ALSTON & BIRD LLP

WWW.ALSTON.COM

Shuanghui Wins CFIUS Approval of Smithfield Acquisition: Company's Careful Approach to U.S. Government Validated

The United States Committee on Foreign Investment in the United States (CFIUS) has approved the proposed acquisition of U.S. pork producer Smithfield Foods ("Smithfield") by Chinese investor Shuanghui International Holdings ("Shuanghui"). The companies announced the regulatory approval on September 6, and now await a final approval vote of Smithfield shareholders planned for September 24 before the transaction may be finalized. The CFIUS approval validates the approach taken by Shuanghui to expand via a major U.S. acquisition, and signals that prepared Chinese investors may overcome even significant political concerns in the U.S. Congress to secure transactions successfully in the U.S. market.

The CFIUS Process: Three Months to Success

Shuanghui and Smithfield publicly announced the proposed deal in May, noting at that time that the companies would voluntarily submit the transaction for review by the member government agencies of CFIUS. Shuanghui's potential acquisition of the largest pork producer in the U.S. market touched off an intense period of congressional scrutiny, including public hearings where the impact of the deal on food security and safety emerged as key political concerns.

The Obama Administration predictably responded to congressional pressure, as the CFIUS agencies in July undertook a second phase—a 45-day investigation of the proposed Smithfield acquisition. CFIUS granted approval of the transaction in early September, reportedly not requiring the companies to enter into so-called "mitigation agreements" regarding the management or operation of Smithfield's U.S. assets.

The approval of the deal as proposed also serves notice to the U.S. Congress that the Obama Administration is not only confident in current U.S. food safety and security regulatory schemes, but also that it will reject efforts by Congress to achieve a *de facto* expansion of the scope of CFIUS activities beyond the committee's traditional focus on national security aspects of foreign investment. The approval of Shuanghui should appropriately be viewed as a signal to Chinese investors that commercial transactions in many sectors will not be adversely affected by undue political factors.

Keys to Approval

Shuanghui and Smithfield managed the political and regulatory process surrounding the proposed acquisition exceptionally well. The companies' early and voluntary submission of the transaction for review by CFIUS provided a high degree of transparency to U.S. government agencies and political leaders alike.

Equally as important, Shuanghui also made a definitive commitment to maintain Smithfield's structure, independence and headquarters in the United States. Critically, this included a pledge to honor the collective bargaining agreements in place with Smithfield's represented employees, as well as existing wage and benefit packages for non-represented employees. Shuanghui further agreed that there will be no closures at Smithfield's facilities and locations, and that Smithfield's existing management team will remain in place.

Indicating a high degree of appreciation for Smithfield's corporate culture and heritage, and the role Smithfield plays in its home communities, Shuanghui also pledged to maintain Smithfield's headquarters in Smithfield, Virginia, and to continue Smithfield's philanthropic support of community initiatives and investments in sustainability. Collectively, such commitments identified Shuanghui as a good faith partner to Smithfield, as well as to the multiple communities throughout the country where Smithfield operates farming and production facilities.

A Final Hurdle

The companies anticipate a vote by Smithfield shareholders on the deal on September 24. The hedge fund Starboard Value LP, a minority holder of 5.7 percent of Smithfield stock, opposes the transaction for economic reasons and is expected to vote against the deal even as it seeks alternative bidders for Smithfield assets. The likelihood is slim that Starboard will derail the transaction, particularly as CFIUS approval in this case is seen by many in Washington as a firm rebuke of political opponents, which should deny Starboard additional external leverage. Should Smithfield shareholders approve the merger, the agreement should close by the contractually agreed deadline of November 29.

Conclusion

Chinese investors should view the CFIUS approval of the Smithfield transaction as an indication of a readily open market in the United States. Approval for Shuanghui comes after several years of negative media coverage of Chinese food safety issues, and the companies' close cooperation with one another and U.S. government regulators clearly helped to overcome significant political concerns in the U.S. Congress.

Contacts:

Anthony Balloon
Partner
+1.404.881.7262
tony.balloon@alston.com

Thomas Crocker
Partner
+1.202.239.3318
thomas.crocker@alston.com

Eric Shimp
Policy Advisor
+1.202.239.3409
eric.shimp@alston.com