

Client Alert:

NSIA – Building Momentum

24 October 2022

Recently, the U.K.'s Department for Business, Energy & Industrial Strategy ("**BEIS**") issued its first decisions prohibiting transactions under the National Security and Investment Act ("**NSIA**") regime. These transactions remain the only deals that have been blocked by BEIS to date:

- **The takeover of Pulsic Limited ("**Pulsic**")**, an electronic design automation company, by a Hong Kong rival **Super Orange HK** – BEIS [noted](#) that the risk to national security arose from Pulsic's ownership of intellectual property ("**IP**") and software products, which could facilitate the building of cutting-edge integrated circuits that could have dual-use application (civilian or military supply chain) and such products could potentially be used to build defence or technological capabilities.
- **The licensing of the IP relating to specific sensitive technology owned by the University of Manchester by a Chinese company, Beijing Infinite Vision Technology Company Ltd ("**BIVT**")** – interestingly, this transaction did not involve the acquisition of shares which would likely have required a mandatory notification and instead concerned a licensing agreement that would have enabled BIVT to use the IP and fell within the remit of the voluntary notification rules. BEIS [identified](#) that the transfer of the IP under the licensing agreement would give rise to national security concerns due to the dual-use application of the underlying technology and the potential of it being used to build defence or technological capabilities, which would pose a threat to national security.

The decisions suggest that BEIS is beginning to take more of an interventionist approach than it did initially and it is comfortable scrutinising transactions falling outside of basic share and asset purchases. Also, given both blocked deals relate to companies within the tech sector, it shows the flexibility of the NSIA regime to address threats posed by new and emerging technologies.

Earlier this year, BEIS also retrospectively called-in the acquisition of Newport Wafer Fab ("**NWF**"), the U.K.'s largest semiconductor producer, by Nexperia, a Dutch subsidiary of Chinese owned Wingtech Technology Co. Ltd. The decision has been delayed multiple times and BEIS has provided no commentary to indicate which outcome it is inclined to pursue. However, [reportedly](#), *"the UK government plans to call for Nexperia to reduce its ownership of the company substantially"* and NWF may also end up being returned to its original owner Drew Nelson, who has recently teamed up with the private equity group Palladian Investment Partners to make a bid for the company.

Notwithstanding the focus on Chinese acquirers in the deals blocked to date, the NSIA regime is jurisdiction agnostic and transactions involving acquirers based in a variety of different countries are being closely scrutinised. This is evident as BEIS has called-in and investigated multiple deals across the board, to list a few:

- i. A proposed acquisition of an aircraft products manufacturer Ligeance Aerospace Technology Co. Ltd by Sichuan Development Holding Co. Ltd (which is a wholly State-owned enterprise funded by the Sichuan Provincial Government) was [cleared](#) by BEIS on 10 October 2022 (subject to conditions);
- ii. A proposed \$7.3 billion merger of the London-based satellite communications company Inmarsat and its U.S. rival, Viasat Inc., was [cleared](#) on 15 September 2022 following the NSIA review (though note the U.K.'s Competition and Markets Authority ("**CMA**") has subsequently announced that the acquisition raises potential competition concerns and an in-depth investigation into the deal was launched on 14 October 2022);

Client Alert: (continued)

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- iii. An acquisition of additional shares in BT Group Plc by Altice (owned by Patrick Drahi, a French billionaire) bringing Altice's total shareholding up to 18 percent (the initial review period was extended but the transaction was subsequently [cleared](#) by BEIS on 23 August 2022) also illustrates the willingness of BEIS to scrutinise acquisitions of shareholdings falling below minimum thresholds requiring mandatory notification;
- iv. An acquisition of additional shares in the Royal Mail by Vesa Equity (an investment vehicle owned by the Czech billionaire Daniel Křetínský), which would increase Vesa's current stake to above 25 percent (the application was [submitted voluntarily](#) and a decision is still pending); and
- v. An acquisition of a U.K. company Sepura Ltd by a UK acquirer Epiris LLP (a private equity firm) was [cleared](#) by BEIS on 14 July 2022 (subject to conditions).

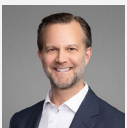
This summer, BEIS published its first [annual report](#) (the “**Report**”) regarding the first three months of the NSIA's operation and during that time there were no final orders reported. Seven months on, BEIS has published [nine final orders](#), blocking or clearing transactions subject to conditions. There are also multiple examples of deals that it has allowed following review. It is difficult to draw conclusions as to any emerging trends given the relatively limited number of decisions to date. However, it is evident that BEIS has shown increasing willingness to exercise its powers, with the number of decisions given likely to gain momentum as more deals are being reviewed.

It is also interesting to note that the Report notes that just 222 notifications (mandatory and voluntary) were made in the initial three-month period from 4 January 2022 to 31 March 2022. Of these, only 17 were called in for further scrutiny. An Impact Assessment conducted by the U.K. government had initially estimated 1,000-1,830 notifications and 70-95 call-ins per year, which were widely seen as conservative estimates. However, on a simple extrapolation, such estimates were actually lower than the numbers seen in reality.

It is also important to bear in mind that the NSIA regime does not operate in isolation. A number of statutory and regulatory regimes operate alongside it. Crucially, information shared with BEIS may be shared with these other bodies. For example the CMA and BEIS recently established a [framework for cooperation, coordination and information sharing on relevant transactions](#). Clients should keep in mind that even where their transaction is cleared under the NSIA, there may still be concerns under other regulatory regimes.

We will continue to monitor the developments in this area to help our clients navigate transactions under the new NSIA regime.

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