<u>14 October 2025</u>

COMMITTEE OF LONDON LAW SOCIETY
RESPONSE TO CONSULTATION ON THE NOTIFIABLE ACQUISITION REGULATIONS

1. INTRODUCTION

1.1 The City of London Law Society Competition Law Committee (the "**Committee**") welcomes the opportunity to respond to the Cabinet Office's consultation on proposed changes to the National Security and Investment Act (Notifiable Acquisition) (Specification of Qualifying Entities) Regulations 2021 (the "**Consultation**").

1.2 The City of London Law Society ("**CLLS**") represents approximately 17,000 City of London solicitors through individual and corporate membership, including some of the largest international law firms in the world. The Committee comprises leading solicitors specialising in UK and EU competition law in a number of law firms based in the City of London, who act for UK and international businesses, financial institutions, and regulatory and government bodies in relation to competition law matters. Members of the Committee also represent companies when certain transactions and/or investments are reviewed under the National Security and Investment Act (the "**NSI Act**"), making filings and submissions as well as liaising on their behalf with the Investment Security Unit (the "**ISU**").

1.3 The Committee members and individuals responsible for the preparation of this response are:

- Nicole Kar, Paul, Weiss, Rifkind, Wharton & Garrison LLP (Chair of the Committee);
- Veronica Roberts and Ali Macgregor, Herbert Smith Freehills Kramer LLP; and
- Mark Jones, Jones Day;
- Nelson Jung, Clifford Chance LLP;
- Nigel Parr, Ashurst LLP;
- Alex Potter, Freshfields LLP;
- Samantha Mobley, Baker McKenzie LLP; and
- Ian Giles, Norton Rose Fulbright LLP.

1.4 Given its role and broad representation of law firms within its membership, the Committee considered it appropriate to provide a paper outlining its views on certain aspects of the Consultation and the NSI Act regime more generally.

1.5 The Committee welcomes the Cabinet Office's aim to clarify some of the mandatory sector definitions covered by the Consultation.

2. OBSERVATIONS ON THE OPERATION OF THE NSI ACT REGIME AND THE CONSULTATION

The overall number of notifications under the NSI Act is consistently high

2.1 The Committee notes that the number of transactions reviewed under the NSI Act remains high. In the most recent reporting year (1 April 2024 – 31 March 2025, "**FY2024-2025**"), the ISU received a total of 1,143 notifications. This figure reflects a steadily increasing trend, rising from 906 notifications in the previous reporting year and 865 in the reporting year before that.

2.2 Furthermore, the available data shows that very few of these notifications have raised substantive issues – 95.5% of acquisitions reviewed in FY2024-2025 were cleared to proceed within the initial review period. This mirrors the figure from the previous reporting period (95.6%). Consequently, a substantial amount of time and resource is expended to assess transactions that ultimately pose no issues. As well as taking up Government time and resources, this process delays and adds uncertainty for transactions affecting UK businesses.

2.3 In both its call for evidence which triggered the Consultation and in its subsequent response, the Government emphasised the importance of the NSI Act framework being proportionate, well-targeted and "*as pro-business and pro-investment as possible*".[1]

2.4 An important aspect of the Government's agenda is to encourage growth in the UK economy. To achieve this growth, it is crucial that the regulatory frameworks affecting UK businesses and investors in UK businesses remain limited and proportionate. Under the NSI Act regime, a significantly higher number of transactions are notified compared to peer regimes in other countries. For example, the Committee on Foreign Investment in the United States ("**CFIUS**") received 209 notifications (reviewing 325 transactions in total) in its most recent reporting year despite the United States having a substantially larger economy than the UK.[2] If the Government aims to position the UK as a competitive destination for global investment, it must ensure that barriers to such investment are kept as low as possible. This means ensuring that its regulatory regimes (including the NSI Act) are as limited and focussed as possible.

2.5 In this respect, the Committee is concerned that, even by the Government's own estimations (which necessarily carry a degree of uncertainty), the changes outlined in the Consultation are likely to result in more, not fewer, notifications. The Cabinet Office should therefore consider carefully whether expanding certain mandatory notification sector definitions aligns with the Government's wider goal of encouraging growth in the UK economy.

Transparency and engagement with the ISU, as well as the speed of reviews, should be improved

2.6 The Committee welcomes the ISU's openness to engage with parties and their advisers, particularly after call-in of a transaction. However, the actual engagement and discussion of the issues is very limited in sharp contrast to the standard engagement with merger control authorities.

