



## THE NEXT GENERATION PROBLEM:

### THE UPS AND DOWNS OF SWEDEN'S HUAWEI BAN

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*After months of pending legal challenges, Sweden proceeded with the long-delayed 5G-frequency auctions in January this year, finally allowing Swedish telecom providers to continue the 5G-rollout; however, still without partnerships with Chinese 5G-equipment provider Huawei Technologies, which remains banned from Swedish networks on national security grounds. The ban was upheld in court on February 09 and has now put Stockholm on an open collision course with Beijing, which has threatened retaliation against Swedish businesses in China. In completely excluding Huawei, Sweden has, atypically, joined ranks with the U.S., the UK, Japan, New Zealand, and Australia, willingly or not getting pulled into the fray of the Sino-American rivalry. On the sidelines of a play involving government officials, national intelligence services, Swedish industry, telecom providers, Brussels, Washington, and Beijing, other European states are now keenly observing the Swedish experience with interest. Will Beijing make a discouraging example of Stockholm, or will the latter call bluff? Whatever the final answer may be, it is sure to set a precedent. To this end, this Issue Brief aims to explore Sweden's experience thus far and outline the possible implications for the future.*

#### **A Year in Review:**

In January 2020, the European Commission presented the EU's common cybersecurity approach for 5G networks, entitled the "EU Toolbox." The toolbox sets some common standards and calls for legal measures allowing for the "restriction of involvement of suppliers based on their risk profile," with risk calculated from both technological and strategic perspectives.<sup>1</sup> However, as the naming convention implies, the EU approach offers only

guidelines and coordination – a toolbox– leaving practical enforcement to the member states, stopping short of the all-out pre-emptive ban called for by the U.S.

Not being behind the curb, Sweden updated the Electronic Communications Act the very same month, adding provisions that allow the Post and Telecom Authority (PTS) to withhold the sale of radiocommunications licenses on national security grounds.<sup>2</sup> The Swedish government, historically

a forerunner in implementing new wireless communication standards, had already in 2018 signed a letter of intent with other Nordic countries to develop an integrated 5G-region and had been taking anticipatory measures for some time.<sup>3</sup> As the revised law was introduced, Minister of Digitalization Anders Ygeman clarified it “would not be directed at any specific operator, provider, or nation.”<sup>4</sup> Yet, things would take a turn in the following months.

## ***Huawei soon found an unexpected ally in Ericsson, one of its main competitors.***

In March, the Swedish Security Service (SÄPO) highlighted Beijing, alongside Moscow, as Sweden’s largest cybersecurity threat in its 2019 Yearbook, citing extensive signals intelligence and theft of intellectual property and research.<sup>5</sup> Acting on these concerns in July, SÄPO, PTS, and the Armed Forces began a joint investigation into Swedish telecom providers’ 5G-plans, aiming to determine whether they presented risks to national security.<sup>6</sup> Three months later, on October 20, PTS announced the accepted applicants for the 5G-frequency auctions scheduled for early November. The announcement included the requirement that all telecom providers would be barred from using equipment from vendors Huawei and ZTE, likewise setting a timeline for when all existing equipment would have to be removed from current 4G-networks.<sup>7</sup>

The surprise announcement, released just a month ahead of the scheduled auctions, caught both Huawei and the telecom providers off-guard. Huawei immediately appealed PTS’ decision, citing procedural misconduct as the agency had neglected to notify and hear Huawei’s argument, requesting the decision to be halted until the case had been resolved.<sup>8</sup> Similarly, several telecom providers urged the auctions to be postponed, noting the billions of investments (SEK) at stake, complaining that they had not been notified earlier. The telecom provider “Three” notably joined Huawei in appealing PTS’

decision.<sup>9</sup> However, the decision also stocked anger in Beijing. Both the Chinese Foreign Ministry and the Chinese ambassador pushed back forcefully on allegations that Huawei would be unsafe, making veiled threats that there would “undoubtedly” be consequences for Swedish businesses operating in China.<sup>10</sup> While Sweden makes up a relatively small share of Huawei’s global operations, the ban has the potential to set a precedent for other EU countries to follow, either successfully defying Beijing, rallying others to follow, or deterring if it comes at too high a cost.

