

UK blocks Nexperia's acquisition of Newport Wafer Fab – update on UK's NSIA

SIMON ALBERT – ALSTON & BIRD

WWW.ALSTON.COM

On 16 November 2022, after multiple extensions to the review timeline, the UK Business Secretary used his powers under the UK's National Security & Investment Act ('NSIA') to block the acquisition of Newport Wafer Fab by Chinese-owned Nexperia, requiring the complete reversal of the transaction.¹ That followed two prior prohibition orders in other cases during the first few months since the NSIA came into force in January 2022. This bulletin considers the procedural and substantive issues arising from the *Newport* case and the wider operation of the NSIA, in light of recent policy statements by UK officials.

Newport case – procedural and substantive issues

Newport Wafer Fab is reportedly the UK's biggest chipmaker.² The Dutch-based prospective acquirer Nexperia is controlled by China's partly state-owned Wingtech Technology. Nexperia held a 14% stake in Newport Wafer Fab before acquiring the remaining 86% of the company on 5 July 2021.

Given the high-tech nature of the target business, producing silicon semiconductor wafers, and the identity of the ultimate prospective acquirer, the transaction attracted significant public and Parliamentary scrutiny, culminating in a report by the House of Commons' Foreign Affairs Committee, effectively calling on the UK government to review the transaction under the NSIA.³ In response, on 25 May 2022, the then Business Secretary used his NSIA powers to launch an extended, in-depth review of the transaction, 'calling it in' for a full national security assessment. This is also the first transaction to be blocked by the UK government on national security grounds, using its powers to retrospectively review deals



completed before the NSIA entered into force on 4 January 2022.

That review ended with the prohibition order announced on 16 November, requiring the full divestment of the 86% stake acquired in 2021. The stated official risks to national security related to:

1. technology and know-how that could result from a potential reintroduction of compound semiconductor activities at the Newport site, and the potential for those activities to undermine UK capabilities; and
2. the location of the site could facilitate access to technological expertise and know-how in the South Wales Cluster ('the Cluster'), and the links between the site and the Cluster may prevent the Cluster being engaged in future projects relevant to national security.

In response, the UK head of Nexperia said he was 'shocked with the decision', promising to appeal it. In a strongly-worded press release, Nexperia argued that 'previous reviews by BEIS and the UK's National Security Advisor [had] both [...] found no substantive national security concerns that should give cause to block the acquisition.'⁴ Nexperia added that it did 'not accept the potential national security concerns raised [as it

had already] proposed far-reaching remedies to BEIS's Investment Security Unit that fully address even these potential concerns.'⁴

Any such litigation by Nexperia (e.g., a judicial review in the High Court) would be potentially ground-breaking, given that the NSIA has only been in force since January 2022. The grounds for any appeal and any resulting judicial rulings would of course be of great interest to observers of the new regime.

Prior prohibition orders

To date, including the *Newport* case, there have been only three publicly reported prohibition orders which the British government has imposed under the NSIA.⁵ On 20 July 2022, the then UK Business Secretary announced that he had used his powers under the NSIA to prohibit the licensing of certain intellectual property between the UK's Manchester University and Beijing Infinite Vision Technology Company Ltd.⁶ On 17 August 2022, there was a second reported such prohibition, the acquisition of Pulsic Ltd by Super Orange HK Holding Ltd.⁷ The *Newport* case followed on 16 November 2022. The common element in all three of these cases, apart from the high tech involved, is the fact that the prospective ultimate acquirers in each case have been Chinese.

Recent policy statements by UK officials

A recent speech⁸ by the director of the UK government's signals intelligence headquarters, GCHQ, may shed more light on the official thinking behind the NSIA prohibition order in the *Manchester University* case. The speech explicitly touched on the NSIA, stating: 'We have strong legislative and policy frameworks which we use to protect technology and markets. Through the National Security and Investment Act and other legislation, government has new powers to intervene in transactions that pose risks to our national security.'

