

Broadcom decision: antitrust still not in-house priority

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Antitrust and competition are high on the EU's agenda once again, with Commissioner Margrethe Vestager placing interim injunctive relief measures on US tech giant, Broadcom – but it's still not a major priority for in-house lawyers.

The measure has not been used in nearly 20 years, and means Broadcom must annul contractual requirements immediately, as opposed to waiting for a formal legal decision to be ratified.

Due to competition concerns, the European Commission has ordered Broadcom to stop applying certain provisions contained in agreements with six of its main customers. By applying these measures, the Commission believes that it can prevent serious and irreparable harm to competition from Broadcom's activities.

"In the boardroom, competition policy and regulation can be deemed an unlikely risk or even a distraction," said Mathew Heim, visiting fellow at Bruegel and former vice president at Qualcomm. "This means that businesses are often surprised or unprepared when investigations begin. As a company grows in size and

success, it's best to have an eye on relevant competition policies, as these can bite unexpectedly.

[Research undertaken by the UK's Competition and Markets Authority \(CMA\) in 2019 affirmed this](#), finding that only a quarter of UK businesses purport to know competition law well.

In 2014, similar research found that [just three percent of businesses know it very well](#).

KEY TAKEAWAYS

Margrethe Vestager's latest antitrust investigation has seen her implement an interim injunctive relief on Broadcom. The intervention has not been used by the Commission in 18 years;

In spite of risks, research suggests business still doesn't take antitrust seriously;

Sources in smaller enterprises say tougher antitrust regulation is welcomed.

"Compliance and training can be time-consuming and even costly, but these are preferable to the damage that can be caused by competition enforcement, by potential fines and other liabilities that may flow," added Heim.

Read more: [Antitrust regulators struggle with big data](#)

Harry Broadman, partner and chair of the emerging markets practice at the Berkeley Research Group and former member of the Committee on Foreign Investment in the US (Cfius), agreed.

"Companies, especially in the high tech sector, whether in the EU or the US, need to take a proactive stance to both their conduct and acquisition strategies, to not raise the eyebrows of competition authorities," he said.

"The focus is not only on firms who have already achieved market dominance, but on mergers and acquisitions of even mid-sized entities that could result in dominant market positions," he continued.

Dele Atanda, CEO at MetaMe, an AI-focused digital startup operating in both the US and EU, explained that antitrust regulation is just not a company priority – and that he does not fear it.

"I welcome it," he said. "Antitrust legislation enables us to be better champions for consumers, businesses and society as a whole."

Atanda added that strong antitrust legislation, such as that in the EU, has enabled his company to deliver value to people and companies from their data.

"Most startups like ours are unlikely to need to pay much attention to antitrust legislation as we have a very low risk of being investigated for this at our stage," he summarised.

Atanda also noted US-EU convergence.

"EU regulators tend to be more focused on privacy related issues while US regulators tend to be more focused on freedom related issues," Atanda pointed out. "That said, both are in rare sync realising that privacy and antitrust abuses are not only casual to each other, but mutually reinforcing."

Calling on regulators to address anti-competitive and data privacy activity if they want to change the status quo, Atanda continued: "At the end of the day, both come down to the same kind of tyranny and abuse of power. Different faces of the same hydra-like monster."

Why Broadcom, and why now?

The Commission's investigation of Broadcom focused on five areas of business that related to the manufacturing and sale of TV and modem chipsets.

It concluded that interim measures were needed in two areas: exclusive purchasing obligations, and the grant of rebates or other advantages conditioned on exclusivity or minimum purchase requirements.

As a company in a dominant position, the Commission deduced that Broadcom was restricting competition.

Vestager's decision to impose interim measures aren't surprising. Recent moves by [the French competition authority](#) Concurrences, and [her own stance](#) have been a sign of endorsement. In an innovative market such as tech, competition authorities need to act faster.

While regulatory fines have made the headlines recently, previous EU competition targets such as Alphabet made \$38.944 billion in Q2 of 2019 alone – meaning a \$2.7 billion fine has limited impact.

"Tactics like loyalty rebates are effective for small coffee shops," said Charles Delingpole, CEO at consultancy ComplyAdvantage, pointing out that when used by companies such as Alphabet, they potentially prevent competitors from entering the market at all.

Europe's saviour?

Since taking up the position, Vestager's proactive approach has turned heads.

Having secured a new term with the directorate-general for competition (DG Comp), and a [fresh role as the European Commission's executive vice president for a Europe fit for the digital age](#), there's no doubt in the market that her approach will be maintained.

"She will continue to be an activist policymaker, and that has pluses and minuses. My own view is that in some cases, notably the blocking of the Alstom-Siemens merger, she made the correct, and courageous, policy call," Broadman continued.

Read more: [The GE-Alstom saga: beginning to end](#)

Delingpole also praised the commissioner who one source has referred to as the world's most influential competition regulator.

"If a manufacturer agrees only to buy from Broadcom, and not from an innovative third-party, innovation is going to be a lot harder, particularly in Europe," he added.

Delingpole believes smaller companies need not worry about Vestager's approach.

"Companies should actively welcome their protection against an over-dominant Silicon Valley," he said.

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Many feel the Broadcom case shows that Vestager and her DG Comp colleagues are unafraid of pushing the envelope to ensure that companies do not abuse their dominance.

"In most advanced countries, whether merited or not, the high tech sector has moved into the bullseye of competition authorities," summarised Broadman, noting both legislators and executive branch policymakers. "This focus is not going to end anytime soon."

* **The link to the original article is: <https://www.iflr.com/Article/3903781/Corporate/Broadcom-decision-antitrust-still-not-in-house-priority.html>**

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