

Business and Trade Sub-Committee on Economic Security, Arms and Export Controls

Oral evidence: UK economic security, HC 835

Wednesday 7 May 2025

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Members present: Liam Byrne (Chair); John Cooper; Sarah Edwards; Charlie Maynard; and Matt Western.

Questions 64 to 87

Witnesses

III: Nicole Kar, Partner, Paul, Weiss; Martin McElwee, Partner, Freshfields; Mike Reid, Senior Partner, Frog Capital.

Examination of witnesses

Witnesses: Nicole Kar, Martin McElwee and Mike Reid.

Q64 **Chair:** Welcome to this final panel of today's Sub-Committee on Economic Security hearings. Thank you very much indeed to our witnesses for joining us. We are just going to open with a very quick question to you all. How would you describe the attractiveness of the UK investment environment at the moment, in particular for firms in critical sectors of the economy that are seeking investment? Nicole, would you kick us off?

Nicole Kar: The UK continues to be an attractive investment destination. We will talk about the National Security and Investment Act in a bit, I am sure. After the passage of the NSIA, we have seen, as a result of geopolitics, a drop-off of perhaps inward investment from certain destinations such as China, which is a feature of many Western economies. In terms of across the piece in the 17 sensitive sectors that are covered by the foreign investment screening, there is much more selection that goes on by outside investors, and some uncertainty, for example, whether investors from certain countries will be welcome in those sectors. I would say there is some pick and choose, but overall the UK continues to be an attractive investment environment.

Q65 **Chair:** Mike Reid, what is your take?

Mike Reid: I founded and run an investment firm, which focuses on scale-up software companies in Europe. To take a family analogy, we focus not on the babies but more on the teenagers of the software industry, typically companies that are about 50 employees, growing to around 500 employees. The UK is a fantastic place to invest in. The discussion relevant for this panel is the level of risk investors want to take. The UK is a fantastic place for low-risk investments, infrastructure and large buyouts.

The challenge and sensitivity to the cycle, to regulation and to others is what happens to high-risk places of investment, so early-stage companies where the criteria around attracting investment are much more challenging. Entrepreneurs at the heart of that find it far more difficult to persuade investors to come on board if the environment is not right.

Q66 **Chair:** That is a very helpful distinction. Martin, what is your view?

Martin McElwee: A couple of years ago I wrote a paper with TheCityUK, which involved going around to a wide range of investors who had invested in the UK in the past, whether those were private equity investors, infrastructure investors or others. The consensus from that was that the UK generally is an attractive investment destination. Their biggest ask at that time was for policy stability above all else, with factors



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such as the National Security and Investment Act mentioned, but relatively far down the list of priorities by comparison with simple policy stability and some other issues around, for example, the performance of the Competition and Markets Authority at that stage.

For the sensitive sectors, there are those investing in businesses that have to go through the regime who can be pretty confident that this is a non-issue and is just a frictional cost for them. It is an annoyance, but is just one of the things that our clients have now largely factored in. I agree entirely with Nicole that some people are taking themselves out of investment altogether because it is just too risky.

Then there is a set of—let us call them good, responsible investors, who are prepared to do things that require quite a lot of scrutiny and may require commitments to be given at the end of it. That is a much more complicated, intensive process for them. Generally, they get it because they are big operators in the defence sector or in civil nuclear. They get it, but it is a significant cost for them.

Q67 Matt Western: I am interested. We were talking about British Steel in the previous session, but touched on nuclear power stations as well. To what extent do you think the Government are good in working across Government Departments to assist with or promote these sorts of opportunities, but also in ensuring that these investments are secure for the UK?

Nicole Kar: It is hard for me to comment more generally, because we tend not as practitioners to see the inner workings of the Government consultation process. I could talk about an experience that we had for an investor into the UK in relation to the Royal Mail Group. That really did bring a whole-of-Government approach to the Government commitments negotiated there. There were myriad concerns in relation to that transaction that transcended security and were much more about the unionised workforce, the brand, the nature of the company and continued investment, et cetera.

