

Billing Code: 351020

NOTICE: A federal district court in N.D. California issued a nationwide preliminary injunction at 5:49 AM PDT on 9/19/2020 in the case of *WeChat Users Alliance v. Trump*, No. 20-cv-05910-LB. The Court granted the Plaintiffs' motion for an injunction against the implementation of Executive Order 13943 (limited to the Secretary of Commerce's Identification of Prohibited Transactions 1 through 6, **WeChat/Tencent**). The Commerce Department is obligated to comply with the Court's Order and is taking immediate steps to do so. Accordingly, on September 21, 2020, the Commerce Department withdrew this Identification of Prohibited Transactions from the Federal Register prior to formal publication. The Secretary's Identification of Prohibited Transactions will remain available for public inspection on the Commerce Department's website. This serves as **NOTICE** that the Secretary's prohibition of identified transactions pursuant to Executive Order 13943, related to **WeChat/Tencent**, **HAVE BEEN ENJOINED**, and **WILL NOT GO INTO EFFECT**, pending further legal developments.

DEPARTMENT OF COMMERCE

15 CFR Chapter VII

[Docket Number 200917-0248]

RIN: 0605-XD010

Identification of Prohibited Transactions to Implement Executive Order 13943 and Address the Threat Posed by WeChat and the National Emergency with Respect to the Information and Communications Technology and Services Supply Chain

AGENCY: Office of the Secretary, U.S. Department of Commerce.

ACTION: Identification of prohibited transactions.

SUMMARY: Pursuant to Executive Order 13943, the Secretary of Commerce is publishing this Identification of Prohibited Transactions related to WeChat by any person, or with respect to any property, subject to the jurisdiction of the United States, with Tencent Holdings Ltd. (a.k.a. Ténghùn Kònggǔ Yǒuxiàn Gōngsī), Shenzhen, China, or any subsidiary of that entity, to address the national emergency with respect to the information and communications technology and services supply chain declared in Executive Order 13873, May 15, 2019 (Securing the Information and Communications Technology and Services Supply Chain), and particularly to address the threat identified in Executive Order 13943 posed by mobile application WeChat.

DATES: Identification of prohibited transactions is effective as of September 20, 2020, as set forth in Executive Order 13943.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

In Executive Order 13873 of May 15, 2019 (Securing the Information and Communications Technology and Services Supply Chain), the President found that foreign adversaries are increasingly creating and exploiting vulnerabilities in information and communications

technology and services (ICTS), which store and communicate vast amounts of sensitive information, facilitate the digital economy, and support critical infrastructure and vital emergency services, in order to commit malicious cyber-enabled actions, including economic and industrial espionage against the United States and its people. The President found that the unrestricted acquisition or use in the United States of ICTS designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of foreign adversaries augments the ability of foreign adversaries to create and exploit vulnerabilities in ICTS, with potentially catastrophic effects, and thereby constitutes an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, and declared a national emergency with respect to this threat. The President directed that additional steps are required to protect the security, integrity, and reliability of ICTS provided and used in the United States.

On August 6, 2020, in Executive Order 13943 (Addressing the Threat Posed by WeChat, and Taking Additional Steps To Address the National Emergency With Respect to the Information and Communications Technology and Services Supply Chain), the President found 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 President directed that action must be taken to address the threat posed by the mobile application WeChat.

Pursuant to Executive Order 13943, any transaction that is related to WeChat by any person, or with respect to any property, subject to the jurisdiction of the United States, with Tencent Holdings Ltd. (a.k.a. Ténghùn Kònggǔ Yǒuxiàn Gōngsī), Shenzhen, China, or any subsidiary of that entity, as identified by the Secretary of Commerce (Secretary) within 45 days from the date

of the order, shall be prohibited, to the extent permitted under applicable law. This Identification of Prohibited Transactions implements that directive by the President.

Identifying Prohibited Transactions

Definitions

Content delivery service means a service that copies, saves, and delivers content, for a fee, from geographically dispersed servers to end-users for the purposes of enabling faster delivery of content.

Entity means a government or instrumentality of such government, partnership, association, trust, joint venture, corporation, group, subgroup, or other organization, including an international organization.

Information and communications technology or services means any hardware, software, or other product or service primarily intended to fulfill or enable the function of information or data processing, storage, retrieval, or communication by electronic means, including transmission, storage, and display.

