt@wilmerhale.com)

☎ +1 202 663 6250



## **Benjamin A. Powell**

**PARTNER**

Co-Chair, Cybersecurity and  
Privacy Practice

✉ [benjamin.powell@wilmerhale.com](mailto:benjamin.powell@wilmerhale.com)

☎ +1 202 663 6770



## **Barry J. Hurewitz**

**PARTNER**

✉ [barry.hurewitz@wilmerhale.com](mailto:barry.hurewitz@wilmerhale.com)

☎ +1 202 663 6089