

U.S. Commerce Department Announces “Prohibited Transactions” Related to TikTok, WeChat Mobile Apps

September 24, 2020

On Friday, September 18, 2020, the U.S. Commerce Department announced “prohibitions on transactions relating to mobile applications (apps) WeChat and TikTok to safeguard the national security of the United States.” This followed earlier executive orders authorizing, but not specifying, the prohibition of certain activities related to these apps. See our earlier [Update](#).

Many of the prohibitions targeting these mobile apps were scheduled to go into effect on Sunday, September 20, 2020. However, on Saturday, the U.S. Commerce Secretary, Wilbur Ross, announced that all prohibitions related to the TikTok mobile app would be delayed until September 27, 2020, and on Sunday, a U.S. federal court issued a preliminary injunction blocking the prohibitions regarding WeChat.

WHAT IS THE CURRENT STATE-OF-PLAY FOR THE TIKTOK AND WECHAT MOBILE APPS?

There are no prohibitions currently in effect regarding either app.

Although the notices for both sets of prohibitions were withdrawn from the Federal Register on September 22, 2020, the notice for prohibitions applicable to TikTok was republished today, September 24, 2020, setting staggered effective dates for the prohibitions, with the earliest restrictions beginning after 11:59 pm on September 27, 2020. It is unclear when, or if, the prohibitions will be readopted regarding WeChat.

WHAT PROHIBITIONS WERE ADOPTED?

As authorized by the earlier executive orders, the initial notices prohibited (i) certain services (mobile application stores, internet hosting, content delivery, internet transit and peering and, in the case of WeChat, funds transfers and payment processing) and (ii) the use of WeChat or TikTok code or services in other software.

In both cases, the prohibitions set out in the initial notices related only to “business-to-business transactions” conducted “within the land and maritime borders of the United States or its territories” by any person, or related to any property, subject to U.S. jurisdiction. Additionally, the notices expressly carved out the “exchange between or among...mobile application users of personal or business information” using the TikTok or WeChat mobile applications. Accordingly, the prohibitions did not appear to require a “mass extinction” event—users were allowed to maintain currently installed versions of both apps on their devices, including employer-issued devices.

The reissued notice for the prohibitions applicable to TikTok appears to be substantively identical to the initial notice, with the exception that the effective date for the prohibition against distribution through U.S. app stores is now September 27, 2020. The remainder of the restrictions are effective November 12, 2020.

Despite not targeting users, however, the prohibitions likely will affect users of the mobile apps in the United States. By restricting the services noted above, users would be unlikely to continue receiving the same services, or the same quality of services, through the apps going forward.

WHAT HAPPENS NEXT?

The Trump Administration has now declared that the TikTok and WeChat mobile apps present unacceptable national security risks. Accordingly, absent a deal that President Trump approves regarding the restructuring of TikTok’s U.S. operations or court intervention, the restrictions applicable to TikTok appear likely to become effective, as described above. The U.S. government continues to consider an appeal of the preliminary injunction related to WeChat.

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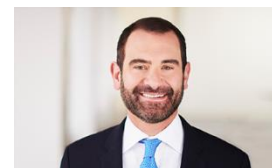
Our relevant regulatory teams are watching these developments closely and would be glad to discuss any questions related to these issues.



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