The investor was impressed by how those meetings were conducted by Government, in that we had representatives of the postal service or the Government Department sponsoring the postal service there, but also relevant people came in and out of those sessions as needed. It presented as a very joined-up and co-ordinated discussion.

Q68 Matt Western: Can you illustrate that with which Departments?

Nicole Kar: It was primarily DBT that we were dealing with in relation to that transaction. We also dealt with ISU separately, and I am sure we will come on to talk about the Investment Security Unit. In relation to that transaction, there were different concerns. There were overseas dependencies of the UK. There were the postal unions. There was the postal service. There was the regulator. That was quite a well joined-up approach.



I cannot really comment on more broad considerations. We will probably get on to it, but an issue for investors is that they do not know who is being consulted, except in certain sectors. If you are in telecoms, you know that Ofcom will be consulted. You know that there will be other Departments. On a more generic or general investment that does have sensitive implications, it is very untransparent to investors how that discussion is proceeding behind closed doors. It is very opaque.

Q69 **Matt Western:** Martin McElwain, do you have any comments from the legal perspective?

Martin McElwee: I would agree. There are certain regulated industries, so you know, as Nicole says, that Ofcom will feed into, for example, a public interest review by the Minister and that Ofcom's view is going to be very important. Reviews in the ISU rely on input from other Departments. You can make a good guess that this is going to go to the MOD, DFT or wherever, but it is much less clear where the decision making is taking place, unless your individual company has a good personal route into that Department. That is a barrier for smaller companies.

Q70 **Matt Western:** Mike Reid, do you have any comments?

Mike Reid: Not on the major topic of a nuclear power station, no. The ultimate impact, having listened to the previous panels, which were really interesting, is the importance of national security and the focus of the panel.

As a scale-up investor, my role here is to highlight that, at the moment, there is a one-size-fits-all approach, which has significant implications for other, particularly smaller companies, which I am sure a lot of the panel would agree, at the detail level, are not going to be caught by national security priorities. Nevertheless, sometimes unintentionally, it impedes these much smaller companies—it costs lawyer money, costs time, costs investment risk, et cetera—that we are trying to cultivate to drive our growth agenda.

Q71 **Chair:** If we are trying to stop our adversaries from gaining a technological edge over us, for example, we might be terrifically worried about a firm that could be a couple of PhDs in, say, the advanced materials space. Sometimes there will be a peril there that we just have to throw the kitchen sink at when we are doing a review.

Mike Reid: Personally, I am not sure the kitchen sink approach necessarily gets you where you want to get to. Probably the work, certainly listening to the prior panels, is the clarity of thinking in terms of the key risk areas, for example the 17 risk areas that are outlined in the NSIA plus the eight or so activities. They are already incredibly broad.

One might argue that the kitchen sink is already being thrown in, because if you are a lawyer, and you look at that list and ask, "Mike, is the company you are invested in potentially caught?" the legal view is typically always, "Probably, we had better check", because there is



always the end of the sentence that says “pretty well everything”. “If it has AI, we should look at it”. The challenge then becomes of scope and resources from the Government perspective. Given the prior panels, the resources probably should be applied to major threats that were highlighted in the panels, rather than the risk that there is a materials science spin-out that we should catch.

Q72 Matt Western: Can I just ask one further question to that? That is about dual use technologies. How good are we, or are these Departments, in identifying or recognising there could be a dual use to a new technology, in your experience, Mr Reid?

Mike Reid: What is the governmental ability to assess that?

Matt Western: Yes.

Mike Reid: I am not sure. I do not have enough competence. Ultimately, they find it challenging, unless it is very specifically one of the threats we were talking about earlier, such as nuclear or really deep tech. Then it is quite obviously a contentious area, compared to lighter-level businesses, such as software companies doing interesting things with data, which ultimately we probably all agree are not a strategic threat to the country, but they are still captured by the definition.

