Title: National Security and Investment Bill **IA No:** BEIS006(F)-20-CCP **RPC Reference No:** RPC-4173(4)-BEIS **Lead department or agency:** Department for Business, Energy and Industrial Strategy **Other departments or agencies:**	**Impact Assessment (IA)** Date: 09/11/2020 Stage: Final Source of intervention: Domestic Type of measure: Primary legislation Contact for enquiries: nsiireview@beis.gov.uk
Summary: Intervention and Options	**RPC Opinion: Fit for purpose**

Cost of Preferred (or more likely) Option (in 2019 prices, 2020 present value)			
Total Net Present Value	**Business Net Present Value**	**Net cost to business per year**	**Business Impact Target Status**
-£425m	-£368m	£43m	Qualifying provision, £214m

Overview

This document looks at the measures in the National Security and Investment Bill and gives an overarching assessment of the impact they will have on business. This Impact Assessment has two parts. Part one looks at the costs and benefits arising due to the proposed National Security and Investment Regime (NSI) and the second part analyses the impacts of the Amendment to Part 9 of the Enterprise Act 2002 (EA02). The estimated cost to business per year resulting from the introduction of the NSI Regime is highly uncertain, as indicated by the estimated cost range of £22.6m - £62.7m. The cost resulting from the Amendment of the EA02 is £2.7m - £3.1m per year. This Impact Assessment primarily considers the impact of the NSI regime on the economy due to the scale of the measure.

What is the problem under consideration? Why is Government intervention necessary?

National Security and Investment

To support an open approach to investment into the UK, the Government must ensure that there are appropriate safeguards to protect national security. Geopolitical, economic and rapid technological changes are producing an evolving national security landscape. In this context, the Government wishes to reform its powers so that they are sufficiently flexible, as to ensure that the acquisition of control over UK businesses and assets cannot undermine our national security, and that the powers provide predictability and consistency for business.

National security is a public good and, therefore, market forces do not lead to an optimum allocation of resources. Government intervention is required to address this market failure by legislating to put in place a new regime to reduce national security risks. Similar national security investment screening regimes have already been implemented by some other advanced economies (e.g. US, Germany and Japan).

Amendment to Part 9 of the Enterprise Act 2002

Part 9 of the Enterprise Act 2002 (the Act) includes information sharing gateways. Some of these enable UK public authorities to disclose confidential commercial and personal information to overseas public authorities. Currently, information gathered by UK public authorities during the exercise of their merger functions can only be disclosed to overseas authorities once all the relevant consents are obtained (the consent gateway, s.239) or to fulfil its statutory obligations (statutory functions gateway, s.241).

What are the policy objectives and the intended effects?

National Security and Investment

The Government wants to ensure that it has the right powers to take necessary steps to protect national security. The Government also intends to support investment in the UK economy by providing greater transparency and predictability to processes for scrutinising transactions that may create national security risks. The proposals are intended to minimise any potential costs to business by creating a proportionate and focused regime with strict statutory deadlines to reduce uncertainty and ensure swift resolution.

Amendment to Part 9 of the Enterprise Act 2002

This amendment will enable these public authorities to disclose confidential merger information without consent through the overseas disclosure gateway (s.243) in Part 9 of the Act. The proposal intends to facilitate co-operation between the CMA and public authorities in other countries and lead to more efficient decision-making and enforcement in a cross-border context.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

National Security and Investment

A. Do nothing;
B. The introduction of a regime based on voluntary notification across the economy, underpinned by a call-in power;
C. Introduce a mandatory notification regime for those sectors which pose the greatest risk with a voluntary notification regime for all other sectors with an enhanced call-in power.

Amendment to Part 9 of the Enterprise Act 2002

A. Do nothing;
B. Amend the clause on the overseas disclosure gateway (s.243) in Part 9 of the Act.

Will the policy be reviewed? Yes **If applicable, set review date:** 5 years after royal assent

Does implementation go beyond minimum EU requirements?		N/A		
Is this measure likely to impact international trade and investment?		Yes		
Are any of these organisations in scope?	**Micro** Yes	**Small** Yes	**Medium** Yes	**Large** Yes
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)		**Traded:** N/A	**Non-traded:** N/A	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: [signature] Date: 9/11/2020

Summary: Analysis & Evidence

Description: Mandatory notification regime for core sectors with a voluntary regime for all other sectors and for assets, supplemented with an enhanced call-in power with the amendment to part 9 of the Enterprise Act 2002

FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year 2020	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -249m	**High: -656m**	**Best Estimate: -425m**

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low	N/A	N/A	£29m	**£249m**
High	N/A		£76m	**£656m**
Best Estimate	N/A		£49m	**£425m**

Description and scale of key monetised costs by 'main affected groups' in the central scenario

National Security and Investment

The estimated costs associated with this legislation are uncertain, this uncertainty is reflected in estimated cost ranges that are presented within this Impact Assessment.

Additional costs to businesses arising from familiarising themselves with the new regime (PV: £134m to £365m); engaging with Government prior to notification (PV: £23m to £75m); making a notification (PV: £34m to £83m); and formalising the detailed national security reviews (PV: £4m to £17m). Additional costs to Government arising from discussions with businesses prior to notification (PV: £5m to £16m); screening cases that have been notified (PV: £16m to £36m); formalising the detailed national security reviews (PV: £2m to £21m); and undertaking market monitoring activities (PV: £9m to £17m).

Amendment to Part 9 of the Enterprise Act 2002

The Government has considered two categories of businesses that might be affected by this change to the Act: (i) those that complete a merger; and (ii) those that consider merging, familiarise themselves with the associated rules and procedures, but do not subsequently proceed with the merger. The Government estimates that additional familiarisation efforts will not create a significant cost burden (£3m) for affected UK businesses.

Other key non-monetised costs by 'main affected groups'

National Security and Investment

There was conflicting evidence on whether the valuation of businesses which fall under the new regime and the level of inward foreign direct investment in the UK would be negatively impacted. Evidence suggests that national security regimes do not play a major role in informing the investment decision-making process, provided that the regime is clear and predictable. Some studies have shown that the potential negative impact of regulatory uncertainty on investments may be offset by the increased security and economic stability in the country as a result of the regime. These have been discussed further in the annexed section *FDI investment in the UK.*

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low	N/A	N/A	N/A	**N/A**
High	N/A		N/A	**N/A**
Best Estimate	N/A		N/A	**N/A**

Description and scale of key monetised benefits by 'main affected groups' **<u>There are significant benefits to society in preventing national security threats to the UK.</u>** A case study has been provided and other non-monetised benefits have been discussed.
Other key non-monetised benefits by 'main affected groups' The proposals are likely to benefit society and the wider economy by providing a clear framework to investors, consumers and businesses. The regime will also ensure that the Government can take steps to mitigate and reduce potential threats to safety and security.

Key assumptions/sensitivities/risks	**Discount rate**	3.5%

- The analysis primarily focusses on the events that occur in certain sectors (the core areas - as defined in the main body of the IA), due to the mandatory notification and the higher security risks associated with these sectors.
- Transactions and events involving foreign investors are more likely to raise national security concerns.
- Transactions and events involving larger investments are assumed to have higher associated costs.
- Historical evidence on the number of transactions taking place, and the proportion that are assessed, formally and informally, through the various mechanisms available to the Government, is an indicator of future trends under the new regime.
- The analysis does not include the estimated costs in non-equity related events that fall under the "acquisition of material influence over an entity's policy" trigger event due to insufficient data.
- Figures in the summary section of the IA are rounded to the nearest £1m.

BUSINESS ASSESSMENT (Option c)

Direct impact on business (Equivalent Annual) £m:			**Score for Business Impact Target (qualifying provisions only): £214m**
Costs: £43.0m	**Benefits:**	**Net: -£43.0m**	

Contents

1. Strategic Overview

1. Through the National Security and Investment Bill, the Government is seeking to strengthen the national security of the UK against risks which may arise in changes of ownership and control of entities and assets. The Bill also amends the Enterprise Act 2002 with one measure to allow cooperation UK and overseas public authorities for the purposes of merger investigations. The Act amendment will not create a significant cost burden for UK businesses and therefore the majority of this Impact Assessment will focus on the National Security and Investment (NSI) regime. Sections 1 to 4 cover the NSI regime and Section 5 provides further details about the impact of the Amendment of Part 9 of the Enterprise Act 2002.

2. The Government's first duty is to protect national security. In a changing geopolitical and technological environment, it is important that the Government periodically reviews whether it has the right powers, structures and processes needed to intervene in the rare circumstances where national security might be at risk from an investment. In 2016, the Government announced such a review, which led to the publication of a Green Paper in October 2017[1] and a White Paper in July 2018.[2] The proposals considered in this Impact Assessment take account of the responses to both of these consultations.

3. The Government has a well-developed and co-ordinated approach to protecting our national security but lacks comprehensive statutory powers in relation to the ownership and control of businesses and other entities that could be used to undermine our national security. The Green Paper, therefore, proposed both short and long-term reforms. The short-term reforms addressed risks in three areas of the economy: goods and services that can be used for military or military and civilian use,[3] computing hardware and quantum technologies.[4]

4. Consequently, two Orders, The Enterprise Act 2002 (Share of Supply Test) (Amendment) Order 2020 (S.I. 2020/748) and the Enterprise Act 2002 (Turnover Test) (Amendment) Order 2020 (S.I. 2020/763) were made on 20 July 2020 to expand on the 2018 measures (see paragraph 5). These orders collectively expanded the 'share of supply' and 'turnover' thresholds to enable the Secretary of State to intervene in more mergers on public interest grounds in three additional sectors of the economy: Artificial Intelligence (AI), cryptographic authentication technologies and advanced materials.

5. The White Paper built on the Green Paper consultation on long-term reforms and invited views on detailed proposals for a new system to mitigate national security risks across the economy. The Government's response to that consultation will be published alongside this Impact Assessment.

6. In reforming its powers, the Government will continue to deliver its vision of making the UK the world's most innovative economy and the best place to start and grow a business. This

[1] https://www.gov.uk/government/consultations/national-security-and-infrastructure-investment-review
[2] https://www.gov.uk/government/consultations/national-security-and-investment-proposed-reforms
[3] These technologies are referred to synonymously as "military or military and civilian use" and "military or/and dual-use".
[4] The Government published further guidance (2020), 'Enterprise Act 2002: Changes to the turnover and share of supply tests for mergers', about these changes.

means ensuring a rules-based system that is predictable, transparent, and encourages the investment that will help our economy continue to grow and prosper.

7. This review is timely as several other countries have also recently carried out similar reviews in response to the same geopolitical and technological changes. The Government can, therefore, learn from their experiences in developing and reforming their regimes. Further detail on international regimes is included in the Annex.

1.1. The White Paper consultation

8. The White Paper set out the Government's proposals to create a clear, focused set of powers to review certain acquisitions and mergers within a predictable and transparent process, via a voluntary notification regime with an enhanced call-in power. The Government's response to the consultation (published alongside this document) sets out a final set of proposals.

9. This Impact Assessment considers these developments. There are some key differences between the estimates included here and those that were in the White Paper, namely due to the Government's decision to shift to a mandatory notification system for some transactions in specified sectors of the economy to target those areas that pose the greater national security risks and an improved evidence base.

10. This mandatory notification system will be complemented by a voluntary notification system and a call-in power for transactions in the other sectors and for asset sales.

1.2. Policy objective

11. The Government wants to ensure that its powers and systems for mitigating national security risks arising from acquisitions are appropriate and proportionate to the current and evolving threat. The Green Paper set out five principles that underpinned the review of these powers and continue to shape policy development. These are to:

    a. ensure the UK remains attractive to inward investment;
    b. provide certainty and transparency wherever possible;
    c. reflect national security concerns;
    d. ensure a targeted scope wherever possible; and
    e. ensure powers are proportionate.

12. In reforming the UK's approach, the Government wishes to address a number of issues.

    a. National security concerns can arise in, but are not limited to, national infrastructure-related businesses or assets. However national security-related powers in these sectors are inconsistent and limited in places.

    b. National security risks may arise in transactions unrelated to competition issues, and may also arise in relation to acquisition of assets, which are not currently covered by the EA02 powers.

c. Technological advances in certain sectors of the economy present huge opportunities to positively transform our lives, but also present significant and complex national security challenges, including ensuring UK cyber security is maintained.

d. Industries now have deeper, broader and more complicated supply chains. As a result of this change, essential goods and services are provided by increasingly more diverse networks of businesses, including specialists with small turnovers.

13. The Government recognises that the policy being pursued is different to the proposals initially laid out in the White Paper. There are multiple reasons as to why the Government has elected to make the changes.

a. Sweeping technological, economic and geopolitical changes in recent years mean that we have looked again at the proposed legislative reforms we put forward in 2018, and whether they were still sufficiently robust in their ability to tackle the myriad challenges the Government faces in this area.

b. The onset of the COVID-19 pandemic in early 2020 has only added to the challenges the Government must tackle, destabilising a healthy economy and bringing hardship to otherwise successful, viable UK businesses. Though the Government has sought to support businesses through this period, it is regrettably inevitable that many will still be in financial distress as a result of the economic circumstances.

c. This rapidly changing security and economic landscape could have a particularly acute effect on small UK businesses in sensitive sectors, where there may be heightened national security risks stemming from mergers, acquisitions, and broader transfers of control.

d. In response to these risks, the Government amended its current powers under the Enterprise Act 2002 in June 2020 to provide for a lower threshold for intervention in three sensitive sectors of the economy: artificial intelligence, cryptographic authentication technology and advanced materials. The Government made similar changes in 2018 in relation to three other sectors: military/dual-use technologies, quantum technology, and computing hardware. These changes were only ever intended as short-term measures before more comprehensive reforms were brought forward via primary legislation.

e. The Government has concluded that more far-reaching change is required. The proposals put forward in 2018 do not go far enough in addressing the national security risks arising from a small number of transactions in particularly sensitive sectors, nor reflect the full gravity of the current economic situation.

