

Foreign State Intervention (FSI) Regime

Lead department	Department for Culture, Media and Sport
Summary of proposal	Introduction and subsequent modification of the Foreign State Intervention (FSI) regime to prevent any risk of a foreign state from exercising control or influence over the UK press or news magazines while minimising undesired effects in relation to wider investment in UK media.
Submission type	Impact assessment (IA) – 27/08/2024
Legislation type	Primary and secondary legislation
Implementation date	TBC
Policy stage	Final
RPC reference	RPC-DCMS-5357(1)
Opinion type	Formal
Date of issue	21 October 2024

RPC opinion

Rating¹	RPC opinion
Fit for purpose	The IA provides a proportionate and careful assessment of the direct costs to business of the proposals and states that small and micro businesses (SMBs) are unlikely to be captured by the requirements. The IA assesses a broad range of wider impacts. However, it would have been improved by consideration of more options, and further discussion of historical precedents and international comparators as the IA notes that some other countries have adopted similar measures.

Business impact target assessment

	Department assessment	RPC validated
Classification	Qualifying regulatory provision	Non-qualifying regulatory provision (de minimis)
Equivalent annual net direct cost to business (EANDCB)	£0.53 million (previous to current regime) -£0.53 million (current to modified regime)	£0.53 million (previous to current regime) -£0.53 million (current to modified regime) <i>(2019 prices, 2020 pv)</i>

¹ The RPC opinion rating is based only on the robustness of the EANDCB and quality of the SaMBA, as set out in the [Better Regulation Framework](#). RPC ratings are fit for purpose or not fit for purpose.

**Business impact target
(BIT) score**

Business net present value	N/A
Overall net present value	N/A

RPC summary

Category	Quality ²	RPC comments
EANDCB	Green	The EANDCB captures the familiarisation and compliance costs of the policy changes against the appropriate counterfactuals, is based upon proportionate evidence and analysis, and conforms with RPC guidance on direct and indirect impacts.
Small and micro business assessment (SaMBA)	Green	The Department has provided a sufficient SaMBA. The IA highlights that micro businesses are unlikely to be subject to merger reviews under the preferred option as they do not satisfy the £2m turnover threshold, and most of the small businesses identified in the Department's market analysis do not breach the £2m threshold.
Rationale and options	Satisfactory	Due to the retrospective nature of the IA in relation to the introduction of the Foreign State Intervention (FSI) regime and subsequent modifications, relatively high-level rationale arguments are presented. The IA would have been improved by discussing some of the potential alternatives to the FSI regime and its implementation.
Cost-benefit analysis	Satisfactory	The IA draws upon a range of recent evidence sources to inform the quantitative cost-benefit analysis. The IA also provides an assessment of the non-monetised impacts of each of the options.
Wider impacts	Satisfactory	The IA considers a broad range of wider impacts, including justice costs, potential CMA case load changes, international trade, innovation, equality and competition impacts.
Monitoring and evaluation plan	Satisfactory	The IA presents a logic model and a set of key evaluation questions to inform a Post Implementation Review of the extent to which the proposed reform achieves the intended objectives, mitigates risks and provides an evidence base for future possible merger reforms. The Department also does well to map the evaluation questions to policy objectives.

Summary of proposal

The final stage IA presents the impacts of two sequential policy changes (Option 0 to Option 1 in May 2024 and then Option 1 to the proposed Option 2) as an initial IA

² The RPC quality ratings are used to indicate the quality and robustness of the evidence used to support different analytical areas. The definitions of the RPC quality ratings can be accessed [here](#).

was not submitted for the introduction of the Foreign State Intervention (FSI) regime in May 2024.

- **Option 0 - Previous Regime (Do nothing)** - In effect not having a specific FSI regime for UK newspapers. Although this option is described as the do-nothing option, this option would in fact require Parliament to repeal the legislation that recently created the new FSI regime.
- **Option 1 - Current Regime, primary Legislation** - This option explores the impacts associated with the new FSI regime (as drafted in the DMCC Act) but without the exceptions - this is a retrospective assessment.
- **Option 2 - Modified regime, secondary legislation (preferred option)** - This option includes the modifications for state owned investment and for other small/retail investments that are intended to smooth the effects of the new FSI regime.

