

## UK Publishes First Annual Report on the National Security and Investment Regime

June 21, 2022

On June 16, 2022, the UK government published its first [annual report](#) on the operation of the UK's National Security and Investment (NSI) regime, covering the first three months since the regime came into force on January 4, 2022. While the report stresses that long-term trends can't be identified in such a short period of time, the volume of notifications is slightly below the lower number of filings initially anticipated. This may be attributable to the slowdown in M&A activity, but it suggests that the regime (at least initially) is not leading to a surge in benign notifications, which is reassuring.

Overall, the report concludes that the regime appears to be operating well, with the government keeping to its statutory timeframes and only a minority of deals being 'called-in' on national security concerns. No penalties have been imposed on parties for non-compliance, and there have been no criminal prosecutions or judicial reviews of decisions taken under the new regime.

We have summarised below our four key takeaways from the report.

### **1. There were fewer notifications than originally anticipated**

In the first three months of the regime coming into force, the government received 222 notifications, of which 196 were mandatory filings, 25 were voluntary, and one was a retrospective validation application for a transaction completed without approval. Out of the 222 notifications, 17 were 'called-in' for further assessment. If this trend continues, it means that notifications will reach approximately 900 per year, lower than the 1,000 to 1,830 originally estimated. The 'call-in' numbers will be around 68 per year, which is running at approximately the anticipated rate of 70 to 95 per year. The report suggests that the figures may be lower than estimated due to a general decline in M&A activity towards the end of last year, which may have continued into the first part of this year. In any event, the report notes that it only covers the first three months of operation, so limited trends or patterns can be inferred from the data.

### **2. Mandatory notifications most commonly fell within the defence sector, while voluntary notifications most commonly fell within professional, scientific and technical activities**

While the government received mandatory notifications across each of the 17 specified sectors of the economy, the five most common sectors were defence, military and dual-use, critical suppliers to government, artificial intelligence, and data infrastructure. Interestingly, the government received the fewest mandatory filings in synthetic biology, which may suggest that the sector definition is unambiguous. For voluntary notifications, the five most common areas related to professional, scientific and technical activities, data infrastructure, other service activities, energy, and computing hardware.

### **3. Of the 17 transactions 'called-in' for further assessment, three were cleared and 14 were still being assessed as of March 31, 2022**

Of the 17 'called-in' transactions, the majority were assessed after a mandatory notification. The main sectors in scope were

military and dual-use, defence, and critical suppliers to government.

#### **4. The 30-working day review period is working well, with few notifications being rejected for being incomplete**

According to the report, the average time for the government to confirm that a mandatory notification is complete is three working days, which is consistent with our experience in practice. Only a small number of notifications have been rejected as incomplete for failing to include enough information about the transaction or covering multiple acquisitions that should have been submitted as two notifications. Indeed, it has been reported that several mandatory notifications were rejected because they should have been submitted as voluntary filings.

The statutory time limit for the government to 'call-in' a notification once accepted is 30 working days. The government has stayed within this time limit for every notification received, with the shortest review period taking only 11 working days.

#### **What does this all show?**

- Despite the broad scope of the UK NSI regime and the ambiguity of certain sector definitions, the number of notifications during the relevant period is reassuring and suggests that the regime may not be leading to a surge in benign notifications.
- The government is responding quickly to notifications and keeping to the statutory timeframes, which is good news for businesses.
- While it is not surprising that the government is 'calling-in' transactions in defence and military and dual-use, companies are reminded that deals involving cutting-edge technology such as artificial intelligence and data infrastructure are also being closely scrutinised.
- The government has not shied away from using its 'call-in' powers. While no specific deals have been disclosed in the report, two 'call-ins' were publicly announced in May 2022 in the microchip and telecommunications sectors. Businesses should expect the government to continue to use these powers to scrutinise and intervene in transactions on national security concerns.
- For the relevant period, the government has not blocked any deal on national security concerns nor has it imposed any conditions to mitigate such concerns. Again, it's too early to draw any conclusions here, but it will be interesting to see how the situation evolves in the coming months.
- On the same date the annual report was published, the government also published a [memorandum of understanding](#) on the operation of the NSI regime, establishing a framework of cooperation, coordination and information sharing between the UK Competition and Markets Authority (CMA) and the Department for Business, Energy and Industrial Strategy (BEIS), the body in which the Investment Security Unit (ISU) sits. While the memorandum does not give rise to any legally binding obligations on the part of the CMA or BEIS, it is a statement of intent which will be taken into account by the relevant staff at each body. Of note, the memorandum provides that BEIS and the CMA may seek to share information on transactions being considered under their respective legal frameworks to enable effective coordination and alignment. The CMA will, for example, continue to engage on an informal basis with BEIS in relation to mergers that are notified to the CMA or which the CMA becomes aware of which might be relevant to the ISU. In addition, where the CMA is informed that an acquisition has been 'called-in' by the ISU, the CMA will endeavour to notify (and update, as appropriate) the ISU on the status of a particular merger, and the ISU will take similar steps. Businesses should therefore anticipate closer cooperation and information sharing between the two bodies going forward.

Please reach out to us if you have any questions about the UK NSI regime.

*Cooley trainee solicitor [Victoria Barlow](#) also contributed to this alert.*

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