The speech made multiple references to the high-tech research pioneered by Britain's 'world-leading academic institutions,' including the 'quantum revolution,' which may deliver 'systems which are exponentially more powerful than our current digital technologies that push at the edge of known physics.' That focus on the higher education sector is reflected in the official NSIA guidance which has already appeared; the NSIA prohibition order mentioned above in relation to the University of Manchester; and the guidance published under the NSIA, such as 'Guidance for the Higher Education and Research-Intensive Sectors,'⁹ and the 'Market Guidance Notes' which include 'Help for Higher Education Institutions to Decide Whether to Notify.'¹⁰ This guidance has implications for venture capital funds and others investing in spin-out projects from such research, or seeking to commercialise the results.¹¹ The speech's focus on the 'quantum revolution' mentioned above also helps to explain the inclusion of 'Quantum Technologies' as one of the 17 areas of the economy scrutinised by the NSIA.¹²

Conclusions

As the prohibition orders in the *Newport* and *Manchester*

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University cases demonstrate, the NSIA can pose a material risk to the successful completion of transactions in potentially sensitive sectors. The recent GCHQ speech may

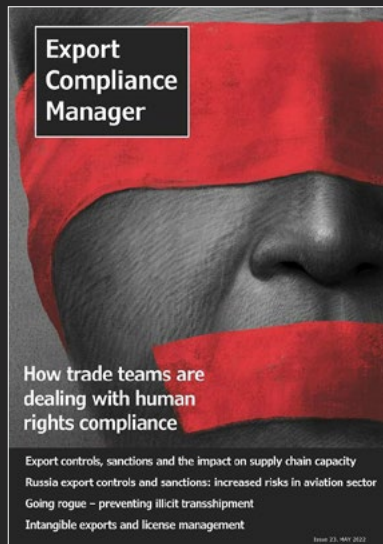
therefore serve as a useful resource to explain why the British government has acted in the way it has in certain instances, and help to predict how the British government

may act in future situations. As such, investors and their advisors considering the likelihood or necessity of a mandatory or voluntary NSIA notification to the British

government may wish to give it, and any potential publicly available litigation resulting from the *Newport* case, further close attention in the coming months and years.

LINKS AND NOTES

- ¹ See <https://www.gov.uk/government/publications/acquisition-of-newport-wafer-fab-by-nexperia-by-notice-of-final-order>
- ² *Financial Times*, 16 November 2022, 'Newport Wafer Fab's sale to Nexperia blocked by UK ministers,' by Anna Gross and Jim Pickard, <https://www.ft.com/content/cdaddf62-72f7-4789-890c-69f1ce196748>
- ³ See <https://committees.parliament.uk/committee/78/foreign-affairs-committee/news/165303/foreign-affairs-committee-publishes-report-on-newport-wafer-fab/>
- ⁴ See Nexperia's press release of 16 November 2022, <https://www.nexperia.com/about/news-events/press-releases/Nexperia-is-shocked-by-the-Secretary-of-State-s-order-to-divest-Newport-Wafer-Fab.html>
- ⁵ For the full list of 'Final Orders made under the [NSIA],' see <https://www.gov.uk/government/collections/notice-of-final-orders-made-under-the-national-security-and-investment-act-2021>
- ⁶ See https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1098889/acquisition-of-pulsic-by-super-orange-hk-holding-notice-final-order.pdf
- ⁷ See https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1098889/acquisition-of-pulsic-by-super-orange-hk-holding-notice-final-order.pdf
- ⁸ See RUSI Annual Security Lecture 2022 with Sir Jeremy Fleming, Director of GCHQ, Tuesday, 11 October 2022, available at <https://rusi.org/events/open-to-all/rusi-annual-security-lecture-2022-sir-jeremy-fleming-director-gchq> and <https://www.gchq.gov.uk/news/rusi-asl>
- ⁹ See www.gov.uk/government/publications/national-security-and-investment-act-guidance-for-the-higher-education-and-research-intensive-sectors
- ¹⁰ See www.gov.uk/government/publications/national-security-and-investment-act-market-guidance-notes/national-security-and-investment-market-guidance-notes-july-2022#help-for-higher-education-institutions-to-decide-whether-to-notify
- ¹¹ See 'Example 2' in the above mentioned 'Guidance for the Higher Education and Research-Intensive Sectors,' as regards 'Developing university or research organisation spin-out companies,' which explicitly discusses 'a venture capital fund that is backed by multiple investors invest[ing] in an established university spin-out, in return for a 27% equity stake.'
- ¹² See <https://www.legislation.gov.uk/uksi/2021/1264/contents/made>



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