Q73 Sarah Edwards: Perhaps following on from that discussion that we are having around the scope, who is covered, whether they should be and that debate, does the National Security and Investment Act get the balance right between our national security and the ease of investing in companies? Can you speak to that? Do you have any thoughts to that? Should we start, Nicole, with you?

Nicole Kar: For practitioners on the outside of the system, rather than being privy to the security discussions happening within Government, all we can do is really extrapolate from what we see from the annual report and the statistics. At the moment, the balance probably is not quite right. It might have made sense, in the first four years’ operation of the regime, to call in quite so much as we have had called in. Martin, as he mentioned, has done a very good report with TheCityUK, which talks about how the review numbers in the UK are three times Germany and other European jurisdictions. They are also twice the US, which has an eight times bigger economy.

The numbers seem quite high relative to the outcomes. If you assume that security outcomes are that small proportion of cases and we are pulling in a factor of seven of the number, it seems to me we are scanning a lot for a relatively low number of problematic issues.

There is another thing I would draw your attention to, which is a little concealed in the numbers. Of the 906 notifications that we had in the 2024 report, 61%, or over 500, were by UK acquirers. The UK regime is a real outlier in terms of looking at domestic-to-domestic investment.



On the other aspect, as the Chair was alluding to, about investment attitudes toward the UK, in the recent work that the Government have done, we are in the bottom 10% of OECD countries for investment intensity. As for UK business investment, 40% of firms in any given year make no investment at all. It seems to me, if it is about encouraging investment and growth in the right areas, so non-sensitive strategic areas, that balance is somewhat out of kilter at the moment and we could address that. As I say, I am not a securocrat, so the ISU may give you evidence and say, "There is a much higher proportion and we decide not to mitigate".

Q74 Sarah Edwards: Could I just follow up on the point that you made about UK-to-UK investment? Given how complex many companies are, and the subsidiaries within subsidiaries within whatever complex umbrella structure that you like, does that data reflect that that is what we are seeing or is there an extra level that maybe was not analysed in that data?

Nicole Kar: That is a very fair question. The UK has taken an approach of just sweeping across the board. Even where it is UK to UK, we take a look at it if you hit the sensitive sectors and you are acquiring a sufficient proportion of control. A different way of looking at it could be to ask investors to indicate who the ultimate beneficial owner is, for example, which is an approach taken in other jurisdictions. That would have that triage filtering effect that you are describing.

Q75 Sarah Edwards: Mike, did you want to comment on the scope? You obviously have some experience.

Mike Reid: The number one point is that Frog Capital and some of the software networks that we work with, such as Boardwave in Europe, certainly recognise the need for something like NSIA. There is no argument in terms of the importance of national security.

Taking Nicole's point a little further, it could take some scrutiny and innovation, for example, at the lower end, back to my one-size-fits-all theme. Why 25%? Why not 33%? Why not 50%, below a certain threshold? You say, "We want to take away some of that perception of friction to that smaller end of the market, taking into account the materials science theme as a potential risk". Ultimately one could conclude, "Let us make that an easier end and focus our resources on the mid to larger companies that are more likely to be in line with the risks that we are facing".

The second thing is back to the 17 themes. I am not an expert in this area, but I am curious about whether those themes have changed since the launch. It would be very surprising if they are exactly the same risks as they were. Why have they not changed? Is some body able to not only change them in line with the security threats as they are updated, but also look at changing them in terms of narrowing or developing them, so they do not have such a broad impact on areas where it is not necessary?



Q76 **Sarah Edwards:** Martin, did you want to comment as well?

Martin McElwee: Let me zoom up a little. If you look at the NS&I regime by comparison with other foreign investment regimes elsewhere in the world, taking entirely Nicole's point that the NS&I is not a foreign investment regime and, therefore, it is necessarily more expansive than others, in general it does not come out badly.

