UK FINANCE

Call for Evidence: National Security and Investment Act

UK Finance response

15 January 2024

National Security and Investment Act: Call for Evidence

(Questions 17 and 31 are not relevant to UK Finance response)

1 How the NSI Act works and how it is likely to be used

To what extent do you / your organisation agree with the following statements:

Question 8. I / my organisation understand(s) the types of risk the Government seeks to address through the NSI Act - required

- ○ Strongly Agree
- ◉ Agree (with respect to our Members)

UK Finance understands that the purpose of the NSI Act is to enable the UK Government to review transactions which could raise national security concerns and that the UK Government would like to prevent businesses or assets that are critical to the UK, e.g. essential infrastructure, defence assets, sensitive intelligence from being acquired by acquirers who might pose a threat to UK national security.

UK Finance supports the objective of the Call for Evidence given: (i) the mandatory regime is too expansive and often captures transactions which couldn't be considered to pose a threat to UK national security; and (ii) there would be a benefit to greater transparency around the UK Government's process and decision making in individual cases.

- ○ Neither Agree nor Disagree
- ○ Disagree
- ○ Strongly Disagree

Question 9. I / my organisation understand(s) how the NSI Act works and the requirements it places on my organisation. - required

- ○ Strongly Agree
- ◉ Agree - (with respect to our Members).
- ○ Neither Agree nor Disagree
- ○ Disagree
- ○ Strongly Disagree

Question 10. I / my organisation understand(s) the circumstances of an acquisition that make it more likely that the Government will call it in or impose a final order under the NSI Act. - required

- ○ Strongly Agree
- ○ Agree
- ○ Neither Agree nor Disagree

◉ Disagree

While the nature of UK Government concerns may be evident in very sensitive transactions it would be helpful for the ISU to share more information with the parties explaining why a transaction has been called in for a more detailed review or a final order is imposed. Additionally, the lack of public information published in final orders makes it more difficult to anticipate whether the UK Government will be interested in a particular acquisition and to plan deal timetables accordingly.

○ Strongly Disagree

Question 11. My / my organisation's approach to investment has changed since January 2022.

○ Strongly Agree

○ Agree

◉ Neither Agree nor Disagree

○ Disagree

○ Strongly Disagree

Question 12. The commencement of the NSI Act was an important factor in changing my / my organisation's approach to investment. - required

○ Strongly Agree

○ Agree

○ Neither Agree nor Disagree

○ Disagree

○ Strongly Disagree

◉ Not applicable

Question 13. Tick any of the below that apply to how your approach has changed: - required

☐ Seeking investment

☐ Advising on investment

☐ Making investments -

☐ Seeking research collaborations

☐ Planning research programmes

☐ Supplying goods and services to the UK

☐ Doing business in the UK

☒ Not Applicable

☐ Other (please specify):

Question 14. Please provide any additional detail on your answers to Questions 14-16, including why your approach has changed (if applicable).

- UK Finance does not make filings / investment decisions.
- Members of UK Finance have needed to adapt their investment practices to take account of the implications of the NSI Act for their transactions and lending activities. This includes due diligence requirements in relation to potential transactions, including: (i) considering whether a transaction is notifiable from a jurisdictional perspective under the NSI Act (either whether a mandatory notification is required or whether a voluntary notification is advisable); (ii) factoring in the cost and timing implications of an NSI Act filing (the latter in terms of the transacting parties' deal timelines); (iii) considering whether a transaction gives rise to any plausible national security risk; and (iv) assessing the overall viability of an investment or disposal in light of the potential need to make a NSI Act notification and the risk of the transaction being "called in" for further investigation.
- These implications of the NSI Act, to the extent relevant, need to be reflected in the transaction documentation (e.g. as conditions precedent in deal documentation and financing arrangements). The negotiation of these contractual provisions with counterparties can be protracted and onerous. The need to account for the NSI Act in transactions which require technical filings and raise no plausible national security risk can disadvantage UK businesses compared to international counterparts. It can make UK businesses less appealing targets, impacting their ability to attract investment and be as competitive as possible.
- The requirement to file for certain internal reorganisations has impacted on "business-as-usual" corporate activities as well as transactional activity and therefore can have a particularly marked impact on the efficiency and competitiveness of UK businesses.

