

Data Infrastructure: Questions and observations: NSI

QUESTIONS

1. Data centres represent an investment asset class, one that is attracting an increasingly wide range of investor types due to stable growth and market uncertainty in other, more traditional asset classes like commercial property. Does this present complications, and how does the relationship between investor/owner and operator compare with other infrastructure, say to a nuclear power station?
2. There are comparisons with other markets. What have we learned from other countries in terms of good practice and poor practice that will be applied here?
3. The objective of the bill is national security rather than economic, but there is no definition of national security included. What safeguards will be applied to ensure that decisions are not vulnerable to being politicised (as we have seen in the US)?
4. The data infrastructure market is relatively immature and subject to further consolidation, or “repeat business”, involving the same entities making multiple, similar acquisitions within the same market. Will there be scope for an entity to be deemed acceptable after it has completed one iteration, or will each of a repeated set of transactions need to repeat the whole process?
5. Can you identify any recent transactions, acquisitions or mergers in the data infrastructure sector that UK Government would, in retrospect, have liked to scrutinise and/or intervene on? Can we perhaps review recent transaction history in the sector in the light of the definitions to see which ones would and which w
6. Can you clarify that the notification process will not necessarily lead to a transaction being called in by the SoS? Our understanding is that the majority of transactions so notified will not be, and that on expiry of the 30 day period, can continue. Should operators therefore automatically schedule this 30 day window into transaction timetables?
7. If a data infrastructure asset – data centre – is currently owned by a foreign entity and sold to another foreign entity, how will this apply? Does it depend purely on location? What if the asset is UK owned but located elsewhere?
8. Is the primary sensitivity around access to data? Would GDPR liability be a good model for discussion – i.e. using a similar distinction between data controller and data processor and identifying different risk categories accordingly? We have done some work on this, see <https://www.techuk.org/insights/news/item/12106-gdpr-for-data-centres>

Observations made relating to data infrastructure

- Speed in transactions can be very important when it comes to FDI, for both parties. The UK’s attractiveness as a location depends on the ability to deliver within very challenging deadlines. In some cases, contractual penalties apply for late delivery which could be caused by notification which are harsh and include the contract being rendered void. This is particularly true of data infrastructure where build timelines are exceptionally short (£100M + projects take around 12 months from breaking ground to operational).
- Technology is complex and there is concern that the team of scrutineers might not possess appropriate technical knowledge. Recent cases in other EU nation states have resulted in long delays attributable to lack of expertise within the relevant department. We can share that information if helpful.