CFIUS Presidential Order: Beijing Shiji Information Technology and StayNTouch

Acquirer: Beijing Shiji Information Technology Co., Ltd. (China)

Acquired: StayNTouch, Inc. (US)

Value: Unknown [to be confirmed by Yi, if possible]

Industry: Software; Technology Services

On March 6, 2020, President Trump issued an “Order Regarding the Acquisition of Stayntouch, Inc. by Beijing Shiji Information Technology Co., Ltd.,” prohibiting Beijing Shiji Information Technology Co., Ltd. (“Beijing Shiji”) from acquiring any ownership in the US company StayNTouch, Inc. (“StayNTouch”) or any of StayNTouch assets. (Executive Order Regarding the Acquisition of Stayntouch, Inc. by Beijing Shiji Information Technology Co., Ltd., March 6, 2020 (hereinafter “Order”).)
Shiji, a producer of software solutions for the hospitality industry with offices in the US and Europe, had acquired StayNTouch, a US developer of hotel property management software as a service products, in September 2018, but had been invested in the company since 2016. (See StayNTouch Press Release, Shiji Completes Acquisition of StayNTouch, Sept. 18, 2018.) The acquisition of StayNTouch added to Beijing Shiji’s pre-existing stackable solutions for the hotel and travel industry. (Id.)

The President had determined the existence of “credible evidence” that Beijing Shiji “might take action that threatens to impair the national security of the United States,” a determination that is a prerequisite for taking action under the CFIUS enabling statute, Section 721 of the Defense Production Act as amended by the Foreign Investment Risk Modernization Act of 2018 (“FIRRMA”). (See Order; 50 U.S.C. 4565(d)(4)). On the basis of this finding, the President ordered that the transaction resulting in the acquisition of StayNTouch, and any ownership in StayNTouch, by directly or indirectly by Beijing Shiji, is “prohibited,” (Order §2(a)), and all interest must be divested to a purchaser approved by CFIUS within 120 days of the Order unless extended by CFIUS (see Order §2(b)). Included in this divestiture order is any “operations” that were “developed . . . by StayNTouch at the time of, or since, its acquisition.” (Order §2(b)(iii).) Until the time of the divestiture, Beijing Shiji cannot have access to any “hotel guest data” through StayNTouch. (Order §2(c).)

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