2. Rationale for intervention

14. The Government is clear that its current powers, as set out below, are no longer sufficient to address the challenging and changing national security threats the UK faces. There have been significant national security, technological and economic changes in recent years. These include innovative technologies developed by new start-ups or small companies, which fall outside the scope of the Government's existing formal powers under the EA02 (e.g. below the current turnover and share of supply thresholds). The current powers under the EA02 also do not generally apply to single asset transactions, therefore, this currently poses a risk to national security.

15. In addition, on considering the totality of the available powers and levers, the Government has concluded that there is a case for a more coherent, proportionate, formal system for scrutinising the national security implications of acquisitions, which could give greater certainty to business.

16. National security is a public good: when provided, the whole of society is protected, and no individual can be denied protection. Furthermore, the benefits from assessing a transaction's potential risks to national security are not limited to participants in that transaction but accrue to wider society. If the nation's security was compromised through an investment transaction, there could be significant costs associated with this. Private costs and benefits will not take these wider societal impacts into account and therefore a market failure is likely to occur. The risks to national security from investment transactions, if left to the free market, would be higher than at the socially optimal level.

17. The Government also intends to support investment in the UK economy by providing greater transparency and predictability to processes for scrutinising transactions that may create national security risks. The proposals are intended to minimise any potential costs to business by creating a proportionate and focused regime with statutory timelines now included for the investment screening process to minimise investment uncertainty.

18. Given the existence of an externality and market failure, Government intervention is necessary to achieve the desired reforms. These proposals are not in any way designed or intended to limit market access for any individual country.

3. Options considered

19. The Government has considered the following options:

    a. do nothing and continue using current powers (counterfactual);
    b. the introduction of a regime based on voluntary notification across the economy, underpinned by a call-in power; and
    c. the introduction of a mandatory notification regime for those sectors which pose the greatest risk with a voluntary notification regime for all other sectors with an additional

enhanced call-in power.[5] Trigger events in scope are the acquisition of material influence or control over entities, and the acquisition of assets (preferred option).

3.1. Do nothing and continue using current powers (counterfactual)

20. At present, the Government has a range of levers, if a merger raises national security concerns. These levers have been introduced over time to address specific threats as they have arisen.

21. The Enterprise Act 2002 applies to both EU and domestic mergers and covers national security (including public security), financial stability (prudential regulation in European mergers), media plurality and protecting the UK's ability to combat a public health emergency. These powers apply across the whole economy but, for the most part, only to mergers that meet one of two thresholds: where the acquired company has an annual UK turnover of more than £70 million; and where the merger would result in the creation of, or increase in, a 25% or more combined share of sales or purchases in the UK (or in a substantial part of it), of goods or services of a particular description. There are at least 100 transactions in scope of the turnover test per year in the UK[6] with further mergers in scope under the share of supply test.

22. The are only two exceptions to this rule:

    - mergers related to certain defence or media companies where there are no turnover or share of supply tests;[7] and
    - mergers related to businesses which produce or design goods covered by parts of the Strategic Export Control Lists and/or certain advanced technological goods where the UK turnover threshold is over £1 million and/or where there does not need to be an increase in the share of supply.[8]

23. Different thresholds apply to advanced technology in certain aspects of the economy because they raise particular national security concerns. The Government amended the EA02 in 2018 and subsequently in 2020 in respect of six sectors: military and dual-use, quantum, computing hardware technologies, artificial intelligence, cryptographic authentication technology and advanced materials. For these parts of the economy, this involved reducing the UK turnover threshold from over £70 million to over £1 million and removing the requirement for an increase in the share of supply as a result of the merger.

24. A statutory intervention under the EA02 requires the CMA to provide a report to the Government on jurisdictional and competition issues as part of a Phase 1 investigation. Phase 1 investigations are triggered when a Public Interest Intervention Notice is issued to the CMA by the Government. The CMA would not be expected to provide its own advice on

[5] The call-in power is the power for the Government to subject a trigger event to a more detailed assessment of the national security risk that it may raise. The Government can 'call in' any trigger event that meets the legal test, even if it has not been notified to the Government.
[6] Based on the sample of 21% UK M&A transactions between 2014 and 2019 where Capital IQ held data regarding revenue at the point of the transaction. It is likely thatthere will be more transactions than this over the £70m threshold but it is also thought that these larger transactions are also more likely to be recorded through Capital IQ.
[7] These mergers are covered by the Special Public Interest Regime as set out in section 59 of the Enterprise Act 2002.
[8] The businesses in scope of these thresholds are set out in section [23A] of the Act as amended in 2018.

national security issues at Phase 1, as the CMA acknowledges it is not an expert on national security issues and will generally summarise any representation made to it in its Phase 1 report (including those of other Government departments).

25. On the basis of a Phase 1 investigation, the Secretary of State must clear the transaction if they are satisfied there are no national security concerns. However, if the Secretary of State considers there are concerns, they may refer it to a Phase 2 investigation, or they can clear the transaction by accepting remedies offered by the parties. Phase 2 investigations are undertaken by an inquiry group comprising of CMA panel members. If the Group considers that the merger operates or may be expected to operate against the public interest, it makes recommendations as to what action the Government should take to remedy any adverse effects. The Secretary of State would however make the final decision on the merger and takes whatever remedial steps they considered necessary to address the public interest issues. If the Secretary of State considers that no remedies can adequately address the public interest concerns, they can block the deal entirely.

26. There have been twelve national security interventions under the EA02 since 2002. In addition to those under EA02, the Government currently has a range of other powers and levers available to protect national security. These include sector-specific regulation, the ability to act in an emergency under the Civil Contingencies Act 2004, and export control legislation. The Government can also engage with businesses that are considering transactions and agree measures to ensure that national security is not at risk because of the transaction. In addition to this, Government departments may seek commitments and deeds from businesses, to ensure that the national security risk from these businesses being acquired is minimised.

27. Because of the limitations of the EA02, this option would, therefore, not meet the policy objective of ensuring that the Government has clear and consistent powers to scrutinise whether investment in our most critical companies raise national security concerns, and intervene when they do.

28. The current arrangement creates significant levels of uncertainty for businesses. It gives companies and investors limited opportunity to seek advice and clearance from the Government that their transaction will not jeopardise national security.

3.2: Introduce a regime based on voluntary notification across the economy, underpinned by a call-in power

29. In the White Paper, the Government consulted on the following proposals for a new investment screening regime:

    a. a voluntary notification system to encourage notifications from parties who consider that their transaction or other event may raise national security concerns;
    b. a draft Statement of Policy Intent setting out how and when it expects national security concerns are likely to arise;

c. a call-in power that the Government may use to call in transactions or other events to undertake a national security assessment even if they were not notified to the Government;
d. a statutory process that would be used to scrutinise investments and other events;
e. details of remedies the Government proposes to mitigate risks to national security, sanctions for non-compliance with the regime and the mechanism for judicial oversight; and
f. how the regime would interact with other regulatory regimes, including the Competition and Markets Authority and the Takeover Panel.

30. However, sweeping technological, economic and geopolitical changes in recent years mean that we have looked again at the proposed legislative reforms we put forward in 2018, and whether they were still sufficiently robust in their ability to tackle the myriad challenges the Government faces in this area.

31. The COVID-19 pandemic has only brought these issues into sharper relief. In June 2020, the Government acted to lower the threshold for intervention in transactions in three sectors crucial to national security, having made similar changes in 2018. However, as we rebuild from COVID-19 where sensitive British businesses may be in a weaker financial position, we must go further and ensure that the Government can intervene in any deal across the economy that raises national security risks.

32. The Government has subsequently decided to make a number of changes to the proposals it put forward in 2018, which are explored in the preferred option below

3.3. Introduce a mandatory notification regime for those sectors which pose the greatest risk with a voluntary notification regime for all other sectors with an enhanced call-in power (preferred option)

33. The Government intends to bring forward new primary legislation to create a regime to provide more certainty and predictability to business, whilst ensuring that the full range of transactions that may raise national security concerns can be addressed.

34. There are a number of differences between the current range of powers available to the Government and the proposed new regime, as set out in the Government response to the White Paper. For clarity, a number of key differences are set out below.

3.3.1. Call-in power

35. The new regime will provide a more formal process by which the Government can obtain information about relevant transactions. The Government considers that it should be able to call-in a transaction, to fully assess the national security risk, without relying on the goodwill of the parties involved.

36. A call-in under the new regime will occur for one of two reasons. First, when a company has not submitted a notification, but Government's market monitoring suggests the transaction should be called in; and secondly when a transaction has been notified but

Government requires a further assessment to be undertaken beyond the initial notification screening. As such, it is not suitable to directly compare a call-in under the new regime and the call-in power under a Public Interest Intervention.

3.3.2. Trigger events

37. Under the new regime, the Government would have clear powers to address national security risks in an enhanced range of situations. Like the current powers under EA02, the new powers would apply across the whole economy, although the Government intends to give clarity to businesses as to which sectors are most likely to see national security risks arise. Whereas the scope of EA02 is largely defined by the size of the transaction (through the turnover and share of supply thresholds), the new system focuses on the means by which an investor could acquire the ability to undermine national security:

   a) the acquisition of 15% or more of the shares or votes in an entity;
   b) the acquisition of more than 25% of the shares or votes in an entity;
   c) the acquisition of more than 50% of the shares or votes in an entity;
   d) the acquisition of 75% or more of the shares or votes in an entity;
   e) the acquisition of material influence over an entity's policy; and
   f) the acquisition of a right or interest in, or in relation to, an asset providing the ability to:
      - use the asset, or use it to a greater extent than prior to the acquisition; or
      - direct or control how the asset is used, or direct or control how the asset is used to a greater extent than prior to the acquisition.

38. The regime will also bring into scope the acquisition of assets (i.e. assets such as machinery or intellectual property transferred without the other elements of a stand-alone business). This will be an extension of the Government's current powers and is necessary to prevent parties from circumventing the regime by purchasing assets rather than shares in the company that owns them.

3.3.3. Remedies

39. The proposed legislation will permit the Secretary of State to impose any such remedies as they consider necessary to protect national security. This will involve a move away from the regime under the EA02, whereby Ministers can accept undertakings made voluntarily by the concerned parties at Phase 1 or Phase 2, as well as impose conditions at Phase 2.

40. Whilst the Government expects that businesses will be involved in its discussions about remedies that affect them, it also considers it important that the Secretary of State makes a deliberate, formal decision as to the necessary remedies on a case-by-case basis. While this may be only a relatively small distinction in practice from the EA02 regime, the Government considers that this an important change in approach. It also means that remedies under the proposed new regime would not be directly comparable to conditions imposed under EA02 following a phase two investigation, but broadly equivalent to both voluntary undertakings accepted by Ministers and conditions imposed taken together.

3.3.4. Additional powers

41. The risks that this Bill seeks to address– including risks presented by different assets or entities, investors, and triggers – will likely change over time. The Government therefore intends to introduce powers to update this legislation to reflect these changes and avoid powers becoming outdated. These powers would allow the Government to:

    a. add, remove, or amend the list of sectors for which notification of transactions is mandatory;
    b. exempt types of investors from the requirements to notify in otherwise mandatory sectors when the Government is comfortable that risks to national security are sufficiently low; and
    c. designate new categories or remove existing categories of transaction from the mandatory regime that are already within scope of the Bill's call-in power.

42. These powers will ensure the regime is consistently targeted to those areas that pose the greatest national security concerns.[9]

4. Impact analysis

43. This section focuses on the cost-benefit analysis of the proposed regime, setting out the limitations of the analysis, the potential benefits of the regime, the number of businesses that it is estimated will be affected, and the costs to both business and the Government.

