

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fourth Delegated Legislation Committee

DRAFT ENTERPRISE ACT 2002 (SHARE OF SUPPLY
TEST) (AMENDMENT) ORDER 2018

Wednesday 2 May 2018

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Sunday 6 May 2018

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The Committee consisted of the following Members:

Chair: IAN AUSTIN

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| † Afriyie, Adam (<i>Windsor</i>) (Con) | † Herbert, Nick (<i>Arundel and South Downs</i>) (Con) |
| † Benyon, Richard (<i>Newbury</i>) (Con) | † Keegan, Gillian (<i>Chichester</i>) (Con) |
| † Berger, Luciana (<i>Liverpool, Wavertree</i>) (Lab/Co-op) | † Kendall, Liz (<i>Leicester West</i>) (Lab) |
| † Blackman, Bob (<i>Harrow East</i>) (Con) | † Metcalfe, Stephen (<i>South Basildon and East Thurrock</i>) (Con) |
| † Campbell, Mr Ronnie (<i>Blyth Valley</i>) (Lab) | † Robinson, Mary (<i>Cheadle</i>) (Con) |
| † Charalambous, Bambos (<i>Enfield, Southgate</i>) (Lab) | Shah, Naz (<i>Bradford West</i>) (Lab) |
| † Esterson, Bill (<i>Sefton Central</i>) (Lab) | † Smith, Nick (<i>Blaenau Gwent</i>) (Lab) |
| † Harrington, Richard (<i>Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy</i>) | † Turley, Anna (<i>Redcar</i>) (Lab/Co-op) |
| † Harris, Rebecca (<i>Lord Commissioner of Her Majesty's Treasury</i>) | Mike Everett, <i>Committee Clerk</i> |
| | † attended the Committee |

Fourth Delegated Legislation Committee

Wednesday 2 May 2018

[IAN AUSTIN *in the Chair*]

Draft Enterprise Act 2002 (Share of Supply Test) (Amendment) Order 2018

2.30 pm

The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Richard Harrington): I beg to move,

That the Committee has considered the draft Enterprise Act 2002 (Share of Supply Test) (Amendment) Order 2018.

It is tradition in such Committees to say that it is a pleasure to serve under the Chair, but in your case, Mr Austin, I mean it. Before we start proceedings, I hope you will allow me to abuse my position by congratulating my hon. Friend the Member for South Basildon and East Thurrock (Stephen Metcalfe), who had his first granddaughter this morning, Daisy Hawes. She deserves to be in *Hansard* at the age of a few hours.

The order will extend the Government's powers to intervene in mergers that might give rise to national security implications. The powers to make this secondary legislation are found in the Enterprise Act 2002, which received Royal Assent in November of that year with cross-party support, following scrutiny in this House and the other place.

The draft instrument will amend the share of supply test to allow the scrutiny of more mergers, but only in three areas of the economy: military and dual-use technologies, and two large parts of the advanced technology sector, encompassing computing hardware and quantum technologies. Prior to taking on this statutory instrument, my knowledge of quantum technologies was somewhat sparse. I am sure some Opposition Members are doctors in quantum physics, but I am not. However, I know that it is very important to the national security of our country. I have spoken to quite a few hon. Members involved in national security on both sides of the House to ensure that they are briefed on this matter.

Generally, the Government's policy, which Members may disagree with, is to try not to interfere unless we have to. The UK economy is open to the world. We have a framework of laws and policies on protecting national security that we feel have to be continually reviewed and updated. The vast majority of investment in the UK economy raises no national security concerns at all, but there is a risk that having ownership or control of critical businesses or infrastructure provides opportunities to undertake espionage or sabotage, or to exert inappropriate leverage on certain proprietary technologies. The Enterprise Act is the key legal means for the Government to examine mergers for the purposes of national security and other specified public interest criteria.

Last year, we set out a two-stage approach, beginning with action through today's instrument and continuing with a proposed related instrument amending the turnover test. The Department published its consultation last year. There were 27 responses, and feedback was also obtained through meetings with seven organisations.

Respondents recognised the technological, economic and national security challenges that the Government had described, and provided constructive feedback on the detail being incorporated into the reforms.

I will use the next few minutes—I promise it will be just a few—to explain the amendments being made. Today's order and the proposed order amending the turnover threshold involve businesses active in three areas of the economy. The first is military and dual-use technologies, including such items as arms and military and paramilitary equipment. Those items are just for military use, but dual-use technology has both military and civilian uses.

The national security interests related to those technologies are fairly obvious. In the wrong hands, such items pose a clear and immediate risk to the UK, our people and society. In addition, the acquisition of items that provide the UK with its military advantage can raise legitimate and significant national security concerns. The instrument ensures that businesses involved in the development or production of goods that form well-known, established parts of the UK export control regime will be in scope.

