Paul, Weiss

Client Memorandum

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UK Court Rules No Right to "Fair Value" Compensation for Forced Business Sale for National Security Concerns

The third judgment to date on the National Security and Investment Act 2021 again shows significant judicial deference to the executive in its decisions under this regime.

What happened?

- LetterOne, ultimately owned by Russian nationals (including sanctioned individuals), acquired Upp, a UK fibre broadband start-up, in January 2021. The acquisition was retrospectively called in for scrutiny under the UK's National Security and Investment Act 2021 (the "NSIA") after it came into force in January 2022. On 19 December 2022, the Secretary of State issued a final order (the "Order") requiring full divestment of Upp on national security grounds. Upp was sold in September 2023, at a price which LetterOne considered to be far below its true value.

- LetterOne sought judicial review of the Order. Its challenge included the claim that the forced divestment interfered with its property rights under Article 1 of Protocol 1 of the European Convention on Human Rights ("A1P1"), and that it was entitled to compensation for loss on the subsequent sale. Section 30 NSIA gives the government discretion to give financial assistance in consequence of a final order. None was given in the order and a later request from LetterOne was refused.

- The High Court rejected the challenge in September 2024, including LetterOne's claim of a breach of its A1P1 human rights, stressing that national security risk assessments, the choice of remedies and the question of compensation fall within the executive's discretion.

- LetterOne was given permission to appeal the A1P1 aspects of the High Court's judgment. On 28 November 2025, the Court of Appeal dismissed LetterOne's appeal:

  - **The sale proceeds were proportionate compensation for the deprivation of property**: The court noted that A1P1 carries a right to compensation for the expropriation of property, which must be reasonably proportionate to its value. However, it concluded (without deciding definitively whether the order to divest Upp amounted to the expropriation of property) that LetterOne had in fact received proportionate compensation. It had retained the proceeds of the sale of Upp on the open market to a purchaser of their choice. The fact that the sale was forced did not undermine the proportionality of the compensation.

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- **No right to full compensation for financial loss**: Investors cannot expect full compensation at fair market value for losses arising from an NSIA divestment order. The court highlighted that the complicated and lengthy process for assessing fair market value could impede the government's ability to address national security risks through the NSIA regime. Moreover, case law around A1P1 rights does not indicate any right to compensation for loss of value from a forced sale, for past investment or for future profits.

What are the key takeaways?

- **Companies may not obtain fair value of a divested asset**. While cases will inevitably turn on their own facts, if the government orders a divestment on national security grounds, the seller may have no entitlement to more than the sale proceeds. The ability to run an open-market sale (with vetted buyers) and keep the proceeds may well be (as it was here) considered to be proportionate compensation without the need for a separate "fair value" top-up. This applies even if it can be shown that the forced nature of the sale has reduced the price below what otherwise may have been obtainable. Dealmakers will be familiar with similar risks where divestment of an acquired business is ordered under the UK or EU merger control regimes.

- **NSIA risk endures**. The Court of Appeal did not follow the High Court's approach to proportionality that "*large-scale investors* [cannot] *be surprised that they may lose money on investments that threaten national security*", but essentially that remains the bottom line. This is not only a risk at the time of an acquisition: NSIA call-in powers run for five years after the date of completion of an acquisition. Moreover, national security risk can shift. The Russian ultimate beneficial owners of LetterOne became a security concern in relation to their ownership of Upp after sanctions were imposed on them following Russia's invasion of Ukraine.

- **Judicial deference applies across the full NSIA regime – challenge is difficult**. In the three NSIA-related judgments to date, the court has consistently shown significant deference to the government (as we have discussed previously) across substantive questions of national security, points of procedure and now also the question of proportionate compensation. Businesses have a right to request judicial review of NSIA decisions affecting them. But these will rarely be straightforward cases because of the flexibility afforded to the government by the statutory regime, the extent of judicial deference to the decision-maker and the possibility of relevant evidence being confidential and closed – i.e., unavailable – to the challenging parties.

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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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