Question 15. How could Government improve its communication regarding the scope and operation of the NSI Act?

- It would be helpful for the ISU to provide transacting parties with more detailed, tailored guidance on specific jurisdictional issues that arise in each case, in relation to the scope of the NSI Act, where there are cases of genuine uncertainty. It would be helpful if the ISU could provide specific guidance in addition to the general guidance published on the UK Government website (which whilst detailed and helpful does not cover every eventuality, as transactions can be nuanced and raise new issues). We note that the Financial Conduct Authority ("FCA") provides general guidance to the capital market via its Primary Market Bulletin, which is supplemented by an ability to request specific guidance within parameters.

Question 16. Are there areas of the NSI Act on which you would like additional guidance, for example around acquirer, control, or target risk, or the scope of the Act?

- More clarity would be useful around what constitutes "Control" for the purposes of Qualifying Entities as it applies to entities other than companies. Four cases are referenced in Section 8 of the NSI Act. Section 8(2) provides for a trigger event based on shareholding thresholds with further detail given in Section 8(3) and (4) for entities with a share capital, without a share capital and limited liability partnerships. Section 8(5) provides for voting rights thresholds, with Section 8(7) providing further detail. Section 8(8) refers to a material influence over the policy of the entity. The third case, specified in Section 8(6) refers to an acquisition of voting rights which enable the person to secure or prevent the passage *of any class of resolution* governing the affairs of the entity. If the reference to "any class of resolution" as it relates to Qualifying Entities other than companies includes resolutions that have voting thresholds which do match with the Companies Act resolution thresholds (which appear to be the reference points attaching to Qualifying Entities that are companies), it could be possible for a trigger event to occur with a relatively minor level of control than would otherwise be commercially sensible.

- In addition, UK Finance members conduct investments and transactions with entities other than companies, such as partnerships, limited liability partnerships and funds, and so additional guidance on how to interpret "Control" and Section 8 of the NSI Act in relation to these entities would be beneficial.

Question 18. Do you understand where the NSI Act may apply to Outward Direct Investment (ODI), and would you welcome additional guidance?

- We understand that there may indeed be limited circumstances where the NSI Act could apply to Outward Direct Investment ("ODI"), considering that the scope of the regime extends to certain acquisitions of non-UK targets (entities or assets).

- However, the existing guidance on "How the National Security and Investment Act could affect people or acquisitions outside the UK" is very high level with respect to ODI and lacks specific examples, which would help industry to understand the scope of the regime's application. It would also be helpful if the guidance could include more detail on the circumstances in which alternative transaction types (e.g. IP licences) could be caught.

- We understand that in parallel to the NSI Act regime, the Department for Business and Trade ("DBT") is considering proposals for an outward investment screening regime. UK Finance and its members request that the ISU works closely with DBT if it chooses to develop this regime, so that the new regime is not overly burdensome, and does not create duplicative notification obligations for transacting parties.

2 Scope of the NSI system

Question 19. Are there particular types of acquisitions that are currently subject to mandatory notification requirements that you do not think should be?

- We agree that the scope of the mandatory notification regime could be limited further to avoid unnecessary burdens on business and the ISU.

