Foreign Acquisitions and National Security: What are Genuine Threats? What are Implausible Worries?

A Framework for OECD Countries, and Beyond

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Potential damage to national security from a foreign acquisition falls into three categories: the first category of threat ("Threat I") is that the proposed acquisition would make the country where the acquired firm is located dependent upon a foreign-controlled supplier of goods or services crucial to the functioning of that economy (including, but not exclusively, the functioning of that country's defense industrial base) who might delay, deny, or place conditions upon provision of those goods or services. The second category of threat ("Threat II") is that the proposed acquisition would allow transfer of technology or other expertise to a foreign-controlled entity that might be deployed by the entity or its government in a manner harmful to that country's national interests. The third category of threat ("Threat III") is that the proposed acquisition would allow insertion of some potential capability for infiltration, surveillance, or sabotage – via a human agent, or non-human agent -- into the provision of goods or services crucial to the functioning of that economy. Drawing on cases from the United States, this paper offers a framework that will enable national authorities in any country where a foreign acquisition is proposed to take place to separate plausible national security threats from implausible claims that a foreign acquisition will threaten national security.

The argument that the goods or services provided by the target of a foreign acquisition are *critical* to the national interest is a necessary but NOT a sufficient condition to block the acquisition. To assess whether a foreign transaction poses any or all of these three threats, the assessment process may well begin by a "criticality" determination; that is, a determination of what the costs would be if provision were denied or manipulated (Threat I), or of how much advantage the foreign purchaser and its government would gain through the acquisition of specialized knowledge or technology (Threat II), or of how extensive the damage would be from surveillance or disruption in the acquired company or network (Threat III). But this assessment of "criticality" must be combined in each case with a second assessment to determine the availability of alternative suppliers and the ease of switching from one to another. When competition among rival suppliers is high and switching costs are low, there is no genuine national security rationale for blocking a proposed acquisition no matter how crucial the goods and services the target company provides.

The OECD-Wide framework – or World-Wide framework – described here is most useful for dismissing the vast majority of cases in which foreign acquisitions pose no national security threat whatsoever. This framework will help ensure that all countries continue to benefit from the positive contributions that foreign investment – including foreign investment via acquisition -- can provide to home and host countries alike.

OECD-Wide (or World-Wide) Decision-Tree
When Is there a Plausible National Security Rationale to Block a Proposed Foreign Acquisition?