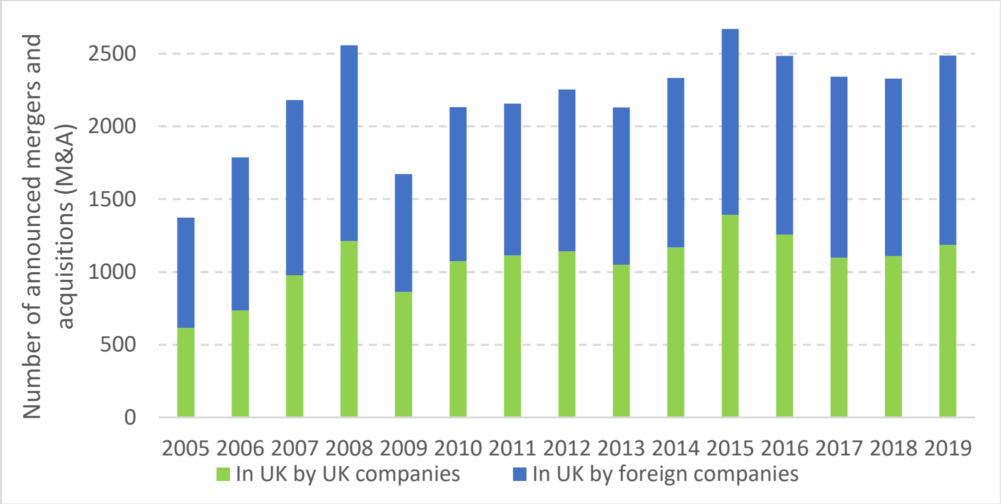
4.1 Limitations

44. It is important to first highlight some of the challenges and limitations encountered when carrying out this assessment.

    a. **Acquiring control or material influence**. One of the key estimates underpinning the costs and benefits of the new regime is the number of acquisitions taking place each year that lead to an acquirer gaining control or material influence. However, investments of this sort are difficult to predict annually as they fluctuate year-to-year. The chart below provides details of the number of acquisitions in the UK, split between UK acquisitions by UK companies, and UK acquisitions by foreign companies, across the whole economy between 2005 and 2019. During this period, the highest number of total acquisitions in the UK in any year was 2,669 (2015) and the lowest was 1,374 (2005).

[9] Following any of these changes guidance will be published to clarify the latest policy and the implications that these changes would have for investors to reduce uncertainty.

Figure 1: Number of acquisitions in the UK, 2005 to 2019[10]



Source: S&P Capital IQ

The estimates within this analysis do not account for non-equity related gain of control or material influence. There is insufficient data available to accurately estimate the number of events where this would qualify. This is a key limitation of this analysis.

b. **Acquisition of assets**. Unlike mergers and acquisitions (M&A), which are recorded in a number of datasets, there is little evidence available for the acquisition of assets. One of the main reasons for this is that the acquisition of an asset does not lead to a change in the legal status of the business. Therefore, these investments are not usually recorded outside of the businesses involved in it.

c. **Costs to businesses**. Evidence on costs to businesses were provided by a limited number of key stakeholders, including investors and legal firms through consultations. It is not thought that these formed a representative sample of those who would be impacted by the legislation. Therefore, the costs received from businesses had to be adapted to reflect this. This is set out further in Section 4.4.1.

d. **Businesses in scope.** All sectors of the economy are within scope of the regime. However, transactions in some sectors are more likely to require investigation. In particular, the sectors highlighted below are regarded as ‘core sectors’ in which, national security risks are considered more likely to arise.[11] The Government will use secondary legislation to define specific activities within these sectors where notification will be mandatory. These sectors are:

- Civil Nuclear

[10] Note that these are different to those recorded by the ONS in the official statistics as they are more inclusive. ONS ststistics only record those transactions over £1m where over 50% of the entity is acquired.
[11] To highlight which transactions occurred within the ’core sectors‘, Standard Industry Classification (SIC) codes were used. From this, we highlighted 57 separate SIC codes at a five-figure level that are envisaged to fall within or include the ’core sectors’. Global Industry Classification codes were also explored as part of this process. However, these were not available at the level of granularity needed to provide an accurate split between those sectors regarded as core and others.

- Communications
- Data Infrastructure
- Defence
- Energy
- Transport
- Artificial Intelligence
- Advanced Robotics
- Computing Hardware
- Cryptographic Authentication
- Advanced Materials
- Quantum Technologies
- Engineering Biology
- Critical Suppliers to Government
- Critical Suppliers to the Emergency Services
- Military or Dual-Use Technologies
- Satellite and Space Technologies

e. **Notifications.** For the purpose of this analysis, the estimates do not differentiate between mandatory or voluntary notifications or cases that will be called in by Government.

f. **Remedies.** This analysis only considers cases where a remedy has been imposed and implemented.

g. **Non-completion.** This analysis considers cases where during the process of the national security assessment, the business decides not to proceed with the transaction, either because of the assessment or for a separate business reason. The resources needed to undertake the investment screening activities are included but the wider macroeconomic impact of the transactions not completing has not been estimated.

h. **Threat level.** As set out below in more detail, the number of cases that Government will review, will depend in part on the current national security threat level. The threat level has not been hypothesised as part of the assessment.

i. **Initial spike.** It is expected that some notifications will take place at start of the regime that will be deemed to be over-cautious. However, it is anticipated that, over time, over-cautious notifications will decrease, as the regime is better understood. This potential spike has not been modelled in the estimates.

45. Some of the evidence used to inform the estimates is not made explicit in this Impact Assessment due to its sensitivity. The evidence, sources and assumptions were shared with those who reviewed this Impact Assessment prior to publication to ensure the analysis was appropriate.

46. The principal benefit will be to enhance the Government's ability to intervene in cases where investments or other trigger events raise national security concerns. At the same time, the regime will provide transparency and predictability to businesses to ensure that the UK remains a stable and secure country where people are able to do business, and in which they want to invest.

47. It is difficult to quantify these benefits as there are numerous and complex interlinkages between investments and national security threats. In addition, the level of the threat that the UK faces changes over time in a way that is, by its nature, difficult to predict. Trying to predict such change is beyond the scope of this assessment and therefore a case study and an example are provided below to illustrate the benefits of the regime.

4.2 Benefits

48. The UK benefits greatly from value created from inward investment, and overseas investors have made substantial contributions to UK businesses and wider UK economy to date. Between 2015/16 and 2019/20 there have been over 10,000 FDI projects in the UK. Over 56,000 new jobs were created by inward investment projects in 2019/20. Foreign investment can also boost general value added and R&D activity (see Annex for more information on the benefits of foreign investment). However, there have been significant national security, technological and economic changes in recent years. This regime will provide greater safeguarding powers to ensure that a small number of investments that may aim to harm the UK's national security cannot do so.

Benefits to national security – a case study

49. The following case study depicts one example where the new regime could have been beneficial and averted the resulting potential national security threat.

Case study (references to particular countries have been omitted)

A British company was acquired by a foreign investor. This company worked with advanced technologies that have potential military applications.

It is very likely that the foreign investor's buyout of the British company enabled a full-scale technology transfer resulting in the accelerated progress of weaponry in the country of origin of this foreign investor. To date, this country is believed to be the only nation that has successfully operationalised this technology in its weaponry.

The national security implications of this technology transfer are manifold. The UK's strategy to maintaining national security is to uphold its comparative advantage in cutting-edge technologies, and thereby deter any hostile entity from challenging or threatening the UK's national security. Unless the UK curbs the right of foreign firms to obtain such technologies through means of M&A and similar, UK developed advanced technologies may find their way into weapon systems of foreign and potentially hostile states. This will not only make the world a less safe place, but also potentially harm the UK either directly or indirectly.

Benefits to national security – an example

50. The following is a fictional example, created to show the potential costs of a hostile actor gaining control of either a company or an asset through a business acquisition, that could then cause major disruption and costs to the UK.

51. The example focusses on a small IT company, which supplies key services to a major airport. A change of control has recently taken place at the IT company. If the new owner decided to stop providing services to the airport to create disruption to the UK and this disruption lasted for two days, the effect would be widespread, and there would be many costs associated with remediating the situation.

52. If each passenger was delayed by 12 hours, which can be assumed to be a conservative estimate, and 50,000 passengers were delayed on each day of the disruption, with some knock-on delays, which has been observed during airport shutdowns, over 100,000 passengers could be affected. This is broadly in line with the average daily passenger count of the UK's top ten largest airports.[12]

53. Costs would be felt by passengers, the airlines, the airport, the airport's retailers, the transport network supporting the airport and insurers, amongst others. The average cost of a delay per passenger per hour is around £14.50.[13] If slightly over 100,000 passengers were affected, this could lead to costs of around £17.5 million. In addition, it would be expected that the airport would lose out on around £2.5 million revenue throughout the two-day shutdown. Costs to airlines would also be expected to run into the millions.

54. There would also be costs that are harder to estimate, such as future loss of earnings due to reputational damage to airlines and the airport, damage to any companies share price that was involved, notwithstanding the personal cost that many passengers may face due to missed business opportunities, missed holidays and other opportunities.

55. This example shows that even if one significant and potentially malicious business acquisition is prevented, or managed, each year by the new regime, then the monetary benefits alone, will lead to a significant reduction in the net costs to businesses and the wider economy as a result of this legislation.

Wider benefits to society

56. Although wider benefits of the regime are difficult to quantify, the regime is likely to benefit society and the wider economy by providing a clear and more comprehensive framework for the Government's management of national security risks arising from acquisitions.

57. The proposals will also involve providing transparency to businesses and investors about the relevant rules, which will give them adequate clarity and confidence about the regulatory rules and systems within which they should operate. As discussed in the Annex,

[12] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/674749/uk-aviation-forecasts-2017.pdf
[13] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/372619/AC08_tagged.pdf

investors highlighted that providing national security regimes are clear and predictable, they do not play a major role in the investment decision making process.

58. With a partial mandatory regime in particular, the Government highlighting the areas that are considered to impose the greatest risk to national security, would allow more effective long term business and investment planning (and hence lead to subsequent investment, innovation and growth).

59. The new notification regime is also likely to uncover transactions of interest at an earlier opportunity than at present. The earlier in the process that potential concerns are identified, the quicker and easier the assessment process would be, reducing potential investment delays, and if remedies are needed they would likely be easier to implement and more effective.

60. The regime will also help to ensure that the UK's investment landscape continues to focus on transactions that are focussed on generating economic value. If investors/companies are buying assets or companies for other reasons (e.g. national security), this would otherwise distort markets and valuations that could result in suboptimal outcomes for the UK economy, limiting potential growth.

4.3. Number of businesses affected under the new regime

4.3.1. Assumptions and methodology for estimating the number of affected businesses

61. At all stages, assessing the number of businesses that will be affected by the new regime has been challenging, as set out in section 4.1 and below. In respect of the estimates for the number of businesses needing to familiarise themselves with the new regime, engaging informally with the Government and submitting notifications, it is expected that there will be some annual variation, reflecting the economy as a whole.

62. Estimating the number of cases called in for a national security assessment and how many remedies might be imposed has also proved problematic. These figures will depend to a great extent on the prevailing national security situation. Consideration was given to two possible approaches to estimating the numbers affected: basing them on evidence from other countries' screening regimes or drawing on the UK's current regime.

63. Given the significant variation in other countries' regimes' scope, policy objectives and legal systems it was decided that estimates based on their data would be of limited use. For context, CFIUS, the equivalent regime in the USA, reviewed 143 transactions within scope in 2015. Of these, 66 of these were investigated, 11 were subject to mitigation procedures, and five were rejected or withdrawn.[14] However, due to key differences between the regimes, such as the definition of national security, differences in scope of safe harbours, and the recent changes to the The Foreign Investment Risk Review Modernization (FIRRMA) Act, it is difficult to directly draw parallels with the US regime.

[14] https://www.treasury.gov/resource-center/international/foreign-investment/Documents/Unclassified%20CFIUS%20Annual%20Report%20-%20(report%20period%20CY%202015).pdf

64. This Impact Assessment, therefore, draws on figures from the existing arrangements in the UK for managing national security risks arising from investments. The White Paper included some initial estimates, which have been refined in light of developments to the policy, consultation responses and improved data. However, there is still a great deal of uncertainty and so indicative ranges have been given below.

65. Analysis has been carried out using the following trigger events:

    a. Acquisition of 15% or more, over 25%, over 50% and 75% or more of the shares in an entity (M&A);
    b. Acquisition of control by acquiring a majority stake in the parent company;
    c. Acquisition of an asset.

66. To estimate the total number of investment activities that will be affected at each stage, including where transactions were announced but not completed for direct and indirect M&A transactions, the following approach was used.

Stage 1 Early investment decision/Familiarisation

67. The annual frequency of investment activities was estimated from publicly available data. This was collected regardless of the origin of the investor or which sectors these occur in. It was assumed that businesses and investors will need to familiarise themselves with the new regulations, at the point of announcement, to decide whether their investments will be likely to be within the core scope of the new regime.

68. Capital IQ was used to gather evidence on the number of completed M&As where a share of 15% or over (the lowest threshold of the trigger events) was acquired.[15] Additional BEIS commissioned research also provided data regarding those M&A transactions that would have announced but not completed as they will likely also incur costs as a result of this legislation. Because Capital IQ focusses on transactions of £1 million and above, the evidence also was complimented with data from Pitchbook on transactions below £1 million.[16]

69. Orbis database was used to estimate the number of indirect M&A transactions.[17] This is where a foreign owner of a UK subsidiary was acquired with a stake of over 50%.[18] This situation would mean that the new majority owner of the foreign subsidiary would have material control over that UK subsidiary.

