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(Original Signature of Member)

110TH CONGRESS
1ST SESSION

H. RES.

Expressing the sense of the House of Representatives regarding the planned acquisition of a minority interest in 3Com by affiliates of Huawei.

IN THE HOUSE OF REPRESENTATIVES

Ms. ROS-LEHTINEN (for herself, Mr. McCOTTER, and Mr. HOEKSTRA) submitted the following resolution; which was referred to the Committee on

RESOLUTION

Expressing the sense of the House of Representatives regarding the planned acquisition of a minority interest in 3Com by affiliates of Huawei.

Whereas, on September 28, 2007, 3Com Corporation announced it had signed a definitive merger agreement to be acquired by affiliates of Bain Capital Partners, LLC;

Whereas as part of that transaction, affiliates of Huawei Technologies would acquire a minority interest in the company and become a commercial and strategic partner of 3Com;

Whereas Marlborough, Massachusetts-based 3Com sells a broad range of data-networking equipment, including

“Federal Information Processing Standards” (FIPS) - certified security local area network solutions for the Federal Government, including the Department of Defense and civilian agencies, military organizations, and contractors;

Whereas Huawei is headquartered in Shenzhen, China, is a privately held company that was established in 1988 by Ren Zhengfei, a former People’s Liberation Army officer, and is currently the largest telecommunications supplier in China;

Whereas Huawei lines of business include research, development, manufacturing, and marketing of telecommunication equipment, including switches, optical access networks, mobile and wireless communications, data communications, and intelligent networks;

Whereas, since 1988, the company has rapidly expanded from a small enterprise to become a global provider of telecom services, with over 61,000 employees and over \$8.5 billion in revenues, including 12 research and development centers around the world such as in the Silicon Valley and Dallas, Texas, Bangalore, India, Stockholm, Sweden, and Moscow, Russia;

Whereas, since 2001, Huawei has actively sought entry into international markets, reportedly using government subsidies to support aggressive pricing needed to help capture market share;

Whereas the ownership structure of Huawei, including possible links to the Government of the People’s Republic of China, including the People’s Liberation Army, is so opaque that the company has been described as “one of the least transparent in China”;

Whereas Huawei was identified by United States intelligence agencies as the supplier of fiber optic equipment to Iraqi air defense systems during the late 1990s;

Whereas a March 17, 2001, Washington Post article stated that "Pentagon officials have accused the company of laying optical communications cables between Iraqi anti-aircraft batteries, radar stations, and command centers, which they say could significantly aid Baghdad's efforts to shoot down U.S. warplanes patrolling the 'no-fly' zones over northern and southern Iraq";

Whereas according to a November 16, 2005, article in the Asia Times, India's Research and Analysis Wing (RAW) reportedly charged in August 2002 that Chinese engineers at the Bangalore office of Huawei were involved in developing state-of-the-art telephone surveillance equipment for the former Taliban regime in Afghanistan;

Whereas according to that same article, an official with India's Ministry of External Affairs was quoted as saying that Huawei's operations in India "have come to the adverse notice of India's security agencies, which have expressed reservations regarding the company's links with the Chinese intelligence and military establishments";

Whereas, on August 26, 2007, the German news magazine Der Spiegel reported recently that computers in the German chancellery and the foreign, economic, and research ministries had been infected with Chinese spyware software, and German officials say they believe the hackers were linked to China's People's Liberation Army;

Whereas, on September 3, 2007, the Financial Times reported that the Chinese military hacked into a Pentagon

computer network in June, 2007, in the most successful cyber attack ever on the Department of Defense;

Whereas, on September 6, 2007, London's The Times Online reported that China leads the list of countries hacking into government computers that contain Britain's military and foreign policy secrets;

Whereas the Committee on Foreign Investment in the United States (CFIUS) is an interagency committee, originally created by executive order, that serves the President in overseeing the national security implications of foreign investment in the economy;

Whereas the proposed acquisition of commercial operations at six United States ports by Dubai Ports World in 2006 caused the CFIUS process to come under intense scrutiny by Members of Congress and the American public;

Whereas the Foreign Investment and National Security Act of 2007 (Public Law 110-49) established CFIUS by statutory authority and further clarifies and enhances United States Government scrutiny of acquisitions of critical infrastructure assets by non-United States investors;

Whereas the Foreign Investment and National Security Act of 2007 formalizes prior CFIUS practice of considering "critical infrastructure" transactions to be within the scope of its review;

Whereas the economic and national security of the United States relies, in large part, on the security and reliability of information systems and networks that increasingly are linked to consumer and investor confidence;

Whereas without appropriate mitigation foreign ownership of United States telecommunications service providers could multiply opportunities for espionage, hinder law enforce-

ment, and disrupt critical infrastructure and related services;

Whereas Presidential Decision Directive 63 on Critical Infrastructure Protection, the creation of the Department of Homeland Security, and the publication of both the National Strategy for the Physical Protection of Critical Infrastructures and Key Assets and the National Strategy to Secure Cyberspace, establish an evolving policy framework for protecting the critical infrastructure of the United States; and

Whereas as part of Huawei's and Bain Capital Partners' proposed merger agreement with 3Com, Bain announced its intention to voluntarily submit to the CFIUS process: Now, therefore, be it resolved—

1 *Resolved*, That it is the sense of the House of Rep-
2 resentatives that—

3 (1) the planned acquisition of a minority inter-
4 est in 3Com by affiliates of Huawei triggers a num-
5 ber of statutory factors to be considered by the
6 President and members of the CFIUS Committee
7 and which are necessary to block a foreign acquisi-
8 tion, including—

9 (A) the control of domestic industries and
10 commercial activity by foreign citizens as it af-
11 fects the capability and capacity of the United
12 States to meet the requirements of national se-
13 curity;

1 (B) the potential effects of the transaction
2 on the sale of equipment, or technology to a
3 country that, among other things, proliferates
4 missile technology or chemical and biological
5 weapons, as well as transactions identified by
6 the Secretary of Defense as “posing a regional
7 military threat” to the interests of the United
8 States;

9 (C) the potential effects of the transaction
10 on United States technological leadership in
11 areas affecting United States national security;

12 (D) whether the transaction has a security-
13 related impact on critical infrastructure in the
14 United States;

15 (E) the potential effects on United States
16 critical technologies; and

17 (F) whether the transaction is a foreign
18 government-controlled transaction; and

19 (2) the preponderance of publicly available evi-
20 dence clearly suggests that as currently structured,
21 the proposed transaction involving Huawei threatens
22 the national security of the United States and
23 should not be approved by the Committee on For-
24 eign Investment in the United States.