

Transaction Prohibition and New Guidance — Updates From the UK National Security Regime

The Department of Business, Energy and Industrial Strategy also issued its annual report and further guidance that could help stakeholders navigate the new National Security and Investment Act 2021.

Key Points:

- **First Prohibition Decision**
 - The UK's Department for Business, Energy and Industrial Strategy (BEIS) has issued its first prohibition decision using its powers under the National Security and Investment Act 2021 (NSIA) blocking an agreement between the University of Manchester (UoM) and Beijing Infinite Technology Company Ltd (Beijing Infinite) for the licensing of vision sensing technology.
- **Conditional Clearance Decisions**
 - BEIS has attached conditions to the acquisition by UK private equity firm Epiris of Cambridge-based Sepura Ltd (Sepura) to protect sensitive information and technology and mitigate national security risks.
 - In Parker-Hannifin's acquisition of UK defence manufacturer Meggitt, reviewed under the former national security regime, BEIS accepted undertakings from the parties to protect the stability of supply to the UK's armed forces and to enhance security measures at UK facilities.
- **NSIA Annual Report and Market Guidance Notes**
 - The appointment of liquidators and receivers may constitute a qualifying acquisition and in some scenarios may require mandatory notification.
 - Granting security over shares is not a notifiable event unless the security involves day-to-day control by the pledgee over the secured shares.
 - Corporate reorganisations may qualify for mandatory notification even if the ultimate beneficial owner remains the same.

First Prohibition Decision

On 20 July 2022, the Secretary of State for BEIS (the SoS) issued a final order regarding a licence agreement between UoM and Beijing Infinite, which entitled Beijing Infinite to exploit intellectual property for certain vision sensing technology (known as "SCAMP-5" and "SCAMP-7").

The SoS considered that the licensed technology had “dual-use” applications (i.e., it could be used for both civilian and military purposes) and could be used to build defence or technological capabilities that may present national security risks to the UK. SCAMP-5 and SCAMP-7 can be used for image sensors, locating pixels of interest on an image to enable feature mapping, read-outs, and feature extractions. The technology can also be applied to the vision systems of robots and unmanned aerial vehicles.

As the prohibited transaction was an asset deal, it will not have been subject to a mandatory notification requirement. Instead, it will have either been notified voluntarily by the parties or called-in for review by the SoS using its retrospective “call-in” powers under the NSIA. The decision underlines the potential risk of review (and prohibition) by BEIS of transactions that do not fall within the mandatory regime.

Conditional Clearance Decisions

BEIS has also recently attached conditions to two other transactions on national security grounds; one under the NSIA and one under the prior national security regime that has now been superseded by the NSIA.

Epiris/Sepura

On 14 July 2022, BEIS cleared the acquisition by Epiris of Sepura subject to undertakings. Sepura designs and develops digital radio solutions including terrestrial trunked radio devices used by emergency services in the UK. Epiris is a London-based investor, indicating that BEIS is willing to investigate acquisitions by UK acquirers.

BEIS' final order requires the parties to implement enhanced controls to protect sensitive information and technology from unauthorised access and to provide rights of access to premises and information so that compliance with the security measures can be audited.

Parker Hannifin/Meggitt

On 19 July 2022, BEIS conditionally cleared the acquisition by Parker Hannifin of UK defence manufacturer Meggitt. Meggitt is a UK manufacturer of components for the aerospace, defence, and selected energy markets.

As a result of the undertakings:

- **Security of Supply:** Parker Hannifin committed to honour existing contracts and to notify the Ministry of Defence (MOD) in advance if there is a material change to Meggitt's ability to supply the MOD.
- **Information Security:** The parties agreed to reinforce their commitment to site security arrangements protecting UK government information and to retain a majority of Meggitt's board of directors as British nationals resident in the UK.
- **Sovereign UK Capabilities:** Parker Hannifin committed to institute a government-approved control plan to prevent International Traffic in Arms Regulations controls applying to products designed and manufactured by Meggitt, allowing the MOD to add new technology.

NSIA Annual Report

On 16 June 2022, BEIS published its first “annual” report covering the first three months until 31 March 2022. The report provides a number of insights into the approach that parties are taking to the regime and the areas that BEIS is likely to focus on in the future. Key highlights from the report include the following:

- **Number of notifications:** BEIS received a total of 222 notifications in the first three months of the regime: 196 mandatory notifications, 25 voluntary notifications, and one request for retrospective validation.
- **Most common sectors:** The sectors giving rise to the most mandatory notifications were “Defence”, “Military and Dual Use”, and “Critical Suppliers to Government”, with 34%, 21%, and 20% of total notifications, respectively.
- **Use of call-in powers:** Of the 222 total notifications, only 7.7% were called in for a national security review. Again, the majority of these notifications related to the “Defence” sector (13 out of 17 notices).
- **Voluntary notifications:** 17 of the transactions that were the subject to a national security review related to voluntary notifications, reinforcing that such reviews will not relate exclusively to transactions falling within sectors requiring mandatory notifications.

Updated Guidance

On 19 July 2022, BEIS issued “Market Guidance Notes” (the Guidance) in relation to the application of the regime. Key takeaways include:

- **Temporary Acquisitions of Control:** BEIS has clarified that the appointment of liquidators and receivers may constitute a qualifying acquisition under the NSIA and may, in some circumstances, require mandatory notification. The NSIA does not treat rights exercisable by an administrator or creditors during insolvency proceedings as notifiable, however.
- **Security:** The granting of security over shares is not a notifiable event unless the security involves day-to-day control by the pledgee over the secured shares. However, the enforcement of such security where the secured shares are in a qualifying entity that is active in a mandatory sector may give rise to a notification requirement in certain circumstances.
- **Corporate Reorganisations:** The NSIA applies to corporate reorganisations of shareholdings in qualifying entities even when the ultimate beneficial owner of a qualifying entity remains the same post-reorganisation. If a new entity in the structure has acquired direct or indirect control over a qualifying entity active in a specified sector, this may give rise to a mandatory notification requirement.

Less than seven months after the NSIA came into force on 4 January 2022, these updates provide indications of how the new regime will take shape in the UK. Stakeholders should continue to monitor developments to understand how the regime could potentially impact their transactions.

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