

Federal Trade Commission v. Qualcomm Incorporated: Post-Mortem

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This teleforum will investigate the potential impact of the pending decision in the FTC's controversial Section 5 lawsuit against Qualcomm, brought days before the change in administration two years ago, with the incoming acting chair writing an unusual and biting dissent. Among other things, the FTC is seeking to permanently enjoin Qualcomm from engaging in certain industry-wide patent licensing practices, which the FTC alleges impair competition in violation of the antitrust laws. However, it has been argued that the FTC's novel theory fails to meet the burden of proof by showing actual evidence of harm, as clarified recently by the US Supreme Court in *Ohio v. American Express Co.* The consequences of FTC's legal theory, if upheld by the court, could reach well-beyond patent licensing arrangements. Indeed, some experts fear that changes to Qualcomm's business model will undermine U.S. national security interests and cede American leadership in the 5G race to a foreign adversary—the same concerns echoed last year by the Committee on Foreign Investment in the United States (CFIUS) when it recommended that the President permanently prohibit Broadcom from acquiring Qualcomm.

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