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UK NSIA Investment Controls: Insights for Dealmakers from the Latest Data

What does the latest data tell dealmakers about enforcement and remedy trends?

Introduction

The UK government's latest [annual report](#) on the National Security Investment Act 2021 (NSIA) regime, covering the 12 months to 31 March 2024, confirms that only a fraction of transactions are "called in" for close review; and remedies or prohibition are imposed on an even smaller proportion of those transactions.



Call-ins

- The proportion of transactions called-in for detailed review has declined in 2023-24 compared to 2022-23 (4.4% vs 7.2% of notifications).
- Of the 37 call-ins in 2023-24, 15 (40%) were filed on a voluntary basis, as opposed to requiring mandatory review. Dealmakers should always consider whether it is advisable to notify a transaction as sensitivities are more dynamic than the underlying 17 sensitive sectors requiring mandatory notification.
- Unsurprisingly, 41% of the deals called-in involved Chinese investors. However, 39% of the call-ins involved domestic UK investors. This reinforces that the NSIA is not only a "foreign" direct investment control regime.
- Four non-notified deals were called-in (down from 10 in 2022-23), confirming that the government continues to monitor deal activity proactively.



Enforcement

- The vast majority of transactions are cleared unconditionally (99.5%), with only five giving rise to enforcement action (prohibition or commitments) in 2023-24, compared to 15 in 2023-23. The enforcement rate has picked up in the current period, however, with six final orders in the five months to 31 August 2024.
- Ten transactions were withdrawn in 2023-24, suggesting that investors could not see a path to clearance (e.g., because they would have been blocked or only approved subject to unacceptably onerous commitments).
- All five final orders in 2023-24 were imposed on investors from Five Eyes or traditionally “friendly” jurisdictions (UK, USA, Canada and France) confirming that Western investors are not immune from scrutiny.
- None of the five final order cases in 2023-24 involved Chinese investors, although this was the case for eight out of the 10 withdrawn deals.
- Four of the five final orders related to defence, military or dual-use sectors, which continue to be the most sensitive sectors from a national security perspective.
- The content of commitments is not discussed in the report but the five final orders included:
 - Notification requirements to keep the government informed of changes to deal terms, premises occupants or customers;
 - Information ringfencing requirements;
 - Obligations to ensure continued supply to the UK government;
 - Commitments concerning corporate governance;
 - Obligations to keep R&D and manufacturing within the UK; and
 - Due diligence checks on customers.



Review periods

- The data in the report confirm that “stop the clock” mechanisms regularly extend statutory deadlines:
 - Cleared deals took around 22 additional working days on top of the 26 average number of statutory working days from call-in to clearance.
 - Deals where enforcement action was taken took an additional 19 working days over the average of 34 statutory working days from call-in to final notice.
- Review periods overall appear to be getting shorter with the five final orders in 2023-24 taking an average of 34 working days to be imposed compared to 81 working days in 2022-23. However, the data confirm our experience that there can be significant variation in the time taken to reach a final decision, and deals concerning investors from “sensitive” jurisdictions may take longer.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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