70. For assets, ONS data on the number of companies disposing of tangible assets per year was used. This data has severe limitations, reasonable assumptions have been used to estimate the number of assets sales that would likely take place in those areas of national security interest due to the voluntary basis of this trigger.[19] No data could be collected to

[15] Note that these are different to those recorded by the ONS in the official statistics as they are more inclusive. ONS ststistics only record those transactions over £1m where over 50% of the entity is acquired.
[16] This added 3% to the total number of M&A transactions.
[17] Orbis was used as this holds global business data and therefore the ultimate owners of UK subsidiaries could be traced in a complete way.
[18] When a UK company has a domestic parent that is acquired, since the parent is domestic, this event is counted as a direct acquisition.
[19] The ONS asset disposals data was able to be broken by sector and by asset type. This data did not specify whether the assets were sold or disposed of due to depreciation. A significant proportion of the disposals (75%) were assumed to be due to depreciation rather than sales.
https://www.ons.gov.uk/economy/grossdomesticproductgdp/adhocs/11902qcascountsofcompaniesthatdisposedofcapitalassetsbyindustry

estimate the number of intangible assets sales per year. This method reflects the limitations of the publicly available data on asset sales and should be regarded as a considerable limitation of this part of the analysis.

Stage 2 Early engagement with the Government

71. Based on the evidence held by Government, it is expected that the transactions involving foreign investors are more likely to have associated security concerns. For this analysis, all foreign investors are deemed to be more likely to engage early with government due to the increased security risks.

72. For the mandatory notification sectors, it was assumed that some businesses would still choose to engage with the government early to assist them in identifying potential areas of security interest before a formal notification is submitted.

73. For those outside of the core sectors and therefore under the voluntary regime or for asset transactions, it was assumed businesses would engage early with government to seek clarification as to whether their transaction could be of interest of being called in by Government.

74. For all early engagement, it was also assumed that the likelihood of engaging early was higher for larger businesses.[20] Subsequently, only large and medium businesses, identified through thier annual revenue, were assumed to undertake early engagement with government.[21] Large companies were also assumed to engage in the process more frequently than medium sized businesses.

75. It may be assumed that the number of businesses engaging early with Government will be higher in the immediate years after introduction which could reflect the potential unfamiliarity with the new notification regime. For this analysis, early engagement with government rates are assumed as constant. The government will provide guidance and a draft Statement of Policy Intent, setting out how and when it expects national security concerns are likely to arise, to reduce uncertainty for investors.

Stage 3 Notification

76. For those transactions in the mandatory notification sectors, it is assumed that all transactions would result in a notification submitted to government.

77. For those outside of the mandatory elements of the notification regime, half of those who engaged early with government (stage 2) were assumed to submit a notification.[22]

Stages 4 and 5 Call-ins (national security assessments and remedies)

[20] It was assumed that smaller companies would not necessarily have the associated resources available for them to engage with the government prior to a notification.
[21] Large, medium and small businesses were identified as those with an annual turnover above £36m, between £36m and £10m, and below £10m, respectively.
[22] It was assumed that through early engagement, Government would provide clarification as to the transactions that would be of interest and therefore only a subset of those who engaged early would subsequently submit a notification. The 50% rate of this assumption, however, was a policy assumption.

78. The decision on whether to call in a transaction for a national security assessment and the outcome of that assessment will be based on national security risks. As such, the number of transactions that will be called in, will depend on the transactions taking place at any one time, and the level and nature of the threat.

79. Forecasting this threat, and therefore the parameters that the regime will operate in, is inherently difficult and beyond the scope of this Impact Assessment. Hence, accurately estimating the number of cases likely to be called in, or the number of remedies that the Government is likely to impose is impracticable.

80. The new regime is intended, amongst other things, to provide clarity and transparency around Government's interventions into deals. The Government will not be able to use the regime to intervene in transactions on grounds other than national security. Because of the expanded remit of the new regime, there is an understanding that there will be some additionality in the number of cases of interest that are identified.

81. The number of call-ins and remedies has been estimated from the review of trends in 2019 and 2020. The review identified which trigger events would have been assessed as meeting the criteria for call in. It is estimated that will result in around 70 to 95 detailed national security assessments, and around10 remedies, per year.

82. It should, however, be noted that not all of these would have been additional. In the central case 18% of these assessments are assumed to be additional compared to the current EA02 regime. In addition, the Government currently engages with businesses informally in deals which are not currently in scope of the EA02.

4.3.2 Number of affected businesses

83. Table 1 shows the estimated number of trigger events for the preferred option.

Table 1: Range of numbers[23] of trigger events affected per year under the preferred option

Stage[24]	Estimates in the White Paper	Revised total estimates*
a. Early investment decision/Familiarisation	Not stated	6,340 – 14,480
b. Early engagement with Government	Not stated	890 – 2,220
c. Notification	200	1,000 – 1,830
d. Call-ins / National security assessments*	100	70 – 95
e. Remedies*	50	Around 10

Source: Data was collected from a range of sources, as set out mainly in paragraphs 57-78. *The number of estimated trigger events for stages a, b and c have been rounded to the nearest 10. For stages d and e, these have been rounded to the nearest 5.

[23] This is a static estimate. This does not take into account any additional powers that could be included over time.
[24] All familiarisation costs are assumed additional. Some early engagement and notifications take place under the current regime. However, it has not been possible to gather reliable evidence on early engagement and due to the increased information requested as part of the envisaged notification all of these have been assumed as additional. For assessments and remedies, 18% have been assumed in the central case as additional.

Table 2: A disaggregation of the revised total estimated trigger events per year under the revised preferred option[25]

Stage	Estimates for direct transactions	Estimates for indirect transactions	Estimates for asset sales[26]
a. Early investment decision/Familiarisation	2,280 – 2,670	380 - 780	3,680- 11,030
b. Early engagement with Government	180 - 220	140 - 280	570 – 1,720
c. Notification	600 - 730	120 - 240	290 – 860
d. Call-ins / National security assessments*	70 - 95		
e. Remedies*	Around 10		

Source: Data was collected from a range of sources, as set out mainly in paragraphs 57-78. *Rounded to the nearest 5. The figures may not directly correlate to those in Table 1 due to rounding.

84. The White Paper published in July 2018 included estimates for the number of notifications, call-ins, and remedies. While significant uncertainty remains, the estimates have been significantly revised since then. This is due to the following main reasons.

85. The methodology that has been used to calculate the figures has been revised since the White Paper. New evidence and better data availability allowed us to devise updated and more accurate estimates. The original White Paper used a top down methodology that was heavily based on the numbers of M&A per year, and a subsequent estimate regarding how many of those M&A the Government would look to call-in. The new methodology uses a similar approach to estimate the number of cases involved in stage 1,2 and 3 but uses historical evidence of cases that the Government has been interested in, from a national security perspective, for the estimates of stages 4 and 5.

86. Policy changes made since the White Paper have also had an impact on the figures. For example, the core sectors of interest have been expanded and a mandatory regime has been proposed for these sectors resulting in a larger number of trigger events being notified. An additional 15% notifiable event has now also been included. These policy changes have predominantly resulted in a larger number of transactions in stages 1, 2 and three.

4.4 Costs

87. There are two main areas where the new regime could potentially incur additional costs.

    a. Additional administrative costs. These would include both the costs to the Government in implementing the new regime as well as the cost to businesses of complying with it.

    b. Potential impact of the new regulatory regime on investments decisions, which could affect both the value of individual investments and the total volume of

[25] The same assumptions are used here as those in Table 1.
[26] The large range reflects the uncertainty with the assets data and these do not include intangible assets.

inward foreign direct investment (FDI) in the UK. This has been explored further in the Annex.

4.4.1 Monetised costs: administrative costs

88. The additional administrative costs have been grouped into five categories.

a. **Familiarisation and early advice costs:** Businesses and investors that (by the nature of their investments and the sectors they invest in) fall within the scope of the new regime will need to understand it. This is especially true when the regime is new, but they are also likely to research the requirements when considering new deals after the regime is established. This might materialise as a cost as staff are reallocated from more other activities to read guidance and/or seek expert legal advice.

b. **Costs of early engagement with the Government:** Businesses might seek early advice from Government about the regime, including the areas that could be of national security concern and whether their investment warrants a notification. This might include time spent drafting emails, having phone conversations and, in some cases, meeting with officials. These costs, therefore, will arise for both businesses and Government.

c. **Notifications:** Costs to businesses that submit a notification about their investment. This will involve filling out forms, providing relevant information and, if required, meeting with officials. There will also be costs to the Government at this stage from screening notifications.

d. **Call-ins / National security assessment:** Costs to businesses that are called in to undergo a detailed national security assessment. These costs could include legal fees, providing additional information and attending further meetings. There will also be additional costs to the Government as a result of the administration of the assessment process. The degree of complexity of each case will be determined by a range of factors such as business structure, level of analysis needed to reach an accurate assessment and the degree of cooperation from businesses.

Remedies: Costs to businesses associated with remedies. There would also be additional costs to Government as a result of the administration of the remedies. Government has not analysed the cost of the remedies themselves. The analysis shows that there are only a small number of additional remedies expected, these are likely to formalise remedies which are currently undertaken on a more informal basis.

4.4.2 Unit costs

Unit costs to businesses

89. Following close engagement with the Government, some stakeholders were able to provide estimates of the additional administrative costs that businesses might incur. There are two important limitations regarding these costs: firstly, they were provided by a limited number of stakeholders that were not thought to be representative of the businesses that will be impacted by this legislation and, secondly, they were based on the stakeholders' experiences of either competition assessments or national security assessments in other jurisdictions. These estimates were used as a base and revised as appropriate to reflect the updated policy.

90. Table 3 shows the additional cost to businesses for direct and indirect M&A transactions per case, by the size of business, at each stage.[27] For all asset transactions, the costs associated with the small business transactions were used, this was thought to represent the required resource for asset sales. These reflect the costs and only when the investment is considered on national security grounds.

91. These estimates cover the costs to both the target business and the acquirer. The proportion of the cost that each party pays varies greatly by case, and this split has not been represented in the estimates.

92. The estimates try to include all additional costs to businesses. However, it is worth bearing in mind that businesses may incur some of these costs as part of their usual due diligence when undertaking an investment. As previously discussed, there will also be some costs incurred under the current regime that have not been excluded from this analysis.

93. There is the assumption that:

    a. transactions involving larger businesses are assumed to incur greater costs relative to smaller businesses for familiarisation, early engagement with government and notifications;[28]

    b. unit costs are same for M&A investment whether directly or indirectly through the acquisition of a majority stake in a parent company;[29]

    c. costs at each of the stages described above are assumed to be direct; and

    d. businesses and investors that are based abroad carry out their investment activities from subsidiaries based in the UK and therefore, all administrative costs to businesses are domestic costs (costs to the UK).

[27] The total administrative costs to businesses affected by this regime depend on the stage they reach. For example, if a business is affected only at stage one, the total cost to this business equals the familiarisation and early advice cost. If a business is affected by stage one and two, the total cost to this business equals the familiarisation and early advice cost plus the early engagement with Government cost.
[28] This reflects the likely higher complexity of the larger transactions which would require additional resource to familiarise and support a business through the investment screening process.
[29] However, costs are assumed to be lower for the acquisition of assets.

94. While the costs used have been partially informed by stakeholders, significant uncertainty remains. Adjustments were made to take into account that the firms who provided this information were large firms and they were also revised to reflect the latest mandatory regime. The estimated costs for familiarisation, early engagement with government and notifications were also informed by the previously published Impact Assessment on The Enterprise Act 2002 (Turnover and Share of Supply Test) (Amendment) Order 2018.[30]

95. It is expected that SMEs are likely to be involved in smaller, less complex, transactions. Therefore, it is assumed that they will face reduced administrative costs and information dissemination through the investment screening process. Legal fees and other costs are assumed to be proportional to the size of the transaction to account for the relative complexity.

Table 3 – Additional cost per case to businesses, by business size, at each stage when the case is considered on national security grounds only (2019 prices – rounded to the nearest £1,000).[31]

Business size	**Small business** (revenue <£10m pa) **and asset transactions**		**Medium business** (revenue >£10m <£36m pa)		**Large Business** (revenue >£36m pa)	
Scenario	**High**	**Low**	**High**	**Low**	**High**	**Low**
Stage 1. Familiarisation	**£1,000**	**£1,000**	**£5,000**	**£2,000**	**£19,000**	**£14,000**
a. Activities involving internal staff (reading, research, etc.)	£1,000	£1,000	£3,000	£2,000	£4,000	£4,000
b. External legal advice	£0	£0	£2,000	£0	£14,000	£10,000
Stage 2. Early engagement with Government	**£2,000**	**£1,000**	**£7,000**	**£4,000**	**£14,000**	**£11,000**
a. Activities involving internal staff (emails/phone calls, meeting with officials)	£2,000	£1,000	£5,000	£4,000	£7,000	£6,000
b. External legal advice	£0	£0	£2,000	£1,000	£7,000	£5,000
Stage 3. Notification	**£3,000**	**£1,000**	**£8,000**	**£5,000**	**£21,000**	**£15,000**
a. Activities involving internal staff (emails/phone calls, meeting with officials)	£2,000	£1,000	£4,000	£3,000	£6,000	£5,000
b. External legal advice	£1,000	£0	£4,000	£2,000	£14,000	£10,000
Stage 4.a National security assessment - standard case	**£81,000**	**£66,000**	**£81,000**	**£66,000**	**£81,000**	**£66,000**
i) Activities involving internal staff (gathering information, responding to request of information, meeting with officials)	£15,000	£15,000	£15,000	£15,000	£15,000	£15,000
ii) External legal advice	£66,000	£51,000	£66,000	£51,000	£66,000	£51,000
Stage 4.b National security assessment - complex cases	**£171,000**	**£120,000**	**£171,000**	**£120,000**	**£171,000**	**£120,000**

[30] https://www.legislation.gov.uk/ukdsi/2018/9780111167441/impacts

[31] For business unit costs for stages 1, 2 and 3 these estimates are informed by June 2018 amendment to the EA02 Impact Assessment as well as stakeholder engagement, these primarily involve using the Annual Survey of Hours and Earnings data (uprated with additional 21.9% non wage related employment costs) and external legal advice costs informed by the Ministry of Justice's solicitors' guideline hourly rates. Internal business' unit costs to business for stage 4.1a, 4.1b, 4.1c were based on information from stakeholders. For stages 4.1a, 4.1b, 4.1c and 5 external legal advice costs were informed by information provided by stakeholders following the consultation period for the June 2018 amendment to the EA02.

i) Activities involving internal staff (gathering information, responding to request of information, meeting with officials)	£18,000	£18,000	£18,000	£18,000	£18,000	£18,000
ii) External legal advice	£153,000	£102,000	£153,000	£102,000	£153,000	£102,000
Stage 4.c National security assessment – very complex case	**£374,000**	**£323,000**	**£374,000**	**£323,000**	**£374,000**	**£323,000**
i) Gathering additional information	£18,000	£18,000	£18,000	£18,000	£18,000	£18,000
ii) External legal advice	£357,000	£306,000	£357,000	£306,000	£357,000	£306,000
Stage 5. Implementation of remedy[32]	**£15,000**	**£10,000**	**£15,000**	**£10,000**	**£15,000**	**£10,000**

Please note that some of these figures may not sum due to rounding.

