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Minority Stakes — Beware of U.K. National Security Risks

By [Jade-Alexandra Fearn](#)

The U.K. Government's recent conditional approval of a minority investment (coupled with a commercial arrangement) by Emirates Telecommunications Group Co. PJSC ("e&") (majority owned by the UAE Government) over Vodafone Group Plc ("Vodafone") is a timely reminder that the U.K.'s national security regime (primarily governed by the National Security and Investment Act 2021 ("NSI&A")) is broader in scope and remit than other regulatory review frameworks, and can bite on minority investments.

Background

In May 2022, e& acquired a minority interest in Vodafone. In May 2023, e& and Vodafone announced publicly that they had entered into a "Strategic Relationship Agreement" and by this point, e& had increased its shareholding in Vodafone to just under 15% (14.6%). In its public announcement about the agreement with e&, Vodafone noted that:

- e& would be a "cornerstone shareholder" of Vodafone;
- The Group CEO of e& would join the Vodafone board as a non-executive Director (for as long as e& maintained its existing shareholding), and have the ability to appoint an independent second non-executive Director (if e&'s shareholding exceeded 20%); and
- The parties would collaborate on a number of so-called growth areas, including potential joint offerings of digital services and solutions to multi-national customers and public sector organisations.

As e&'s investment did not exceed 25%, a mandatory NSI&A notification was not required in May 2023. However, the U.K. Government viewed the arrangement as a trigger event under section 8 (8) of the NSI&A (and therefore reviewable) because the arrangements were found to amount to the acquisition by e& of "material influence" over Vodafone.

What is Material Influence?

For NSI&A purposes, so-called "material influence" has the same meaning as under U.K. merger control principles. In short, while shareholdings of more than 25% will likely be viewed as giving rise to material influence, shareholdings as low as 10-15% (even with no accompanying board representation or other strategic rights) may also give rise to material influence depending on the specific circumstances and arrangements between the parties. In the case at hand, it is likely that whilst e&'s shareholding alone may have been enough to confer material influence, the non-executive board representation of Vodafone may also have pushed the needle with respect to conferring material influence.

While acquisitions of material influence are not caught by the NSI&A's mandatory notification regime, such acquisitions are so-called trigger events for the NSI&A's voluntary notification regime. Given

that the U.K. Government has extensive “call-in” powers to review qualifying non-notified transactions up to five years post-completion, parties are encouraged to make use of the voluntary notification regime where transactions may have a nexus to U.K. national security concerns.

Review of e&’s Investment

In summary, e&’s investment was subject to U.K. national security review. Subject to the requirements set out below, the U.K. Government conditionally approved the investment. As with all NSI&A final orders (which can be found [here](#)), the U.K. Secretary of State’s final order concerning the transaction (and alleged national security concerns) is brief. However, the final order sets out a brief description of the alleged national security risks given Vodafone’s role in: (i) supporting the U.K.’s domestic and international initiatives in the wider telecommunications sector; (ii) contributing towards ensuring U.K. cyber security; and (iii) acting as a strategic supplier of services to many parts of central government, including services provided to U.K. Government departments dealing with national security issues.

According to the final order, to mitigate the alleged risks of the investment to U.K. national security, the parties are required to: (i) meet certain (albeit unstated) notification requirements in relation to any alteration to, or termination of, the terms of the Strategic Relationship Agreement; (ii) meet certain (albeit unstated) requirements relating to Vodafone’s board composition, board committee membership, and board committee functions; and (iii) establish a National Security Committee to oversee sensitive work that Vodafone and its group perform which has an impact on or is in respect of the national security of the United Kingdom.

Key Take-Aways

U.K. and international national security filings are becoming increasingly common across M&A transactions, particularly those involving or otherwise connected to so-called sensitive sectors. At the earliest stage possible in a transaction, parties should consider what, if any, national security exposure might arise given the nature of their proposed investment and, if necessary, how to mitigate any such concerns.

While minority investments conferring material influence such as the e& investment are caught by the U.K.’s voluntary notification regime, other regimes adopt diverging approaches with respect to minority investments. Various jurisdictions across Europe and globally have mandatory notification regimes which might bite on investments as low as 5-10% depending on the sector(s) concerned. Even where transactions may not be caught by mandatory (or voluntary) notification processes, many jurisdictions – including the U.K. – have very wide call-in powers to review transactions across a multitude of sectors. It is therefore critical that a full assessment of national security risks (and likelihood of transactions being called in for review) is undertaken as early as possible in any deal timetabling.



The Paul Hastings team have extensive U.K. and international experience in relation to national security reviews. If you have any questions concerning these developing issues, please do not hesitate to contact the following Paul Hastings London lawyer:

Jade-Alexandra Fearn
44.020.3321.1096
jadefearnspaulhastings.com