The Heritage Foundation
LEADERSHIP FOR AMERICA

ISSUE BRIEF

No. 3964 | JUNE 10,

$25 Billion: The Sprint and Smithfield Acquisitions Should Be Cleared

Derek Scissors, PhD

Permitting the acquisitions of Sprint by Japan's SoftBank and Smithfield by China's Shuanghui is in America's national interest. Except for narrowly defined security reasons, the default position of the U.S. government should be to keep out of private-sector transactions.

The Shuanghui–Smithfield deal is nothing more than one food company purchasing another; there are no national security implications. The appropriate government role is to monitor Smithfield after the acquisition is completed, to ensure the new ownership does not harm the company's ability to meet American health and safety regulations.

The SoftBank bid is complicated by the ties Sprint and SoftBank have to Chinese telecom equipment manufacturers. Chinese equipment should not be used to fulfill U.S. government contracts, whether Sprint is acquired by SoftBank or by rival bidder Dish Network. Beyond this restriction, the deal should be allowed to proceed. Regrettably, SoftBank has accepted a U.S. government-vetted director for security affairs.[1] This is an infringement on free enterprise that sets a terrible precedent and should be made temporary or voided altogether.

This paper, in its entirety, can be found at
http://report.heritage.org/ib3964

Produced by the Asian Studies Center

The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002
(202) 546-4400 | heritage.org

Major Misstep with Sprint. The Committee on Foreign Investment in the United States (CFIUS), a collection of government analysts and decision makers led by the Department of the Treasury, is the means by which the U.S. evaluates and mitigates the national security risk of foreign acquisitions. Its mandate has been previously shown to be inadequate in light of possible risks from foreign greenfield (brand-new assets) investment and the obvious importance of supply contracts.[2]

Softbank's proposed $20.1 billion acquisition of Sprint, however, is exactly what CFIUS is presently designed to respond to. It seems to have made some sound recommendations, though a continued lack of transparency makes it difficult to be sure. SoftBank has indicated that it will spend a considerable sum to replace the Chinese equipment used by Clearwire, an American affiliate of Sprint.[3] This is appropriate.

Personal involvement by Members of Congress is less so. For example, Representative Mike Rogers (R–MI), chairman of the House Intelligence Committee, has properly wanted to explore an explicit cyber provision for CFIUS, but prior to introducing any legislation, he made public comments concerning the SoftBank bid. Members should be evaluating whether and what guiding legislation is needed, not inserting themselves into individual market transactions.

If that is inappropriate, a much stronger description is required for the seemingly permanent board presence of a national security director vetted by the U.S. government. "Outrageous and frightening" comes to mind.

SoftBank should be presented with specific corporate changes that respond to specific American national security concerns. There is no justification for permanent corporate involvement by the government; it is antithetical to the notion of free enterprise. It is hard not to draw a parallel to Chinese demands that political representatives join the boards of foreign companies doing business in the People's Republic of China (PRC). National security is not quite as broad and vague as Chinese directives to "safeguard the interests of the people," but it is quite broad and vague. The U.S. should not go down this path.

The treatment of SoftBank is also discriminatory. What to do with Clearwire and the supposed need for permanent oversight are also issues for Dish Network, but no remedies for Dish are being discussed. If national security requirements do not apply to all, they are unfair. It is also more likely these requirements will be eventually circumvented, which suggests that part of a good solution lies in changing domestic regulation and law.

Pork for All? The $4.7 billion Shuanghui bid for Smithfield continues the upsurge in Chinese investment in the U.S. that began in 2012. The motivation for Shuanghui is two-fold. First, pork is a staple food in the PRC, and securing additional supply is a priority similar in many ways to securing ownership of more oil or iron ore, which are well-recognized objectives for Chinese outward investment.