2.7 The lack of transparency in the NSI Act review process can result in considerable uncertainty and pose challenges for businesses and their advisers navigating the regime. There are a number of ways in which this could be improved:

2.7.1 **Appointing a case manager for each notification and providing their contact details to the notifying party**: it is normal practice for merger control regimes, and is also a feature of other FDI screening regimes (e.g. CFIUS), that there is a dedicated contact at the authority who the parties can reach out to, for example, to clarify requests for information and provide updates on the timing and status of the review. This is a notable omission of the NSI Act regime, yet it would help provide greater certainty for parties. It would also be beneficial for the ISU to be able to pick up the phone to a party's advisers if they want to talk through any aspect of the matter.

2.7.2 **Having more than one channel of communication**: building on the point raised at 2.7.1, another shortcoming of the NSI Act regime is the lack of direct communication with the ISU. Currently, the only means of contact is through the general email address. The Committee members have experienced situations

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1 Call for evidence outcome: National Security and Investment Act 2021: Call for Evidence Response, Updated 18 April 2024, available here.

2 CFIUS Annual Report to Congress, Report Period: CT 2024, August 2025, pages 14 and 15, available here.

where parties have provided information to the general email address, but it took a day or more to reach the relevant team working on the case due to the absence of a more direct line of communication with case team members.

2.7.3 **Providing updates on the timing of reviews**: once a notification is submitted, it would be helpful for companies which are focused on deal planning and timetable if the ISU could provide an indication of when the notification is likely to be accepted or additional information is to be sought. There is currently significant variation in the time taken to accept a notification. For example, a rough timeframe could be provided shortly after submission based on factors such as the notifying party's previous notifications (if any) and the ISU's capacity at the time of notification. It is also very important that the parties receive notice of when final decisions (in particular final orders) are likely to be issued. Committee members have encountered situations where final orders relating to listed businesses have been published without notice on the Cabinet Office's website during market trading hours. To improve this, for example, the ISU could inform the relevant parties that a final order is expected to be published in the next 48 hours, so that the parties can better manage their internal and external communications.

2.7.4 **Communicating more effectively with parties**: the ISU could improve its engagement with parties by taking basic steps, such as acknowledging receipt of submissions and confirming that the ISU has no further questions about transactions when it has made enquiries about non-notified transactions. This wording can always be caveated to emphasise that the ISU may revert with additional questions if new information comes to light (as the Competition and Markets Authority ("**CMA**") does).

2.8 Transparency under the NSI Act regime would also be significantly improved by publishing more detailed content from the final orders on the Cabinet Office's website. As well as impacting the parties involved, final orders can also have an impact on third parties who may supply or acquire goods or services to or from parties that are subject to final orders. For those third parties, understanding the obligations imposed by the final orders is important to assess and manage potential implications for their own operations.

2.9 Investors also benefit from having a clear understanding, in advance, of the types of remedies that may be imposed in final orders in a worst-case scenario. Greater transparency regarding previously imposed remedies would allow businesses to effectively assess the risks associated with certain transactions. It would also enable the parties to propose appropriate remedies upfront where appropriate, which should expedite the review process.

2.10 Regarding the speed of reviews, at the time the regime was launched, Government officials indicated that the review period would only last as long as was needed. The Cabinet Office has not published recent data on the average time it takes for the ISU to confirm that it will take no further action during the initial period. However, based on the experiences of the Committee members, the ISU increasingly uses the full duration of relevant periods, even for straightforward clearances received in the initial period. The Cabinet Office should consider ideas for increasing the speed of reviews, including:

2.10.1 Setting and publishing ambitious targets to clear straightforward acquisitions within the initial period (e.g. within 20 or 25 working days), as well as the ISU's performance against such targets, as organisations like the CMA do. Speeding up the review of non-problematic cases could free up resource in the ISU to focus on more complex cases.

2.10.2 Implementing a fast-track process for investors who make more than one notification a year and who can confirm that there have been no, or only very limited, changes to their ownership since the previous notification. The ISU should at this point have institutional knowledge of some investors who make repeat filings, which should be used to facilitate and speed up future NSI Act reviews.

