1. Executive Summary

[redacted] welcomes the opportunity to comment on the Government's draft exemptions to the proposed foreign state intervention ("FSI") regime for newspapers and periodical news magazines. A free and independent press is the bulwark of UK democracy and underpins our vigorous national discourse. [redacted] We have fiercely championed the free press and enshrined editorial autonomy at our newspaper titles. That is why we agree with the Government that the UK press needs to be robustly defended against undue influence by foreign state actors.

1.2 However, the proposed FSI regime is ill-conceived, overly restrictive and risks unleashing a slew of unintended consequences. As currently drafted, it could inflict significant and lasting damage on the news publishing industry and would have a direct and immediate impact on [redacted] newspaper publishing and other media businesses. The newspaper industry is facing an existential threat as declining circulation and the shift towards digital news sources places increasing pressure on national, regional and specialist news publishers. Yet, far from preserving the UK's free press, the proposed regime could further weaken the economics of news publishing, hastening the news industry's decline.

1.3 In its current form, the FSI regime is overly broad and will prove difficult to apply. The Government has recognised in its consultation notice the potential for the proposed FSI regime to give rise to such "chilling effects", deterring the very investment on which the future of the UK newspaper industry depends. The Draft Exemption Regulations are a welcome first step towards modifying the FSI regime to moderate this risk. However, they do not go far enough, and as drafted, could deter global investment funds from investing in the UK media sector.

1.4 Specifically:

(i) A formal exception to the FSI regime should be introduced to exempt debt and non-equity financing by foreign investors who would otherwise fall within the scope of the FSI regime. These represent essential sources of finance, which do not confer any undue influence to the lenders in question.

(ii) The FSI regime risks placing too heavy a burden on smaller publishers and innovative start-ups which may struggle to obtain necessary funding – stifling their ability to grow and thereby contribute to a healthy UK media sector. Publishers with UK turnover of less than £100 million should therefore fall outside the scope of the FSI regime.

(iii) There is no reason in principle why non-print news media (such as broadcast TV, radio, online news) should be treated differently to print newspapers given their significant influence over the public discourse – these should be brought within the scope of the FSI regime prior to its coming into effect.

[redacted]

2. The FSI regime is overly broad and risks chilling beneficial investment in the UK

2.1 A fiercely independent news industry is a core element of the national discourse and supports the overarching aim of the FSI regime to defend the UK newspaper industry from falling under the sway of foreign state actors.

2.2 As the Government has noted, however, it is essential that the new FSI regime "does not have undesired effects in relation to wider investment in UK media and business". is concerned that, as currently drafted, the FSI regime introduced by the DMCC Amendment is overly broad, is likely to prove difficult to apply in practice, and consequently risks stifling beneficial inbound investment into the UK news publishing sector. This in turn will significantly curtail the ability of UK newspapers and periodicals to raise capital, innovate, compete, and ultimately survive.

2.3 The following sections set out some of key concerns with the FSI regime.
Curtailing access to vital debt and non-equity financing

2.4 is deeply concerned that the FSI regime, as set out in the DMCC Amendment, would prohibit, and at a minimum deter, the provision of debt financing by state-related investors and financial institutions. The current Draft Exemption Regulations do not address these concerns.

2.5 The DMCC Amendment defines a new concept of "foreign state newspaper merger situation" by reference to three limbs. The first limb of the test is particularly notable. It cross-refers to the existing definition of "relevant merger situation" under the UK merger control framework but modifies this such that a foreign state newspaper merger situation may arise where a person acquires "influence" rather than "material influence".

2.6 These proposals render the scope of the FSI regime extremely wide. By moving away from "material influence" – which is already a low threshold for intervention when compared to other merger control regimes[7] – regulatory scrutiny could be triggered by minimal share acquisitions or indirect investments, that do not confer "control" in any meaningful sense, thereby limiting the appetite of foreign investors to scrutinise opportunities in the UK in any depth. This would extend to debt financing.

