Global Counsel

After Alaska: tech investment and US-China tensions

Blog post by Senior Associates Miranda Lutz and Jens Presthus, 30 March 2021

The meeting between US and Chinese officials in Alaska on March 19th left little doubt that the new Biden administration does not mean a quick rapprochement between Beijing and Washington. If anything, Chinese officials upped the ante by making it clear that they see little downside to taking a tough line and signalling that China will emerge confident from covid-19.

In the wake of the summit, US policymakers inevitably return to the question of what to do about China. The tech sector seems likely to be heavily implicated in the answer, for two largely bipartisan reasons. First, the belief that reliance on Chinese tech, particularly for communications, poses a national security risk. Second, that competition with China in the tech sector aligns neatly with bipartisan US efforts to boost domestic manufacturing.

US policy will play out on several fronts. The national security concern is what will force the Biden administration to maintain many policies that were hallmarks of the Trump era. There has been a lot of focus on tighter scrutiny of Chinese investment in the US over the last five years. But one of the important shifts under the Trump administration that is likely to be sustained is closer scrutiny of US investment in, or related to, China. For instance, Facebook's recent decision to voluntarily drop its bid to build a fibre-optic cable from California to Hong Kong and Taiwan, citing pressure from the US government over concerns of a direct communications link between the US and Hong Kong, is indicative of this trend.

Another Trump administration shift likely to endure is the use of the US Commerce Department's Entity List to impose export controls on "sensitive" US technology. Biden's Department of Commerce has already moved to make the export controls on Huawei's suppliers more uniform in banning all inputs like microchips, antennas, and batteries. Newly installed US Secretary of Commerce Gina Raimondo has not been shy in stating her goal to use the Entity List "to its full effect." In practice, she will have a bigger toolkit than her predecessor, because sweeping regulation allowing Commerce to prohibit technology-related business transactions initiated under the last administration only went into effect this month. The fact that the new White House chose to sustain the Trump-era change is suggestive.

We should also expect Biden to make the most of expanded powers for the Committee on Foreign Investment in the United States (CFIUS) process that only went into effect at the end of last year, and especially to robustly disincentivise Chinese investment in US tech. The US Treasury Department has further indicated that additional rulemakings to boost CFIUS' powers could be forthcoming. This could mean expanding the authority of the Federal Trade Commission (FTC) to monitor foreign government subsidies and take them into account in premerger notification processes; imposing greater transparency requirements for Americans investing in Chinese companies or endeavours that could benefit the Chinese military; and deploying export controls for US security equipment products that could be used to monitor citizens in Hong Kong. Given the drift in policy, none of this can be ruled out.

Tying anti-China policy to US industrial policy will be the other plank of the administration's approach. President Biden's ongoing 100-day review into critical supply chains – which includes semiconductors and large-storage batteries – will be suggestive for what it says about the US’ sense of the tools at its disposal. It is already clear there is bipartisan US support for some measure of financial incentives to boost domestic tech-related production. The FY21 National Defense Authorization Act (NDAA) authorised grants for the construction of semiconductor fabs to increase the production of chips in the US (potentially a factor in US semiconductor giant Intel’s March 23rd announcement it will build two new plants in Arizona). Although this provision has yet to be funded, it is indicative that there is support among lawmakers to put some measure of money where their mouth is. The Biden administration’s infrastructure proposal, expected to be rolled out this week, is another potential vehicle where the federal government could provide financial support like tax breaks, subsidies, grants for both R&D and manufacturing in the domestic tech industry.

All of this will of course trigger similar responses from Beijing. The National People’s Congress, in March was revealing for the way high-ranking officials publicly admitted that the country is decades behind in key technologies in announcing new and ambitious plans for seven priority sectors, including AI and semiconductors. Beijing shares Washington’s concern about being too reliant on foreign technology - and for good reason. China currently imports 90% of the chips it needs, a number the leadership hopes to reduce to 30% by 2025. In principle – and for understandable reasons given the technology deficit – China seems keen to encourage foreign companies who want to set up innovation centres in China. But here the two strategies will obviously collide, as US policymakers will see this as exactly the kind of risk to US technology leadership and IP strengths they are committed to managing.

The bottom line is that the tensions on display in Alaska were not a hangover from four years of tense US-China relations, but a sign of what is still to come. This will play out on a number of fronts, but technology investment will certainly be one of them.