Business, Energy and
Industrial Strategy Committee
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Nusrat Ghani MP, Minister of State for the Investment Security Unit
Cabinet Office
70 Whitehall
London
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24 April 2023

Dear Nus,

National Security and Investment Act 2021: Annual Report to Parliament, FY2022/23

The Business, Energy and Industrial Strategy Sub-Committee on National Security and Investment has recently taken oral and written evidence on information which the Investment Security Unit (ISU) might usefully include in its next Annual Report, to help stakeholders understand the new investment screening system. I wanted to provide you with a summary of what we have heard so far, so that it can be considered in the preparation of this year's report, which I understand the ISU is already working on.

Suggestions include:

- Information that clarifies understanding of the scope of the Act, most importantly the number of mandatory and voluntary notifications that were rejected due to being out of scope, as well as the number of notifications filed as mandatory but ultimately accepted as voluntary notifications. This would provide clarity on whether businesses have correctly understood the scope and definitions of qualifying transactions and the seventeen sensitive sectors. A breakdown by industry sector would further highlight any sector-specific issues.[1]
- A breakdown of the total number of cases by transaction type—for example, acquisition, merger, internal reorganisation or financial instrument—in order to identify the number of technical filings that were captured.[2]
- The number of transactions abandoned by the parties involved, and when in the process this occurred.[3]

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[1] Herbert Smith Freehills LLP (INF0007); Freshfields Bruckhaus Deringer LLP (INF0015); BVCA (INF0008); oral evidence taken on 28 March, HC (2022-23) 1118, Q31 [Athene Blakeman]
[2] BVCA (INF0008); Clifford Chance LLP (INF0011); The City of London Law Society Company Law Committee (INF0014); Dentons UK & Middle East LLP (INF0010); Freshfields Bruckhaus Deringer LLP (INF0015)
[3] Clifford Chance LLP (INF0011); The City of London Law Society Company Law Committee (INF0014); Slaughter and May (INF0003)

- More detail about the kinds of remedies imposed on cases in Final Orders, particularly how often behavioural or structural remedies were imposed. This should include at a minimum the number of Final Orders that imposed remedies, rather than preventing the acquisition entirely (although this information can be calculated from published Final Orders it would be useful to have it in officially collated in the report).[4]
- More detail on the time taken for each stage of the investment screening process, including the average time taken, the longest and shortest times or the distribution of cases within that range. A breakdown of the average time taken by each possible outcome at each stage would also be valuable.[5]
- More data on how information notices are used, including the average number issued, as well as the average amount of time taken to issue, respond to or accept them.[6]
- Contextual information on statistical trends and changes in the investment landscape and investment flows.[7]

It might be helpful for the report to clearly lay out case numbers by outcome, potentially using diagrams.[8] Although information like the number of cases cleared at each stage can be estimated from the data that is included in the report, some witnesses have asked for this to be made explicit in the report.[9] The chart in the Integrated Review Refresh 2023, published in March,[10] could provide a model.

Where the Annual Report includes numbers of cases—for example, the number of cases reviewed or the number of notifications accepted or rejected—witnesses have suggested that these headline figures should be broken down to allow comparisons by:

- The nationality of the acquirer, particularly for the number of cases reviewed, and the numbers of cases that achieved each possible outcome at the various stages of the screening process.[11]
- Whether the cases were notified voluntarily, under the mandatory system, or called in by the Secretary of State without a notification.[12]

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[4] Herbert Smith Freehills LLP (INF0007); The City of London Law Society Company Law Committee (INF0014); Freshfields Bruckhaus Deringer LLP (INF0015); Slaughter and May (INF0003)

[5] The City of London Law Society Company Law Committee (INF0014); Dentons UK & Middle East LLP (INF0010); Prof Ioannis Kokkoris (INF0017); Clifford Chance LLP (INF0011)

[6] Freshfields Bruckhaus Deringer LLP (INF0015)

[7] Slaughter and May (INF0003); Clifford Chance LLP (INF0011); BVCA (INF0008); Herbert Smith Freehills LLP (INF0007); CMS (INF0016); Eversheds Sutherland (International) LLP (INF0013)

[8] Dentons UK & Middle East LLP (INF0010)

[9] Oral evidence taken on 28 March, HC (2022-23) 1118, Q31 [Veronica Roberts]

[10] Cabinet Office, *Integrated Review Refresh 2023: Responding to a more contested and volatile world*, CP 811, March 2023, p. 49

[11] Clifford Chance LLP (INF0011); Herbert Smith Freehills LLP (INF0007); The City of London Law Society Company Law Committee (INF0014); Freshfields Bruckhaus Deringer LLP (INF0015); Slaughter and May (INF0003); Dentons UK & Middle East LLP (INF0010); Kirkland & Ellis (INF0012); BVCA (INF0008); Prof Ioannis Kokkoris (INF0017); oral evidence taken on 28 March, HC (2022-23) 1118, Q31 [Veronica Roberts]

[12] Herbert Smith Freehills LLP (INF0007); The City of London Law Society Company Law Committee (INF0014)

- The industry sector involved.[13]

I hope that passing on these suggestions is helpful for you and your officials in preparing the report, which I look forward to reading when it is published.

I also appreciate your openness to giving evidence. I am just waiting for the membership of my Committee to be finalised, given our imminent change to being the Business and Trade Committee, before finalising the forward programme. We will certainly want to hear from you in conjunction with the Annual Report, however, so I will ask Committee staff to discuss potential arrangements with your officials now in order to find a date that might work in the near future.

In line with usual practice, I expect that the Committee will publish this letter.

Yours sincerely,

DARREN JONES MP
Chair of the Business, Energy and Industrial Strategy Committee

[13] Herbert Smith Freehills LLP (INF0007), Clifford Chance LLP (INF0011), Freshfields Bruckhaus Deringer LLP (INF0015), Kirkland & Ellis (INF0012), Prof Ioannis Kokkoris (INF0017), Slaughter and May (INF0003), Eversheds Sutherland (International) LLP (INF0013)