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Republican congressman spars with Wong-Ervin over Qualcomm

[Charles McConnell](#)

30 June 2017

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In a hearing yesterday, a Colorado congressman pushed back against assertions by a former Federal Trade Commission official that Qualcomm has not engaged in a pattern of anticompetitive behaviour, and that the Chinese and Korean fines against it were not warranted.

Representative Ken Buck pointed to Koren Wong-Ervin's written and oral testimony before the House antitrust subcommittee during yesterday's hearing on recent trends in international antitrust. Wong-Ervin, who was a senior FTC advisor on intellectual property and international antitrust before heading George Mason University's Global Antitrust Institute, said the [Chinese](#) and [Korean](#) fines against Qualcomm were not based in sound legal theory.

However, Buck insisted that her testimony did not dispute the facts of Qualcomm's alleged behaviour, and asked if she was suggesting "that the fact that a foreign government has found a United States corporation to have engaged in anticompetitive behaviour [is] in and of itself somehow wrong or unfair."

On top of the fines imposed on Qualcomm in Korea and China, competition authorities in the [EU](#), Taiwan and [US](#) are also scrutinising the company, Buck said, and have thresholds before they would direct resources to begin and conduct an investigation.

"Do you know of any investigation of Qualcomm's anticompetitive behaviour by the EU, Taiwan, the United States that has been fully investigated and where a country has come to the conclusion that Qualcomm has not engaged in anticompetitive behaviour?" he asked.

Wong-Ervin conceded that she did not, but said the FTC litigation against Qualcomm is in its beginning stages, where the agency has [pleaded](#) its case but not proven it. She added that the Chinese decision was based on excessive pricing, which is not an antitrust violation in the US – especially as it relates to intellectual property, so as not to diminish incentives to innovate.

Some antitrust agencies outside the US do not need a certain threshold to begin an probe, Wong-Ervin said, and indeed must investigate all complaints.

"China is largely an implementer of technology, not an innovator," Wong-Ervin said. "They have a lot of manufacturers that complain and say 'I want lower royalties.' They are obligated – they don't have to have a good-faith basis – they have to investigate."

Decisions by foreign jurisdictions against Qualcomm, Nokia, Microsoft, Merck and others do not boil down to simply attacking American companies, Wong-Ervin said. Those

competition authorities' decisions "all have in common the lack of an effects-based approach; the lack of evidence of any actual harm to the competitive process or consumers."

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