Swedish industry quickly took note, and Huawei soon found an unexpected ally in Ericsson, one of its main competitors. In the subsequent months, Ericsson’s CEO, Börje Ekholm, personally lobbied Anna Hallberg, Minister for Foreign Trade and Nordic Affairs, to reverse PTS’ decision. Ekholm cited risks of blowback in China and the critical 5G rollout delays, which could undermine Swedish long-term competitiveness in the tech sector.<sup>11</sup> The Swedish market makes up a relatively small part of Ericsson’s global operations and is dwarfed by the vast Chinese market, which already today makes up thirteen percent of Ericsson’s total revenue, a share only set to grow in the years ahead.<sup>12</sup> Indeed, Ericsson’s full-year report for 2020 highlighted how the third quarter saw the highest gross margin levels since 2006, pointing out the Chinese 5G-rollout as a key driver in growing sales.<sup>13</sup> Ericsson is notably the only non-Chinese company to have won 5G contracts with all three major telecom operators in China, landing a double-digit share of a massive 5G tender in 2020 that saw Finnish Nokia walk home emptyhanded.<sup>14</sup> Jacob Wallenberg, chairman of Investor AB, Sweden’s largest conglomerate holding company, has for similar reasons come to Huawei’s defense but refused to comment on the security aspects of PTS’ decision.<sup>15</sup>

Only days before the scheduled 5G auctions, the Administrative Court of Appeals granted Huawei’s request to temporarily freeze the decision barring Huawei equipment, citing the irreparable economic damage inflicted if the PTS’ decision

would turn out inaccurate.<sup>16</sup> The verdict effectively forced the postponement of the auctions into 2021. Yet, the ruling was soon overturned only a month later by a superior Administrative Court, which cited the greater weight of Sweden's public interest vis-à-vis Huawei as a corporate entity in not delaying the critical 5G-rollout.<sup>17</sup> It further noted how Huawei, either way, was not a direct party to the 5G-auctions. With that, Huawei had emptied its legal remedies within the court system, and the attempt to appeal to the Highest Administrative Court was denied. Huawei now had to wait for a ruling on the main lawsuit concerned with the PTS's decision itself. However, company leadership appealed unsuccessfully to the Swedish government in an open letter, urging it to step in and reverse the decision, warning they may be forced to take the case for international arbitration as a last resort, citing the Sino-Swedish Investor Agreement of 1982.<sup>18</sup>

PTS held the auctions on January 19, worth 2.3 bn SEK.<sup>19</sup> Whereas carriers Telia and state-owned Teracom AB had never used Huawei equipment in the first place, Tele2 and Telenor announced they had now chosen Ericsson over Huawei for their joint 5G-venture, leaving Three as the only one still hoping to use Huawei in its networks. Minister of Digitalization Ygeman underscored the great need not to delay auctions any further.<sup>20</sup> After the auctions, Beijing's Ministry of Commerce Spokesperson, Gao Feng, urged Sweden to "immediately correct the mistake," which violates WTO rules under the disguise of "national security," adding that China will respond with "all necessary measures."<sup>21</sup> With the Huawei ban upheld in court on February 09, it remains to be seen what form the measures will take.<sup>22</sup>

Beijing's Wolf Warrior diplomacy and the threats of economic pressure are unlikely to improve Huawei's public relations in Sweden;<sup>23</sup> to the contrary, it heightens public awareness of perceived links between Huawei and Beijing. Sino-Swedish rows over imprisoned book publisher Gui Minhai, "sharp power" exercises in the Swedish media landscape,<sup>24</sup> and alleged spying activities on Tibetan Communities

in Sweden have all contributed to record low levels of public trust in China – in fact, the lowest degree of trust in all of Europe at only 15 percent. While most recognize China's growing importance for the economy and as an essential partner in solving critical global challenges, like climate change, less than 20 percent support cooperation on 5G.<sup>25</sup> This dynamic has undoubtedly played a role in Stockholm's uncharacteristically tough stance on China compared to the rest of Europe.

