

**Statement
of**

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Before the

**Committee on Banking, Housing and Urban Affairs
United States Senate**

Concerning

**Effective Implementation by CFIUS of the Exon-Florio Amendment to
Section 721 of the Defense Production Act of 1950, 50 App. U.S.C. § 2170**

Presented on

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I. INTRODUCTION

Mr. Chairman, Ranking Member Sarbanes, and Members of the Committee, I appreciate the opportunity to discuss the Department of Justice's role in implementing the Exon-Florio Amendment to Section 721 of the Defense Production Act of 1950 ("Exon-Florio"). The Department of Justice has worked vigilantly within CFIUS to implement Exon-Florio effectively to protect national security. The effective implementation of Exon-Florio is critically important to the Department's national security mission and is a responsibility we take very seriously.

II. IMPLEMENTATION OF EXON-FLORIO IMPLICATES KEY ELEMENTS OF THE DEPARTMENT OF JUSTICE'S NATIONAL SECURITY MISSION

To fulfill its mission to defend the interests of the United States, ensure public safety, and prevent crime, the Department of Justice has set goals to strengthen its counterintelligence capabilities, with a focus on protecting sensitive United States information and technology relating to national defense and critical infrastructure, and to protect the Nation's

communications systems by preventing and combating cybercrime and protecting the privacy of United States communications. Currently, the Federal Bureau of Investigation's ("FBI") second and third highest priorities are to protect against foreign intelligence operations and espionage and to protect against cyber-based attacks and high-technology crimes. The Department must ensure that it has the necessary tools and resources to accomplish its mission and meet these goals, and nothing is more important in our arsenal than the ability to conduct lawful electronic surveillance without risking interference by foreign entities and the premature, unauthorized disclosure to targets of the surveillance.

Acquisitions by foreign persons of United States businesses can have the potential to implicate these key areas of national security concern to the Department, particularly: counterintelligence, United States communications system protection, privacy protection, and the ability to conduct effective electronic surveillance. The Office of the National Counterintelligence Executive has reported in its *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage* that in 2004 persons or entities from nearly 100 foreign countries made attempts to acquire sensitive United States information or technology, such as information systems, sensors, aeronautics, electronics, and armaments materials. One method used for this collection was foreign direct investment in United States businesses. There has also been a rise in foreign acquisitions of United States companies in the telecommunications sector, which directly implicates the Department's protection of the United States communications infrastructure, privacy interests, and law enforcement's electronic surveillance capabilities. The risks presented by these acquisitions vary according to the particular communications assets at issue and their interconnection with other portions of our critical infrastructure. However, certain foreign control over certain United States infrastructure

components, absent mitigation measures, could augment the opportunities for foreign entities to disrupt United States communications, deny Internet or voice services to significant portions of the country, and compromise the privacy of users of the United States communications system.

The Department of Justice is using all of its traditional techniques and resources to combat these risks; however, Exon-Florio is an important national security tool when no other statutory authority exists, apart from the International Emergency Economic Powers Act, that is adequate to protect national security. Through its involvement in the CFIUS process, the Department has carefully examined potential threats to national security posed by specific foreign acquisitions of United States businesses, and where appropriate, we have developed measures to mitigate those risks. Along with other interested member agencies of CFIUS, the Department of Justice has negotiated numerous security agreements to mitigate potential threats to national security caused by those transactions.

These security agreements are typically the result of negotiations between the companies involved in the transaction and those CFIUS member agencies whose national security equities are implicated. In addition to the Department of Justice, the Departments of Homeland Security and Defense often are parties to these agreements. The agreements vary in scope and purpose, depending on the facts of a particular transaction, and are negotiated on a case-by-case basis to meet the particular national security risks at issue. For transactions that involve the communications sector, these agreements are often negotiated in conjunction with Executive Branch review of applications submitted to the Federal Communications Commission. Along with the Department of Homeland Security, the Department of Justice plays a key role in monitoring and enforcing the security agreements to which it is a party.

III. THE DEPARTMENT OF JUSTICE HAS BEEN VIGILANT TO ENSURE EFFECTIVE IMPLEMENTATION OF EXON-FLORIO

Effective implementation of Exon-Florio is critical to the mission and goals of the Department of Justice. Therefore, the Department has brought together its diverse resources to address the complex issues raised by the variety of transactions coming before CFIUS. The Department's Criminal Division has primary responsibility at a policy level for CFIUS matters and closely coordinates the involvement of various departmental components in the process. These components include: the FBI, which both coordinates with the intelligence community and provides operational and analytical support in the areas of counterintelligence, critical infrastructure protection, privacy protection, and electronic surveillance; the Computer Crime and Intellectual Property Section, which provides expertise related to the United States communications system, cybercrime, and privacy protection; the Office of Enforcement Operations and the Narcotic and Dangerous Drug Section, both of which provide expertise related to electronic surveillance issues; and the Counterespionage Section, which provides legal guidance on counterintelligence issues. The Office of Intelligence Policy and Review assists with intelligence community coordination, and the Counterterrorism Section assists with reviewing transactions that may implicate terrorism concerns. In addition, the Antitrust Division has provided support and input in appropriate cases, and the Office of the Chief Information Officer has provided assistance on occasion. By bringing all of these diverse resources and this extensive expertise to bear, the Department of Justice has maximized its ability to participate in the effective implementation of Exon-Florio.

IV. CONCLUSION

In conclusion, I again would like to thank you, Mr. Chairman, and the Committee for your interest in ensuring that Exon-Florio is used as effectively as possible and for giving me the

opportunity to explain the Department of Justice's role with respect to this important national security safeguard. The Department of Justice is keenly aware of the significance of its responsibilities under Exon-Florio, and we have worked extremely hard to meet those responsibilities with the utmost vigilance, diligence, and professionalism. This Nation's security and the safety of our citizens are always the highest priority for the Department of Justice. Thank you, and I am happy to answer any questions you may have.