

Despite the fanfare, politicians and regulators may yet have something to say about Nvidia's takeover of Arm

Blog post by Senior Associate Max von Thun, 15 September 2020

The planned takeover of semiconductor design firm Arm has been the talk of the town in recent days. The proposed deal between Arm's owner Softbank and US company Nvidia puts a \$40 bn price tag on the leading UK-based tech company and would be the largest ever M&A transaction in the history of the semiconductor industry. But despite the fanfare, the transaction looks set to face a wall of political and regulatory scrutiny and a successful completion of the transaction cannot be taken as given. Moreover, a future US-owned Arm could face a whole new set of challenges stemming from the US-China conflict.

In the UK, where politics and policy have become unpredictable and issues of national sovereignty and industrial autonomy have come to the fore, an array of voices are expressing concerns and hostility. They range from the opposition Labour party and trade unions through to Financial Times columnists and the mainstays of the right-wing print media, The Telegraph and the Daily Mail. A potential public inquiry by Parliament's Business, Energy and Industrial Strategy (BEIS) Committee, as seen in previous high-profile takeovers, would increase the temperature further. A Downing Street spokesperson is already reported as saying the transaction will be "scrutinised in close detail".

The government's main tool when it comes to investigating and blocking foreign takeovers is the 2002 Enterprise Act and its public interest provisions. These allow the government to intervene in mergers when they raise national security, media plurality, financial stability or (a recent addition) public health concerns and meet specific thresholds for turnover or share of supply. In the past few years, several reforms have been introduced lowering these thresholds for critical technologies including computer processing units (CPUs) and artificial intelligence, both of which would arguably apply in Arm's case.

Of the existing criteria allowing intervention on public interest grounds, the only one that could conceivably apply is national security, yet even here the rationale for doing so is rather weak. Arm does not have a notable presence in military technology, while the UK government is highly unlikely to perceive US ownership as a national security threat in itself.

Another route for intervention is for the government to request commitments from Nvidia with regards to Arm's existing headquarters, jobs and investment in the UK. Following changes to the UK's Takeover Code in 2015, the government now has the power to request legally binding commitments known as 'post-offer undertakings' (POUs) in takeovers involving publicly-listed companies. While Arm has been private since 2016, the Code also applies to companies whose securities have been publicly traded at any point in the past decade.

Another way in which the deal could be delayed or even derailed in the UK is through a more straightforward competition investigation by the Competition and Markets Authority (CMA), the UK's competition regulator. Although Arm and Nvidia largely operate in different parts of the semiconductor

industry, the CMA may well be concerned that a tie-up would harm other businesses as well as consumers through an overall reduction in competition.

The fact that Nvidia's takeover threatens Arm's neutrality as a provider of semiconductor technology to numerous chipmakers (including Nvidia rivals Qualcomm, Samsung and Intel) is particularly salient in this regard. A formal CMA investigation, depending on how far it proceeds, could delay the acquisition by up to eight months.

Looking beyond the UK, there are a number of other political and regulatory threats to the Nvidia-Arm takeover that are worth monitoring. As in the UK, the European Commission - the EU's competition authority - could decide to investigate the potential effects of the deal on Nvidia's rivals in Europe, particularly in terms of access to and pricing of Arm's technology. While the commission's merger investigations are restricted to reviewing competition concerns, its antitrust unit (DG Competition) could come under pressure from other parts of the commission pursuing different policy agendas.

For example, internal market commissioner Thierry Breton has recently emphasised the need for Europe to develop greater autonomy in advanced technologies including semiconductors in response of US-China tensions, an aspiration that could be set back by the acquisition of Arm by an American company.

A number of other risks emanate from the US. CFIUS, the agency responsible for US investment screening, is also unlikely to block the acquisition on national security grounds. Although unlikely, the Department of Justice or the Federal Trade Commission (the US antitrust authorities) could choose to review the deal's impact on competition following pressure from Nvidia's rivals. More plausibly, Arm's long-term prospects could be threatened by restrictions on its foreign business dealings imposed by the US Department of Commerce.

As in the case of recent export restrictions applied to trade with Huawei, the US government could act to prevent both Arm and companies that use Arm technology (including non-US firms) from doing business with Chinese entities. As both Arm and many of its customers earn a substantial share of their revenues in China, just the mere prospect of such restrictions could be enough to trigger a search for alternative suppliers.

In summary, while the chances of the deal being blocked by regulators or governments remain low, the risk to Arm's future from being turned into a pawn in the wider US-China conflict should not be underestimated.