***Excessive restrictions on Chinese business in Europe can also trigger reciprocal barriers for European companies.***

### Sweden's Lone Stance

Sweden has undoubtedly taken the strongest position on 5G-networks among the Nordic countries. Whereas Sweden has followed the lead of the U.S.-UK-led Anglosphere, its Nordic Neighbors have more in common with countries in continental Europe, where heavyweights like Germany, France, and Italy have all taken more cautious stances. Their independent investigations have been unable to find any alarming backdoors in Huawei equipment,<sup>26</sup> in contrast to equipment made by U.S.-based Cisco (Berlin has yet to forget the Obama administration's wiretapping of Angela Merkel).<sup>27</sup> Moreover, security concerns aside, Huawei equipment is considerably cheaper than the competition. Telecom carriers with substantial Huawei partnerships, such as Deutsche Telekom, would see significant losses and year-long delays in their 5G rollouts under a complete ban.<sup>28</sup>

Excessive restrictions on Chinese business in Europe can also trigger reciprocal barriers for European companies. This factor plays a vital role in many countries' decision-making processes across the EU, not the least for Merkel and German Industry.<sup>29</sup> Without irrefutable proof of Huawei's misconduct,

many prefer to impose stricter oversight or regulatory caps on market access without singling out Huawei, thus hesitating to pull the trigger preemptively, as has been the case in the rest of the Nordic region.

Last year, Denmark signaled that it would prefer to use 5G equipment produced in countries considered “security allies,” but never outright banned Huawei, leaving the ultimate decision up to the private telecom carriers. This careful approach came despite the fact that Sino-Danish relations were already on thin ice over revelations that the Chinese ambassador had applied economic pressure on the autonomous Faroese government to pick Huawei for its 5G-nets in 2019.<sup>30</sup> Similarly, Norway left the decision up to telecom carriers, restricting access only in core networks.<sup>31</sup> Nonetheless, carrier Telenor’s decision to choose Swedish Ericson over Huawei, despite its close relationship with the latter, still drew Beijing’s ire. Meanwhile, Finland set out security criteria that equally apply to all telecom equipment providers, allowing for bans on national security grounds, but choosing not to use them preemptively. The ban only applies to critical parts of the 5G-network, and the government is obligated to reimburse telecom providers for any equipment discarded due to the ban.<sup>32</sup>

***The unrepentant way Sweden took its decision may force the hand of China’s increasingly nationalistic leadership.***

Sweden’s principled position stands out clearly against this European backdrop. The Swedish government has, at least publicly, not been especially proactive in efforts to assuage tensions, presumably fed up with Beijing’s intimidation tactics after years of self-restraint. While there is an intrinsic value in asserting boundaries and not bowing to coercive pressures, this can, however, come at a cost and is a separate consideration from the core of Beijing’s objections

– the absence of proffered evidence for Huawei’s misconduct. While the mere suspicion concerning risk to critical systems is arguably enough to justify certain companies’ exclusion, there is also a line to be drawn somewhere between unrestricted free trade and unchecked invocations of national security interests. The Swedish economy has undoubtedly felt the impact of politicized trade with the Trump era’s tariff regimes. Whether one agrees with them or not, Beijing’s objections are thus predictable, and the unrepentant way Sweden took its decision may force the hand of China’s increasingly nationalistic leadership. In taking a principled stand alone without the backing of a unified EU, Stockholm may have painted a target on its back.

