

**By FedEx and electronic mail**

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**With copy to:**

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Department of Foreign Investment Administration,  
MINISTRY OF COMMERCE OF THE PEOPLE'S REPUBLIC OF CHINA

Department of European Affairs,  
MINISTRY OF FOREIGN AFFAIRS OF THE PEOPLE'S REPUBLIC OF CHINA

Shenzhen, 31 December 2020



**Written Notification of Dispute**

**Pursuant to Article 6 bis of the Agreement on the Mutual Protection of Investments entered into between the Kingdom of Sweden and the People's Republic of China on 29 March 1982, as amended on 27 September 2004**

Your Excellencies,

We write in our capacity as a foreign investor in the Swedish company Huawei Technologies Sweden AB ("**Huawei Sweden**") to provide the Kingdom of Sweden with formal written Notification of an Investment Dispute between our company, Huawei Technologies Co., Ltd. ("**Huawei**") and the Kingdom of Sweden under Article 6 bis of the Agreement on the mutual protection of investments entered into between the Kingdom of Sweden and the People's Republic of China on 29 March 1982, as amended on 27 September 2004 (the "**BIT**").

Huawei is a leading global provider of information and communications technology (“ICT”) infrastructure and smart devices. Huawei together with its affiliates have more than 194,000 employees, operate in more than 170 countries and regions, and serve more than three billion people around the world. Huawei has made considerable investments in Sweden and has been for over 20 years a driving force of the country’s digitalization.

Huawei Sweden has established presence in fixed and mobile infrastructure throughout Sweden and has ongoing projects with all major Mobile Network Operators (“MNOs”) on the Swedish market, namely Telia, Telenor, Tele2 and Hi3G. In 2000, Huawei established its first R&D Center in Europe in Kista outside Stockholm, followed in subsequent years by two additional R&D Centres in Sweden, one in Gothenburg and one in Lund. The company currently employs more than 600 people in Sweden, more than half of which are engaged in R&D. During 2016-2019, Huawei invested over SEK 3.7 billion in its Swedish R&D operations. Despite the Covid-19 outbreak, the projected R&D investment for 2020 is SEK 1.2 billion. In 2019, Huawei Sweden generated revenues of approximately SEK 5 billion.

Despite Huawei’s significant investments in Sweden and considerable contribution to the Swedish economy, the Kingdom of Sweden has taken a number of harmful measures directly targeting Huawei and gravely damaging its investment in Sweden and, more generally, its interests in Europe and globally.

On 17 April 2020, the Swedish Post and Telecom Agency (“PTS”) invited MNOs to an auction in the 3.5 GHz and 2.3 GHz bands (namely, the upcoming Swedish 5G network). The MNOs’ applications were to be submitted to PTS no later than 30 June 2020.

In the press release it issued for the bidding invitation, PTS stated that, « since the 5G development is an important part of Sweden’s digitalization, putting focus on the importance of high security, a pre-examination of applicants should take place in consultation with the Swedish Security Service and the Swedish Armed Forces prior to the auctions. According to the license conditions, the licensee shall also take the technical and organizational measures required to ensure that the use of radio in accordance with the license does not cause harm to Swedish security. »

On 20 October 2020, PTS issued a decision (the “PTS Decision”) whereby PTS authorised four MNOs – namely Hi3G Access AB, Neet4Mobility HB, Telia Sverige AG and Teracom AB (the “Authorized MNOs”) – to participate in the auction concerning licences to use radio transmitters in the frequency bands 3400-3720 MHz and 2300-2380 MHz. In that decision, PTS introduced a number of requirements to be met by the participants in the auction, the relevant part of which read as follows:

« 28. [...] the licensee shall observe the following:

- New installation and implementation of central functions for radio usage in the 3400-3720 MHz frequency band may not be carried out with products from the suppliers Huawei or ZTE.
- Where existing infrastructure for central functions will be used for the provision of services in the frequency bands in question, the decommissioning of Huawei and ZTE products shall be completed by 1 January 2025. [...]

30. To the extent that central functions depend on personnel or functions located abroad, such dependencies shall be discontinued and, if necessary, replaced by functions or personnel located in Sweden. This shall be completed at the latest 1 January 2025.”