There are failings in the NS&I, which are well known. The way it captures benign internal restructurings is an intense source of frustration. It could be faster for trusted investors or UK investors. There are challenges in understanding the scope of some of the sectoral definitions. However, you can go to other countries and there are different problems, such as the need for precautionary notifications, slow processes internally, a bleeding into economic security rather than national security when that was not originally how it was scoped—we will come on to that, I am sure—or a vast range of sectors, so financial services, food security, et cetera. Taken as a whole, it is in a pretty good place as a balanced approach.

If we want to take the best of the best—the best of all worlds—there are things that could be done. To take Mike's point, could we look at the sectors? It is not often that sectors are removed from something like this. The Government's proposals most recently were to increase or separate out some of them, or possibly add some new ones in. I can understand it would take a brave Government to take them out, because what happens if that goes wrong? It is healthy for the Government to have that scrutiny on a regular basis, which is what they are committed to, and quite genuinely test themselves. Do we need all of this? Could we at least give more specificity in each of those areas on what is in and what is out?

Q77 **Sarah Edwards:** Just following up on that, I have heard in a couple of ways about a speeding-up of the process or identifying less risky categories. Is there something like a fast-track lane that some other countries use that you think is a good idea? Again, take the good things from other places and apply them to what we have, which you have suggested seems like it is in the right direction, but could do with some positive tweaks.

Martin McElwee: The UK Government, certainly under the Conservative Government, set their face against a fast-track regime and said that they needed to be able to look properly at things. That is a choice. I understand that, but it is a choice that has consequences.

It is also fair to say there are other regimes, particularly on the continent, that will allow you earlier informal dialogue as to whether you are in or out. Again, that is not perfect, but it is helpful in marginal cases. If there is an opportunity to have that informal conversation early on with the ISU, you take your own risk assessment as to whether that is enough comfort for you.



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Yes, there are things that can be done in process. As I said at the beginning, for most people who are formally caught but for whom it is not a seriously risky area, this is just 30 working days of a nuisance. You get no real engagement in that period. Maybe that is just the way it will be. It is the interesting ones that need a better quality of engagement through an extended review process.

Q78 Sarah Edwards: Mike, you just indicated that you wanted to come back on that.

Mike Reid: A really important point around frameworks and approval authorities like this is that their biggest impact is invisible. The biggest impact, very tangibly, in my experience, in selling a company was not the speed of the application process, the lack of or speed of responsiveness, et cetera. It is the perception of what might happen. We had live cases of certain bidders to buy the company who had very different perceptions of the wording on the Government website.

Some were saying, "No problem, it is not involved. We are cracking on". Others were saying, "No, we will not move further until you guys go and get formal approval". Do not underestimate these invisible ripples, which you have already outlined in the panel, which is why it is fantastic having this panel.

Given that invisibility and the difficulty in measuring what that invisibility is, even though it is there, as well as working on fast tracking stuff, the panel should be looking at where we can remove the need to cover. That is back to my point. Why 25%? Why not 33%? Even a simple move like that will take out of the system a whole number of smaller, 20, 30, 50 or 100-employee companies, which, I would argue, are very unlikely to be part of key national security. Therefore, they release resources from the system, which means the fast tracking can work and not get buried by the quantity of the applications.

Q79 Charlie Maynard: It sounds like we are all headed in the same direction. My recommendation would be this. Particularly to the two lawyers, but perhaps also from a non-legal perspective, why not just draft a short note saying, "These are the recommendations we would like to make", and we receive can it from each of you? I am not sure what we can do with that, but it would be very useful. If we have that from each of you, we can put it together and then write to the Minister saying, "How about changing this?"

Nicole Kar: We have done that, each of us in different fora, but we are very happy to send specific written evidence to the Committee, for sure.