### **The Technical Security vs. the Geopolitical Angle**

What are the security concerns with 5G, then? From a purely technical perspective, banning Huawei outright makes little sense, as diversification of equipment vendors lowers the overall system risk – if a flaw is found, it won’t require the entire system to be replaced. Such network and cybersecurity risks are more effectively targeted with appropriate technical regulations,<sup>33</sup> such as rules requiring that data be stored on domestic or European servers. However, with the remarkable societal transformation expected from the advent of 5G and the Internet of Things, risks are much higher than ever before. Nearly everything, including the most critical of public functions, will be connected to the same core system, and all the possible uses of 5G-integration in daily life cannot yet even be fully imagined. Regulators are already playing catch-up.

Unlike with previous generations of wireless communications, 5G also blurs the line between core and fringe networks, making it challenging to keep the two separate in any meaningful sense – the whole system is sensitive.<sup>34</sup> Accordingly, excessive technological dependence on a foreign power introduces yet another degree of unpredictability to the system, and this is core to the many overtures about Huawei. It illustrates how many security

concerns are fundamentally geared more towards geopolitics than technical security, not wanting to be at the mercy of others, and undemocratic states with low Rule of Law rankings in particular.<sup>35</sup>

As a result, in a curious twist of fate, American and European champions of free trade and market liberalization have ended up on the back foot. Meanwhile, Beijing has spent the last few years condemning the Trump administration for protectionism, trying to portray itself as an avid defender of free trade and joining the world's largest free trade agreement, RCEP, last year. As EU HR/VP Josep Borell put in early February this year: whereas Western nations had been “the masters of technologies [thus far], others will be the new masters” in the post-Covid-19 world and the emergent “Asian Century.”<sup>36</sup> This new reality is gradually dawning upon Brussels, Washington, and their allies, with many trying to navigate it in different ways.

### **The Geopolitical Security Concerns – From America to Europe**

Concerns about Huawei first blew up on the U.S.-China Trade War's sidelines in 2018. Several U.S. intelligence agencies alleged that Huawei received funding from China's National Security Commission, the People's Liberation Army, and a third branch of the Chinese state intelligence network, hinting that Huawei was not as independent as it claimed – allegations that Huawei pushed back on.<sup>37</sup> Since then, irrefutable evidence incriminating Huawei as controlled by the Communist Party of China (CPC) has yet to emerge. The public discussion continues to revolve around suspicions and allegations.

Huawei has been quick to underscore that it is employee-owned and that the workers nominate company leadership without screening any employees for party membership. Huawei further maintains that company leadership is a separate legal entity from the Huawei Trade Union Committee, by law a member of the CPC-led All-China Federation of Trade Unions. Nonetheless, the leadership nomination process lacks screening mechanisms to guarantee non-interference from the CPC, and concerns over

the ambiguous Chinese legal environment remain. “[I]t is very difficult to completely reject the claims of Huawei critics that the company is more than just a privately run company striving for economic profit.”<sup>38</sup>

### **“Huawei and ZTE's combined market share of 41 percent dwarfed those of European Nokia and Ericsson.”**

However, while these concerns only caught a strong headwind in 2018, they emerged long before the Trump era. U.S. companies were urged not to use Huawei networking equipment already in late 2012. Moreover, since 2013, central federal government departments have been obliged to seek federal law enforcement permission for using Chinese vendors.<sup>39</sup> These concerns were only heightened in the subsequent years, as the line between private companies and the government became vaguer, accentuated by Beijing's 2014 Military-Civil Fusion (MCF) Strategy, and reaching new heights following Trump's inauguration.

In 2017, Beijing introduced a new National Intelligence Law, giving unspecified intelligence agencies sweeping powers and containing provisions obligating Chinese persons (read: people and organizations in China) to support them in their efforts.<sup>40</sup> In tandem, President Xi Jinping took personal leadership of the newly created Central Commission for Integrated Military and Civilian Development, further blurring the line between state and private sectors.<sup>41</sup> The leading cause of concern emerging in some Western countries was: can corporations based in China truly be regarded as independent from the CPC? Washington certainly didn't think so and added Huawei and ZTE to the U.S. Entity List, barring U.S. companies from trading in sensitive technologies with them. The Trump administration later blacklisted them for U.S. investors by putting them on a list of “Communist

