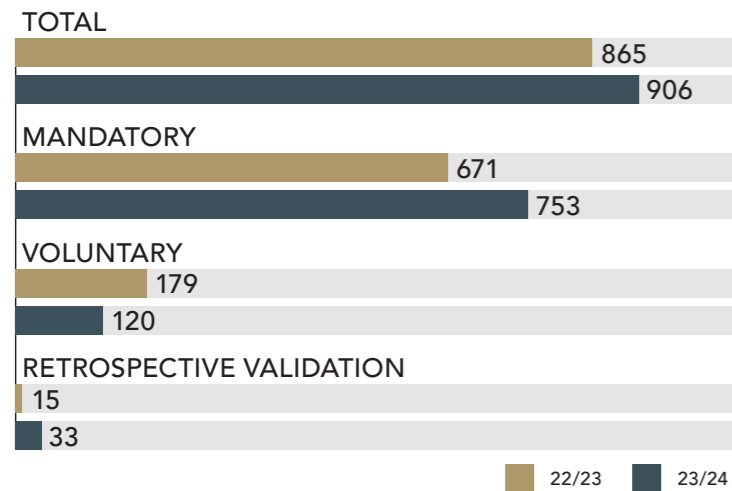


THE YEAR IN REVIEW: UK FOREIGN DIRECT INVESTMENT REGIME IN THE SPOTLIGHT

On 10 September 2024, the UK Government published its third Annual Report on the operation of the National Security and Investment Act 2021 (NSIA). Covering the period from 1 April 2023 to 31 March 2024, the report gives a valuable insight into the workings of the UK foreign direct investment screening regime. Below are selected headlines and key takeaways from the latest Annual Report, including a comparative, year-on-year assessment of notable trends.

(EVEN) MORE DEALS UNDER REVIEW



- **For deal planning purposes, the NSIA process remains a key consideration.** 906 NSIA notifications were made in 23/24. In contrast, the UK Competition and Markets Authority considered a total of 54 Phase 1 merger control cases over the same period.
- Year-on-year, there has been an almost 5% increase in NSIA notifications, although there was a notable decline in voluntary notifications (suggesting that businesses are making fewer precautionary filings).
- To place this in a wider context, official UK Government statistics indicate a 6% decline in FDI projects landed in the UK in 23/24 compared to 22/23.*
- Businesses and their advisors appear to understand the notification procedure. The rejection rate for notifications was only 3%.

KEY SECTORS UNDER INVESTIGATION

TOP ECONOMIC SECTORS FOR MANDATORY NOTIFICATIONS	
2022/23	2023/24
1. Defence	1. Defence
2. Critical Supplies	2. Critical Supplies
3. Data Infrastructure	3. Military/Dual Use
4. Military/Dual Use	4. Data Infrastructure
5. AI	5. Advanced Materials

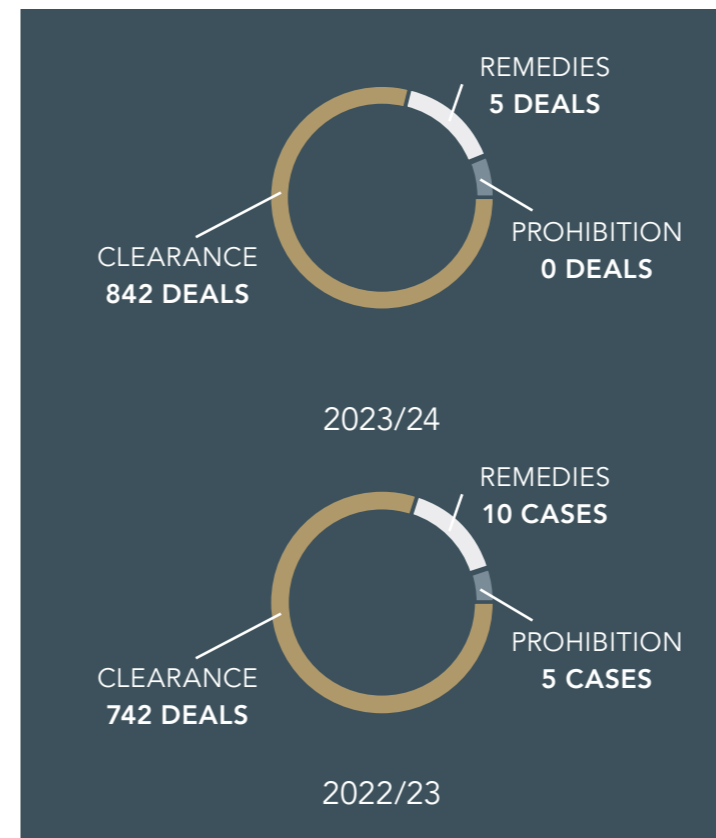
TOP ECONOMIC SECTORS FOR CALL-IN / DETAILED ASSESSMENT	
2022/23	2023/24
1. Military/Dual Use	1. Defence
2. Defence	2. Military/Dual Use
3. Advanced Materials	3. Communications
4. Space Technology	4. Advanced Materials
5. Computing	5. Academic Research/Universities