- The NSI Act has general application with no de minimis thresholds on, for example monetary value (both in relation to transactions and turnover) or extent of market presence. This sits awkwardly with, for example, the UK's approach to competition merger control, where the UK Government recently maintained the voluntary nature of UK merger control as well as jurisdictional thresholds (based on turnover and/or share of supply), including for "killer acquisitions", noting that "*Merger control should place a proportionate burden on benign or low risk mergers while ensuring robust scrutiny of mergers that raise concerns*" (see paragraph 1.94, Reforming Competition and Consumer Policy, July 2021). UK Finance members welcome the UK Government's recognition of the need to reduce the compliance burden placed on businesses and investors under the NSI Act and would encourage the UK Government to consider the introduction of de minimis thresholds analogous to those considered appropriate and proportionate in areas such as competition merger control.
- UK Finance members consider that internal restructurings - where there is "no change in control" of the ultimate parent entity - should be exempt from the mandatory notification requirement, given that in the overwhelming majority of cases they do not give rise to any plausible national security concern (particularly as the UK Government would retain the ability to voluntarily intervene in the exceptional cases where national security concerns arise if required).
- Further, we believe that share pledges under Scots law (both taking and releasing share pledges) should not be subject to the mandatory notification requirements. Please see our responses to Scots law related questions below. A pragmatic solution to this issue would be to create a specific exemption under the Notifiable Acquisition Regulations which exempts Scots law share pledges from the mandatory regime.

Question 20. Have the timelines associated with mandatory notification affected acquisitions in which you have been involved?

- The need for a mandatory NSI Act filing in relation to a merger is considered on deals involving UK Finance's members.
- While UK Finance recognises that the majority of cases are cleared within the initial 30 working day period, the requirement to make a mandatory filing can cause delays to deal timelines because of the suspensory nature of the mandatory regime, meaning that simultaneous signing and closing is no longer an option in some cases. The expansive scope of the NSI Act (not least in capturing internal organisations and, for completeness, a Scots law share pledge) means that it is not uncommon for it to be the only filing required in a transaction.
- In some cases, "call in" notices can also come unexpectedly with no advance warning – which can cause added / unforeseen delays in certain cases. It would be helpful if the ISU could provide parties with an advance steer on its thinking if it is reviewing a transaction with a view to issuing a "call in" notice, so that transactions are not called in by the ISU following a long period without contact.
- The need to notify some internal re-structuring transactions under the mandatory regime can also lead to pre-sale internal re-structuring transactions needing to be delayed and/or ordinary corporate business-as-usual transactions being delayed (which can impact UK businesses' ability to attract investment and be as efficient and competitive as their international counterparts).

- The UK Government could consider a fast-track option for a more rapid review and clearance of technical filings and low risk deals (e.g. where there are repeated / reputable acquirers, or for UK acquirers). The UK Government could introduce a triaging process that could filter for higher and lower risk acquisitions, with lower risk deals being referred to the fast-track option, or a form of "block exemption" for technical filings involving certain categories of acquirer.

- UK Finance members note that the UK regime is less cumbersome than some international counterparts but note that generally the US regime is more efficient and causes fewer delays.

Internal reorganisations

Question 21. Are there types of internal reorganisation that are more or less likely to result in substantive changes in who controls or influences an entity, and if so how would you characterise these types of reorganisations?

- In our experience, the vast majority of internal restructurings give rise to no concerns and we do not see any reason why a voluntary regime (per the UK's merger control regime) would not prove fit for purpose in this area, especially given that the UK Government's call-in rights should protect national security concerns sufficiently for the small minority of transactions that could be problematic.

- Transactions which give rise to no new ultimate controlling entities or no changes to the identities exercising operational or managerial control are particularly low risk.

- A significant number of the NSI Act notifications made relate to internal restructurings which do not give rise to any plausible national security concerns and the requirement to notify these can place significant burdens on business (including ordinary course corporate actions), in terms of time required to both analyse whether an internal restructuring is caught by the NSI Act and time delays before an internal restructuring can be completed, and internal resources. This is particularly the case given that the NSI Act has general application in the absence of any de minimis jurisdictional thresholds. The broad application of the NSI Act to internal restructurings (which is more expansive than many international comparator regimes in this respect) risks putting UK companies at a competitive disadvantage compared to their international counterparts.