3. License to use radio transmitters in the 2300-2380 MHz frequency band shall be subject to additional conditions relating to requirements relevant to the security of Sweden, which has not been specified in the decision to limit the number of licences and to issue a general invitation to the application for participating in the auction. »

The effect of the PTS Decision – which introduced the above-referenced mandatory requirements as a tool designed specifically to unjustly single out Chinese investors and, in particular, Huawei – is that all future licensees of the frequencies awarded through the auction are prohibited from using any equipment or services from Huawei for the 5G networks, and that such equipment and services are to be phased out by no later than 1 January 2025 for the 3G and 4G networks. These draconian measures

adopted by the Kingdom of Sweden (through PTS and, at a minimum, the Swedish Security Service and the Swedish Armed Forces) effectively exclude Huawei Sweden, a company established in and having contributed to the Swedish economy for the past 20 years, from the market in Sweden by precluding it from selling its network products to MNOs.

The impact of the Swedish authorities' discriminatory actions on Huawei's investment in Sweden is already extremely prejudicial and grave. Huawei has incurred immediate and irreparable losses given that many purchase orders were cancelled following the issuance of the PTS Decision, and the ongoing negotiation of the projects was suspended. This, however, is only a fraction of Huawei's losses. Immediately after the 5G auction is completed, on 19 January 2021, MNOs will (i) enter into the stage of massive roll-out, (ii) cancel the entirety of the planned procurements for the following 5-10 years under the existing 5G framework agreements with Huawei, and (iii) transfer to another supplier the following 5-10 years procurements which, under the existing framework agreements, are Huawei's market share. This is not only discriminatory and in breach of Huawei's existing rights, but in effect unfairly excludes Huawei from the 5G network in Sweden and deprives Huawei of the benefits of its long-term investment in Sweden.

Huawei Sweden has attempted to challenge the PTS Decision before the Administrative Court of Stockholm. However, the decision of the Administrative Court of Appeal issued on 16 December 2020 and revoking the suspension of the PTS Decision previously ordered by the Administrative Court of Stockholm means that the damage caused to Huawei's investment in Sweden is irreversible in any event, since the four Authorized MNOs are required, in order to comply with the PTS Decision, to exclude Huawei's equipment from the design of their 5G network. Even if the administrative courts in Sweden were to ultimately rule in Huawei Sweden's favour, it would still be too late for Huawei to participate in the 5G network in any meaningful way as the Authorized MNO's network design and procurement decisions already have been made on the basis of the PTS Decision prohibiting the inclusion of Huawei's equipment.

Huawei's immediate revenue loss caused by these actions is estimated at SEK 5.2 billion for the 2021-2025 period alone. As the PTS Decision refers to a period of 25 years, the total estimated revenue losses would be substantially larger.

The Kingdom of Sweden's measures leading to and including the PTS decision, which were adopted without any transparency and have unlawfully targeted and discriminated Huawei, directly violate the Kingdom of Sweden's international obligations under the BIT whereby the Kingdom of Sweden undertook, in particular (i) to ensure at all times fair and equitable treatment to the investments made by investors of the People's Republic of China (Article 2(1)); (ii) not to subject investments made by investors from the People's Republic of China to a treatment less favourable than that accorded to investments made by investors of third States (Article 2(2)); and (iii) not to expropriate, nationalize or take any other measure having a similar effect with respect to an investment made in its territory by investors of the People's Republic of China (Article 3).

As explained above, the Kingdom of Sweden's internationally unlawful conduct, in breach of the BIT, has already gravely impacted Huawei, and will have further dramatic consequences on Huawei's investment in Sweden: Huawei Sweden is being effectively deprived of its revenues and business activities in the country, which in turn is affecting the very existence of the company and has devastating consequences on Huawei's business activities and reputation in Europe and globally.

In light of the above breaches by the Kingdom of Sweden of its international obligations under the BIT, Huawei requests, pursuant to Article 6 bis of the BIT, that negotiations be undertaken as a matter of urgency with representatives of Sweden for the purposes of reaching an amicable resolution of this dispute. We are prepared to meet your delegated representatives as soon as possible.

Due to the significant and irreversible damage to Huawei Sweden and the urgency of resolving this dispute and avoiding that Huawei's investment in Sweden be further impacted negatively by the measures taken by the Swedish authorities, we truly hope that such negotiations will allow us to reach an outcome that satisfies the interests of both Huawei and the Kingdom of Sweden in the nearest future. We reserve our right to submit this dispute to international arbitration under Article 6 bis of the Sweden-China BIT, so that our legal rights are fully enforced and Sweden complies fully with its international obligations. Huawei hereby accepts the Kingdom of Sweden's consent to the submission of the present

dispute to the International Centre for the Settlement of Investment Disputes ("ICSID") pursuant to Article 6 bis of the BIT.

Huawei expressly reserves its right to amend this written Notification of Dispute.

Yours respectfully,

  
Ms. Zhao Minglu  
[Signature by Legal Representative of Huawei Technologies Co., Ltd.]



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