Q80 John Cooper: Thank you for joining us. It does seem the system is designed to create a very wide trawl. That does seem to be the original intention. It is clear, from the numbers that are in that bigger trawl and then the numbers that actually are drilled down to, that there is quite the disparity there.



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Perhaps we will start with you, Nicole, because you have touched on this already. Without getting into why we have gone down that particular route, can you give us a sense of what it is like on an administrative level, day to day, dealing with this whole system? Do you think there is clear guidance given to people and case management? Is there a good to-ing and fro-ing, or is it quite monolithic?

Nicole Kar: There is a difficulty in our regime. It was designed this way, so it is institutional design, but there is a disconnect between those who deal with the front office and those who are in the back office, if you like, in Government Departments, making decisions around national security.

What we see, as users and practitioners, is only the front office. In my experience, and I will not speak for Martin, it is a very polite, welcoming committee. They will jump on a call with a client and say, "This is what we are and what we do. These are our timelines". They will give no specific guidance as to an individual case. They will not give you feedback on what their concerns could be. You wait to see if you are coming out in a 30-working-day period, another 30-working-day period, or indeed a 45-working-day period.

If you call the ISU, in fairness, it would not be able to give you real insight, because it is in the process of doing a write-around, it is consulting, et cetera. It is very different in design from a CFIUS process, a FIRB process, or other processes we are used to dealing with internationally, because you do not have an opportunity ever to discuss with the decision maker or, indeed, to see the people who are in the room debating the merits.

The other difficulty, which we may get on to, is that there is no real learning effect. It is quite an indirect learning effect about the regime. We have had four years of operation. We have had a number of final orders published. I can look at the website. Anyone can look at the website and decide whether a Chinese company can buy a dual-use or a Government contracting entity in the UK, to which the answer often is no. I cannot really extrapolate from that the particular activities involved, the nature of the order that was required, et cetera. Even a repeat investor cannot really tell from their last experience what it means for a further experience in the UK. Every single case is a reset and there is not a lot of transparency.

I am a regulatory lawyer. Transparency is something we are used to. In national security, we all have to accept that we cannot have the same level of transparency, but there is a lot of guidance published. It is quite general, understandably. On particular sectors, it is quite helpful. The Chair mentioned the university sector and small acquisitions. There is a reasonably good steer about what would cause the ISU and Government, ultimately, concerns. Beyond that, the learning effect is not really forced out of the annual reports or case-specific orders. There is not a lot of learning that you can do in the UK regime at the moment, unlike CFIUS and some other places.



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Q81 John Cooper: Martin, is that your experience, that you have this void that you are shouting into and nothing seems to come back until you get a final decision?

Martin McElwee: I hope we never have to shout at them. Yes, for cases that do not go to extended review and reach the stage of having to give commitments, yes, that is a universal experience. As Nicole says, that is the way the system has been set up. When you get to the stage of the most complicated cases, yes, there is much greater engagement. I suspect there are people in the background who we do not have access to, but there is a pretty high quality of engagement at that point.

Nicole's point about the learning effect is really important, though, because that distinguishes the NS&I process from what went before, when final orders were published. It distinguishes this from, for example, the competition regime, where we have very full precedent to work from and a proper learning effect, and a recognition by the regulator that it is good to talk in the early stages of cases now.

Whether the ISU will go on that same journey that the Competition and Markets Act has gone on, I am not sure, because I recognise that national security is different from competition, but it took quite a lot of time for the CMA to realise that would be a good thing in the interests of growth, the interests of the parties and its own interests. It may be that the ISU could learn a bit from that.

Q82 John Cooper: Then just sticking with you, we have talked about the wide trawl. The safety net underneath that, then, is this rapid assessment and the idea that you will get quite a quick decision. There are statistics published that show that they seem to do quite well measured against those benchmarks. As you will know, TheCityUK said that all parties involved in a transaction that is notified must factor in at least a couple of extra months to their deal timelines to ensure compliance with the NSI Act's notification requirements. Although on the face of it, that does seem to rattle through these things, actually, there is quite a big drag here, is there not?