- UK Finance members would therefore request carve outs from the mandatory regime for internal restructurings which give rise to no new ultimate controlling entities and for transactions in which existing majority shareholders increase their shareholding in an entity from <75% to >75% (a trigger event under section 8(2) of the NSI Act), where there is no change of control.

Question 22. Have you had to notify an internal reorganisation under the NSI Act and, if so, what impact did it have on your organisation?

- UK Finance does not notify transactions. However, we would anticipate that a number of our members' filings would relate to internal reorganisations – and they can have a significant effect on timing both for M&A and business-as-usual corporate transactions.

The appointment of liquidators, official receivers, and special administrators

Question 23. Are liquidators, official receivers, or special administrators likely to use their temporary control of shares in solvent entities to influence the policies of those solvent entities and, if so, how?

- No. Typically liquidators, official receivers and special administrators will not use their temporary control of shares in solvent entities to exercise voting rights and influence the policies of the solvent entities. This is because generally insolvency officeholders do not retain ownership of the shares for very long. Their aim is to sell the shares to generate funds to repay the creditors of the entity which previously held the shares but is now insolvent. This is generally a swift process, and it is not in the interests of the insolvency officeholder to hold the shares for a long period or influence the policy of the solvent entity.

Question 24. Are there other circumstances which give temporary control over entities in financial distress where complying with mandatory notification requirements presents challenges? If so, what are the circumstances and has this happened to your organisation?

- Yes. There are circumstances in which companies enter financial distress and default on loan agreements where the lender, its nominee or a security trustee will directly seek to enforce security over shares secured as part of the loan agreement. If the company which defaults on the loan and whose shares are secured is active in one of the mandatory sectors, the enforcement of security could trigger an NSI Act filing.

- Additional time and expense can be incurred by lenders before entering into secured lending arrangements to consider whether the borrower could be considered active in a sensitive sector and therefore could result in a mandatory NSI Act filing being required if they default and the lender enforces its security.

- Much like insolvency practitioners, it is not common for lenders, their nominees or security trustees to retain ownership of these shares for long. They are keen to recover the investment of the lenders by selling them onto a third-party acquirer. In some cases, the enforcement of security and the selling of the secured shares onto a third party can be near instantaneous. Practical complications can be caused to the desired swiftness of this process if the lender is required to make a mandatory NSI Act filing when enforcing security and taking ownership of the shares, given the suspensory nature of the regime and the need to obtain clearance from the UK Government before completing the transaction, i.e. before taking ownership. As the sale of the secured shares onto a third party would also likely trigger an NSI Act filing (if the company to which the shares relate is active in a mandatory sector) it is an unnecessary burden to require the lender, nominee or security trustee to make an NSI Act filing with respect to a very short-term arrangement.

- UK Finance would also welcome an exception to the NSI Act being applied to lenders, their nominees or security trustees acquiring shares on enforcement of security for very brief periods with the intention of near immediately selling the shares onto a third party acquirer. Anti-avoidance provisions could be included to prevent, for example, entities providing lending with the sole purpose of later taking control whilst benefitting from the exemption, and to appropriately regulate related party loans. Such an exemption could be restricted to

a pre-approved list of entities (for which UK regulated lenders and specialist loans agencies could apply) and specific actions relating to recovery of debt/enforcement of security.

Question 25. Have you had to notify the appointment of a liquidator, receiver or special administrator under the NSI Act and, if so, what effect did it have on the insolvency process and your organisation?

- UK Finance does not make notifications.
- It is our impression that the gap in the NSI Act whereby administrators are expressly exempt from the NSI Act but other insolvency officeholders are not has not had a widespread impact on lenders, although this may largely be due to macro-economic conditions.
- Nonetheless, the policy rationale for distinguishing between different types of insolvency officeholders is not clear. Aligning the position between the appointment of administrators and other insolvency officeholders would be welcomed.
- It would also be helpful for the position regarding the appointment of fixed charge receivers, repossession of leased assets owned by the bank and other possession proceedings (e.g. calling up in Scotland or property possession proceedings) to be clarified.

