

President Trump Targets Chinese Social Media Apps TikTok and WeChat in New Executive Orders

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On August 6, 2020, President Trump signed two executive orders prohibiting U.S. persons from engaging in transactions with the parent companies of Chinese social media apps TikTok and WeChat. The executive orders, which rely on the President's authority under the International Emergency Economic Powers Act (IEEPA) and the National Emergencies Act, describe the new measures as additional steps to address the national emergency identified in the President's May 15, 2019 supply chain executive order, which broadly prohibited transactions involving information and communications technology or services of "foreign adversaries."

The executive orders follow the administration's recent expansion of its "Clean Network" program to protect critical U.S. telecommunications and technology infrastructure, which includes, among other things, "remov[ing] untrusted applications from U.S. mobile app stores" and "prevent[ing] untrusted [Chinese] smartphone manufacturers from pre-installing – or otherwise making available for download – trusted apps on their apps store."

Noting that "the spread in the United States of mobile applications developed and owned by companies in the People's Republic of China (China) continues to threaten the national security, foreign policy, and economy of the United States," the orders call for "aggressive action" against the owners of TikTok and WeChat to protect U.S. national security interests. The orders allege that TikTok, a video-sharing app owned by the Chinese company ByteDance Ltd. (ByteDance), "automatically captures vast swaths of information from its users, including Internet and other network activity information such

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as location data and browsing and search histories," which "threatens to allow the Chinese Communist Party access to Americans' personal and proprietary information – potentially allowing China to track the locations of Federal employees and contractors, build dossiers of personal information for blackmail, and conduct corporate espionage." The orders allege the same with respect to WeChat, a messaging, social media, and electronic payment app owned by the Chinese company Tencent Holdings Ltd. (Tencent), and claim that WeChat additionally "captures the personal and proprietary information of Chinese nationals visiting the United States, thereby allowing the Chinese Communist Party a mechanism for keeping tabs on Chinese citizens who may be enjoying the benefits of a free society for the first time in their lives." The orders allege that both apps also "censor[] content that the Chinese Communist Party deems politically sensitive" (such as content concerning protests in Hong Kong and China's treatment of Uyghurs and other Muslim minorities) and are also "used for disinformation campaigns that benefit the Chinese Communist Party."

Beginning 45 days after their date of issuance – *i.e.*, September 20, 2020 – the executive orders will prohibit transactions by persons subject to U.S. jurisdiction (or transactions that involve property subject to U.S. jurisdiction) with ByteDance, Tencent, or any of their subsidiaries. The executive orders do not define "transaction" or specify which kinds of transactions will be prohibited. Instead, the orders direct the Secretary of Commerce to identify the prohibited transactions within 45 days. It is therefore unclear at this point how broadly the executive orders will be applied, though the prohibition on transactions with Tencent appears to be limited to transactions that are "related to WeChat." The prohibitions are also likely to have more lasting implications for WeChat, as ByteDance is reportedly in talks to sell TikTok to Microsoft or another U.S.-based company following scrutiny by the Committee on Foreign Investment in the United States (CFIUS).

Wiley continues to closely monitor the U.S. government's efforts to address the growing political, economic, and military competition from China and the impact of such efforts on U.S. and non-U.S. companies. Should you have any questions on the executive orders and their implications, please do not hesitate to contact one of the attorneys listed on this alert.