- In 23/24, 48% of notifications related to acquisitions in the Defence sector.
- This continues a trend seen since the introduction of the NSIA. Defence has consistently accounted for nearly half of all mandatory notifications.**
- Acquisitions relating to Defence and Military/Dual Use goods and services appear to be at particular risk of call-in and detailed assessment, together accounting for almost 63% of all FY 23/24 call-in notices (the same sectors accounted for a similar proportion of call-in notices in FY22/23).
- Although outside the scope of the mandatory notification regime, investments in the Higher Education / Research sector were subject to close scrutiny. The UK Government has intervened to control foreign access to cutting edge developments in sensitive technologies at UK universities.
- In May 2024, persisting concerns prompted the UK Government to issue specific guidance to higher education institutions, research organisations and investors in research-intensive sectors on the scope of the NSIA regime.

CALL IN RATE REDUCED

- Call-in rate almost halved, with 5% of notifications subject to detailed assessment (8% in FY22/23).
- In a statement on the exercise of call-in powers issued this year, the UK Government reiterated that the NSIA regime is “country agnostic” insofar as judgments are not based solely on an acquirer’s country of origin.
- Nonetheless, investments with an origin in China have attracted the most call-in notices over the last two years (accounting for just over 40% of all call-ins in 23/24 and 22/23).

FINAL OUTCOMES – REMEDIES RATHER THAN PROHIBITIONS***



- **The overwhelming majority of acquisitions were cleared unconditionally in 23/24.**
- Five acquisitions were cleared conditionally, subject to final orders requiring some form of remedy (equivalent to less than 1% of all deals reviewed in 23/24).
- Remedies were notably varied in nature. They ranged from information safeguards, the appointment of a UK Government board observer to an affected business, through to the formation of a standing security committee to oversee sensitive work.
- **No deals were prohibited in 23/24. This stands in contrast to the prior reporting period, in which five deals were subject to outright prohibition.**
- This does not appear to signify a deliberate moderation in policy. In FY23/24, ten acquisitions were abandoned following call-in. Of these, eight were associated with Chinese investors. It is unclear if these acquisitions would have culminated in remedies, or even prohibition, if subject to full review. It is also noteworthy that since March the UK Government has issued six final orders (three since the election in July).
- Importantly, the new UK Labour Government has yet to clearly set out its position in this area, although statements on wider economic issues and industrial policy indicate it may take a more robust line than the preceding administration.

For further information, please contact Daniel Vowden, Partner, Antitrust and FDI, London, or any of his colleagues in the Mayer Brown antitrust practice (<https://www.mayerbrown.com/en/services/antitrust--competition>)



PARTNER
DANIEL VOWDEN
ANTITRUST & COMPETITION
LONDON +44 20 3130 3969
DVOWDEN@MAYERBROWN.COM



PARTNER
JEAN-MAXIME BLUTEL
ANTITRUST & COMPETITION
PARIS +33 1 53 53 18 63
JBLUTEL@MAYERBROWN.COM

* References to UK Government statistics are to the Department for Business and Trade investment results 2023 to 2024.

** A notification may be associated with more than one economic sector for NSIA purposes.

*** The total number of notifications received in a reference period is not identical to the total number of decisions adopted in the same period. Please also note that analysis of outcomes does not take account of subsequent variation or revocation orders.