Unit costs to Government[33]

96. The Government has a range of powers to protect national security, and a well-developed and co-ordinated approach to the application of them. In respect of business transactions, some of these powers come under the EA02, as well as a range of sector regulation and export controls.

97. To allow the Government to administer the new regime in an efficient and timely way, there will be additional costs to the Government, when compared to the current regime.

98. The unit costs to the Government have been estimated based on evidence provided by Government departments and the CMA,[34] and has been partially based on the existing costs to Government as outlined above. For example, approximate costs to the Government from running a PIN phase 1 investigation under the current regime. For assets, it has been assumed that the associated costs to government for early engagement and initial notification screening is half of that for direct and indirect M&A transactions.

Table 4 – Costs to the Government for an investment assessed only on national security grounds (rounded to the nearest £1,000)

	Low unit cost scenario estimates	**High unit cost scenario estimates**
<u>Costs per case</u>		
Direct and indirect M&A transactions		
Stage 1. Familiarisation and early advice costs	N/A	N/A
Stage 2. Early engagement with Government	£1,000	£1,000
Stage 3. Notification	£2,000	£3,000
Asset transactions		
Stage 1. Familiarisation and early advice costs	N/A	N/A
Stage 2. Early engagement with Government	£1,000	£1,000
Stage 3. Notification	£1,000	£1,000
All transactions		
Stage 4. National security assessment		

[32] It should be noted that these estimates only include the legal costs associated with the implementation of remedies as informed by stakeholders. These do not include the associated costs to businesss to implement the remedial actions themselves due to a lack of available data.
[33] Both central Government departments and their agencies.
[34] Central unit costs in table 3 for stages 1, 2, 3, 4.a, 4.b, and 5 were estimated based on internal Government discussions on resourcing requirements for the new regime. Central unit costs for stage 4.c were based on information received from the CMA.

a. Standard case	£32,000	£97,000
b. Complex case	£65,000	£235,000
c. Very complex case	£306,000	£509,000
Stage 5. Remedies	£8,000	£23,000
Additional total fixed costs		
Monitoring and other non-case related work	£1,000,000	£2,000,000

Source: Data was collected and estimated from internal Government data on the actions undertaken for current EA02 assessments.

99. As outlined above, there are already costs to the Government associated with coordinating, monitoring, and countering national security risks around business investments. However, in addition to these existing costs and the unit cost per case, the Government will also incur costs as a result of activities unrelated to the caseload, such as market monitoring activities. These costs are estimated to be **£1.5 million per year** in our central case.[35] Fixed costs to the Government for the 'low' scenario and 'high' scenarios (£1 million and £2 million respectively) were calculated as ±50% relative to the 'central' fixed cost scenario.

100. The increased resources that the Government will dedicate to market monitoring will increase the Government's capabilities to identify trigger events. This might also further enhance the Government's ability to identify investments that are currently in scope of the EA02. This additionality has not been quantified in the estimates.

101. There will be no charge to businesses under the regime, as such, costs to Government will not be recovered.

4.4.3 Costs to the CMA

102. Unit costs to the CMA have not been included as part of this analysis. Under the EA02, when a Public Interest Intervention Notice is issued, the CMA carries out a range of functions on behalf of the Secretary of State. Under the new regime many of these functions will not be carried out by the CMA, and as such, it is not expected that the CMA would face any additionality in costs because of the new regime.

4.4.4 Additional costs under the preferred option

103. To estimate additional costs, the unit costs to businesses and the Government (see Tables 2 and 3) were multiplied by the relevant estimated number of additional cases affected. The additional number of cases affected excludes cases that are under the EA02. For assets the costs estimated below are assumed to be

104. Table 5 shows the additional monetised costs to businesses and the Government on average per year, and table 6 and 7 show the time profile of costs.

[35] Estimated from the costs of acquiring and expanding the market monitoring tools needed for this function and the development of a case management system.

Table 5: Additional monetised costs to businesses and Government (average per year) under the preferred option (2019 prices in £ millions)

	Low scenario estimates (low unit costs and low number of affected businesses)	High scenario estimates (high unit costs and high number of affected businesses)
Businesses	£22.6	£62.7
Government (including fixed costs)	£3.7	£10.4
Total	**£26.2**	**£73.1**

Source: Tables 2 & 3, and internal Government estimates. Estimates were calculated by multiplying unit costs by the additional number of cases affected per annum.

Table 6: Time profile of total annual monetised additional costs to businesses and Government under the preferred option - low scenario (2019 prices in £ millions)

Year	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	Total
Costs to businesses	£22.6	£22.6	£22.6	£22.6	£22.6	£22.6	£22.6	£22.6	£22.6	£22.6	£225.8
Costs to Government (incl. fixed costs)	£3.7	£3.7	£3.7	£3.7	£3.7	£3.7	£3.7	£3.7	£3.7	£3.7	£36.5
Total	£26.2	£26.2	£26.2	£26.2	£26.2	£26.2	£26.2	£26.2	£26.2	£26.2	£262.4
Preset Value (PV)	£26.2	£25.4	£24.5	£23.7	£22.9	£22.1	£21.3	£20.6	£19.9	£19.3	£225.8

Source: The low scenario is based on i) low unit cost assumptions and ii) the low affected business population estimate. Note, it has been assumed that costs to businesses and Government will not fall over time, whereas, over time there may be some reduction in costs.

Table 7: Time profile of total annual monetised additional costs to businesses and Government under the preferred option – high scenario (2019 prices in £ millions)

Year	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	Total
Costs to businesses	£62.7	£62.7	£62.7	£62.7	£62.7	£62.7	£62.7	£62.7	£62.7	£62.7	£627.1
Costs to Government (incl. fixed costs)	£10.4	£10.4	£10.4	£10.4	£10.4	£10.4	£10.4	£10.4	£10.4	£10.4	£103.9
Total	£73.1	£73.1	£73.1	£73.1	£73.1	£73.1	£73.1	£73.1	£73.1	£73.1	£731.0
Present Value (PV)	£73.1	£70.6	£68.2	£65.9	£63.7	£61.5	£59.5	£57.5	£55.5	£53.6	£629.2

Source: The high scenario is based on i) high unit cost assumptions and ii) the high affected business population estimate. Note: the same assumption as Table 5.

4.4.5 Non-monetised costs

105. It is also important to assess how the proposed new regime would alter measures on the UK's openness to FDI and various methodologies for this were explored. In cases where the existing methodology was used it was concluded that the UK's openness would remain largely unchanged. Further details on this can be found in the Annex.

106. As part of the efforts to understand how an updated screening regime for investment on national security grounds could affect investment in the UK, external research was commissioned. The aim of this research was to better understand who owns the companies, how they raise finance, and what the implications of other countries' approaches to screening foreign investment on national security grounds has been.

107. This research had several main findings.

a. Investments are primarily driven by the need for stable, long-term, inflation protected returns. Foreign investments in infrastructure can also be driven by the destination country's relative stability (both political and regulatory), market size / opportunities, and technological advantages. Investment in infrastructure may be limited by a lack of liquidity and regulatory uncertainty. Foreign investments may also be affected by currency volatility.

b. Some studies noted that the existence of a foreign investment regime may act as a deterrence in the first place to foreign acquisitions, although the evidence of such an effect materialising was weak.

c. Interviews with 20 investors found that they do not see national security regimes as playing a major role in the investment decision making process providing that the regimes are clear and predictable. However, if regimes are based on 'political' decisions, they can be seen as a significant barrier to overcome.

108. However, the study concluded that the evidence regarding the effect of an investment screening regime on the level of competition in markets and the resulting valuations of transactions that are scrutinised by national security screening regimes is inconclusive.

109. Further details can be found in the Annex, *FDI in the United Kingdom*.

Impact on investment decisions

110. Some studies[36] have pointed out that, in the short term, uncertainty about the new regime could have adverse effects on investments and M&A activity. Regulatory uncertainty could increase the time needed to complete a deal. As transaction time increases, there is a higher likelihood that the target's value decreases in the interim period between deal announcement and completion, thereby discouraging merger activity. Furthermore, uncertainty about the successful completion of the merger or additional regulatory or bureaucratic hurdles could decrease a firm's willingness to initiate a merger.

111. However, other studies have highlighted that, whilst regulatory uncertainty might negatively affect M&A deal value and the number of M&A deals, this uncertainty might be offset by the increased security and economic stability as businesses are more likely to invest in countries which exhibit a stable and secure environment.[37]

4.5 Summary of cost-benefit analysis

112. The analysis has estimated a combined additional administrative cost to businesses and the Government of **£26.2m to £73.1m per year on average** under the preferred option.

113. We are aware that when estimating the impact of legislation, the time needed and the associated costs are often underestimated. It is believed that this potential optimism bias

[36] For example: Bhagwat, V. , Dam, R. , Harford, J. , 2016. The real effects of uncertainty on merger activity. Rev. Finance. Stud. 29, 30 0 0–3034

[37] Bonaime, A., Gulen, H. and Ion, M., 2018. Does policy uncertainty affect mergers and acquisitions? *Journal of Financial Economics*.

has already been incorporated within the assumed range of transaction numbers and the associated costs and therefore this has not been subsequently reapplied.

114. The impact of the proposed new regime on businesses' valuations and foreign direct investment has also been considered. On the former, the evidence from the literature review showed conflicting results. On the latter, interviews with investors showed that national security regimes do not seem to play a major role in the investment decision making process providing that the regimes are clear and predictable.

115. Some studies show that in the short term the introduction of new regulations would lead to an increase in regulatory uncertainty. This regulatory uncertainty would affect both the number and value of M&A deals. However, some other studies have stressed that while regulatory uncertainty might negatively affect M&A this might be offset by the increased security and economic stability as businesses are more likely to invest in countries which exhibit a stable and secure environment.

116. The benefits of this regime were also assessed. Whilst it is difficult to monetise the impact of screening regimes for investments on national security grounds, some illustration of the potential benefits of this regime have been provided. In particular, one example illustrates that if this regime helps stop just one large malicious acquisition event per year, the monetary benefits alone could outweigh its administrative costs.

117. In conclusion, the costs that the proposed regime will bring about are proportionate to the expected benefits of the regime, namely, an enhanced ability to protect and safeguard the UK's national security from a range of threats. This is likely to have long-term positive economic, social and reputational impacts.

4.6 Impact on the justice system

118. The policy intention for the regime is to have strong and clear sanctions to incentivise compliance and to acknowledge that a breach of the regime may put national security at risk. Therefore, the Government will have the flexibility to determine whether to seek Crown Prosecution Service (CPS) agreement to prosecute the offence or to impose civil penalties or director disqualifications.

119. The proposed legislation will impact on the justice system in four ways:

a. if a party breaches the regime and the Government considers it necessary to seek CPS agreement to pursue criminal sanctions;
b. if a criminal or civil sanction has been imposed on a party and they choose to appeal. Appeals against criminal sanctions will go through the normal criminal appeals route, whilst appeals against civil sanctions will be heard by the High Court;
c. the Government has decided to apply a standard judicial review process (with two minor modifications) to legal challenges.
d. if the Government applies to the magistrate's court to have a person disqualified from being able to service as a director (director disqualification). The Government

would prefer to usually accept an undertaking from the person but in some cases a court order may be necessary. The maximum period of disqualification will be 15 years.

120. For this Impact Assessment we have assumed full compliance. However, a full justice impact test will be created to estimate the potential impact of these sanctions to the justice system.

4.7 Small and micro business assessment (SAMBA)

121. The target company's turnover was analysed, to estimate the impact of the proposed new regime on small and micro businesses.[38] The size of the businesses were able to be gathered for direct M&As, this distribution was also used for acquisitions of a majority stake in parent companies. Due to data limitations, it was not possible to get detailed information on the size of businesses selling assets and it was not thought appropriate to use the distribution from the direct M&A transactions.