Making it easier for parties to assess whether the NSI Act applies would be very beneficial for businesses and investors

2.11 Businesses and investors can face significant challenges in assessing whether the NSI Act could apply to their transaction. In FY2024-2025, the ISU received 134 voluntary notifications. Despite the regime having been in operation for nearly four years, this figure has not declined as one might expect: there were 120 voluntary notifications submitted in the previous reporting year and 180 in the reporting year before that. This suggests that many businesses still struggle to fully understand whether their transactions fall within the scope of the NSI Act regime and/or their transaction may be one that is deemed to raise substantive concerns.

2.12 Importantly, the Cabinet Office should carefully consider whether increasing the scope and complexity of some of the definitions in the National Security and Investment Act 2021 (Notifiable Acquisition) (Specification of Qualifying Entities) Regulations 2021 ("**NARs**") as contemplated by the Consultation is merited. Advisers increasingly feel obliged to produce lengthy and detailed questionnaires to help their clients assess whether the NSI Act applies, which can be challenging for both lawyers and technical staff to interpret and understand. This applies both to transactions that are ultimately notified to the ISU and transactions that are not. Simplifying and narrowing the definitions would make it easier for businesses to understand and determine whether their transactions are in scope, thereby reducing costs and uncertainty. The sector definitions that are particularly problematic in this regard are 'Artificial Intelligence'; 'Advanced Materials'; 'Quantum Technologies'; and 'Synthetic Biology'.

2.13 The Committee welcomes the guidance that has been provided by the Cabinet Office on the NSI Act regime to date. More detailed guidance on the interpretation of the sector definitions in the NARs and on trigger events by reference to specific examples would enable parties to assess the likely application of the regime better. With four years of experience in applying the NARs, the ISU is now well placed to increase certainty and reduce the number of NSI Act notifications by, for example:

2.13.1 offering prompt guidance to parties who wish to confirm whether certain activities are within or fall outside the scope of the NARs; and

2.13.2 publishing (with any confidential information removed) details of requests for guidance on the NARs it has received, and its responses to those requests.

2.14 The Committee also notes that some of the guidance currently available (such as that relating to the Defence sector) are not consistent with the ISU's current practice. This should be addressed by clarifying the guidance.

2.15 These measures would provide businesses with greater certainty and reduce the number of unnecessary notifications made under the NSI Act.

3. ITEMS NOT INCLUDED IN THE CONSULTATION – EXCLUSION OF SOME KINDS OF INTERNAL RESTRUCTURING AND APPOINTMENT OF LIQUIDATORS

3.1 The Committee welcomes the Government's commitment to exclude some internal restructurings and the appointment of liquidators from the mandatory notification regime of the NSI Act.

3.2 These aspects of the regime are likely to represent low risk scenarios from a national security perspective. For example:

3.2.1 Inserting or removing a holding company in an ownership chain currently requires a mandatory notification (when it involves a qualifying entity carrying out activities specified in the NARs), even though this trigger event will not change the quality of control the ultimate owner has over the qualifying entity.

3.2.2 Transactions will sometimes occur over multiple stages (e.g. a qualifying entity is moved to sit under a new JV company, into which a new partner will invest). In such transactions, two or more separate notifications are currently required under the NSI Act, even though there is actually only one event that has changed the control position for the qualifying entity (the new investor coming in). Generally, merger control regimes only capture changes made on a lasting basis, so a single filing can be made in respect of multiple steps of an acquisition.

3.3 Requiring mandatory notifications in such cases imposes costs and delays to routine business activities that are disproportionate to the level of risk involved. This can also result in additional unnecessary work for the ISU (e.g. where multiple filings are required for the same transaction).

3.4 Since the mandatory filing process needlessly delays internal restructuring required for commercial purposes, the Committee would urge the Cabinet Office to:

3.4.1 remove the requirement to make notifications where there is no change of control on a lasting basis (so multiple NSI Act filings do not need to be made in respect of different steps of the same transaction);

3.4.2 exclude all internal restructurings where the qualifying entity remains a subsidiary of UK incorporated entity following the restructuring; and

3.4.3 either offer a fast track process or waive the suspensory nature of the regime (i.e. remove the obligation on parties not to complete the restructuring prior to receipt of the Secretary of State's approval), for all other internal restructurings where there is no change to the ultimate ownership of the qualifying entity.

4. COMMENTS ON THE DRAFT REVISED SECTOR DEFINITIONS

4.1 The Committee's (and the CLLS's) members advise and represent a wide range of businesses who may be impacted differently by the changes proposed in the Consultation. The Committee therefore makes limited comments about some of the sector definitions.