Previously, there were no specific statutory restriction on foreign state ownership or foreign-state controlled investment in UK newspapers and news magazines. However, concerns over foreign state influence on plurality of views within UK newspaper and news magazines were raised during the passage of the DMCC bill leading to an amendment which led to the introduction of the current FSI regime in May 2024 (representing the move from Option 0 to Option 1).

The current FSI regime seeks to address these concerns by introducing a ban on foreign states from acquiring, either directly or indirectly, any shareholdings in UK newspapers and news magazines with an annual turnover in excess of £2 million, to avoid foreign states (including proxies) having controlling influence over the policies of UK newspapers and news magazines, and crucially its journalism and editorial policies. However, the FSI regime restricts investment, and so the Department proposes to make amendments to the regime, allowing investments from state owned investment vehicles up to a clearly defined threshold of 5% (the move from Option 1 to Option 2). This will also ensure that FSI notices are not triggered by insignificant investments.

The Department estimates that the introduction of the FSI regime in May 2024 (Option 1) resulted in a £0.53m net annual cost to businesses. The proposed amendments (Option 2) result in an estimated -£0.53 annual cost to businesses when compared to Option 1, leaving an overall net cost to business of zero when comparing the modified regime (Option 2) with the previous regime (Option 0).

EANDCB

The EANDCB accounts for familiarisation and compliance costs, relying on proportionate evidence and analysis. It adheres to RPC guidance, includes only direct business impacts (including consideration of CMA forgone merger fees), and is calculated accurately. The IA transparently outlines two sequential policy changes: from Option 0 to Option 1 (implemented in May 2024), as shown in table 17, and then from Option 1 to Option 2 (the currently proposed change), detailed in table 18. Additionally, the Department has displayed the preferred option against the initial

baseline to illustrate the net impact of both policy changes (Option 0 to Option 2) in table 19.

The Department estimates that the introduction of the FSI regime in May 2024 led to a £0.53m annual net cost to businesses. The proposed amendments (Option 2) are expected to reduce this cost, resulting in an estimated -£0.53m annual cost compared to Option 1, and an overall zero net annual cost compared to Option 0.

SaMBA

The Department has provided a sufficient SaMBA. Using the Companies House definitions of small and micro businesses, the IA estimates there are 141 SMBs operating in the UK who own one or more newspapers. The Department highlights that micro businesses are unlikely to be subject to merger reviews as, by definition, they do not satisfy the £2m turnover threshold. Although a small business could satisfy the £2m threshold, the Department argues that most of the small businesses identified in their market analysis do not breach the £2m threshold. However, this point could be strengthened by providing a data table from the market analysis showing the number of small businesses at different turnover ranges. Despite not explicitly exempting small and micro businesses, the turnover threshold proposed by the Department means that SMBs are unlikely to be in scope of the requirements. Although the IA argues that SMBs will not face disproportionate impacts or familiarisation costs due to these businesses rarely being captured by the requirements, it would benefit from assessing whether any mitigations could be put in place if a SMB were to become in scope.

Medium-sized business considerations

The IA does not include a medium-sized business assessment. In accordance with changes made to the Better Regulation Framework in October 2022, the IA should include a separate test (in addition to the current SaMBA) to consider whether medium sized businesses should be exempt from the regulation and whether there are any disproportionate impacts on them which could be mitigated through additional measures.

Rationale and options

Summary of Rationale

Due to the retrospective nature of the IA, it outlines the rationale for two sequential policy changes as an initial IA was not produced for the emergency primary legislation that introduced the Foreign State Intervention (FSI) regime in May 2024:

1. Protection of plurality within major UK newspapers and news magazines by introducing the Foreign State Intervention (FSI) regime in May 2024, which introduced a ban on foreign states from acquiring, either directly or indirectly any shareholdings in UK newspapers and news magazines with an annual turnover in excess of £2 million.

2. Amending the FSI regime through the proposed secondary legislation to permit investment from legitimate state-owned investment vehicles, such as sovereign wealth funds, pension funds and investments held by associated persons that are minimal or held through collective investment vehicles up to a maximum ceiling of 5 per cent.

The IA could further support the Department's rationale to protect UK newspapers and news magazines from foreign influence by highlighting cases of previous misinformation spread through domestic news outlets because of foreign state direct or indirect ownership. Although the IA is retrospective in nature, it would also benefit from a balanced focus between the rationale for the primary legislation passed in May 2024 and the proposed secondary amendment. Additionally, the IA uses a broad definition of foreign power, and in practice there is a potential issue of complex structures of ownership. The Department should also clarify why they chose a £2 million annual turnover exclusion threshold.

