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Client Memorandum

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UK Court Confirms High Bar to Challenging Government's FDI Decisions

The UK High Court has rejected the challenge by Chinese FTDI Holding to the government's prohibition of its acquisition of British semiconductor designer FTDI.

What happened?

On 25 July 2025, the High Court rejected an application for judicial review of the UK government's order of 5 November 2024, which requires FTDI Holding Limited (FTDIHL) (owned by a collection of Chinese funds) to divest its 80.2% shareholding in Future Technology Devices International Limited (FTDI). FTDIHL acquired FTDI (a UK semi-conductor business) in December 2021, prior to the commencement of the UK's National Security and Investment Act 2021 (NSIA) regime.

In November 2023, the UK government called the transaction in for retrospective NSIA review. One year later, it concluded that the transaction raised national security risks, ordering divestment of FTDIHL's stake to mitigate risks of (a) the transfer of UK-developed semiconductor technology and intellectual property to China; and (b) the potential for FTDI's ownership to be used to disrupt UK critical national infrastructure.

FTDIHL sought judicial review of the final order (including a request for interim relief against the order, rejected in February 2025). Its challenges included that the call-in notice was out of time, the divestment order was disproportionate and the final order was insufficiently reasoned. The administrative court rejected all of these arguments bar one, finding that the final order was insufficiently reasoned: "*the only potentially relevant paragraphs of the Final Order are largely formulaic, uninformative and by no means comprehensive*". However, the court ruled that the final order was nevertheless valid.

What are the key takeaways?

- **Actual awareness of the deal by the allocated Investment Scrutiny Unit (ISU) case officer can start the call-in clock.**
  - The Secretary of State can call a case in for in-depth review up to six months after becoming aware of it. The court held that "awareness" is not limited to the relevant minister, but can be met by ISU staff, including the allocated case officer.
  - The allocated case officer for FTDI had received information in 2022 which could – objectively – have made her aware of FTDIHL's acquisition. However, the information was received in the context of the ISU's review of a different transaction and the court accepted her evidence that, with her focus on that other matter, she did not – subjectively – become aware of the FTDIHL / FTDI deal at that time.

- **The court again showed significant deference to the government on matters of national security.**
  - The court declined to engage with a detailed assessment of whether the prohibition order was disproportionate to the national security risk: "*The assessment of that risk is one for which the court lacks institutional qualification and expertise and on which the court is bound to give great weight to the assessment of the Secretary of State*". It similarly "*accorded a high degree of respect*" to the government's assessment that prohibition was the appropriate remedy.
  - This echoes the first judgment on the NSIA (dismissing the challenge of LetterOne, a Russia-linked investment firm, to a final order requiring the sale of UK broadband provider Upp), where the court stated that it "*will treat as axiomatic that Parliament has entrusted the assessment of risk to national security to the executive and not to the judiciary*". An appeal against the LetterOne judgment will be heard in October.
- **The parties could not see the full evidence or hear the full case.**
  - As with previous NSIA challenges, this case required "special advocates". The parties and their advisers were excluded from both access to "closed" confidential material concerning national security matters and to the "closed" part of the proceedings. Special advocates are appointed by the UK Attorney General to represent the interests of the excluded party to ensure fairness, but are not directed or instructed by it and do not report back to it.
- **Significant procedural errors were not enough to vitiate the order.**
  - The FTDIHL judgment found two breaches of NSIA requirements: incorrect service of the call-in notice on FTDIHL; and insufficient reasoning in the final order. However, neither undermined the validity of those measures.
  - This outcome is in stark comparison to, for example, judicial reviews of EU antitrust decisions where an insufficiently reasoned decision would constitute a breach of the parties' rights of defence, invalidating the decision.
  - UK administrative law does not include a general duty for decision-makers to give reasons. Even here, where the NSIA procedural regulations expressly require the final order to be reasoned, the court held that, as a matter of statutory construction, Parliament did not intend for a breach of that duty to invalidate the order.
  - A lack of reasoning can also form the basis of a challenge to procedural fairness or rationality. The court found that it was clear from other evidence in the case that the decision-maker did, in fact, have good reasons for the decision.

In conclusion, this case reinforces the known difficulties in challenging an NSIA decision. The courts are hesitant to open up issues of national security, allowing the executive a wide margin of discretion. Parties must bring their challenge partly blindfolded, having no access to confidential, closed aspects of the evidence or proceedings. Moreover, the finding that the lack of reasoning in the final order does not invalidate it creates little incentive for any additional transparency in this notably opaque regime.

China remains a focus for NSIA scrutiny.

The government's recent NSIA report for the 12 months to 31 March 2025 shows that:

- Only 2% of the 1,143 NSIA notifications received in 2024-25 concerned China-linked acquirers, compared to 3% of 906 notifications in 2023-24; 4% of 865 notifications in 2022-24;
- In 2024-25, 32% of the 56 deals called in for scrutiny involved acquirers with links to China, compared to 41% of the 41 deals called in in 2023-24 and 42% of the 65 deals called in in 2022-23;
- Final orders (conditional clearance or prohibition) were imposed on seven deals involving Chinese investors in 2024-25, compared to none in 2023-24 (although eight China-linked deals in 2023-24 were withdrawn after call-in) and eight in 2022-23.

Crunching these numbers indicates that, although a reducing number of Chinese deals are being notified, the proportion of called-in China-linked deals that are withdrawn or have a final order imposed remains high at 39% in 2024-25, 47% in 2023-24 and 30% in 2022-23, respectively.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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