Second, China has had painful problems with food quality and safety, a situation that is not yet improving and has been emphasized at the highest political levels. Smithfield offers Shuanghui the brand of an established producer in a more developed economy, including a food supply that will be seen as uncontaminated the next time there is a scandal within the PRC, a set of internal production processes that could improve Shuanghui's food quality oversight in the rest of the company, and environmental protection technology and practices. The same goals have been evidenced in Chinese purchases of New Zealand dairy farms, for example.[4]

In the PRC, the pronounced political sensitivities over food security would make the acquisition of a large domestic pork producer by a foreign entity sensitive and probably unacceptable. This is certainly not true in the U.S.: Foreign ownership of American pigs has absolutely no impact on national security.

This contrast points to the limits of reciprocity in the bilateral economic relationship. Reciprocity is a valuable concept in international economics, and it is reasonable for American policymakers pondering Shuanghui–Smithfield to wonder what acquisition the U.S. could make in the PRC for $4.7 billion. However, China and the U.S. do not need the same things. There is little point pushing for an American purchase of a pork farm or any other specific purchase. At the July Strategic and Economic Dialogue, the U.S. should use the Smithfield sale to be more forceful in demanding a more open Chinese market—for example, in finance.

There is no reason to delay the Smithfield transaction. The only appropriate action the U.S. government should take is in the coming years to ensure that Smithfield remains fully compliant with American food quality regulations under its new management. Shuanghui is very unlikely to intentionally violate U.S. regulations; one of its motives is to learn from them. But the capacity of the new company to meet shifting market conditions and possibly changing regulations will be in doubt until it has a track record of doing so. In the meantime, monitoring should be intense.

The Best Path. National security involves protected information and makes detailed policy solutions difficult. However, some things are clear:

- The U.S. government should not be appointing board members to foreign or domestic companies for national security or any other purposes.

1. Danny Yadron, Anton Troianovski, and Spencer Ante, " SoftBank-Sprint Deal Clears Security Hurdle," *The Wall Street Journal*, May 29, 2013, http://online.wsj.com/article/SB10001424127887324809804578511722819972536.html (accessed June 5, 2013).
2. Derek Scissors, "A Better Committee on Foreign Investment in the United States," Heritage Foundation *Issue Brief* No. 3844, January 28, 2013, http://www.heritage.org/research/reports/2013/01/enhancing-the-committee-on-foreign-investment-in-the-united-states-cfius.
3. SoftBank, "SoftBank-Sprint Transaction," http://www.softbank.co.jp/sprint/welcome.html (accessed June 5, 2013).
4. See Derek Scissors, "China's Global Investment Rises: The U.S. Should Focus on Competition," Heritage Foundation *Backgrounder* No. 2757, January 9, 2013, http://www.heritage.org/research/reports/2013/01/chinas-global-investment-rises-the-us-should-focus-on-competition;Chen Zhi, "China Strengthens Legal Supervision Over Food Safety: Wu," *Xinhua News*, March 8, 2013, http://news.xinhuanet.com/english/china/2013-03/08/c_132219174.htm (accessed June 5, 2013); and *Xinhua News*, "Chinese Investment Bringing Welcome Competition to New Zealand Dairy Industry," April 4, 2013, http://news.xinhuanet.com/english/china/2013-04/04/c_132284365.htm (accessed June 5, 2013).

- The national security risks posed by any and all transactions with foreign firms should be mitigated in a single process that is as clear, quick, as unintrusive as possible, and free of political interference.
- SoftBank should be barred from using Chinese equipment to fulfill Sprint's U.S. government contracts. Otherwise, there should be no national security objection to the acquisitions of either Sprint or Smithfield.
- Smithfield will require careful monitoring in the years after the acquisition to ensure that Shuanghui is capable of following American regulations.

Protecting Free Enterprise. Clearly specified national security risks should be met by clearly specified mitigation practices. This does not include imagining a threat to the food supply. More important, it should not include injecting a shadowy, long-term government presence into the private sector, an act that threatens the integrity of the free enterprise system.

*—**Derek Scissors, PhD,** is Senior Research Fellow in Asia Economic Policy in the Asian Studies Center at The Heritage Foundation.*