

UK Government Prohibits Third Deal Under Its New National Security and Investment Act

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SUMMARY

The UK government has blocked three transactions under its new foreign direct investment regime since July, the most recent being last week. These three decisions are the first examples of the UK government exercising its powers under the new regime to prohibit deals that pose a threat to UK national security. The common denominator in two of those has been protecting the UK's semiconductor supply chain.

BACKGROUND

The [National Security and Investment Act](#) (the "NS&I Act") came into force on 4 January 2022 and introduced a new, standalone and wide-ranging regime headed by the UK Secretary of State for Business, Energy and Industrial Strategy ("BEIS"). As set out in a [previous update](#), the NS&I Act provides for a hybrid system of both mandatory and voluntary notifications as well as a "call-in" mechanism whereby the UK government can review transactions up to five years post-completion. Once BEIS has reviewed a transaction, they can make a final order preventing, remedying or mitigating a national security risk. BEIS published its first annual report in June 2022, covering the operation of the regime from January–March 2022. The report showed that out of 222 notifications received, only 17 transactions had been called in for a full national security assessment. The report also confirmed that BEIS had not at that point prohibited any deal from going ahead or imposed remedies as a condition for clearance. However, in July 2022, that changed and BEIS has since blocked the following three deals.

University of Manchester and Beijing Infinite Vision Technology

The first prohibition related to an IP licensing agreement between Beijing Infinite Vision Technology Company Ltd ("Beijing Infinite") and the University of Manchester. The two parties entered into a licence allowing Beijing Infinite to exploit and commercialise the university's vision-sensing technology (also known as [SCAMP-5 and SCAMP 7](#)). The technology in question had been developed to enable the next generation of autonomous robots. Interestingly, as this was a transaction relating to IP (i.e., assets) rather than an equity purchase, it was not subject to a mandatory filing requirement but was instead reportedly voluntarily notified. Once the deal had been

notified, the government “called in” the deal for a full national security review. On 20 July 2022, BEIS published [a final order](#) preventing the IP transfer under the licencing agreement from taking place. The order notes that BEIS considers the technology in question to be “dual-use”, presumably because of its potential use in improved targeting for missile systems, drones and tanks—and that it “*could be used to build defence or technological capabilities which may present national security risk to the UK*”.

Pulsic Limited and Super Orange HK Holding

The second transaction to be prohibited was the acquisition of Pulsic Limited (“Pulsic”) by Super Orange HK Holding Limited, a Shanghai-based developer of chip-design software. Pulsic is a UK-based software company specialising in electronic design automation (“EDA”) and placement and routing software. On 17 August 2022, BEIS published [a final order](#) prohibiting the transaction. The order confirms that BEIS considers Pulsic’s EDA products (including the associated IP, knowledge, processes and techniques for the software) to be “dual-use” as they “*facilitate the building of cutting-edge integrated circuits that could be used in a civilian or military supply chain*”. BEIS note that the tools “*could be exploited to introduce features into the design, including automatically and/or without knowledge of the user that could be used to build defence or technological capabilities*”. The U.S. Commerce Department has recently imposed [export restrictions on four technologies](#) including similar advanced chip-design software necessary to produce next-generation processors, demonstrating this prohibition should be seen as part of a more widely shared concern among governments to protect such technology.

Newport Wafer Fab and Nexperia

Most recently, last week, the long-running uncertainty concerning the acquisition of Newport Wafer Fab (“Newport”) by Chinese-owned semiconductor manufacturer Nexperia came to an end when that deal was also prohibited. Newport runs Britain’s largest chip-making facility and manufactures the silicon wafers that microchips are etched onto. Nexperia, a Netherlands-based company, is ultimately owned by Wingtech, a Shanghai-listed company whose shareholders include those with links to the Chinese government.

The transaction, which had completed on 5 July 2021, [was called in for review](#) on 25 May 2022. The review has been lengthy, with the initial 30-day review period initially being extended by the statutory maximum of 45 days, again by four weeks and then for an indefinite period on 3 October 2022. Reports suggest that the cycle of three Secretaries of State through BEIS during this time contributed to the delays.