122. For direct and indirect M&A transactions, from Capital IQ data, we can estimate that around 80% of transactions in scope of the mandatory regime will be small or medium sized businesses.[39] In the voluntary sectors, this falls to 70%. Overall, the number of affected small and micro businesses account for a very small proportion of the total number of small and micro businesses in the UK.

123. It is important to note that, as explained above, some mergers involving small or micro businesses are already in scope of the EA02 as a result of the share of supply test and lower thresholds for certain industries. Therefore, the small and micro business assessment is likely to be an overestimate and we do not expect SME's to be affected disproportionately.

124. It is expected that SMEs are more likely to be involved in smaller or less complex transactions and would face less internal bureaucracy and information dissemination through the business during the execution of the transaction. Furthermore, legal fees and other costs are assumed to be proportional to the size of the transaction in question to account for the likely complexities of the transactions. As it can be seen in Table 3, the costs incurred by SMEs are estimated to be significantly lower than those for large businesses. As previously discussed, it was not possible to breakdown the number of asset sales by business size.

125. The Government will also offer informal advice to businesses during the early engagement phase. For the voluntary sectors and asset transactions this will have a mitigating effect on the cost burden born by small and micro businesses by providing some advice on whether a formal notification will be required. Early engagement will help businesses avoid filing notifications when they are not deemed necessary.

[38] Data on the number of employees was very limited. Revenue data was more complete.
[39] It is recognised that this will particularly impact start-ups that would potentially have been excluded from the previous EA02 investment screening thresholds.

126. It is also deemed to be more likely that an SME will be the target company in an M&A, rather than the acquirer. Acquiring another company is usually very costly and SMEs are less likely to have sufficient funds to act as an acquirer. Whilst the cost profiles in Table 3 have not provided a distinction between target and acquirer, it is also more likely that costs will be weighed towards the acquirer. As such, in a transaction involving an SME, costs would not fall disproportionately onto a SME.

127. We have considered excluding small businesses or micro-businesses from the scope of the regime but feel that this would be inconsistent with the objectives of the policy. The rationale for these proposals is to protect the UK's national security, and the Government would not want to exempt any UK company from the scope of this regime if they engage in a trigger event which is linked to an unacceptable risk to the UK's national security.

128. It is not possible to estimate the number of National security assessments or remedies, or asset sales that will be within scope for SMEs. However, the SME costs associated with stages 1, 2 and 3 for direct and indirect M&A transactions can be estimated. For familiarisation, early engagement and notifications in the central case, SMEs are expected to have annual additional costs of £4.9m (£42.2m PV), £0.6m (£5.5m PV) and £5.1m (£44.0m PV) respectively. In total, these additional costs would total £10.6m per year (£91.7 PV).

129. Small and micro businesses could benefit from the new regime, as the regime will provide transparency and predictability to businesses that are undertaking business transactions.

4.8 Equality assessment

130. The Department is required to comply with the public-sector duty (PSED) set out in the Equality Act 2010 ("the Act"). The PSED requires the Minister to have due regard to the need to advance equality of opportunity, hinder discrimination and foster good relations between those with and without certain protected characteristics. This due regard is taken to eliminate unlawful discrimination and to tackle prejudice and promote understanding. The characteristics that are protected by the Act are: age, disability, gender reassignment, marriage or civil partnership (in employment only), pregnancy and maternity, race, religion or belief, sex and sexual orientation.[40]

131. The power to call in a transaction applies across the economy to all foreign and domestic acquirers. However, based on evidence held by Government, it is expected that the main the power to call in is more likely to be exercised in respect of foreign investors . Although there is an ability for the Secretary of State to call in cases involving domestic investors, this is more likely to be rare, as they are generally considered less likely to involve threats to national security.

132. The matters considered in this Impact Assessment do not raise any issues relevant to the public sector equality duty under section 149(1) Equality Act 2010 because the policy

[40] https://www.gov.uk/discrimination-your-rights/types-of-discrimination

does not discriminate or unjustly favour any person or group of people with protected characteristics.

4.9 Trade and Investment Impact Test

133. This regime will impact the ability of overseas businesses to export to the UK or provide services to the UK in a very small number of cases. As the regime aims at strengthening national security, only importers who pose a credible threat to the UK will be affected.

134. As the analysis has shown, it is expected that around 10 businesses will be affected per year by receiving remedies which may limit their ability to invest or export to the UK. There is however some uncertainty about the nature of the remedies imposed, as the type of measure will be decided on a case by case basis. The Government will have the ability to use a variety of different mitigation strategies, which will not necessarily have an impact on a business's ability to trade with the UK. It is unlikely that the imposition of such remedies will hinder foreign businesses to export to the UK unless the nature of the threat is trade related. Therefore, around 10 cases may be an overestimate of the number of businesses whose ability to trade with the UK will be limited.

135. Furthermore, it is worth noting that this regime will not only apply to foreign businesses but also to domestic businesses, which supply goods and services in the UK. Hence, any business or transaction creating a trigger event may be subject to further investigation and may have remedies imposed if there is sufficient cause for the Government to intervene on national security grounds.

136. The estimated impact on investment for the UK of this regime has been discussed through this Impact Assessment and is detailed in the annex, *FDI in the United Kingdom.*

4.10 Evaluation and Impact

137. We are committed to evaluating the impact of the investment regime to ensure it is fit for purpose. Key performance indicators will be evaluated and the Bill specifies that the Secretary of State must publish an annual report for the regime. This annual report will include, as a minimum, details of any spending under the Act, the number of trigger event notices accepted and rejected, the number of call-ins and the number of final orders, with a breakdown of the sectors that the notices, call-ins and final orders came from.

138. This ongoing transparency will provide businesses with clarity on which transactions tend to undergo detailed assessments by government, which will in turn assist businesses with their investment planning.

139. In addition, the Government has committed to undertake a full post implementation review of the legislation after five years. Whilst it is difficult to monetise the impact of screening regimes for investments on national security grounds, due to likely difficulties in establishing the baseline costs for the national security threats if they were not otherwise

mitigated, the post implementation review is likely to include impact evaluations on a case study perspective.

5 Amendment to Part 9 of the Enterprise Act 2002

Policy Overview

140. Part 9 of the Enterprise Act 2002 (the Act) includes information sharing gateways. Some of these enable UK public authorities to disclose confidential commercial and personal information to overseas public authorities.

141. Currently, information gathered by UK public authorities during the exercise of their merger functions[41] can only be disclosed to overseas authorities once all the relevant consents are obtained (the consent gateway, s.239) or to fulfil its statutory obligations (statutory functions gateway, s.241).

142. This amendment will enable these public authorities to disclose confidential merger information without consent through the overseas disclosure gateway (s.243) in Part 9 of the Act.

143. Using generous assumptions, the Government estimates that it will not create a significant cost burden (£2.7m – £3.1m) for affected UK businesses.

5.1 Direct Costs to Business

144. This amendment will not change the underlying rules around merger control. Nor will it change the processes by which confidential merger information can be (i) submitted voluntarily by parties or (ii) obtained by public authorities through their information gathering powers.

145. Businesses will be familiar with the CMA's ability to share certain information without consent with overseas public authorities. Part 9 of the Act allows the CMA to share specified information obtained during an antitrust investigation, for example, without consent with overseas public authorities.

146. This amendment would extend the categories of information that could be disclosed without consent through the overseas disclosure gateway to include merger information. Consequently, it will not create a significant cost burden for businesses as it does not impose additional requirements or duties upon parties involved in or contemplating a merger in order to secure clearance.

147. The Government anticipates an effect upon businesses in terms of familiarisation and legal costs. This is expected to be very low on aggregate, for two main reasons:

[41] While only the CMA and Ofcom can gather merger information, the CMA, Ofcom, and the Secretaries of State for BEIS and DCMS can each share information with other public authorities. Under s.44A of the Act, Ofcom is required to investigate and produce a report for the Secretary of State in relation to a Public Interest Intervention Notice concerning media plurality. The scope of both the investigation and the report is limited to the impact of a merger on media plurality in the UK. It is unlikely that Ofcom will need to disclose information to an overseas authority. Moreover, because the Secretaries of State cannot gather information, their interaction with businesses is limited. The principal focus of this De Minimis, therefore, is the CMA.

A small number of UK businesses would be affected by the change

148. The daily operation of most businesses is not concerned with merger and acquisition planning. The familiarisation with rules and procedures associated with merger clearance is likely to be undertaken only at the point a business considers participating in a merger or acquisition.

149. The Government has considered two categories of businesses that might be affected by this change to the Act: (i) those that complete a merger and (ii) those that consider merging, familiarise themselves with the associated rules and procedures, but do not subsequently proceed with the merger.

150. According to Capital IQ, for the period 2015-2019, 2,340 mergers and acquisitions were completed annually, on average. We use this figure to estimate the number of businesses affected by the change in the central scenario. For the higher and lower estimates, the yearly fluctuations of mergers and acquisitions have been considered and incorporated resulting in a high of 2,500 and a low of 2,170.

151. Assumptions: Each M&A activity requires more than one party. We assume an average of two parties per merger.[42] Additionally, we assume that the number of mergers and acquisitions contemplated but not executed is equal to the number of transactions that do proceed.[43]

<table>
<tr><th colspan="2">Box 2: Estimate of number of businesses affected by the amendment to Part 9 of the Act</th></tr>
<tr><td colspan="2">Numbers of businesses affected by the change
= (Number of businesses involved in an M&A transaction) + (Number of businesses that contemplate but do not complete an M&A transaction)
= (Number of M&As x Number of parties) + (Number of contemplated M&As x Number of parties)
Since we assume the number of M&As = Number of contemplated M&As
= 2 x Number of mergers x Number of parties</td></tr>
<tr><td><u>Low Scenario</u>
= 2 x 2,170 x 2
= 8,680 businesses</td><td><u>High Scenario</u>
= 2 x 2,500 x 2
= 10,000 businesses</td></tr>
</table>

The additional familiarisation and legal costs per affected business are negligible

152. The CMA is already able to disclose certain types of specified information to overseas public authorities without the consent of relevant parties. This amendment will also enable them to share information without consent through the same mechanism.

153. Chapter 7 of the CMA's 'Transparency and disclosure: Statement of the CMA's policy and approach' is guidance that indicates the circumstances in which specified information can be shared with overseas authorities without consent. The same guidance will now also

[42] Official statistics are publicly unavailable. Assumption is based on input from BEIS's merger policy team.
[43] It is difficult to estimate the number of businesses that contemplate merging if they do not ultimately merge. As such, a conservative assumption is used, which lends itself to overestimation.

apply to merger and acquisition information and businesses will need to familiarise themselves with it in this context.

154. Businesses will not require a long time to read through rules or necessarily obtain legal advice to explain the change, although management may wish to discuss and/or consult with lawyers about the legal implications. It is difficult to account for the latter. We have assumed that businesses consult external counsel.

155. Our estimate of legal fees is based on the inflation uprated solicitors guideline hourly rates.[44] For this we have assumed the London Grade 1, Class A because M&A cases typically involve larger legal firms.

Box 3: Estimate of familiarisation and legal cost associated with the amendment to Part 9 of the Act
The additional familiarisation cost to one business = (Number of people reading guidance)[45] x (Time spent reading guidance in hours)[46] x (The uplifted wage estimate in pounds per hour)[47] = 5 people x 0.5 hours x £29.57/hour = £74 **The additional legal cost to one business** = (Time with lawyers)[48] x (Legal expense in pounds per hour) = 0.5 hours x £480=/hour = £240 **Total Additional cost to one business** = Additional familiarisation cost + Additional legal cost = £314

156. The additional cost to affected businesses as a consequence of the amendment is likely to be small.

Box 4: Estimate of aggregate direct cost to UK businesses due to the amendment of Part 9 of the Act
The aggregate direct cost to UK businesses per annum

[44] https://www.gov.uk/guidance/solicitors-guideline-hourly-rates - uprated to 2020 prices
[45] The Government assumes that roughly five people per business will read the guidance.
[46] The Government assumes that it would take 30 minutes to read the relevant guidance which occupies 5 pages of the 'Transparency and disclosure: Statement of the CMA's policy and approach'.
[47] The Government assumes conservatively that the guidance will need to be read by a corporate manager or director, the 2019 median wage for whom was £24.25 per hour (ONS Annual Survey of Hours and Earnings, Table 14.5a). This has been uplifted by 21.95 percent (from Eurostat) to generate the wage estimate of £29.57 per hour.
[48] The Government assumes it would take 30 minutes to read the relevant guidance.

= (Number of businesses affected by the change) x (Total additional costs to one business)	
Low Scenario = 8,680 x £314 = £2.7m	High Scenario = 10,000 x £314 = £3.1m

157. Given that the number of businesses affected by the change and the familiarisation cost is expected to be negligible, the direct costs on business resulting from this change are estimated to be between £2.7m and £3.1m per annum with a central estimate of £2.9m per annum.

5.2 Wider Impacts and Transfers

158. The UK is in the process of negotiating competition cooperation arrangements with a number of countries to help to replicate the effects of the EU's agreements which the UK was part of while it was an EU Member State. The objective of this amendment is to support the UK's Competition and Markets Authority to coordinate its process of merger review internationally. The change will help the UK to negotiate and enter into international competition cooperation arrangements, which in turn will promote consistent international enforcement against mergers that might reduce competition.