Scots law share pledges

Question 26. Are lenders holding shares under Scots law share pledges likely to use their temporary holding of those shares in solvent entities to influence those solvent entities against the wishes of the borrower? If so, can you give examples of when this has happened or might happen?

- No, in practice lenders who hold shares under Scots law share pledges do not use their temporary holding of those shares in solvent entities to influence the entities against the wishes of the borrower: This concern would only generally arise where the entity is looking to use its voting rights in a manner prejudicial to the lender's security. Reflecting this, a Scots law share pledge invariably does not allow a security holder to exercise effective control over the relevant shares in a Scottish company prior to enforcement. Under a Scots law share pledge, the secured shares are transferred to the lender (or its nominee). The lender or its nominee hold the shares, but this does not confer control or influence in any real sense because the lender is unable to sell the shares, has no right to be paid dividends, has an obligation to immediately re-transfer the shares on the secured loan being repaid and is not able to exercise voting rights other than in accordance with the borrower's wishes or post the occurrence of an enforcement event. In practical terms, the borrower remains in control.

Question 27. Have you had to notify the appointment of a Scots law share pledge under the NSI Act and, if so, what effect did it have on the lending or borrowing process?

- UK Finance members feel that the ISU should consider not simply the number of notifications made involving a Scots law share pledge, but also the risk that the NSI Act's application to them could unnecessarily limit their use in the first place and/or result in Scotland being a less attractive place for registering corporate entities.

- In short, UK Finance members view the application of the NSI Act to Scots law share pledges to be excessive and unnecessary, as under such arrangements there is an absence of a substantive change of control, i.e. while legal ownership of the shares transfers to the lender/its nominee, day-to-day control over the shares, and the voting rights attached, remains with the borrower/chargor.

- The fact that the NSI Act can apply to Scots law share pledges both on their creation and on their release (rather than enforcement) adds to lending arrangements an increased regulatory and due diligence burden as well as driving time and cost inefficiencies in a way which is distinctly much more burdensome in relation to Scotland as a jurisdiction than what would be the case in other parts of the UK. UK Finance members have expressed a material concern that lenders engaged with Scottish subsidiaries may, due to the NSI Act, proceed without security (with pricing consequences), limit themselves to a floating security over the shares, or indeed, not lend at all.

- Therefore, the members of UK Finance strongly consider that an exemption for Scots law share pledges should be introduced (where the voting rights can be exercised by the borrower/chargor, subject to the lender's ability to protect its security, in an unrestricted manner), until its enforcement. This would align better with the position in England with respect to equitable English law share security and, for completeness, sit better with the approach taken in the UK merger control regime, under which a lender is viewed as having material influence "*where the loan conditions confer on the lender an ability to exercise* rights *over and above those necessary to protect its investment, say, by options to take control of the company or veto rights over certain strategic decisions). (*Mergers: Guidance on the CMA's jurisdiction and procedure, Para 4.32).

Public bodies

Question 28. Do you have views on whether certain public bodies should be exempt from mandatory notification? How would you characterise these public bodies?

- UK Finance does not represent Crown bodies, so does not have a view. However, from a national security risk perspective, it would seem that reviewing acquisitions by public bodies should not be a priority.

Automatic Enforcement Provisions in secured lending agreements

Question 29. Has the inclusion of Automatic Enforcement Provisions under mandatory notification affected your ability to access loans, or to enforce such provisions?

- There has been an impact on the loan markets. In line with industry wide practice (see below), the members of UK Finance have generally amended their loan financing agreements to make it clear that automatic enforcement provisions will not take effect (i.e. that voting rights do not automatically transfer to a lender or security agent) upon security becoming enforceable if it would trigger a mandatory NSI Act notification.

