

CFIUS Deal Abandoned, Presidential Order: Broadcom and Qualcomm

Thursday, May 3, 2018

Status: Presidential Order; Abandoned

Acquirer: Broadcom Limited (Singapore)

Acquired: Qualcomm Incorporated (US)

Value: US\$117 Billion

Industry: Semiconductors;
Telecommunications



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On March 12, 2018, President Trump issued an order (“Presidential Order”) pursuant to Section 721 of the Defense Production Act, the statute implementing the CFIUS process, blocking the proposed takeover of [Qualcomm Incorporated](#) by [Broadcom Limited](#), following “a recommendation from the Committee on Foreign Investment in the United States.” (White House Executive

Orders, [Presidential Order Regarding the Proposed Takeover of Qualcomm Incorporated by Broadcom Limited](#), March 12, 2018; [Qualcomm Incorporated Form 8-K, Ex-99.1, March 13, 2018, SEC Filing](#).) The President determined “that Broadcom Limited, a limited company organized under the laws of Singapore (Broadcom), . . . through exercising control of Qualcomm Incorporated (Qualcomm), a Delaware corporation, might take action that threatens to impair the national security of the United States.” (*Id.*)

Broadcom is a global diversified semiconductor manufacturer co-headquartered in California and in Singapore, but currently domiciled in Singapore. (See Broadcom website, [Company History page](#).) Qualcomm Incorporated is a San Diego based technology and semiconductor company that develops various technologies, such as for telecommunication, artificial intelligence, mobile computing, IoT, and automotive applications. (See Qualcomm website, [We Invent webpage](#).) Qualcomm “pioneered 3G and 4G – and now [is] leading the way to 5G and a new era of intelligent connected devices.” (See [Qualcomm Form 8-K, Ex. 99.1, Nov. 13, 2017, SEC Filing](#).) On November 6, 2017, Broadcom announced an offer to acquire all of the outstanding shares of Qualcomm for approximately US\$103 billion, (see [Broadcom Form 8-K, Ex. 99.1, Nov. 6, 2017, SEC Filing](#)), however, Qualcomm’s board unanimously rejected the unsolicited proposal. (See [Qualcomm Form 8-K, Ex. 99.1, Nov. 13, 2017, SEC Filing](#).) In December 2017, Broadcom put forth 11 directors to be nominated “to replace the eleven current directors of Qualcomm,” and then solicited proxies from Qualcomm’s stockholders to vote at the March 6, 2018, annual stockholders’ meeting. ([Broadcom Schedule 14, Dec. 4, 2017, SEC Filing](#).)

On January 29, following Broadcom’s solicitation of proxies for the purposes of electing a majority of the Qualcomm directors, Qualcomm “filed a unilateral notice” with CFIUS. (See March 5, 2018, [Letter from CFIUS to Parties, Qualcomm Inc. Form 8-K, Ex-99.1, Mar. 6, 2018, SEC Filing](#) (“March 5 CFIUS Letter”).) In the March 5 CFIUS Letter, CFIUS disclosed that on March 4, 2018, the US Department of Treasury self-initiated another review by filing ‘an agency notice’ to broaden “the scope of review to cover the proposed hostile takeover of Qualcomm.” (*Id.*) The March 5 CFIUS letter further stated that CFIUS “has identified potential national security concerns that warrant a full investigation of the proposed transaction.” (*Id.*) These concerns included: (1) “risks associated with Broadcom’s relationships with third party foreign entities;” (2) “the national security effects” of Broadcom’s “‘private equity’-style direction,” “reducing long-term investment, such as R&D, and focusing on short term

profitability” as a result of the large “debt financing to support the Qualcomm acquisition;” (3) risks associated with losing US-controlled Qualcomm’s technology leadership and standard setting, particularly as to the developing 5G telecommunications technology; and (4) loss of Qualcomm as a trusted supplier to the defense industry. (*Id.*)

As a result of CFIUS’s concerns, on March 4, 2018, CFIUS issued an interim order that delayed Qualcomm’s March 6th annual meeting and director vote and prevented Qualcomm from accepting any takeover offer during such time. (Interim Order, [Qualcomm Form 8-K, Ex. 99.1, Mar. 4, 2018, SEC Filing.](#)) Shortly thereafter, on March 12, the Presidential Order was issued requiring Broadcom, including its affiliates and subsidiaries to immediately abandon its proposed takeover and director candidacies, and also prohibiting it from any future “substantially equivalent merger, acquisition, or takeover, whether effected directly or indirectly.” ([Presidential Order Regarding the Proposed Takeover of Qualcomm Incorporated by Broadcom Limited.](#)) On March 14, 2018, Broadcom announced it had “terminated and withdrawn its offer to acquire Qualcomm Incorporated and withdrawn its nominations to the board of directors of Qualcomm Incorporated.” ([Broadcom Ltd. Form 8-K, Mar. 14, 2018, SEC Filing.](#))

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