2.7 By way of illustration, the guidance of the Competition and Markets Authority ("CMA") has long made clear that financing arrangements can, in certain circumstances, give rise to material influence for the purposes of the UK merger control regime. If financing arrangements are capable of giving rise to "material influence", it follows that a similar (or indeed a wider array of) financing arrangements may give rise to mere "influence". Since a transaction is automatically prohibited when it falls within the scope of FSI rules, the regime would thus bar UK publishers from accessing important sources of finance.

2.8 Even if it is not the Government's intention to limit publishers' access to debt finance, in the absence of legal certainty as to how the rules are to be construed and applied there is nevertheless likely to be a chilling effect on the appetite of state financial institutions to offer financing to the UK newspaper sector, and of publishers in considering such sources of

finance. The only way to deliver the requisite legal certainty is by introducing a clear and unambiguous exemption to the FSI regime for debt financing. While a ministerial statement or informal guidance would provide the industry with some reassurance, it is unlikely to be sufficient to overcome the chilling effect described above, given that such guidance can be altered or applied inconsistently (by current or future governments).

2.10 **Proposal 1: The Government should introduce an exemption to the FSI regime for debt and other forms of non-equity financing, removing these from the scope of the FSI regime.**

(i) Such an exemption could be added to the Draft Exemption Regulations, or brought forward in further draft regulations, but in either case should be published as a matter of urgency and with a view to the relevant regulations being in place upon commencement of the FSI regime.

(ii) The exemption should clarify (among other things) that lenders will not be considered to "influence" the editorial or commercial policy of a newspaper where they hold or exercise rights that are consistent with customary loan protections sought by private lenders. The exemption should also provide a means for lenders to enforce security provided they do not assume control of the UK newspaper on a lasting basis, or they ensure that day-to-day running of the newspaper business is delegated to an appropriate third party (such as an insolvency practitioner). Otherwise, the inability to enforce security may represent a further significant disincentive to lenders.

Placing undue regulatory burdens on smaller publishers and start-ups

2.11 Smaller print titles and innovative start-ups would be disproportionately hindered by the proposed FSI regime. As noted above, the DMCC Amendment imports the definition of "relevant merger situation" from UK merger control into the new definition of "foreign state newspaper merger situation" subject to certain modifications. One such modification proposed in the DMCC Amendment is to reduce the so-called "target turnover threshold" from £70 million (applicable under the UK merger control regime) to just £2 million.

2.12 The UK merger control threshold is in fact due to rise to £100 million pursuant to amendments contained in the DMCC Bill. Further, the DMCC Bill will introduce a "safe harbour" whereby mergers involving parties each of whom generate UK turnover of less than £10 million would be exempt from review.

2.13 In this context, setting an equivalent threshold of £2 million under the FSI regime is disproportionate to the harm that the DMCC Amendment is seeking to address. The threshold risks subjecting smaller publishers to burdensome review processes and, ultimately, depriving them of access to sources of capital. Indeed, given that newspaper revenues are closely linked to their audience reach (whether in terms of paid readership or advertising revenues), it seems highly unlikely that any newspaper with less than £100 million in revenues would have a meaningful impact on public discourse and so give rise to the type of concerns regarding undue influence that the FSI regime seeks to address.

2.14 This would exacerbate the crisis facing many smaller publishers and newspaper publications, which are being squeezed out of the industry. It has been reported that the UK suffered a net loss of 265 newspaper titles (principally local and regional titles) in the 15 years between 2005 and 2020.

2.15 The Government has recognised that the sector needs urgent support. Earlier this month, the Minister of State for the Department for Culture, Media and Sport affirmed the Government's commitment "to supporting local and regional newspapers and other news outlets as vital pillars of communities and local democracy", noting that "[t]hey play an essential role in holding power to account, keeping the public informed of local issues and providing reliable, high-quality information." The Government has also backed a number of initiatives aimed at supporting local and regional newspapers. Any steps that risk curtailing new and smaller publishers' access to capital could undermine the Government's efforts in this area.