4.2 **Artificial Intelligence**:

4.2.1 The Committee welcomes the objective of excluding low risk cases of businesses licensing artificial intelligence ("**AI**") without undertaking any further development themselves.

4.2.2 However, the language in the Consultation is still likely to include activities which are lower risk. The new definition still does not clearly separate businesses which use AI (a lower risk activity that now comprises a very large number of businesses) from those that develop AI (a higher risk activity).

4.2.3 The Committee notes that there are better examples of AI definitions that are more focussed and are used by other investment screening authorities. For example, CFIUS' outbound screening regime only captures the development of AI systems that are:

(A) designed for military or government intelligence or mass surveillance uses;

(B) intended to be used for cybersecurity applications, digital forensics, penetration testing or control of robotic systems; or

(C) trained using a defined threshold of computing power (being a quantity of computing power greater than 10ˆ25 computational operations or trained using primarily biological sequence data and a quantity of computing power greater than 10ˆ24 computational operations).

4.2.4 The Cabinet Office should consider adopting a much tighter definition, which would decrease the number of unnecessary NSI Act filings in this area.

4.3 **Advanced Materials / Critical Minerals / Semiconductors**:

4.3.1 The Committee notes that it is helpful to split Advanced Materials out into three different sectors from a comprehension perspective, given that they capture quite different types of business.

4.3.2 However, these definitions are still very broad. The Cabinet Office should reflect on whether parts of the current Advanced Materials are relevant to businesses undertaking activities in the UK. For example, there are critical minerals that are not mined in, and types of critical mineral processing that do not take place in, the UK; so it is counter-intuitive to include such activities in the Advanced Materials / Critical Minerals definition.

4.4 **Critical Suppliers to Government**:

4.4.1 The new paragraph 4(e) would expand this definition to include not only suppliers of notifiable services that result in the supplier generating or having access to OFFICIAL-SENSITIVE information, but also those that "could" result in the supplier generating or having access to information that "could" be so classified. This appears to place the onus on suppliers to assess whether they might have access to such information in the future, whereas it is the government contractor that will know whether that is the case. It is therefore likely that all suppliers of "notifiable services" (as defined) will conclude that they risk falling within this definition, even if they have not generated or obtained access to such information and have not been notified, by way of a Security Aspects Letter, that they are expected to generate or obtain access to such information. As such the criterion would be redundant, in practice.

4.4.2 We therefore suggest that the definition is amended to make it clear that businesses will only be in scope of this definition if they have been notified that the delivery of that notifiable service will or could result in the qualifying entity generating or obtaining access to information of the relevant type.

4.5 **Communications**:

4.5.1 There is a typographical error in paragraph 3(1)(b) which refers to the "turnover condition in sub-paragraph (2A)", but this should refer to sub-paragraph (1A).

4.6 **Data Infrastructure**:

4.6.1 The Committee welcomes the clarification that this definition provides in just applying to data centres. In its original form, the meaning of "data infrastructure" was unclear and led to significant uncertainty.

4.6.2 However, every UK data centre now risks being caught by the new definition, which is likely to significantly increase the number of NSI Act filings in this area. The Cabinet Office should consider carefully whether this is really merited from a national security perspective.

4.7 **Energy**:

4.7.1 In the existing NARs, paragraph 3(a)(iv) appears to be redundant, and should be deleted, as it only applies if the qualifying entity already or imminently owns or operates the facility, and those activities are already covered by paragraphs 3(a)(i) and (ii). Similarly, for paragraphs 3(b)(iv) and 4(4), if the qualifying entity already owns or operates a new upstream petroleum facility, it is already caught by paragraph 3(b)(i) or (ii). Consequently, the words "is or" should be omitted from paragraph 4(5).

4.7.2 We agree with the inclusion of entities holding Multi-purpose Interconnector licences under the prospective Section 6(1) (ea) of the Electricity Act 1989. However, "as inserted by section 205(8) of the Energy Act 2023" should only be included if that section is not in force when the changes are enacted.

