

U.S. Department of Commerce Proposes Rule Governing Information and Communications Technology and Services

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On November 27, 2019, the United States Department of Commerce issued an advance notice of proposed rulemaking seeking public comment on “regulations that would govern the process and procedures that the Secretary of Commerce will use to identify, assess, and address certain information and communications technology and services transactions that pose an undue risk to critical infrastructure or the digital economy in the United States, or an unacceptable risk to U.S. national security or the safety of U.S. persons” (the “**Proposed ICTS Rule**”).

The Proposed ICTS Rule takes a targeted approach, providing a mechanism pursuant to which the Secretary can identify and review particular transactions to address national security risks, and prohibit or require mitigation in connection with such transactions as appropriate. However, given the broad discretion granted to the Secretary to review particular transactions and the relatively opaque process the Proposed ICTS Rule would create, U.S. and global companies that engage in ICTS transactions are apt to face substantial uncertainty, potentially endangering deals.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

John B. Reynolds III

+1 202 962 7143

john.reynolds@davispolk.com

Will Schisa

+1 202 962 7129

will.schisa@davispolk.com

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