159. The amendment will promote the enforcement of competition law and promote competition in UK markets. This has the potential to benefit consumers indirectly through low prices and innovation, and businesses by ensuring they are not harmed by the anticompetitive effects of mergers that result in the concentration of market power.

Impacts on Small Businesses

160. Following communication with the CMA, the Government is confident that small businesses will be neither materially, nor disproportionately, affected by the proposed change to Part 9.

161. As discussed above, the amendment may create a small additional cost to affected businesses.

6. Estimated Annual Direct Costs to Business and Business Impact Target

6.1 EANDCB costs

162. There remains considerable uncertainty regarding the precise number of cases each year. The number of M&A as well as other types of investments usually occur in waves and vary from year to year. Therefore, it is impossible to predict the exact number of cases each year. However, we are confident that the true annual number of cases will be within the ranges we presented throughout this IA.

163. For the purpose of calculating the Estimated Annual Net Direct Cost to Business (EANDCB) figures, the central case costs have been assumed. These are the mid points between the low and the high estimates presented in Table 4 and Table 5 in Section 4.4.

Given the manifold factors, which determine investment activities and the degrees of uncertainty revolving around the number of future national security risks, the mid-point estimate represents our best estimate of the average annual cost to businesses.

Table 8: Central cost to Businesses and Government per case for direct or indirect investment assessed only on national security grounds (2019 prices - rounded to the nearest £1,000)

	Business unit cost, central scenario estimates			Government costs – central costs	
	Small business and asset transactions	**Medium business**	**Large business**	**Direct and indirect M&A transactions**	**Asset transactions**
Stage 1. Familiarisation and early advice costs	£1,000	£4,000	£16,000	N/A	N/A
Stage 2. Early engagement with Government	£2,000	£6,000	£13,000	£1,000	£1,000
Stage 3. Notification	£2,000	£7,000	£18,000	£3,000	£1,000
Stage 4. National security assessment					
a. Standard case	£74,000			£65,000	
b. Complex case	£145,000			£150,000	
c. Very complex case	£349,000			£407,000	
Fixed Costs from increased monitoring and other non-case related work	N/A			£1,500,000	
Stage 5. Remedies	£13,000			£15,000	

164. This is combined with the estimated direct costs to business as a result of amendments to the Enterprise Act 2002 (see Section 5 above) to provide an overall time profile of all monetised costs to business and government for both sets of measures in Table 9 below.

Table 9: Time profile of total annual monetised additional costs to businesses and Government under the preferred option for (a) National Security and Investment and (b) Amendments to Part 9 of the Enterprise Act 2002 – central scenario (2019 prices in £ millions)

Year	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	Total
Costs to businesses for (a) NSI	£39.8	£39.8	£39.8	£39.8	£39.8	£39.8	£39.8	£39.8	£39.8	£39.8	£398.4
Costs to businesses for (b) EA02	£2.9	£2.9	£2.9	£2.9	£2.9	£2.9	£2.9	£2.9	£2.9	£2.9	£29.3
Costs to Government (incl. fixed costs)	£6.6	£6.6	£6.6	£6.6	£6.6	£6.6	£6.6	£6.6	£6.6	£6.6	£65.8
Total	£49.4	£49.4	£49.4	£49.4	£49.4	£49.4	£49.4	£49.4	£49.4	£49.4	£493.5
Present Value total	£49.4	£47.7	£46.1	£44.5	£43.0	£41.6	£40.1	£38.8	£37.5	£36.2	£424.8

6.2 Business impact target

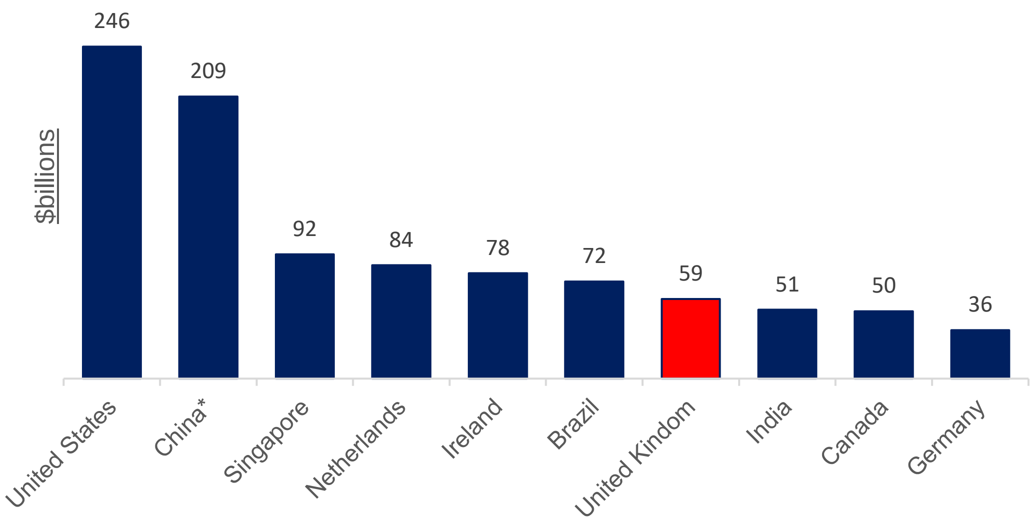
165. This set of proposals is expected to affect UK business in scope of the regime, and foreign investors operating in the UK. The proposals are therefore likely to be in scope of the business impact target and constitute new regulatory burdens for business. The current estimate of the size of the business impact score is £214m.

Annex – FDI Investment in the UK

166. These proposals are intended to help protect national security without disrupting or discouraging the vast majority of overseas investment, which the Government warmly welcomes. The Government is determined that the UK will remain an open and liberal international trading partner and a global champion of trade and investment. The UK's current performance in attracting foreign direct investment is summarised below.

167. The UK is a particularly open economy, which receives and makes very high levels of foreign direct investment. As of 2019, the United Kingdom had the seventh highest inward FDI flow position in the world ($59 billion).[49] Measured relative to GDP, the UK's FDI inward stock position was 70% in 2019, the highest amongst the G20 (the G20 average was 32% and the OECD average was 45%).[50] The UK had an average total inward position of 56% between 2010 and 2019.[51]

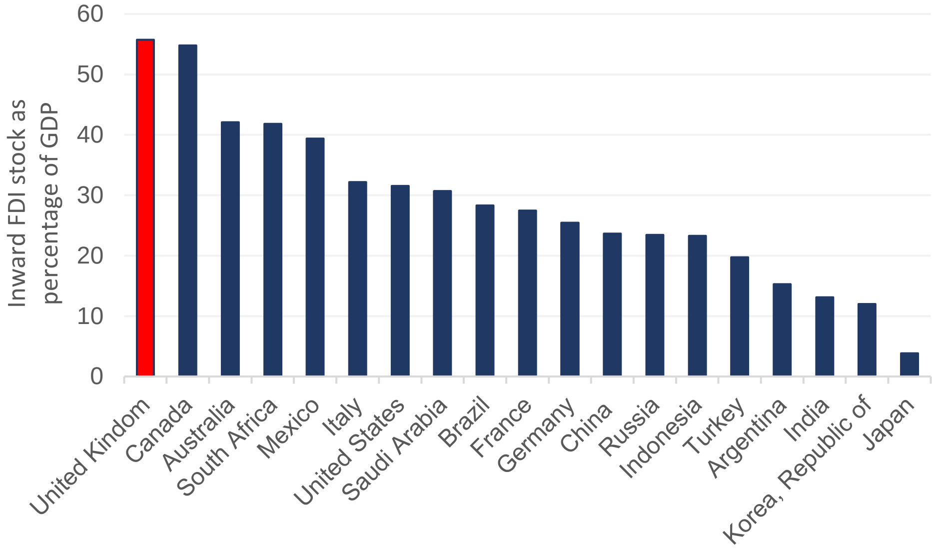
Figure A.1 – FDI inward flow in 2019 ten largest recipient countries



*Including Hong Kong SAR
Source: UNCTAD World Investment Report[52]

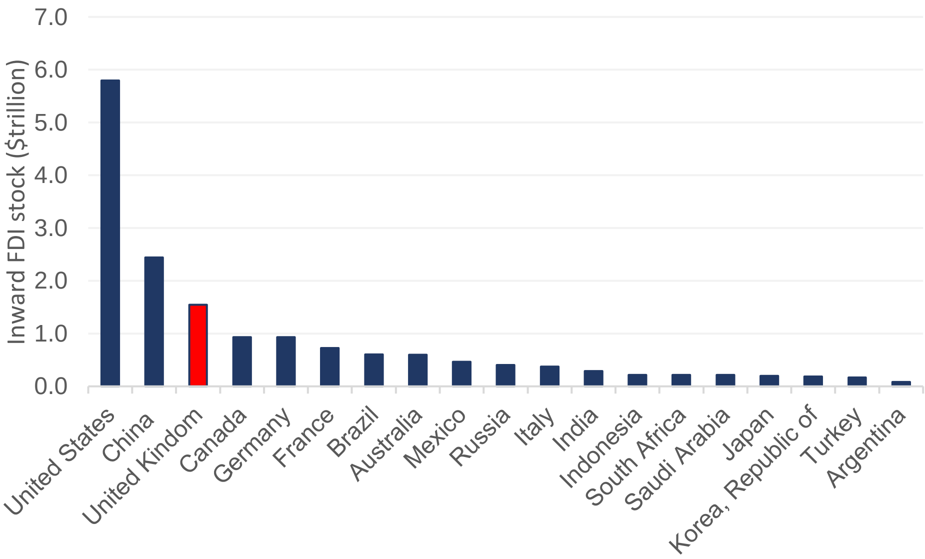
[49] Data from United Nations Conference on Trade and Development (UNCTAD) World Investment Report 2020, https://unctad.org/en/pages/PublicationWebflyer.aspx?publicationid=2769
[50] OECD Foreign Direct Investment Statistics - http://www.oecd.org/investment/statistics.htm
[51] OECD Foreign Direct Investment Statistics - http://www.oecd.org/investment/statistics.htm
[52] Data from United Nations Conference on Trade and Development (UNCTAD) World Investment Report 2020, https://unctad.org/en/pages/PublicationWebflyer.aspx?publicationid=2769

Figure A.2 - FDI inward stock as percentage of GDP average (20010-2019),[53] G20 countries



Source: OECD – Foreign Direct Investment statistics[54]

Figure A.3 - FDI inward stock ($bn) average (20010-2019),[55] G20 countries



Source: OECD – Foreign Direct Investment statistics[56]

168. UK infrastructure requires significant capital sums to upgrade, renew and expand its services. This is vital to ensure that the economy remains resilient to future challenges including climate change and a growing population. The National Infrastructure Pipeline[57] details long-term plans to invest over £400 billion (including £190 billion to be invested by 2020/21) across 700 projects in water, energy and transport infrastructure. A large proportion of this would have been in conjunction with overseas investors.

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[53] For where this data was available.
[54] OECD Foreign Direct Investment Statistics - http://www.oecd.org/investment/statistics.htm
[55] For where this data was available.
[56] OECD Foreign Direct Investment Statistics - http://www.oecd.org/investment/statistics.htm
[57] HM Treasury and Infrastructure and Projects Authority (2018), 'National Infrastructure Pipeline', https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/759222/CCS207_CCS1118987248-001_National_Infrastructure_and_Construction_Pipeline_2018_Accessible.pdf

169. Foreign direct investment into the UK leads to tangible and considerable benefits for our economy and citizens. It can bring new jobs – over 56,000 new jobs were created by inward investment projects in 2019/20 and over 9,000 were safeguarded over the same period.[58] Between 2015/16 and 2019/20 there have been over 10,000 FDI projects in the UK.

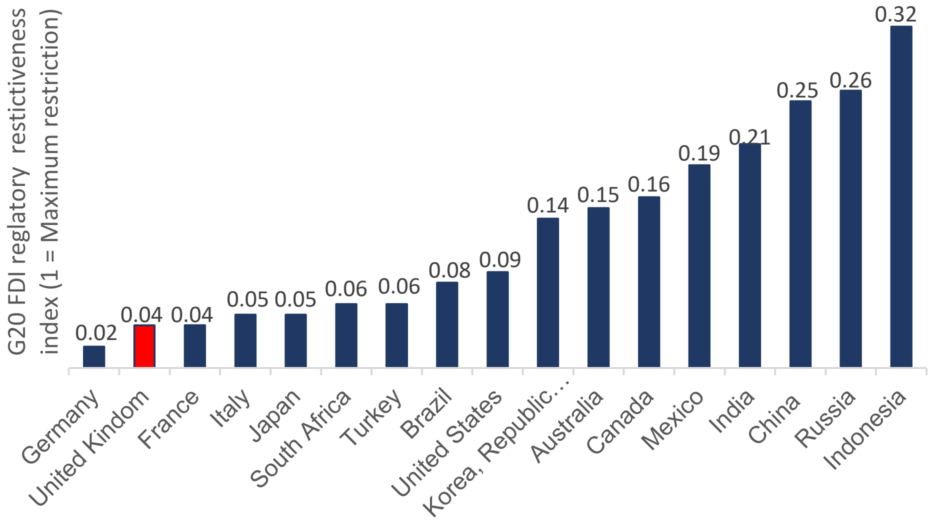
170. Foreign direct investment can also boost general value added and R&D activity.[59] Domestic labour productivity also increases with increased FDI, through new technology, skills, by bringing managerial best-practice to the UK, and promoting the diffusion of ideas through collaborating with UK institutions and businesses.[60] FDI also indirectly contributes to the country's tax revenue and therefore helps fund our public services.