Chinese Military Companies” in 2020.<sup>42</sup>

The Trump administration, which gradually awoke to the importance of cutting-edge technology, realized the U.S. had no serious competitor in the 5G market, where Chinese companies reigned supreme. In 2020, growing with the rapidly expanding Chinese market, Huawei and ZTE’s combined market share of 41 percent dwarfed those of European Nokia and Ericsson, the second and third largest suppliers, at 16 and 14 percent, respectively.<sup>43</sup> U.S. Attorney General William Barr even flaunted the idea of acquiring a majority stake in one of the Nordic companies, though this was never a seriously tabled proposal.<sup>44</sup> Accordingly, there are both legitimate security concerns at stake and underlying political motives.

***Beijing has likely been painted into a corner where it feels forced to respond.***

As a result, the U.S. lobbied Western allies vigorously not to use Chinese-made equipment in their 5G-networks, warning of an end to U.S. intelligence-sharing should they refuse. Secretary of State Mike Pompeo made headlines, saying, “if you have Huawei in your networks, you cannot count on U.S. support.”<sup>45</sup> The efforts resulted in the 2019 Prague Proposals, a non-binding cybersecurity framework, first signed by officials from 32 countries, the U.S., the EU, and NATO.<sup>46</sup> Moreover, nine EU countries in Eastern Europe have signed bilateral MoUs with the U.S., pledging to rigorously vet and keep out “non-trusted” suppliers.<sup>47</sup> Meanwhile, France has ordered its telecom providers to phase out Huawei equipment by 2028.<sup>48</sup> Still, efforts to get Europe on board with an all-out ban have been largely unsuccessful, resulting in the EU Toolbox guidelines instead.

The heads of Swedish SÄPO and MUST (the Military Intelligence and Security Service) have insisted that U.S. pressures played no role in their final decision to single out Huawei and ZTE.<sup>49</sup> However, officials in the UK have been frank about their U-turn

reversal on allowing Huawei. They could no longer be confident the UK would “be able to guarantee the security of future Huawei 5G equipment affected by the change in the US foreign direct product rules.”<sup>50</sup> For the UK, the long-term instability stemming from the U.S.-Chinese rivalry certainly played a role. Even though Washington’s threat of ending intel-sharing turned out to be empty when the UK initially allowed Huawei to have up to a 35 percent market share in non-core networks,<sup>51</sup> London refused to take any risks.<sup>52</sup> While unknown to what extent, Swedish officials have surely faced similar considerations. Notably, the Biden administration has not signaled any upcoming policy changes concerning “untrusted vendors, including Huawei.”<sup>53</sup> However, it is likely to focus more on building Huawei-alternatives than Trump’s whack-a-mole-style approach on individual Chinese companies.<sup>54</sup>

### **Conclusion – Implications for Sino-Swedish Relations**

It remains unclear to what extent China will push back now that the Huawei ban has been upheld in court. Beijing has made some empty threats in the past, for example, following the 2018 row over the Stockholm police’s treatment of Chinese tourists – an instance of overdramatized “porcelain diplomacy.”<sup>55</sup> Yet, this time much more is at stake, as Sweden’s exclusion of Huawei, in a worst-case scenario (from a Chinese perspective), could precipitate a domino effect across Europe. There are thus some tangible concerns under the aggressive rhetoric from China. Therefore, Beijing has likely been painted into a corner where it feels forced to respond, seemingly in an economic version of “the Commitment Trap” dilemma.<sup>56</sup> Should the threats be hollow, others could be incentivized to follow Sweden’s lead. However, an overreaction could also risk further damage to Beijing’s already poor public image in the EU, alienating more member states in the long-term.

Because the PTS agency’s regulatory decisions are not within the Swedish Government’s purview, unlike in the UK legal system, the Swedish ban is likely to stand unchanged. That could prove costly. While unknown to what extent, some diplomatic

efforts to express understanding and assuage tensions could go some way in saving Beijing face, potentially dampening calls to avenge hurt Chinese pride. ■

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## Endnotes

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