Rationale for the FSI regime in May 2024

The Department supports the rationale for introducing the FSI regime on 24th May 2024 to protect plurality of views by referencing Ofcom's media plurality framework, and the growing challenge of foreign information manipulation and interference to democratic societies by citing work done by the EU. Moreover, the IA justifies limiting the scope of the FSI regime to only newspapers and news magazines, stating that the existing structure of licencing and regulation by Ofcom for other news media outlets are still fit for purpose but do not apply to newspapers and news magazines.

Rationale for proposed FSI amendments

The argument for the amendment is clear, in that the current FSI regime restricts foreign state acquisition of UK newspapers and news magazines. However, the Department acknowledges the need for a balance between protecting pluralism and influence of UK media from foreign states and allowing investment into UK media organisations. The Department argues that the need for a balance between key Department objectives creates the need for the proposed secondary legislative amendments to the initial FSI regime. The amendments will also guard against FSI notices being issued for inconsequential investments. The Department justifies the amendment to the existing FSI regime to enable greater levels of investment, citing productivity, human capital accumulation, R&D activity and technology spillover effects as potential benefits to greater levels of inward investment. However, the justifications for the secondary legislative amendments could benefit from greater application to newspapers and news magazines and specifics on how inward investment into UK news outlets could bring about the benefits, rather than a general list of the benefits associated with investments into an economy.

Options

The IA only considers a limited number of intervention options to prevent foreign state influence of UK newspaper and news magazines. However, the Department justifies the limited number to be a result of the recent enactment of the FSI regime in May 2024. As such, the Department argues that there are only three viable options.

The IA could be improved by providing more discussion of alternatives to the introduction of the FSI regime in May 2024 as well as other options in developing the modified regime, for example, different threshold levels for investment.

The Department provides qualitative detail on what each intervention option would involve and highlighting the respective limitations. Although limited in scope, the options do address the problems under consideration. Option 0 reflects the retrospective position before the FSI regime that doesn't stifle inward investment but fails to adequately protect plurality of views, Option 1 address the issue with foreign influence over UK newspapers and news magazines but stifles inward investment and Option 2 (preferred option) attempts to address both issues.

Cost-benefit analysis

Evidence and Data

The Department has drawn upon a range of evidence sources, many of these cited being recent, which provides sufficiently accurate analysis.

Overall Methodology

The IA uses a 10-year appraisal period as recommended by the Green Book for proposals involving administrative changes and discounted monetised impacts using a 3.5% discount rate. The Department follows better regulation framework guidance by using a price year of 2019 and present value base year of 2020. Since the timings of any investigations under any of the three options are unknown, the Department has provided annualised figures.

Option 0

Option 0 quantifies the administrative and compliance costs associated with a Public Interest Intervention Notice (PIIN) under the pre-May 2024 regime.

When estimating the business impact of Option 0, the IA provides a detailed breakdown of the compliance cost sourced from survey data conducted by the Department and applies sensitivity ranges to both the cost figures and the number of PIINs that could occur over the 10-year appraisal period. The compliance costs are multiplied by the number of assumed PIINs and an annualised cost estimated for each year of the appraisal.

Due to there being no policy changes under option 0, the Department assumes that there is no additional familiarisation cost.

The IA also examines non-monetised impacts, discussing the risks to free speech and media plurality under Option 0. It notes the investigative costs for the Department and Ofcom, as well as acquisition delays due to the previous regime's structure. Since the Department viewed Option 0 as maintaining the status quo, no benefits are discussed.

Option 1 & 2

Options 1 & 2 quantify the cost of familiarisation with new legislation and the associated administrative and compliance costs which are underpinned by assumptions on the number of investigations that could occur over the appraisal period. Forgone merger fees are also estimated because both options restrict acquisitions by foreign states to varying degrees. The merger fees were estimated using figures from previous public interest intervention notices with low, central and high sensitivity ranges.

The IA uses a standard cost model to estimate familiarisation costs for options 1 and 2, with a detailed breakdown of how it is applied to the CBA. The Department makes rational assumptions about the number of readers per business type, the number of pages they need to read, and their reading speeds using standard estimates from previous work by the Department. Moreover, the IA accounts for the extra time required by legal professionals to conduct a more detailed review of the policy document. It also includes a secondary round of familiarisation costs for both newspapers and legal companies, focusing solely on the sections specific to the changes introduced in the bill.

