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Antitrust rules not enough to stop Broadcom's post-VMware conduct, stakeholders allege

The European Commission must act to stop Broadcom's potentially exploitative behaviour since its acquisition of VMware, four business associations have told the agency.

Last week, four associations representing business users of digital products sent a letter to European Commission president Ursula von der Leyen claiming that Broadcom's changes affecting VMware products could signal an exploitative abuse of dominance.

Cigref, Beltug, CIO Platform Nederland and Voice allege that since the merger closed in November, Broadcom has imposed significant price hikes, failed to fulfil contractual arrangements, and blocked the reselling of licences, among other complaints.

The groups, which collectively represent more than a thousand large companies using digital products and services, urged von der Leyen's agency to take action to curb Broadcom's "unethical" behaviour.

Ronald Verbeek, the director of CIO Platform Nederland, told GCR that competition law enforcement does not appear to "offer any short term solutions" to address the conduct.

"Processes take a long time or pose risks for retributions, as the dependence on the supplier's product is so large," he said. "Furthermore, the product is often acquired through intermediaries, so who are you even going to take to court and how is that going to improve things?"

He added that such intermediaries are often "as much a victim" of the policy changes as business users.

A Cigref spokesperson echoed this, telling GCR that competition law could move too slowly to end Broadcom's alleged behaviour.

“Firstly, the economic repercussions stemming from Broadcom's practices seem to transcend the limits of competition law regulation, particularly with regard to regulatory response times,” the spokesperson said.

The association also warned that without competition enforcers' ability to influence the company's behaviour in the short term, coupled with a lack of opposition from political authorities or the possibility of effective judicial intervention, there is a “real risk” that Broadcom's practices will spread to the entire technology sector.

This would specifically apply to big technology companies that have a “real opportunity” to lock customers in, the spokesperson added.

The commission launched an in-depth probe in December 2022 into Broadcom's acquisition of VMware, citing concerns that the former could foreclose hardware rivals from accessing the latter's products.

It conditionally cleared the acquisition in July last year, after the parties promised to allow rival computer hardware suppliers access to VMware's cloud computing software.

This fully addressed its concerns that the deal would otherwise incentivise the buyer to foreclose Marvell, its biggest rival, the agency said.

But the agency also pulled back several concerns raised ahead of the Phase II probe, which included a finding that Broadcom lacks a dominant position in the market for storage adapters and network interface cards, meaning it will continue to face competition from rival suppliers.

A commission spokesperson confirmed to GCR on Sunday that the agency has received information indicating that the semiconductor manufacturer is amending “the conditions of VMware's software licensing and support” following its acquisition of the company.

The agency has sent Broadcom requests for information to “investigate this development,” they added.

The spokesperson also confirmed receipt of the letter addressed to von der Leyen, noting the agency would “reply in due course”.

In a blogpost last month, chief executive Hock Tan acknowledged that the “level of change” since the tie-up has “understandably created some unease among our customers and partners”.

But he noted the changes were to further Broadcom’s goals of “innovating faster, meeting our customers’ needs more effectively, and making it easier to do business with us.”

A Broadcom spokesperson said that under its “modernised portfolio for cloud infrastructure”, VMware Cloud Foundation, the typical enterprise customer will generally pay lower ownership costs than when using the public cloud.

At the same time, VCF is “providing more value, faster innovation, and meeting customers’ needs more effectively,” they added.

The spokesperson also noted that VMware has been transitioning to a subscription-based model since 2019, adding that this is “the model all major enterprise software providers deploy today because it enables continuous innovation for our customers.”

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