Martin McElwee: Let us take a case that is UK to UK. You might find your deal is not notifiable to the competition authorities in the first place, because it does not meet the jurisdictional thresholds. The UK regime is voluntary anyway. You might conclude that it is just not competitively interesting. The CMA does not want to see it, or nowadays you can even get a briefing paper through the CMA with comfort from it in two weeks. You have that big bit out of the way, and it has been recognised that that is good.

What is still sitting there then is an NS&I notification, if you fall within the mandatory sectors. You are in there for 30 working days plus prep time. It is very good at hitting that, but it pretty much hits that date and no date earlier. You are, in effect, for maybe four to six weeks, waiting to



close, which you would not be otherwise. Yes, there is an effect, even on mainstream cases.

Q83 **John Cooper:** Obviously, this is a dynamic world. That four to six weeks could be deal or no deal. That could be a deal breaker, potentially.

Martin McElwee: There is arguably a greater issue for the more complicated cases that go into the extended review. Then you have the issue of clock stops. The challenge with clock stops is that it is not just, in a sense, a clock stop for you to provide information. It is a clock stop when it is asking somebody else to provide information, and you do not have control over that. The aim to get that process through in, say, four months is out the window in some cases. You are into six, eight, nine months.

Q84 **John Cooper:** Nicole, is that an experience that you recognise? You have seen this sort of thing, then.

Nicole Kar: In some cases, yes. The difficulty with the NSIA, and foreign investment regimes generally, is that it could be very quick. Actually, the NSIA and the ISU are, by international standards, very quick. Something like 96% of cases are in the 30-working-day period. Because you are not always very clear what the concern is, and you might have a more challenging case, you can find yourself on the receiving end of stop clocks and be unable to communicate to investors how long it is going to go for, when it comes to an end, and what is going on, because there is not really transparency at that point.

Q85 **John Cooper:** Back to that learning point, you have no information to pass on to investors, which might make them nervous of what else is going on.

Nicole Kar: That is right. Investors are used to understanding the end of a process. There are a lot of straightforward cases. There are some grey cases. We are in a position of saying, as practitioners, "This could be between 30 working days and 90 working days, and I cannot really tell you that". The financing costs of that are very significant.

Q86 **John Cooper:** Mike, if I could come to you, are there potential changes to the screening, then? It has been designed this way, so, short of scrapping the whole thing and starting it again, are there changes that could be made to better support firms that are trying to get capital into critical sectors?

Mike Reid: Over and above what the panel has already spoken about, I am probably moving into a stuck record. It is currently "one size fits all". I would have a good look at the size piece.

Q87 **John Cooper:** Is it "one size fits none"? Is that the problem here, that this is fundamentally not really fit for purpose?

Mike Reid: That is too big a question for me to really answer. At the other end, I can just say, like any situation, there is a resourcing limit



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that this operation has to deal with everything. The demands on it are getting larger because people want things more quickly. Therefore, it is a really worthy piece of work to scrutinise the areas, either the definition of the sectors or the size piece, and there may be other attributes that you can narrow successfully by not damaging the ultimate focus on UK security, while releasing resources to deliver the heightening needs on delivery.

The piece, which is not lost on the panel, of the timing of this process is key. Imagine you are letting or about to buy the house of your dreams and someone saying, "Stop—30 days. Sorry, it is going to be another 30." This is all coming at a really crucial moment. The irony of the situation I mentioned earlier was that it was actually the UK buyer with their UK lawyers who decided it needed to go through this process, and the US buyer with its UK lawyers decided it did not. Guess what? We sold to the US.

Chair: That has been very useful. Do committee members have any other questions? No, then that has been all we need. Thank you so much. It has been incredibly helpful just to get that feedback from the coalface of investment decision taking and the processes that you run. We are really grateful to you for your time and evidence. That concludes this panel and the session.