

CLIENT ALERT

The President and CFIUS Expand Exercise of CFIUS Authority by Blocking Broadcom Takeover of Qualcomm

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On Monday, March 12, at the recommendation of the Committee on Foreign Investment in the United States (“CFIUS”), President Trump issued an executive order to block the acquisition of U.S. tech giant Qualcomm Inc. (“Qualcomm”) by Singapore-based Broadcom Ltd. (“Broadcom”). Pursuant to the Defense Production Act of 1950, the president blocked the sale using the reasoning that Broadcom might take action that threatens to impair the national security of the United States. The president’s order can be found [here](#). The move marks an unprecedented expansion of CFIUS’s efforts to use its authority to block involvement by foreign buyers in the U.S. critical technology market on national security grounds.

In a letter dated March 5, 2018, CFIUS had previously explained its concerns regarding the national security risks posed by a proposed Broadcom takeover of Qualcomm’s board of directors and subsequent hostile equity acquisition. CFIUS cited Qualcomm’s status as the leading company in 5G technology development and the risk that Broadcom’s acquisition could result in a weakening of Qualcomm’s position and a possible shift to Chinese dominance in 5G. CFIUS noted that Broadcom’s recent acquisitions had been followed by reductions in research and development investment. The CFIUS letter is available [here](#). CFIUS had previously issued an interim order to postpone Qualcomm’s scheduled shareholder meeting to avoid the election of Broadcom-supported directors.

The president’s order prohibits the takeover of Qualcomm by Broadcom and disqualifies the Broadcom-supported candidates from election to the Qualcomm board of directors. The order instructs Broadcom to immediately and permanently abandon the proposed takeover.

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CFIUS moved unusually quickly to block the proposed acquisition by Broadcom. One factor driving these actions by CFIUS and the president was Broadcom's effort to expedite its "redomestication" from Singapore to the United States, which might have eliminated CFIUS's jurisdiction over the transaction. However, the Committee's rejection of the takeover is also a broader use of its authority to block acquisitions of U.S. businesses by foreign persons based on national security concerns. While CFIUS and the president have rejected numerous deals in the past based on the acquisition of intelligence capabilities or sensitive technology by a foreign buyer, this is the first deal rejected by a president based squarely on the market role and competitiveness of the U.S. company. We expect CFIUS to continue to exercise meaningful scrutiny over foreign acquisitions of U.S. businesses, increasing the importance of the voluntary notice process prior to closings. We anticipate the role of CFIUS in reviewing foreign investment to expand further with the likely passage of the Foreign Investment Risk Review Modernization Act later this year.

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