The IA uses the same approach as described for Option 0 to estimate the compliance costs for Option 1 and 2, but with the omission of Pre-notification and Phase 1 investigation costs and the inclusion of CMA investigation costs and forgone merger fees. The Department assumes the omitted costs would no longer be necessary as all Foreign State Intervention Notices (FSINs) are expected to result in a phase 2 investigation.

The CBA calculations are adjusted where necessary for option 2 to account for the allowance of foreign state investment up to a clearly defined threshold. These amendments include applying a 1.5 times multiplier to the number of pages and words administrative and legal staff would read to account for the additional pages that would explain the investment threshold in more detail. The Department also assumes reductions to the number of FSINs over the appraisal period to account for the foreign investment threshold.

The IA does not quantify any indirect costs due to difficulties in robustly monetising them, but it does highlight some of the potential indirect costs such as impacts on business certainty. However, the discussion of indirect impacts could benefit from more detail.

The IA also examines non-monetised impacts, discussing the benefit of protecting a pluralistic media landscape, free expression of opinion and reduced cost of referring cases, but at the cost of restricting investment when compared to option 0.

Assumptions, risk and sensitivity

The assumptions in the IA are supported by evidence or aligned with prior policy documents, and the Department has provided a table rating these assumptions on quality and impact. However, it would be helpful if the Department explained the work behind internal analysis cited in the IA, particularly the identification of Global Ultimate Owners (GUO) in the UK.

The Department has highlighted the risk of underestimating compliance costs to businesses which has been mitigated by taking a conservative approach (over-estimate) and using sensitivity ranges.

Wider impacts

The IA considers a broad range of wider impacts, including justice costs, potential CMA case load changes, international trade, innovation, equality, and competition impacts in some detail.

The IA acknowledges that the new regime might lead to higher financing costs and a reduced pool of potential investors for UK newspapers and magazines. While the Department could not provide monetary estimates of potential Foreign Direct Investment (FDI) forgone under the preferred option, it highlights the historical rarity of foreign state acquisitions in the sector to offer some context. However, the Department could provide a clearer indication of magnitude by also providing an estimate of the value of FDI into UK news organisations as a percentage of total investment in the sector over the past 15 years. A discussion of the impacts of restrictions on foreign investment in press and newspaper magazines in other countries would have been helpful.

The IA also notes that restricting capital investment under the FSI regime might hinder media businesses' innovation. However, the Department has attempted to mitigate this by adopting a preferred option that allows FDI up to a defined threshold, thus reducing the risk.

For impacts on competition, the IA uses the CMA's competition assessment checklist to evaluate the effects. The Department concludes that the proposed reform is unlikely significantly to distort competition because the turnover exclusion threshold gives smaller organisations access to foreign investment but will face restrictions proposed in the preferred option once their turnover exceeds £2m. However, the Department fails to consider the impacts on news organisations that may have a higher reliance on foreign rather than domestic investment. The IA could benefit from providing details on this.

Monitoring and evaluation plan

The IA states that the proposed reform will be under constant review to ensure the regime is responsive to a changing and complex media merger landscape. However,

the Department does not commit to a post implementation review, stating that under the Communications Act 2003, Ofcom has a statutory duty to review media ownership rules every three years.

The M&E plan adequately identifies challenges to reviewing the proposed reform, highlighting the complexity of attributing changes in the media landscape to merger controls in a quantitative manner. The IA also acknowledges that assessing the impact of foreign investment on the financial health of UK newspapers will be challenging given the range of other contributing macroeconomic factors that determine the financial health of the sector. As a result, the Department was unable to assign key performance indicators to the policy objectives in the M&E plan.

Despite this limitation, the IA presents a logic model and a set of key evaluation questions to inform the extent to which the proposed reform achieves the intended objectives, monitors risks and strengthens the evidence base for future merger reforms. The Department also does well to map the evaluation questions to policy objectives.

However, the M&E plan does not propose a specific approach; rather it lists several approaches that may be used during the evaluation of the reform. Moreover, the IA could benefit from including further detail on the data collection strategy, specifically indicating the types of data that will be gathered, how they will be gathered and how the data will inform the Department's evaluation of the reform.

Regulatory Policy Committee

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