

Explainer: why Chinese telecoms participating in Australia's 5G network could be a problem

Written by Sandeep Gopalan, Pro Vice-Chancellor (Academic Innovation) & Professor of Law, Deakin University

Chinese telecom giants ZTE and Huawei are facing renewed scrutiny about the potential for their equipment and software to be used [in Australia's 5G mobile](#) network, following revelations from a [rent court case in the United States](#) [cur](#)

In the end, Australia's willingness to include Huawei and ZTE in its 5G mobile infrastructure should be based on a rational analysis of risks. There is no shame in excluding them based on evidence rather than Sinophobia.

So let's look at the evidence.

Read more: [How China's Huawei is taking on Samsung and Apple](#)

What has spurred the debate?

The case in the US involves allegations of bribery and industrial espionage against ZTE, echoing the company's previous bad behaviour in [violating US sanctions](#), and [concealing further breaches](#) in violation of a plea deal.

ZTE's actions essentially paralysed its business worldwide after the [US banned the company](#) from using US-made parts in its equipment. American components comprise [25-30% of ZTE's equipment](#)

The debate over whether to ban the companies from involvement with Australia's 5G network was reignited by Labor MP Michael Danby. During a speech to parliament last week, [he said](#) :

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Let me issue a clarion call to this parliament, to the media and to the Australian public: Australia's 5G network must not be sold to these telcos.

What do ZTE and Huawei do?

[ZTE](#) operates in 140 countries and supplies network products and end-to-end telecom services. It booked RMB124 billion (about US\$16 billion) in [revenue during 2017](#).

[Huawei](#), based in Shenzhen, provides networking products and telecom solutions. It operates in 170 countries and employs 180,000 people.

The company provides 4.5G networks, wireless broadband, cloud services, data centres, smart city solutions, and banking solutions, and has a global smartphone market share of about 11%. It had [revenues of US\\$92 billion](#) in 2017.

Why is there concern about them supplying our 5G network?

The 5G network is [critical infrastructure](#). It is expected to support services that are essential to the smooth running of society and the economy, including an increasing number of internet-connected devices such as self-driving cars.

Read more: [*What is 5G? The next generation of wireless, explained*](#)

In a June 2017 white paper about 5G security, Swedish telecommunications company Ericsson [noted](#) that, in comparison to current mobile networks:

The values hosted in, and generated by, the 5G system are estimated to be even higher, and

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the assets (hardware, software, information and revenue streams) will be even more attractive for different types of attacks. Furthermore, considering the possible consequences of an attack, the damage may not be limited to a business or reputation; it could even have a severe impact on public safety.

With these high stakes, it is essential that our 5G network is secure from interference.

There are concerns about Chinese telecoms companies supplying the 5G network in Australia due to accusations they have been involved in bribery, concealment and destruction of evidence, alongside suspected participation in espionage.

In 2013, former CIA Director General Michael Hayden [reported](#) that Huawei:

... shared with the Chinese state intimate and extensive knowledge of foreign telecommunications systems it is involved with.

In 2015, the FBI [stated](#) that:

the Chinese Government's potential access to US business communications is dramatically increasing. Chinese Government-supported telecommunications equipment on US networks may be exploited through Chinese cyber activity, with China's intelligence services operating as an advanced persistent threat to US networks.

Further, it noted that:

China makes no secret that its cyber warfare strategy is predicated on controlling global communications network infrastructure.

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It is the combination of alleged corruption and state control that makes these companies potentially dangerous.

China's deep pockets make Huawei highly competitive. As the FBI [warned](#) :

With over \$100 billion in Chinese government subsidization and direct financing, Huawei is able to ... [make] offers [that are] difficult to refuse in exchange for access to US networks.

The same applies to Australia, and other countries.

Is there any evidence to support these concerns?

ZTE and Huawei have been subject to allegations of bribery and corruption in a number of countries – and in some cases, banned from doing business.

[ZTE pleaded guilty](#) in March 2017 to breaching US sanctions – by illegally shipping equipment to Iran and North Korea – obstruction of justice, and making a false statement. It paid the US government more than US\$892 million in penalties (with a further US\$300 million suspended). ZTE was mandated to have a “corporate monitor” to ensure future good behaviour.

In 2016, the government of Norway [embargoed its state pension fund](#) from investing in ZTE because of corruption.

ZTE was investigated for [corruption in Mongolia](#) in 2013.

Both ZTE and Huawei were [banned from public sector contracts](#) in Algeria due to bribery in 2012.

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ZTE was alleged to have [bribed Philippine officials](#) in connection with a US\$329 million broadband deal in 2007.

To be sure, ZTE and Huawei are not alone in paying bribes and [engaging in unethical business practices overseas](#)

But such behaviour is not conducive to the “[trust models](#)

” necessary for security in such critical infrastructure.

What is the case currently before the courts in the US?

It is important to stress that the allegations in this case are just claims at this point – no court has held them to be true.

ZTE was sued by Universal Telephone Exchange (UTE), an American company, in a Dallas court in 2010. UTE alleged that ZTE had misappropriated its trade secrets and interfered with its bid to secure telecom services contracts in Liberia in 2003-2004. UTE claimed it would have obtained the deal with LTC, but for ZTE's illegal actions. It sought actual damages of US\$10 million and US\$20 million in exemplary damages.

Read more: [**The China-U.S. conflict is about much more than trade**](#)

The parties had to arbitrate the dispute in 2012 because of an arbitration clause in a non-disclosure agreement. ZTE prevailed in the arbitration. The arbitrator ruled that UTE's claims were barred by statutes of limitations, and even if they were not so barred, that ZTE did not harm UTE.

UTE sued to vacate the ruling. In its motion to vacate, UTE claims that ZTE:

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... is a notoriously corrupt organization with a pattern of engaging in bribery, corruption, industrial espionage, and egregious criminal behavior on a worldwide basis.

These allegations rely heavily on ZTE's guilty plea with the US in March 2017.

The Dallas court vacated the arbitrator's decision and remanded the case back for arbitration before a three member tribunal. ZTE's appeal is pending.

Where do things stand now?

The US government issued a [report](#) as far back as 2012 recommending that:

US government systems ... should not include Huawei or ZTE equipment, including in component parts.

Contractors were also asked to exclude this equipment.

The US is [likely to lift the sanctions on ZTE](#) in exchange for a fine, employment of American compliance officers, and management changes as part of Trump's [broader trade strategy with China](#)

. However, the embargo on US government entities purchasing ZTE or Huawei products or services is likely to stay.

The question is whether Australia should follow America's lead in its dealings with ZTE and Huawei. If past is prologue, it is difficult to justify a departure from the US approach.

Sandeep Gopalan does not work for, consult, own shares in or receive funding from any company or organisation that would benefit from this article, and has disclosed no relevant affiliations beyond their academic appointment.

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