Question 30. Have you reflected NSI mandatory notification requirements in the terms within lending agreements, either as part of new agreements or through updating existing agreements? If so, how?

- Yes. UK Finance members now give consideration as to whether it is necessary to include specific conditions precedent in loan financings which are supporting the acquisition of an in-scope entity or asset.
- Furthermore, loan markets have moved to adopt standard wording in share security documents to address concerns relating to triggering "control" under the NSI Act and the exercise of voting rights on enforcement. The updated documents make it clear that voting rights do not automatically transfer to the lender or security agent upon the security becoming enforceable if that would give rise to a notifiable acquisition under the NSI Act.
- Equivalent changes have been adopted by the market in security documents and are now considered standard - even if the shares are not in a company which is active in a mandatory sector or could pose a risk to national security at the start of the transaction, on the basis that the activities of the company could evolve during the life of a loan and mean that at the point of enforcement the company is within scope of the NSI Act.

Activities/areas defined under mandatory notification

Question 32. Do you understand what activities might bring an entity into scope of mandatory notification requirements, as set out in the Notifiable Acquisition Regulations?

- See answers below. This is clear in many cases, but in other cases it is not always clear as the Notifiable Acquisition Regulations are either open to differing interpretations and/or are difficult to understand without a technical background.

Question 33. Are there activities specified in the Notifiable Acquisition Regulations that you do not think should be included? If so, what activities?

- We do not consider that there are particular sectors which should not be included altogether, rather that the scope of activities within certain of the defined sectors that can trigger mandatory filings can be narrowed/clarified.

Question 34. Are there activities not included in the Notifiable Acquisition Regulations that you think should be included? If so, what activities?

- We agree that creating a more clearly defined Semiconductors sector is a positive development, given it is not always clear if semiconductors are captured within other sectors (Advanced Materials and Computing Hardware). A "Semiconductor" sector should be clearly defined and overlaps with other sectors removed.
- Critical Minerals: To an extent, we would expect these substances to be covered by the Advanced Materials sector. As this is sometimes unclear, it would be helpful to have a more focused sector with a clear list of minerals captured.

- In response to the question of whether there are any other sectors that should be captured, we consider that the UK legislation is already broad and encompasses the key activities that could give rise to concerns.

Question 35. Are there areas of the Notifiable Acquisition Regulations that would benefit from additional guidance? If so, what areas and what guidance?

- Yes – a number of sectors could be further narrowed in accordance with better guidance to reduce precautionary filings:
- Advanced Materials: This sector is quite lengthy and structured in a way that is largely impenetrable by a non-expert. Even the core terms (e.g. enabler) are unclear to the reader and therefore it is very hard to know if a company is in scope. If this list could be simplified, with sections carved out or moved into their own specified sectors, we would welcome that change. We also think that some further guidance / examples of in-scope activities would be helpful for non-experts.
- Data Infrastructure: The current definition is too broad. It currently captures any activity that involves the storing or transmission of data, as long as a public authority is involved. This could capture essentially all software providers, despite the fact that the intention is to capture primarily data centres and often there is no sensitivity with the software e.g., software for accounting of SaaS. Some improved guidance or amendments to the Notifiable Acquisition Regulations would allow parties to gain a better understanding of where the UK Government anticipates national security risks may arise.
- Defence: A definition of the key concepts would be helpful – particularly to enable businesses to determine whether an entity's activities are relevant to defence or national security. We appreciate this ambiguity is intentional (as the UK Government wants to maintain flexibility in identifying national security concerns) but it makes application difficult. The second limb (contract with the UK Government / classified material) is more helpful, but then there is the subcontracting element which again is quite vague and difficult to apply (as we understand that sub-contractors may be captured even if they are not aware of the broader relationship with the UK Government).
- Synthetic Biology: The sector is quite lengthy and complex and again is generally only understandable for experts. Additional guidance here would be helpful to allow this sector to be more targeted. The current guidance is largely about giving definitions to key terms which are not helpful when trying to apply this in practice.
- In addition to the above, it would be helpful for the industry participants if the ISU could provide a flow chart detailing next steps to improve the understandability of the guidance.