Internet hosting service means a service through which storage and computing resources are provided to an individual or organization for the accommodation and maintenance of one or more websites or Internet services. Services may include but are not limited to file hosting, domain name server hosting, cloud hosting, and virtual private server hosting, among others.

Internet transit service means a service where a network operator provides connectivity, transport and routing for another network, enabling them to reach broader portions of the

Internet. A transit provider's routers also announce to other networks that they can carry traffic to the network that has purchased transit.

Mobile application means a software application designed to run on a mobile device such as a phone, tablet, or watch.

Mobile application store means any online marketplace where users can download, or update, and install software applications to a mobile device.

Peering means a relationship between Internet service providers (ISP) where the parties directly interconnect to exchange Internet traffic, most often on a no-cost basis.

Person means an individual or entity.

Subsidiary means a company that is owned or controlled by a parent or holding company.

Transaction means any acquisition, importation, transfer, installation, dealing in, or use of any information and communications technology or service.

Identification of Prohibited Transactions

Pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701, *et seq.*, Executive Order 13873 (84 FR 22689, May 15, 2019), and as set forth and provided for in Executive Order 13943 (85 FR 48641, August 6, 2020), the Secretary identifies the following transactions that are prohibited, effective as of September 20, 2020:

Any transaction that is related to WeChat by any person, or with respect to any property, subject to the jurisdiction of the United States, with Tencent Holdings Ltd. (a.k.a. Ténghùn Kònggǔ Yǒuxiàn Gōngsī), Shenzhen, China, or any subsidiary of that entity, involving:

1. Any provision of services to distribute or maintain the WeChat mobile application, constituent code, or mobile application updates through an online mobile application store, or any online marketplace where mobile users within the land or maritime borders of the United States and its territories may download or update applications for use on their mobile devices;
2. Any provision of internet hosting services enabling the functioning or optimization of the WeChat mobile application, within the land and maritime borders of the United States and its territories;
3. Any provision of content delivery services enabling the functioning or optimization of the WeChat mobile application, within the land and maritime borders of the United States and its territories;
4. Any provision of directly contracted or arranged internet transit or peering services enabling the functioning or optimization of the WeChat mobile application, within the land and maritime borders of the United States and its territories;
5. Any provision of services through the WeChat mobile application for the purpose of transferring funds or processing payments to or from parties within the land or maritime borders of the United States and its territories;
6. Any utilization of the WeChat mobile application's constituent code, functions, or services in the functioning of software or services developed and/or accessible within the land and maritime borders of the United States and its territories; or
7. Any other transaction that is related to WeChat by any person, or with respect to any property, subject to the jurisdiction of the United States, with Tencent Holdings Ltd., or any

subsidiary of that entity, as may be identified at a future date under the authority delegated under Executive Order 13943.

The identified prohibitions herein only apply to the parties to business-to-business transactions, and apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to Executive Order 13943, and notwithstanding any contract entered into or any license or permit granted before the date of Executive Order 13943. Any other transaction with Tencent Holdings Ltd. or its subsidiaries is permitted under Executive Order 13943, as implemented by the Secretary, unless identified as prohibited or otherwise contrary to law.

These identified prohibitions do not apply to:

- (1) Payment of wages, salaries, and benefit packages to employees or contractors;
- (2) The exchange between or among WeChat mobile application users of personal or business information using the WeChat mobile application, to include the transferring and receiving of funds;
- (3) Activities related to mobile applications intended for distribution, installation or use outside of the United States by any person, including but not limited to any person subject to U.S. jurisdiction, and all ancillary activities, including activities performed by any U.S. person, which are ordinarily incident to, and necessary for, the distribution, installation, and use of mobile applications outside of the United States; or
- (4) The storing of WeChat mobile application user data in the United States.

AUTHORITY

International Emergency Economic Powers Act, 50 U.S.C. 1701, *et seq.*; National Emergencies Act, 50 U.S.C. 1601 *et seq.*; Executive Order 13943, Addressing the Threat Posed by WeChat, August 6, 2020; Executive Order 13873, Securing the Information and Communications Technology and Services Supply Chain, May 15, 2019.

Dated: September 17, 2020.

This document of the Department of Commerce was signed on September 17, by Wilbur Ross, Secretary of Commerce. That document with the original signature and date is maintained by the Department of Commerce. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned Department of Commerce Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Commerce. This administrative process in no way alters the legal effect of this document upon publication in the Federal Register.

Signed in Washington, DC, on September 17, 2020.

Asha Mathew,

Federal Register Liaison Officer, U.S. Department of Commerce.