2.16 The low threshold for engaging the FSI regime also risks making the UK an unattractive destination for venture capital and private equity investment in innovative media companies and start-ups, which would have a stifling effect on innovation. Private equity investment has become an increasingly important source of capital for the media sector in recent years. We have also seen many examples of private equity investing alongside (or on behalf of) State-related investors in the technology, media and telecoms sectors.

2.17 The example of Vice Media in the US underscores the potential consequences that the DMCC Amendment may unintentionally cause in the UK.

(i) Vice Media is an innovative digital media and broadcasting company, but it started out as, and continues to publish, a print magazine covering news, arts and culture.

(ii) Vice Media filed for bankruptcy last year but has since been bought by a consortium led by Fortress Investment Group ("Fortress"), Fortress is itself the subject of an ongoing takeover by Mubadala Capital, a sovereign investor linked to the Government of Abu Dhabi.

(iii) If Vice Media had been a UK media company, with the FSI regime in force, it is likely that such a rescue by Fortress (under Mubadala's ownership) would have to have been prohibited by the Secretary of State. At the very least it would be subject to a detailed review by the CMA, which would delay the rescue effort.

2.18 As co-investment by private equity and State investors continues to grow, UK newspaper businesses risk finding themselves cut off from increasingly important sources of capital, and in particular those that may invest in the type of innovative start-ups that the UK should be seeking to encourage and promote on the world stage.

2.19 Notwithstanding their important role in local democracy, it is nevertheless inconceivable that an investment by foreign powers in small publishers of this nature would pose a threat of the type that the FSI regime is designed to guard against. Newspapers with such low levels of turnover are likely to have low circulation, and consequently a more modest ability to impact public opinion and discourse in the UK.

2.20 **Proposal 2: The "target turnover threshold" for the purposes of establishing**

whether a "foreign state newspaper merger situation" exists should be aligned with that which will apply under the UK's merger control regime once the DMCC Bill comes into force (i.e. £100 million). This threshold could be indexed to inflation to avoid inadvertently capturing smaller publishers in the future, consistent with the approach taken by the United States with respect to its jurisdictional thresholds for merger control.

Tipping the playing field in favour of digital and other non-print media

2.21 The exclusion of non-print news media from the new FSI regime20 tips the playing field firmly in their favour, at the expense of UK publishers with print newspaper businesses, despite preservation of the latter being the ostensible goal of the FSI regime. This would further exacerbate the ongoing shift in news consumption patterns towards digital sources and disadvantage the millions of consumers who read a print newspaper every day. As far back as 2016, Deloitte reported that "digital audiences are now larger than print Audiences"

2.22 More fundamentally, there is no reason in principle for introducing a regulatory regime which treats print newspapers and other forms of news media differently, when it is clear that the reach and influence of non-print news services on public opinion is increasingly exceeding that of print newspapers. To do so would hand a significant advantage to pure-play digital news providers and overseas media companies, which would be able to tap additional sources of capital, and in so doing potentially raise money at comparatively cheaper rates. If the aim of the FSI regime is to guard against hostile foreign powers controlling UK news media, the law should be applied equally across the news media sector, instead of being targeted at print newspapers.

2.23 Non-print news media has taken on an increasingly influential role in shaping public opinion in the UK, at the same time that the readership of printed newspapers has been declining:

(i) The national circulation of paid-for, printed newspapers recently dipped below three million copies a day for the first time, amounting to a decline of more than 60% in the last ten years.

(ii) Ofcom's 2023 news consumption survey confirmed that a significant majority of UK adults (70%) consume news via broadcast TV, maintaining the latter's position as the most used news platform in the UK

(iii) Even more striking is the growing influence of digital news sources, particularly among younger age groups. For instance, of respondents to Ofcom's surveyaged between 16 – 24, 83% consume news online whereas only 16% read print newspapers. This contrasts with those aged 75 and over, of whom only 38% consume news online but 50% read print newspapers.

