



**NATIONAL SECURITY AND
INVESTMENT ACT 2021:
FINAL ORDER MADE BY UK
GOVERNMENT PREVENTING
THE ACQUISITION OF
INTELLECTUAL PROPERTY
RELATING TO VISION
SENSING TECHNOLOGY**

For the first time, a final order has been published by the UK government under the National Security and Investment Act 2021 to block a proposed transaction, in this case the acquisition by a Chinese company of intellectual property under a licence agreement relating to vision sensing technology.



On 20 July 2022, Kwasi Kwarteng, UK Secretary of State for Business, Energy and Industrial Strategy, published notice of a final order¹ pursuant to section 26 of the National Security and Investment Act 2021 (the **Act**). This was in relation to a licence agreement which had been entered into between the University of Manchester and the proposed acquirer, Beijing Infinite Vision Technology Company Ltd (the **Acquirer**). The impact of the order is that it prevents the “*acquisition of the intellectual property from proceeding*”.

Background

The Act came into force on 4 January 2022. As outlined in the government’s guidance and information about the Act², the Act gives “*the government powers to scrutinise and intervene in business transactions*” to “*protect national security*” where the investment or acquisition has the potential to give rise to national security risks. In June 2021, we published a briefing³ in which we set out details of the Act and reviewed its entry into force including its retrospective provisions.

Press reports indicate that according to the Department for Business, Energy and Industrial Strategy (**BEIS**), as at the end of March 2022, 17 deals had been called in for review under

the legislation. Of these, three had been cleared and 14 were still to be determined. In the first three months of 2022, a total of 196 mandatory notifications were made whilst over the same period a total of 25 voluntary notifications were made.

Details of the Order

The publication of notice of the final order in the case of the University of Manchester and the Acquirer demonstrates that the government is willing in certain circumstances to exercise its enforcement powers under the Act where there is a risk to national security. According to the final order⁴, the University of Manchester and the Acquirer entered into a licence agreement that would have enabled the Acquirer to use intellectual property in relation to “*SCAMP-5 and SCAMP-7 vision sensing technology to develop, test and verify, manufacture, use, and sell licenced products*”. The imaging technology at issue has the capability of being used to improve computer vision for autonomous robots and can have “*both civilian and military applications in reconnaissance and search and rescue operations*”⁵. Given that the government considered that the Acquirer has links to the Chinese State, and the licence agreement falls

within one of the 17 sensitive industry sectors⁶ identified in the Act, it is not surprising that the government decided to review the agreement under the Act.

The acquisition of the licence was held to constitute a trigger event for the purposes of section 9(1) of the Act which relates to the control of assets. Section 9(1) of the Act states that for the purposes of the Act, a person gains control of a qualifying asset if the person acquires a right or interest in, or in relation to, the asset and as a result the person is able (a) to use the asset, or use it to a greater extent than prior to the acquisition, or (b) to direct or control how the asset is used, or direct or control how it is used to a greater extent than prior to the acquisition.

The fact that the Act has been applied to block the acquisition of a licence for technology in these circumstances demonstrates how broadly the Act can and will be applied. Investors and relevant parties should therefore exercise caution and should conduct appropriate due diligence to determine whether they should make a notification to BEIS’ Investment Security Unit on the facts of each case. Technically, notifications of proposed acquisitions of assets

1 NATIONAL SECURITY AND INVESTMENT ACT 2021 - Publication of notice of final order

2 National Security and Investment Act 2021 - Guidance and information about the National Security and Investment Act

3 <https://www.hfw.com/National-Security-and-Investment-Act-2021>

4 NATIONAL SECURITY AND INVESTMENT ACT 2021 - Publication of notice of final order

5 GtR (ukri.org)

6 The 17 sensitive sectors are transport (ports, harbours, terminals, airports, air traffic control), energy, defence, military and dual-use, data infrastructure, advanced materials, advanced robotics, artificial intelligence, civil nuclear, communications, computing hardware, critical suppliers to government, cryptographic authentication, quantum technologies, satellite and space technology, suppliers to the emergency services and synthetic biology.

“Due to these developments, companies should be mindful when entering into agreements involving an acquisition, especially where the proposed acquisition is in relation to one of the 17 sensitive sectors.”

even in the 17 sensitive sectors to the government are voluntary, unlike in the case of proposed acquisitions of relevant equity interests in companies operating in those sectors, which are mandatory.

The UK Secretary of State, in making his decision, considered that: (1) the technology set out in the licence agreement has dual-use (i.e., military as well as civil) applications; (2) there is potential that the technology could be used to build defence or technological capabilities which may present national security risk to the United Kingdom; and (3) those risks would arise on the transfer of the intellectual property to the Acquirer. Taking these three considerations into account, the final order was considered to be necessary and proportionate.

Prospects for the Future

The publication of notice of the final order in this case comes against the wider political and geopolitical backdrop where concerns have been expressed by organisations such as MI5 and the FBI about the influence and threat posed by China to UK and U.S national security. For example, on 25 May 2022, the Secretary of State announced that the acquisition of the UK microchip plant, Newport Wafer Fab, by the Chinese company, Nexperia, had been called-in for a full national security assessment⁷.

It is expected that a decision will be reached on that case later this year. In light of that case and the current case involving the University of Manchester, it is increasingly likely that other transactions will fall to be reviewed under the Act.

Due to these developments, companies should be mindful when entering into agreements involving an acquisition, especially where the proposed acquisition is in relation to one of the 17 sensitive sectors. Investors and relevant companies should take care to identify any potential national security concerns in their transactions, and where the acquisition relates to the requisite proportion of shares or voting rights in a qualifying entity in one of those 17 sensitive sectors, then it is important that the parties obtain the mandatory approval from the government before completing the acquisition. Failure to complete a notifiable acquisition without obtaining government approval will result in the acquisition being void. There are also potential civil and criminal penalties for not obtaining the necessary approval and ultimately the possibility of the transaction having to be unwound, even where notification is voluntary. Similarly, acquirers of assets especially in those 17 sensitive sectors should very carefully consider the merits of prior notification and obtaining clearance in advance of completion.

Thus, even in circumstances where the acquisition is not covered by a mandatory notification, it may be prudent for parties to an acquisition to submit a voluntary notification to ascertain whether the government is going to call it in for review under the Act. The government has published guidance notes based on analysis of the notifications received under the Act and feedback from stakeholders on their experience of the system⁸. It has also published helpful guidance for parties on when they should notify the government about an acquisition⁹. Investors and relevant companies should bear this guidance in mind when reviewing their transactions, and if in doubt should obtain appropriate legal advice.

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⁷ Newport Wafer Fab acquisition called-in for national security assessment - GOV.UK (www.gov.uk)

⁸ National Security and Investment (NSI) Act: market guidance notes - GOV.UK (www.gov.uk)

⁹ Check if you need to tell the government about an acquisition that could harm the UK's national security - GOV.UK (www.gov.uk)

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