Question 36. Are there areas of the Notifiable Acquisition Regulations that would benefit from drafting changes to improve clarity on the activities covered, either by changing drafting within areas of the Regulations or by carving out new areas? If so, what areas?

- Yes – a number of sectors could be further narrowed through drafting changes in the Notifiable Acquisition Regulations to reduce precautionary filings:
- Artificial Intelligence (AI): The sector needs re-focusing to actually target activities that are relevant from a national security perspective. At the moment, the sector risks capturing any

activity that involves an AI element, even where the target is not actually an AI company (with technology that could be sensitive) but just, for example, relatively rudimentary software or an online platform that makes use of AI. The sector also needs to be future-proof, given how quickly this sector is evolving. Generative AI should be covered.

- Communications: More clarity is needed on 'associated facility' and what constitutes passive / active infrastructure. It is unclear why associated facilities are captured by reference to the PECN/S turnover rather than their own.
- Energy: The definition is very broad for generation assets and could be further clarified. For example, very small target assets can be captured based on an acquirer's existing portfolio triggering the thresholds. Definitions are sometimes vague, e.g. what is an aggregator? Clarification would be welcome in terms of whether it is relevant to look at installed capacity only.

3 Operation of the NSI Act

Question 37. Are there any other changes you would like the Government to consider to the operation of the NSI Act?

- While the procedural steps highlighted above are positive, it would be helpful if the feedback provided (on calls etc.) was more substantive rather than purely administrative. For deals that get called in for detailed review, a 'state of play' meeting would be welcome so that the parties can explain more about their business activities to ISU officials. Topics to be included in a 'state of play' meeting could include: (i) detailed descriptions of the notifying parties' businesses, including any especially technical operations which may be difficult for non-subject matter experts to understand; (ii) a discussion of any follow up factual questions the ISU and UK Government more broadly may have for the parties; and (iii) a discussion of the initial concerns identified by the ISU, which led them to call in the deal for detailed review. If applicable to the deal in question, the 'state of play' meeting could also provide an opportunity to have a preliminary discussion about remedies – if the ISU has identified specific, substantive concerns – which could help to expedite the overall review process.
- More substantive engagement on remedies would – in particular – be helpful.
- It would be helpful to include more justification for decisions, at least in final orders / final notifications that are made available to the parties. There can be no meaningful legal challenge in the absence of that – explaining what the concern is (that's the only way to address it) in order to give the interested parties a meaningful opportunity to respond. Parties should also receive access to file.
- It would be helpful to have a contact that notifying parties can contact before a transaction reaches the "call in" phase. UK Finance members understand that the ISU has reservations about becoming a 'contact centre'. We also appreciate that the ISU acts as a central hub receiving information from and coordinating with other UK Government departments, which may make fielding questions from the notifying parties more challenging. However, as the NSI Act regime has now been operational for around 2 years, we understand that the ISU will have developed its own experience, expertise and familiarity with notifications, such that ISU officials may feel more confident in responding to parties' questions throughout the review process. We understand that it may be unrealistic to conduct an ongoing dialogue with the parties, but it would be helpful and reassuring to have a named person to contact

with questions during the review process rather than the general ISU mailbox, in relation to which – given the likely volume of queries received – it can sometimes take a long time to receive a substantive response. In some instances, responses to queries sent to the general ISU mailbox are very short, lacking in helpful information and refer parties to the general guidance published on the UK Government website. An alternative, more personalised approach to responding to queries once a party has notified a transaction would therefore be welcome. UK Finance members are aware that for merger control reviews conducted by the Competition and Markets Authority, a named case team are allocated to a review. This process appears to work well and could be adopted for reviews under the NSI Act also. Similarly, UK Finance members can request individual guidance from the FCA on regulatory matters, for example on listing rule related matters. It would be helpful to have this option when interacting with the ISU also.

