

## U.S. Blocking of Broadcom's Takeover of Qualcomm Signals More Expansive CFIUS Reviews

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April 13, 2018

Singapore-based Broadcom Ltd. attempted to acquire U.S.-based Qualcomm Inc. through a hostile takeover.

Qualcomm is a leading company and key U.S. player in 5G network development, which is the fifth generation wireless system that offers a significant increase in data transfer rates useful in potential applications such as autonomous vehicles. With Broadcom's significant Chinese presence providing more than 90 percent of Broadcom revenues, concern was raised over Broadcom gaining control of Qualcomm.

The Committee on Foreign Investment in the United States (CFIUS) is the interagency committee tasked with reviewing and investigating foreign takeovers of U.S. companies for national security concerns. CFIUS is comprised of the heads of the U.S. Departments of Treasury, Commerce, Energy, Defense, State and Homeland Security, and representatives of other U.S. governmental agencies.

On March 5, 2018, CFIUS provided a national security impact assessment to the transaction parties for the potential Broadcom acquisition of Qualcomm, stating that a successful hostile takeover by Broadcom of Qualcomm could pose U.S. national security risks.

### ***U.S. National Security Risk: Weakening of Qualcomm Technological Leadership in 5G***

CFIUS assessed the impact that the takeover would have on Qualcomm's technological leadership in 5G development. Specifically, Broadcom's prior statements indicated to CFIUS that after the acquisition it would focus on reducing Qualcomm's long-term investment in research and development and increasing its short-term profitability. CFIUS determined that any weakening of Qualcomm's leadership position in 5G would leave an opening for China to expand its influence on 5G development and the standard-setting process. CFIUS concluded that a shift to Chinese dominance in 5G would have substantial negative U.S. national security consequences.

### ***U.S. National Security Risk: Disruption of Trusted Supply Relationship with DoD***

CFIUS also noted that certain U.S. Department of Defense (DOD) national security programs rely on continued access to Qualcomm products under supply contracts. Qualcomm holds a facility security clearance and performs on a range of DOD contracts, some of which are sole-source classified prime contracts with the DOD. CFIUS noted that Qualcomm is otherwise cooperating with the U.S. government on enhancing cybersecurity in the 5G Network. CFIUS concluded that a limitation or disruption of Qualcomm products or technology services provided to the DOD and other U.S. government agencies could have a detrimental impact on national security.

Based upon these assessments and at the recommendation of CFIUS, Pres. Donald Trump issued an Executive Order on March 12, 2018, blocking any acquisition of Qualcomm by Broadcom.

This action, along with other recent Presidential actions noted in the news, demonstrate that economic and trade issues now feature prominently CFIUS' assessment of U.S. national security policy. It indicates that CFIUS may now consider protecting U.S. technology leadership as a matter of U.S. national security policy. This heightened level of scrutiny by CFIUS warrants more caution and reasons to file for voluntary advance notices to CFIUS of transactions that may have

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similar concerns.

Should you have questions about what transactions could be subject to CFIUS review or about other potential actions resulting from the President's emerging U.S. national security policy, please contact the Miller Canfield Export Control Practice Group.