4.7.3 We agree with the idea of looking at aggregated capacities which are assessed against the 500MW, 1GW, 1.5GW etc thresholds. The current definition causes problems because even real estate portfolio acquisitions including small ancillary generation capacity (e.g. rooftop solar installations) can result in a notification, given the very broad definition of "generating activities" in s.4(1)(a) of the Electricity Act 1989 and the related definitions of "supply" and "distribution system". While the amendments suggested to Paragraph 4(6)(b) help to a degree, there is still a risk of small transactions which have no national security implications tipping the transaction over one of the new aggregate thresholds. For instance, if the target of an investment has a single rooftop solar installation, an investor would still need to investigate and determine the aggregate generating capacity of all its existing investee companies in order to determine whether one of the thresholds is exceeded, which is clearly disproportionate to the potential for national security risk that could be caused by a single rooftop solar installation. We therefore suggest that the Government considers a separate de minimis threshold within Paragraph 4(6)(b) for the capacity of the qualifying entity (target entity's capacity only), to avoid this happening. In addition (or in the alternative), the definition could be revised to exclude from the threshold calculation generating capacity that is disregarded for the purpose of calculating the capacity thresholds for Class A small generators in sub-paragraph of the Class A exemption in Schedule 2 of the Electricity (Class Exemptions from the Requirement for a Licence) Order 2001 (i.e. power supplied to a single consumer or qualifying group of consumers on the same site as the generating capacity). This change would make the process of calculating whether the thresholds are met simpler and easier, by excluding the generation of small amounts of electricity (in particular self-supplied electricity) that is not fed into the grid and is therefore not liable to materially contribute to any national security risk to the electricity generation or distribution systems.

4.7.4 Separately, the proposed language in the revised definition is circular, as the "relevant capacity being acquired" (paragraph 6(4)(b)) is defined to include the acquiring group's capacity. We would suggest the following language:

"(6)(b) The relevant capacity of the qualifying entity is such that the acquisition results in the total relevant capacity of the acquirer and its group undertakings[3] *(including the qualifying entity) meeting or exceeding 500 megawatts or any subsequent 500 megawatt threshold starting with 1000 megawatts*

(7) For the purposes of sub-paragraph (6)(b), the "relevant capacity" is the total of—

(a) the total Great Britain[4] *installed capacity of any generating assets owned or operated by an entity; and*

[3] The term 'Group' is not defined in the regulations or the Act. We would suggest either using the term 'Group Undertakings' (which is defined) or, if 'Group' is to be used, to include an appropriate definition.

[4] There is an inconsistency in the Consultation draft amendments between the inclusion of "United Kingdom" in the revised paragraph 4(7), and the definition of aggregation (Paragraph 1) which only relates to the Great Britain market. Moreover, the definition of "generating activities" – which determine the "generating

(b) the amount of Great Britain customer load and generated electricity available to an entity for aggregation"

4.8 Finally, we note that the introduction to the revised Energy definition (page 53 of the Consultation) states that the proposed updates "include clarifications relating to the definition of ‘downstream gas activities’ and ‘enabling the operation’ of a petroleum facility" and the table on page 18 of the Consultation refers a change in the definition of an aggregator "to be more closely aligned with Ofgem’s definition". These proposed changes in the revised wording of the definition do not appear to be included in the text on pages 55-56 of the Consultation.

4.9 **Synthetic Biology**:

4.9.1 The Committee remains concerned that the proposed changes have not materially reduced the length or complexity of the schedule of the NARs and are unlikely to improve businesses' ability to apply the NSI Act regime to transactions in this sector.

4.9.2 As noted at paragraph 2.12 above, this is a sector that the Committee members' clients struggle to interpret. The Cabinet Office should consider a much broader simplification to retain the focus only on transactions that clearly pose a national security risk.

4.10 **Water**:

4.10.1 Given the broad scope of the existing water regulatory regime overseen by Ofwat, the Cabinet Office should consider whether including the water sector is merited.

4.10.2 If a water sector is to be included in the replacement to the NARs, the Cabinet Office should consider limiting its application to the 16 regional water and sewerage companies and water only companies. As drafted, the new definition would also apply to an additional 12 smaller water and sewerage undertakers.

4.11 The Committee would welcome the opportunity to discuss any of the points raised in this paper with the ISU and/or the Cabinet Office.

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capacity" to be taken into account – relies on s.4(1) of the Electricity Act 1989, which pursuant to s.3F(a) of that Act relates only to generating activities "in Great Britain, in the territorial sea adjacent to Great Britain or in an area designated under section 1(7) of the Continental Shelf Act 1964". Consequently, we have suggested amending the references in Paragraph 4(7) from United Kingdom to Great Britain.