(iv) Ofcom's survey also found that the BBC, across all of its (non-print) platforms, still has the widest reach of any media organisation in the UK. BBC One continues to have the highest reach of any individual news source, reaching 49% of UK adults in 2023, with almost one in five UK adults naming BBC One as their single most important news source.

2.24 In addition, the news industry is becoming increasingly dominated by platforms such as Apple News, Google News, X and TikTok who have assumed a key role through their aggregation and promotion of online news content, despite not publishing news

themselves. 71% of 16-24 year-olds consume news via social media, compared to just 16% of 75 year-olds. Ofcom found that 10% of respondents alone used TikTok as a news source in 2023, compared to just 1% in 2020.

2.25 UK news publishers both rely on, and compete with, these social media platforms. Publishers consider news carriers such as Google and Facebook as "must have" partners, with 40% of their traffic coming from these sources. As a consequence, publishers suffer from an imbalance of bargaining power when dealing with these platforms. On the other hand, digital news services are competing directly with these platforms for advertising revenues. While we are not suggesting that such platforms should be brought within the scope of the FSI regime itself, it should be recognised that the regime will, insofar as it limits the available sources of capital to UK media companies with UK print newspapers, hamstring those media companies in their attempt to negotiate and compete with the largest players in the digital space.

2.26 Subjecting traditional print newspapers and periodicals to increased regulatory investment scrutiny, while sparing their digital and broadcast counterparts, will exacerbate these existing trends. Whereas the motivation for the FSI regime is to protect the UK's news publishing sector, by layering additional regulatory constraints on the sector, which is not applied to other media, the Government may further sap publishers' bargaining power with global distribution platforms, and inadvertently hasten the sector's decline.

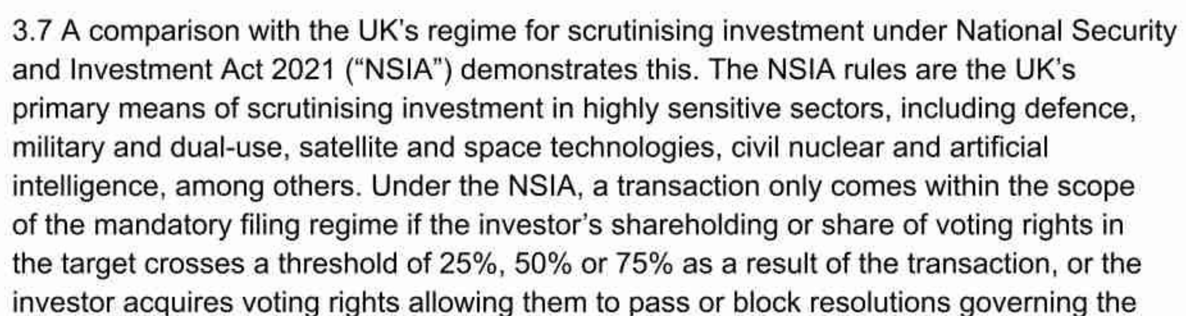
2.27 Indeed, publishers may now face perverse incentives to divest their remaining print assets
in favour of digital or other media interests, in order to access a wider array of financing options and avoid the impact of the FSI regime. For many publishers, the value of maintaining print newspaper operations is primarily to finance their transition to digital services. With the additional constraints imposed by the FSI regime, publishers may conclude that the economics of newspaper publishing simply no longer make sense.

2.28 **Proposal 3: the Government should amend the FSI regime prior to its coming into force so that it applies to all news service providers, including non-print news media services such as digital, TV and radio services.**

3. The Draft Exemption Regulations do not go far enough in mitigating the potential chilling effects of the proposed FSI regime

3.1 welcomes the Government's recognition that exemptions from the FSI regime are needed to avoid undermining the viability of the UK's remaining newspaper publishers. However, considers that the exemptions do not deal with the fundamental issue that the FSI regime was misconceived and overly broad, and as a result prohibits a wide range of potential investments which pose no threat to press freedom in the UK.

