



The Daily Dish

Drawing the Line on Qualcomm

DOUGLAS HOLTZ-EAKIN | MARCH 6, 2018

Eakinomics: Drawing the Line on Qualcomm

In a surprise move, the Committee on Foreign Investment in the United States (CFIUS) [ordered](#) Qualcomm to delay its annual meeting, and thus delay a vote on who will be on its Board of Directors. The vote is part of a takeover attempt by Singapore tech giant Broadcom. Qualcomm's shareholders were to vote on whether to replace six of its 11 directors with nominees put forward by Broadcom; those directors would presumably accept a hostile takeover offer. Recall that CFIUS is an interagency committee that has the power to review foreign investments in the United States and determine whether or not such investments pose a risk to national security. If the transaction does, CFIUS can nix the transaction. This highly unusual move by CFIUS is interesting from at least three perspectives.

The first is whether CFIUS has the power to stop the meeting, and thus the vote. Typically, CFIUS does its review once a transaction has been completed. In this instance, there is simply a presumption that such a transaction could happen as a result of the vote. Despite the unusual timing of the intervention, CFIUS decided to order a review of the proposed transaction and delayed the annual meeting.

The second is that the Qualcomm/Broadcom investigation occurs in the context of proposed reforms to the CFIUS process itself. Senator John Cornyn has led a Senate [effort](#) to draft and pass the Foreign Investment Risk Review Modernization Act (FIRRMA). According to the sponsors, it would update the CFIUS review process to address 21st-century national security concerns, such as investment-driven technology transfers designed to sidestep the Committee's limited jurisdiction. Specifically, FIRRMA would:

- Expand the CFIUS jurisdiction to include certain joint ventures, minority position investments, and real estate transactions near military bases or other sensitive

national security facilities;

- Update the Committee’s definition of “critical technologies” to include emerging technologies that could be essential for maintaining the U.S. technological advantage over countries that pose threats, such as China;
- Allow foreign investors to submit “light filings” to CFIUS for certain types of transactions;
- Add new national security factors for CFIUS to consider in its analyses; and
- Authorize CFIUS to exempt certain otherwise-covered transactions if all foreign investors are from a country that meets certain criteria, such as being a U.S. treaty ally and having a mutual investment security arrangement.

The Qualcomm/Broadcom transaction appears to be exactly the type of technology-related purchase that is the focus of FIRRMA; it would appear that CFIUS is “self-reforming” in advance of the legislative effort.

Finally, there are the economics of the national security threat. The most common issue that has been raised is the impact on Qualcomm’s development of the technologies needed to implement next-generation (“5G”) wireless; 5G is central to pervasive streaming video, self-driving cars, and other technology advancements. The concern is that Broadcom would underfund Qualcomm’s investment in 5G, which would in turn allow Chinese firms to dominate 5G equipment. This raises two questions: (a) Is this a national security issue? and (b) Would Broadcom do that? On the first, it seems to assume Qualcomm is the monopoly producer of 5G technology; at a minimum this ignores the role that Intel and others may play. On the second, the value of the 5G business is presumably one of the core pieces of the franchise that Broadcom is trying to acquire. Why would it turn around and damage it?

Its intervention in the Qualcomm takeover battle is an important moment in the evolution of CFIUS. It will be interesting to see how the transaction and legislation evolve.