



The Daily Dish

Eakinomics: Broadcom – The Retrospective

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The Committee on Foreign Investment in the United States (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. As Eakinomics noted [earlier](#), CFIUS chose to investigate the proposed hostile takeover of U.S. chip manufacturer Qualcomm by Singapore-based Broadcom. Three days ago, President Trump cut abruptly to the chase by [barring](#) the transaction, saying “The proposed takeover of Qualcomm by the Purchaser is prohibited, and any substantially equivalent merger, acquisition, or takeover, whether effected directly or indirectly, is also prohibited.”

He did this on the grounds that “There is credible evidence that leads me to believe that Broadcom Limited... through exercising control of Qualcomm Incorporated (Qualcomm), a Delaware corporation, might take action that threatens to impair the national security of the United States.” In response, Broadcom [dropped](#) its pursuit of Qualcomm.

Fair enough. But given the interest in CFIUS reform, it is useful to think through the Broadcom episode. A number of issues stand out.

First, one has to accept at face value that Broadcom presented a national security threat. Obviously, one can't disseminate classified information, for example. But it would seem to be a minimal standard of government accountability that CFIUS characterize, to the extent possible, the nature of the threat to national security. In the absence of this, some people will simply wonder what is going on, especially because Broadcom transactions cleared CFIUS in 2013, 2014, 2016, and 2017. What was different with Qualcomm?

Second and related, how can one be sure that this is not pure anti-China protectionism in the guise of national security? As Bloomberg [reports](#), eight of the 10 transactions killed by CFIUS under President Trump involved China. The others involved Germany — about which the president has been fairly vocal in his discontents — and Broadcom (Singapore). Patriotism is the last refuge of the scoundrel. Is national security the last refuge of the protectionists? Certainly, the array of special aspects of the Broadcom case can make one wonder: (a) the government intervening before any transaction was settled in order to pre-empt a shareholder vote on a Broadcom slate of directors; (b) the short review prior to the presidential order; and (c) the fact that President Trump himself issued the order.

Third, how important was Broadcom's decision to re-domicile in the United States? Indeed, once the CFIUS review began, Broadcom accelerated its plans to have a U.S. headquarters. In the presence of a national security threat, this might have provided a mechanism to evade the CFIUS review. How one thinks through this issue will determine the degree to which CFIUS should be reformed to encompass any transaction, transfer, agreement, or arrangement designed to evade or circumvent the CFIUS process — a feature of the current

CFIUS reform bills.

Finally, does CFIUS really need to be reformed at all? It certainly appears that CFIUS, the Treasury, and the president have concluded that they have the authority under current law to deal with the Broadcom threat. What more authority do they need?

Broadcom-Qualcomm is gone, but will not be forgotten.