

Congress of the United States

Washington, DC 20510

February 10, 2011

The Honorable Timothy Geithner
Secretary of the Treasury
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

The Honorable Gary Locke
Secretary of Commerce
Department of Commerce
1400 Constitution Avenue, NW
Washington, D.C. 20230

Dear Secretary Geithner and Secretary Locke:

We write to request information on the review by the Committee on Foreign Investment in the United States (CFIUS) of Huawei's acquisition of 3Leaf Systems last May. According to reports, CFIUS began a formal review of the transaction in December; if so, it is required by law to conclude its investigation this month.

As you know, Huawei has well-established ties with the People's Liberation Army; it has also reportedly received extensive government support by the People's Republic of China. Likewise, Huawei has supplied equipment to Saddam Hussein and the Taliban, and now appears to be working extensively in Iran's telecom sector, of which the Iranian Revolutionary Guard Corps owns a significant stake.

In addition to its questionable ties, we are concerned about Huawei's history of illegal behavior. Several suits have been filed in U.S. courts against Huawei alleging its participation in a variety of illegal activities from patent and trademark infringement to fraudulent inducement. Last year, Motorola filed suit against the company accusing it of engaging in a plot steal Motorola's technology. And, last month Indian press reported that three Huawei employees were arrested in that country on charges of money laundering and espionage.

Founded in 2004, 3Leaf developed technology that facilitated cloud computing by virtualizing network and storage resources across computer systems. 3Leaf's technology would allow computer resources to be reallocated according to users' needs across a computer network. According to press reports, Huawei purchased 3Leaf's intellectual property and hired a number of its employees in May of 2010. It appears that Huawei's acquisition of only certain parts of 3Leaf was specifically designed to ensure the transaction avoided CFIUS review.

We are convinced that any attempt Huawei makes to expand its presence in the U.S. or acquire U.S. companies warrants thorough scrutiny. Moreover, the 3Leaf acquisition appears certain to generate transfer to China by Huawei of advanced U.S. computing technology. Allowing Huawei and, by extension, communist China, to have access to this core technology could pose a serious risk as U.S. computer networks come to further rely on and integrate this

technology. Lastly, Huawei, and its Chinese government sponsors, must understand that it will not be permitted to attempt to exploit loopholes it perceives in our laws.

For these reasons, we would appreciate an update on the CFIUS review process as it relates to the acquisition of 3Leaf, as well as responses to the following specific questions:

- Have you determined Huawei's acquisition of 3Leaf Systems to be a "covered transaction"? If so, when will you be reporting its review to Congress?
- Under the Foreign Investment and National Security Act of 2007 (FISIA), CFIUS has the power to "undo" Huawei's acquisition. Given the sensitivity of the export of 3Leaf's technology, and the unlikelihood that any mitigation strategy would effectively prevent Huawei from accessing the technology, is there any option other than undoing the transaction that would sufficiently protect U.S. interests? Additionally, would anything but "unwinding" the transaction send the right message that the U.S. will not permit the attempted circumvention of its laws, namely the legally-mandated CFIUS process?
- Please describe the technology classification process as it relates to the export of resource virtualization or cloud computing technology. Please also describe the review taken by the Commerce Department that allowed a foreign company, with close ties to the Chinese military, to obtain an export license for this technology.

Additionally, several Senators wrote to the Administration in August of last year asking a series of questions related to your Departments, and other departments, as pertains to the actions of Huawei and the risks that company (and other companies, namely its sister corporation, ZTE) poses to the United States. As of now, there has been no answer to those questions. Please assure us that the Administration will expeditiously provide written responses to those questions.

Lastly, and as you know, the European Commission recently found that Huawei and ZTE "benefit from significant Chinese government support, including 'massive' credit lines from state-owned banks."^[1] What investigations, if any, have been undertaken by the U.S. government, whether initiated by U.S. firms affected by unfair Chinese subsidization or under organic authority (e.g., the Tariff Act) possessed by the Administration?

Sincerely,



JON KYL
United States Senator



JIM WEBB
United States Senator

^[1] Dalton, Matthew. "EU Finds China Gives Aid to Huawei, ZTE." *The Wall Street Journal*, February 3, 2011. <http://online.wsj.com/article/SB10001424052748703960804576120012288591074.html>

Ileana Ros-Lehtinen

ILEANA ROS-LEHTINEN
Member of Congress

Sue Myrick

SUE MYRICK
Member of Congress

R. Burr

RICHARD BURR
United States Senator

cc: The Honorable Robert M. Gates, Secretary of Defense
The Honorable Janet Napolitano, Secretary of Homeland Security
The Honorable James Clapper, Director of National Intelligence
The Honorable Tom Donilon, Assistant to the President for National Security
Affairs