3.2 The consultation notice acknowledges that the FSI regime has been framed broadly, to capture "a wide variety of actors". It goes on to state that "it is essential that [the FSI regime does] not have undesired effects in relation to wider investment in the UK". The Draft Exemption Regulations is the Government's attempt to meet that "essential" objective.



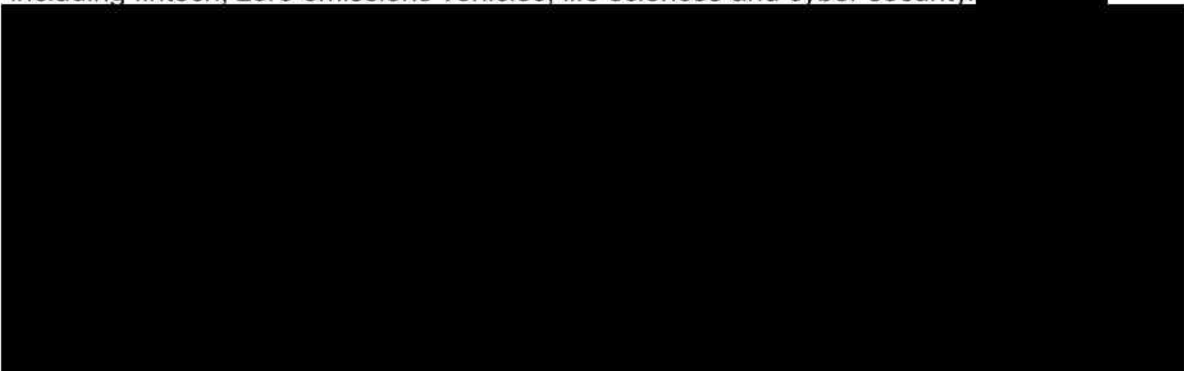
3.7 A comparison with the UK's regime for scrutinising investment under National Security and Investment Act 2021 ("NSIA") demonstrates this. The NSIA rules are the UK's primary means of scrutinising investment in highly sensitive sectors, including defence, military and dual-use, satellite and space technologies, civil nuclear and artificial intelligence, among others. Under the NSIA, a transaction only comes within the scope of the mandatory filing regime if the investor's shareholding or share of voting rights in the target crosses a threshold of 25%, 50% or 75% as a result of the transaction, or the investor acquires voting rights allowing them to pass or block resolutions governing the

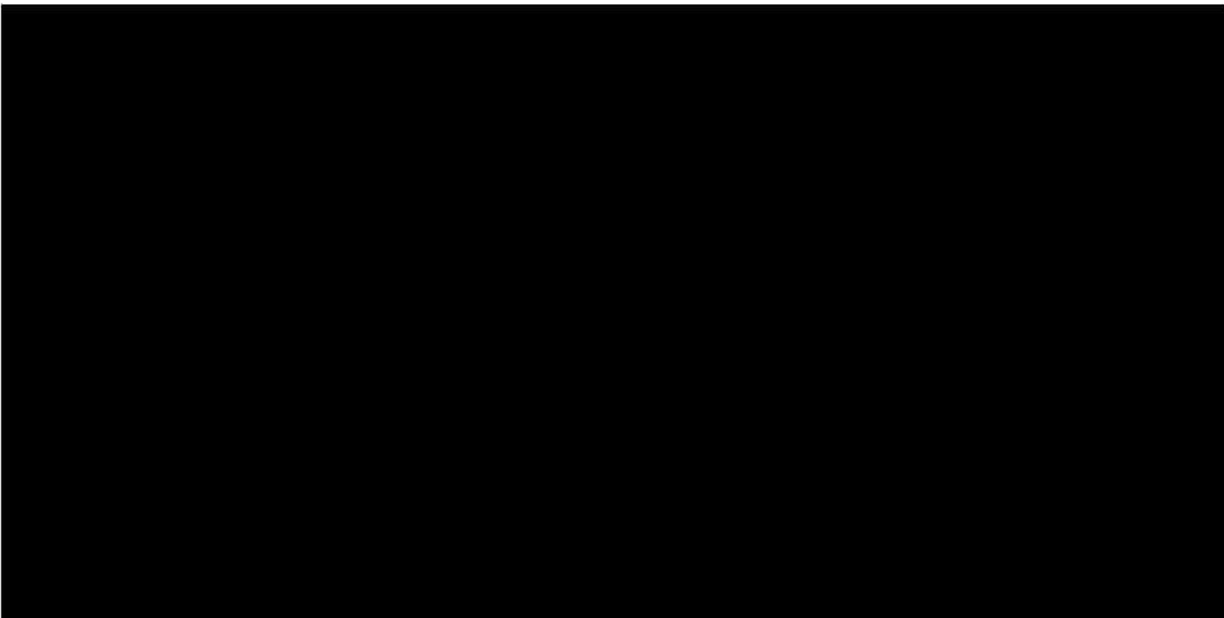
affairs of the target, or the ability to materially influence the policy of the target.