The [final order](#), published on 16 November 2022, requires Nexperia to divest itself of at least 86% of its holdings in Newport. The order notes that a national security risk arises from the “*technology and know-how that could result from a potential reintroduction of*

compound semiconductor activities at the Newport site”, which may “*undermine UK capabilities*” and that “*the location of the site could facilitate access to technology and expertise in the South Wales Cluster*” (a group of major industrial companies in the region), which could “*prevent the Cluster being engaged in future projects relevant to national security*”.

This case appears to be the first use of BEIS’ retroactive powers to review a transaction that closed prior to the entry into force of the NS&I Act in January 2022. It is of particular interest given the intense focus placed on it by government representatives in both the United Kingdom and the United States. The transaction was first reviewed in 2021 by Sir Stephen Lovegrove (Boris Johnson’s national security adviser) in response to recommendations by the UK Foreign Affairs Committee. However, the review reportedly found that there were no reasons to interfere with the purchase on specific security grounds as Newport’s technology was not sufficiently state of the art. The transaction then garnered new attention when nine U.S. congressmen signed [a letter to Joe Biden](#) in April 2022 demanding “*urgent action*” to overturn the sale.

Nexperia, in its [press release](#), has announced that it will appeal the decision; however, the only available route would be to bring a judicial review, which is practically more difficult than a full merits challenge.

DECISIONS SUBJECT TO CONDITIONS

Aside from these prohibition decisions, BEIS has also intervened to a lesser extent in other transactions and has also shown willingness to be creative in the conditions that it imposes. Conditions ordered to date by the UK government have included requiring R&D and manufacturing capabilities to stay in the United Kingdom (see the [final order](#) in relation to the acquisition of CPI Intermediate Holdings, Inc by Iceman Acquisition Corporation), ring-fencing sensitive knowledge (see the [final order](#) in relation to the acquisition of Electricity North West Limited by Redrock Investment Limited), mandating additional cyber-security measures, personnel restrictions and physical security measures such as restricting access to sensitive areas, controlling who from the parent sits on the target board and requiring notification for any future asset transfer. BEIS’s use of conditions for clearance appears to be part of a wider trend, at least within the European Union. Therefore, it is likely that we are going to see more of these types of behavioural commitments as a price for securing approval.

POTENTIAL IMPACT

When the NS&I Act was first announced, the UK government confirmed that it would take a “*targeted, proportionate approach*” under the new regime and that “*most transactions will be cleared without any intervention*”. Although that remains true, it is telling that we now have three prohibition decisions in recent months. BEIS has also

showed that it is willing to call in transactions that do not meet the mandatory thresholds, such as the [acquisition of a further 6% of BT's shares by Altice](#), owned by French billionaire Patrick Drahi. Altice already held a 12% interest, meaning that, post-transaction, Drahi became the largest shareholder in BT (although this still fell well below the 25% mandatory threshold). BEIS's decision to call in the transaction was all the more surprising given that Altice has an EU-based owner.

Investors investing into the United Kingdom or in UK assets should be aware that the UK government is taking a critical look at deals with possible national security implications, particularly those with investors from certain countries (as all prohibitions to date have related to Chinese investors). BEIS is also clearly willing to exercise its retroactive powers (as it did in the Newport deal). Although investors into any of the 17 sensitive sectors need to be aware of the risks, the [NS&I Act Annual Report 2022](#) showed that this is particularly true for the top five most common areas for mandatory notifications, i.e., defence, dual-use, critical suppliers to the government, artificial intelligence and data infrastructure. Given that the regime is still fairly new, it is yet to be seen how aggressive BEIS's approach will be to different types of transactions (e.g., minority acquisitions) and different foreign states (especially as the Altice/BT transaction was ultimately approved), but it is clear that the UK government will intervene when it deems necessary.

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