- Greater clarity on the process/contact between UK Government departments would be beneficial to help avoid the impression of a lack of transparency. Similarly, providing more visibility of cooperation with other FDI regulators, e.g. the CFIUS regime, would be welcome. The UK Government should notify parties that it is liaising with counterparts so that the parties have full visibility over information flows.
- Finally, we understand anecdotally that experience to date suggests that the process can take longer than expected – more transparency and a better understanding of whether timelines will be met throughout the process would be beneficial to stakeholders.

Notification forms

Question 38. If you have completed a notification form, how much time did this take?

- UK Finance does not complete notification forms itself.
- For our members, we generally expect the preparation of an NSI Act filing to take approximately two weeks, depending on the availability of the information required to be submitted as part of the filing.
- If the information required is not readily available or is difficult for the acquirer or qualifying entity to confirm, this process can take longer.
- If there are particularly complicated elements to the transaction such as a complicated or unusual company group structure or it is difficult to describe the activities of a company active in one of the more 'opaque' sectors such as synthetic biology or quantum technologies then the preparation of the filing may require more time.

Question 39. Would you prefer that the forms ask for more information if that reduces the likelihood that the Government asks for additional information during the review or assessment process?

- Yes, the members of UK Finance would generally prefer to provide all information required by the ISU upfront as part of filing the form.
- Reducing the likelihood of follow up requests for information would be very welcome as receipt of requests for information can cause the review process to be paused which extends overall review and deal completion timelines.

NSI Notification Service (the 'portal')

Question 40. What, if any, functional improvements would make submitting a notification on the NSI Notification Service easier?

- If it is later found that a voluntary notification should have been a mandatory notification, the current process requires the transacting parties to submit a new notification, which can cause delays to the transaction timeline. It would be helpful if a voluntary notification could be converted into a mandatory notification, without the need to submit a new notification. Given the substantial overlap in the information requested in the mandatory and voluntary notification filing forms, we would anticipate that the process for converting a voluntary notification into a mandatory notification should be relatively straight forward.

About UK Finance

UK Finance is the collective voice for the banking and finance industry. Representing more than 300 firms across the industry, it seeks to enhance competitiveness, support customers and facilitate innovation. Our primary role is to help our members ensure that the UK retains its position as a global leader in financial services. To do this, we facilitate industry-wide collaboration, provide data and evidence-backed representation with policy makers and regulators, and promote the actions necessary to protect the financial system. UK Finance's operational activity enhances members' own services in situations where collective industry action adds value. Our members include both large and small firms, national and regional, domestic and international, corporate and mutual, retail and wholesale, physical and virtual, banks and non-banks.

The Capital Markets & Wholesale division, led by Conor Lawlor, focuses primarily on policy and regulatory initiatives spanning primary markets, M&A, secondary markets, post trade and liquidity management. Our work in these areas includes bringing technical experts from across our membership together to form new views, drive thought leadership, and develop policy positions relevant to the UK reform agenda. Further information is available at: www.ukfinance.org.uk

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About Linklaters

Highly regarded for its truly integrated global network, offering pragmatic and informed risk-based advice, Linklaters provides a single point of contact and market-leading global experience informed by on-the-ground local expertise in the rapidly evolving area of investment screening. We offer leading individuals and a leading investment screening and antitrust team. Our top-tier team of experts have a track record of handling the most challenging investment and antitrust issues in M&A. We invested in our global know how well before the 2016 inflection point occurred in the proliferation of foreign investment regimes and maintain resources spanning over 200 jurisdictions globally. Our global team or "best-friend" offices alert us to upcoming changes in this rapidly evolving area, where legal changes in filing or to sensitive sectors can often be retrospective in application. Further information is available at www.linklaters.com

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