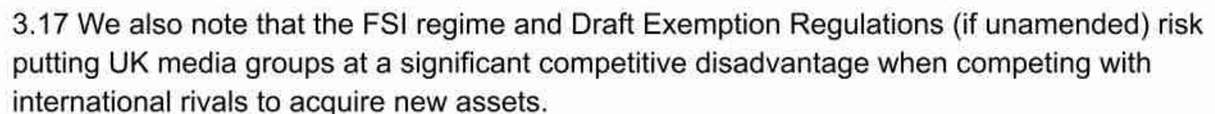
3.8 The lowest level of control that would engage the NSIA regime is therefore an acquisition of “material influence”.

3.9 The current drafting of the FSI regime thus assumes that minority investment by foreign powers in print newspapers presents greater risks, a priori, than investment in civil nuclear energy, for example. Further, whereas the Secretary of State for Culture, Media and Sport is compelled to prohibit investments falling within the scope of the FSI regime, the Secretary of State for Business and Trade has the discretion to approve investments by foreign powers in sensitive sectors. For example, the Secretary of State for Business and Trade unconditionally cleared the acquisition of 100% of Flusso Limited by a Chinese company (73% controlled by the Chinese government and another wholly owned Chinese subsidiary) in August 2022. Flusso is active in semiconductors, which the Government recently announced it proposes to add to the list of sensitive areas subject to mandatory notification and review under the NSIA. Yet had the same investor acquired a de minimis holding in a UK newspaper group, the entire transaction would have been prohibited automatically. This cannot be the intention of the Government.

3.10 More broadly, the position the Government has taken in relation to newspapers is fundamentally at odds with other aspects of its trade policy. The Prime Minister, in 2022, welcomed up to £10 billion of Qatari investment in key sectors of the UK economy, including fintech, zero emissions vehicles, life sciences and cyber security.







3.17 We also note that the FSI regime and Draft Exemption Regulations (if unamended) risk putting UK media groups at a significant competitive disadvantage when competing with international rivals to acquire new assets.

(i) It is not uncommon for media groups, when considering investing in an acquisition of a business or asset, to partner with a financial investor, which may include state-owned investment vehicles or other investors with links to foreign powers. Several examples of such productive partnerships (in the media space and beyond) are set out in paragraph 2.16 above.

(ii) Such investors may prefer to make their investment higher up the corporate structure, so as to gain exposure more generally to the media group's business and to hedge against the risk that the business or asset being acquired underperforms.

(iii) Assuming that the investor in question met the narrowly defined criteria for a SOI, under the new FSI regime it would still be significantly less attractive for the SOI to invest in a UK media group (with UK newspaper holdings) compared to an international media conglomerate with no such holdings. The SOI's ability to invest in the UK media group in support of the new acquisition would be limited to 10% (at most), whereas there would be no such restriction on the international media conglomerate. This is likely, therefore, to divert SOI investment away from the UK media owners.

(iv) Such a competitive disadvantage in global M&A is likely to have knock-on implications for other UK-based professional services and financial institutions who work on these types of transactions.