171. Many of the UK's best-known companies have built their success in part by acquiring other companies, both here and abroad.

Openness index

172. The reasons that drive FDI decisions are varied. The UK's policy environment is a key factor in making the country an attractive destination for overseas investors. A way to assess a country's policy environment is through measures on how open the country is to overseas investors (that is, openness indexes). According to the OECD's FDI Restrictiveness Index,[61] the UK is the second most open country within the G20, only behind Germany (see Figure 4).

Figure A.4: OECD FDI restrictiveness index - G20 countries (2019)[62]



Source: OECD FDI Index[63]

[58] Department for International Trade inward investment results 2019 to 2020. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/899385/Department_for_International_Trade_inward_investment_results_2019_to_2020.pdf

[59] Estimating the economic impact of FDI to support the Department for International Trade's promotion strategy: Analytical report. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/731144/DIT_FDI_analysis_report_v16_accessible.pdf

[60] Drawing on a UK firm-level data from the ONS business and innovation surveys the Bank of England staff 'BankUnderground' blog finds that foreign owned companies are more productive than domestically owned firms and their presence boosts domestic labour productivity, https://bankunderground.co.uk/2017/08/17/foreign-owned-firms-and-productivity/.

[61] OECD - Foreign Direct Investment Regulatory Restrictiveness Index. https://goingdigital.oecd.org/en/indicator/74/

[62] Index scores for Saudi Arabia and Argentina were not available and therefore are excluded from this chart.

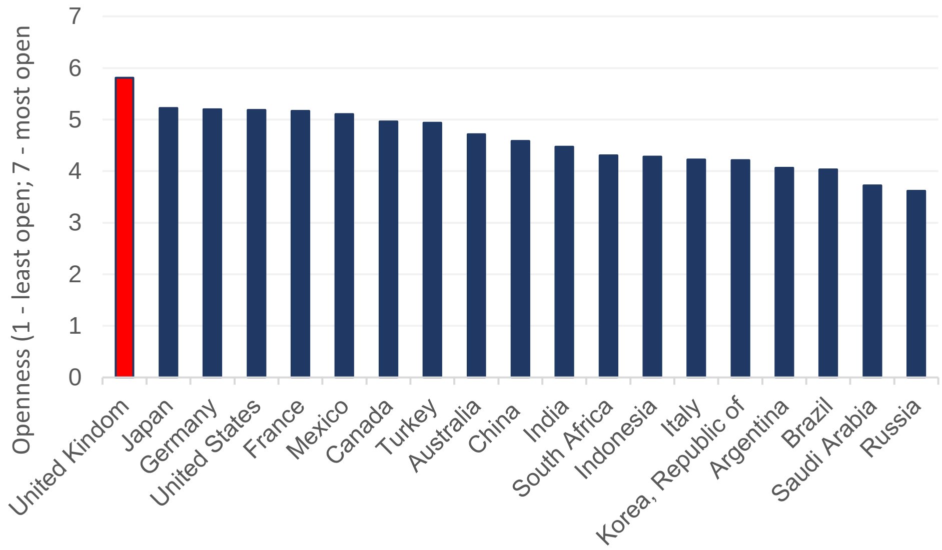
[63] OECD - Foreign Direct Investment Regulatory Restrictiveness Index. https://goingdigital.oecd.org/en/indicator/74/

173. The OECD's FDI Index gauges the restrictiveness of a country's FDI rules by looking at the four main types of restrictions on FDI:

- Foreign equity limitations;
- Screening or approval mechanisms;
- Restrictions on the employment of foreigners as key personnel. and
- Operational restrictions, e.g. restrictions on branching and on capital repatriation or on land ownership.

174. According to the World Economic Forum (WEF)'s measure of how open a country's FDI rules are,[64] the UK is the fifth most open country in the world, only behind Singapore, Hong Kong, Finland and Luxembourg. Compared to G20 countries, the UK was the most open country based on 2016/17 data (see Figure 5) and has retained this position in all but one year (2010/11) since data started being collected in 2006/07. This is the latest version of this data that is available as the WEF updated their methodology for the Global Competitiveness Index (GCI) in 2019.

Figure A.5: WEF's measure on the openness of FDI rules G20 countries (2017/18 report)[65]



Source: Wold Economic Forum's Global Competitiveness Index

175. The WEF's GCI was based on a survey, the Executive Opinion Survey, which gathered the opinions of business leaders around the world on a range of topics.[66] The GCI measure on how open a country's FDI rules are is based on the responses to the question: "*In your country, how restrictive are rules and regulations on foreign direct investment (FDI)?*". Respondents are asked to evaluate FDI rules on a scale of 1 (the worst possible situation) to 7 (the best).We strived to assess how our new regime would alter the WEF's measure on the UK's openness to FDI. However, the WEF's methodology can only be replicated if

[64] This is part of the WEF's Global Competitiveness Index (GCI)
[65] World Economic Forum's Global Competitiveness Report 2017/18, 6.12 Index: Business Impact of rules on FDI based on data collected in 2016/17
[66] The 2017 edition captured the views of 14,375 business executives in over 148 economies between February and June 2017. Following the data editing process described below, a total of 12,775 responses from 133 economies were retained. The average sample size was 96.

businesses have experienced the proposed new regime. For obvious reasons this is not feasible.

176. We considered how the proposed changes to the UK's scrutiny regime for investment on national security grounds would affect the UK's openness score and FDI restrictiveness index. In both cases, we concluded that there may be a change in the UK's scores, however, it was not possible to estimate the extent of the change. It is important to also note that these measures may not be able to capture the granularity of the legislative proposals of the Bill.

Literature Review

177. As part of our efforts to understand how an updated screening regime for investment on national security grounds could affect investment in the UK, BEIS commissioned external research on the sources of capital for companies from the UK Critical National Infrastructure sectors. The aim of this research was to better understand who owns the companies, how they raise finance, and what the implications of other countries' approaches to screening foreign investment on national security grounds has been

178. The research included a literature review to address, among others, the following two questions:

a. What are the drivers of FDI and infrastructure investments?
b. What have been the effects of approaches to national security screening taken by other countries?

179. On the drivers of FDI, the main driver was the need for stable, long-term, inflation protected returns. Foreign investments in infrastructure can also be driven by the destination country's relative stability (both political and regulatory), market size / opportunities, and technological advantages. Investment in infrastructure may be limited by a lack of liquidity and regulatory uncertainty. Foreign investments may also be affected by currency volatility.

180. On the effect of approaches to national security screening, there is a variation in the regimes applied by the different countries. For example, some are only concerned with national security issues, whilst others apply broader 'national interest' tests. The amount of available information and literature in relation to the effects of the regimes also differs considerably by country. For example, there are various econometric studies as to the effects of the US and Canadian regimes, whilst the evidence of the effect of other countries' approaches is more circumstantial.

181. Whilst each country has a different regime, the rate at which acquisitions are blocked across all the countries that we have reviewed is very low (US, Canada, Australia, France and Germany). The degree to which conditions are imposed on acquisitions, as a precursor to allowing them, differs – and in some cases these conditions can be significant. Some countries are viewed to take actions against an acquisition through other means, rather than rejecting the move through the foreign investment regime.

182. The effects of regimes can be broadly seen as resulting from (a) acquisitions that have been blocked or abandoned and (b) acquisitions that were not attempted due to the regime being in place.

183. The literature review included two econometric studies of the stock price effects of acquisitions being blocked by the US regime – which give conflicting results. The first found that government intervention had a negative effect on non-merging firms in the same industry. The authors ascribed this to a lower probability of other firms being acquired, and a lower takeover premium. The second found the stock price of other firms in the same sectors as failed acquisitions significantly increased after an announced block. In particular, based on five blocked transactions, stock prices of other firms in the same sectors were found to increase by about 2% in a one-day window. The authors ascribed this to reduced competition and a potentially lower acquisition price at a later point. The total effect on national welfare is not explored.

184. A few papers noted that the existence of a foreign investment regime may act as a deterrence in the first place to foreign acquisitions, although the evidence of such an effect materialising is weak. Confusion and uncertainty in relation to the process could, in principle, have negative effects on investment. The literature review did not identify any papers that seek to quantify this general ‘chilling effect’.

185. Several papers investigated the effect of the previous Canadian regime on inward foreign direct investment, which ran from 1972 to 1985. The evidence suggests that the regime had a very modest negative impact on foreign direct investment, although the statistical significance is weak.

186. There was little evidence as to the cost of engaging with the regimes. One paper suggested that the cost of complying with the US regime results in acquisitions being abandoned, but this appears to be based on limited evidence. Another paper suggested that the cost would be priced into the bid and assumed that the cost would be marginal.

187. News articles have reported that Chinese buyers have purchased insurance against failed bids. This suggests that it is costly to bid for a company, although it does not provide any evidence of the cost of regulatory compliance itself.

188. Other effects of foreign investment regimes identified in the literature include: other countries retaliating; acquirers purchasing a lower stake to avoid triggering processes; and firms subject to hostile takeovers trying to use the regime as a defence mechanism.

Investors interviews

189. BEIS commissioned research also included 20 interviews among investors representing organisations based in the UK, US, Australia and Canada. The main finding in relation to the effect of national security screening were, as follows:

   a. Transparent and objective regimes are not seen as significant barriers to investing. Investors told interviewers that, providing national security regimes are clear and predictable, they do not play a major role in the investment decision making process. However, if regimes are based on ‘political’ decisions, they can be seen as a significant barrier to overcome.

b. National security regimes are seen to have a relatively minor effect on the capital supply within a country. Most investors did not think that national security regimes have a significant effect on the availability of capital within a country, even when the regimes are more ‘political’. Blocking a transaction can have negative signalling effects, and investors are keen for there to be transparency of decisions. One investor noted that “You would have to implement a pretty severe regime to have any effect”.

190. Investors were generally of the view that the immediate costs of complying with national security regimes are low. However, total bid costs are significant, and would be lost if a deal is blocked. Investors reported a high willingness to engage with authorities in relation to national security regimes, particularly those seen as fair and transparent.

International Comparisons

191. A number of countries have either long standing investment screening regimes, or are in the process of legislating for the creation of a regime. Throughout the implementation of the NSI regime, Government will look to other regimes for lessons learnt and to ensure that the regime operates effectively.

USA

192. The Committee of Foreign Investment in the United States (CFIUS) has been in place since 1975. The Foreign Investment Risk Review Modernization Act (FIRRMA) was passed in Summer 2018. The US Government can review any foreign investment that may be deemed to give rise to a national security risk. As part of a broader programme of reform, earlier this year the United States brought in regulations to require mandatory notification for transactions concerning specified types of businesses.

Australia

193. Powers are granted under the Foreign Acquisitions and Takeover Act 1975. The Takeovers Fees Impositions Act 2015 provided updated the available powers. Powers were further amended in 2016 to allow review of non-government foreign investors acquiring an interest in critical state-owned infrastructure projects. The Australian Government also released draft legislation in July to require foreign investors to seek approval to start or acquire a direct interest in sensitive national security businesses.

Canada

194. Powers are granted under the Investment Canada Act 1985, and amended in 2009 to allow Ministers to imitate national security reviews. The regime applies to a non-Canadian investor acquiring control of an existing Canadian entity or establishing an unrelated investment in the country. All foreign investments in Canadian businesses may also be the subject of a national security review if the investment could be injurious to national security.

Germany

195. Powers were granted through the German Foreign Trade Act (AWG) and German Foreign Trade Regulation (AWV). In 2009 these powers were extended to allow intervention into transactions into national infrastructure for acquisitions by non-EU investors. Interventions are allowed if the transaction threatens public order or security. In 2018, mandatory notification was introduced for the acquisition of a critical infrastructure business through an asset deal by an investor which holds at least 10% of the voting rights of the company. For other businesses, the general threshold for foreign investment review remains at 25% of voting rights.

Japan

196. The Japanese government has announced plans to restrict foreign direct investment (FDI) in high technology areas that could affect defence and security. New rules will require foreign investors in areas such telecommunications, cyber defence, and software to seek prior approval from the government. Under the new rule, which will be enacted from 1 August 2019, foreign investment at 10% or more of a Japanese company’s equity will be subject to scrutiny and approvals from the government. In 2020, the threshold for pre-transaction approval for the acquisition by foreign investors of shares in Japanese listed companies was lowered from 10% to 1%. The scope of the designated business sectors that require pre-acquisition notification was also expanded in June 2020.

Italy

197. The Italian Government reviews acquisitions of stakes in Italian companies which carry out 'strategic activities' in the defence and national security sector as well as those which hold 'assets with strategic relevance' in the energy, transport, communication and high-tech sectors.

France

198. Powers under the regime require any foreign investor who wants to invest in sensitive business sectors in France to gain prior approval from the French Ministry of Economy and Finance. Earlier this year, new powers were introduced to allow the French government to block the acquisition by a foreign investor of a holding in a French entity operating in a strategic sector if that acquisition relates to at least 25% of the voting rights.