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UK National Security and Investment Act 2021 (NSIA) – Annual Report 2022

June 28, 2022

The UK Government recently published its Annual Report on the application of the National Security and Investment Act 2021 (NSIA). This first annual report covers the period from the commencing of the NSIA (4 January 2022) to 31 March 2022. Going forward, subsequent Annual Reports will cover a full calendar year period.

Key findings of the Annual Report include:

- In the first three months of the NSIA's operation, 222 notifications were received. Of these 222 notifications, 17 were called in for review. Of the 17 transactions called in for review, three were cleared during the first three month period and none were subject to a final order. The other 14 called-in transactions were still being investigated by the Annual Report's reporting deadline.
- Of the 222 notifications received, 196 were mandatory notifications, 25 were voluntary notifications and one was a retrospective validation application. The number of notifications received is slightly less than the number of qualifying acquisitions that have been notified. This is because the Government has, in rare cases, accepted a single notification to cover multiple qualifying acquisitions (e.g., in relation to internal group reorganisations).
- Several mandatory notifications were rejected because they should have been voluntary notifications and one mandatory notification was rejected because the acquisition had already completed and should have been submitted as a retrospective validation application. Other notifications were rejected because they did not include enough information about the acquisition or the involved parties, or the notification covered multiple qualifying acquisitions that have been submitted as separate notifications.
- The average time to accept a mandatory notification as complete (i.e., containing all required information) is four working days, whereas the average time to accept a voluntary notification is five working days.
- On average, mandatory notifications subject to a call-in review were reviewed in 24 working days whereas voluntary notifications were subject to an average 22

working day review period. Decisions in relation to all transactions called in for review were reached within the 30 working day deadline.

- Of the 17 sectors subject to the mandatory notification process, while notifications were received in relation to all sectors the five most common sectors were: (i) Defence; (ii) Military and Dual Use; (iii) Critical Suppliers to Government; (iv) Artificial Intelligence; and (v) Data Infrastructure. Voluntary notifications related to a wide range of sectors. The top five sectors for voluntary notifications were: (i) Professional, scientific and technical activities; (ii) Data infrastructure; (iii) Other service activities; (iv) Energy; and (v) Computing hardware.

Key Implications for Investors

Together with a very broad jurisdictional scope and no safe harbours, the measures contained in the NSIA impact a very wide range of transactions. The 2022 Annual Report evidences that in the first three months of the NSIA's operations parties are routinely notifying the UK Government about relevant transactions. Where a transaction has any UK nexus the NSIA regime and, if applicable, notification process will need to be factored into deal viability issues, contractual conditionality and transactional timetabling at an early stage.