Secondly, the instrument seeks to address the risk created through advances in computing hardware, which now mean that there are ubiquitous goods with the potential to be directed remotely, should a hostile actor obtain access or control. Thirdly, the instrument brings quantum technology within scope. The huge technological potential offered by this area presents national security challenges.

We are making these changes because we are concerned about scenarios where a business with no existing share of supply in the UK buys a business in one of these three areas of the economy. Such a merger would not result in an increase in the share of supply in the UK and therefore the current share of supply test set out in the Enterprise Act would not be met. However, with the changes made by this instrument, the Government would be able to intervene if the target business in the merger had a share of supply of at least 25% before the merger—that is the critical point. The acquiring party need not have any share of the supply of the same goods or services for the test to be met. Those changes will only apply to those areas of the economy I have set out.

Under the second proposed statutory instrument, the negative statutory instrument, the Government will be able to intervene in a merger if a target firm or business being taken over has a UK turnover of more than £1 million. The current £70 million threshold in the Enterprise Act has proven not to be at the right level. The scope of the revised threshold will exclude micro-businesses, ensuring that the Government take as proportionate and focused an approach as possible in delivering our policy intentions. Those changes will apply only to the same three areas of the economy covered by today's order. We have published an impact assessment—for those hon. Members who have not received it, it is in the corner of the room—to provide guidance and greater clarity to businesses and investors.

The Government will continue to assess risk in other sectors, including emerging technologies. If there is evidence to suggest that the Government should take action in further areas of the economy, we will bring forward further legislation. In the longer term, the Government will bring forward primary legislation to

make more substantive changes to how we scrutinise the national security implications of foreign investments. A White Paper will follow in due course. I look forward to hearing what hon. Members have to say about the proposed changes.

2.37 pm

Bill Esterson (Sefton Central) (Lab): It is a pleasure to serve under your chairmanship, Mr Austin—that is true of you and true of others. The Minister may be reminded of his comment on other occasions—it will potentially be entertaining to remind him of it. I congratulate the hon. Member for South Basildon and East Thurrock on the birth of his grandchild. The *Hansard* Reporters will no doubt try to determine if she is the youngest person ever to be named in *Hansard*—there is a challenge. I know, Mr Austin, that you have a train to catch, so I shall endeavour to ensure that you can be on it.

This is a very narrow statutory instrument, as the Minister explained. He alluded to a number of areas that it addresses. It follows on in part, if not wholly, from the UK national security risk assessment of 2015. It has taken a while to bring the SI forward, so perhaps the Minister can explain why it has taken quite so long. Undoubtedly, that risk assessment demonstrated the nature of some of the complex threats that the country faces. It is a concern that it has taken so long, given that, although this is a narrow SI, the provisions in it are important. We will support them for that reason.

The Secretary of State is reluctant to intervene, as we saw with GKN. The Opposition had grave concerns about the national security implications of the takeover by Melrose of GKN. The Minister used the phrase “control” of UK business; that actually describes some of the reasons why we were so concerned with the way that the Government did not choose to intervene in the takeover. He also used the phrase “dual use”, which is one of the elements that the statutory instrument covers. GKN has military and dual use in its operations. The statutory instrument highlights those real concerns about national security and the takeover. Perhaps the Minister can give a response now or later on that point.

The Minister mentioned the export regime. Will he expand a little on the implications of this statutory instrument for the Government’s approach to exports? He did not mention the Green Paper, but he did mention that a White Paper is coming forward about primary legislation in the area of national security. My understanding is that a Green Paper is also due on the wider area of competition regimes. Perhaps the Minister will indicate when he expects that to come forward.

There are concerns not just about national security; the public interest tests around mergers and takeovers cover a number of areas. The Competition and Markets Authority has a role to play in deciding how to investigate—we saw that just this week with the proposed merger of Asda and Sainsbury’s. With the White Paper coming forward and perhaps the Green Paper that I mentioned, will the Minister say whether the Government intend to make proposals on an economic interest test, as well as on national security? There are real concerns about some of the recent takeovers and mergers, such as GKN and Asda and Sainsbury’s. These changes would not have been relevant to Cadbury, BHS or Unilever,

but there are a number of takeovers and mergers where there is great public interest and concern. Perhaps the Minister might have some thoughts, in relation to what he has said, about some of those takeovers, particularly GKN because it is relevant to national security.

We support the measures and think that they are right, but perhaps the Minister will say why it has taken so long since the 2015 risk assessment to get to this point today.

2.43 pm

Adam Afriyie (Windsor) (Con): I thank the Minister for his very articulate presentation of the statutory instruments. They are to be welcomed because they plug a loophole in the short term, until primary legislation can deal with the wider issues. On those wider issues, intellectual property is the danger, as much as the research and commercially viable businesses that may be bought or sold. When we look at the primary legislation, perhaps those are two areas that we can focus on, as well as merely the mergers and acquisitions.

2.44 pm

Richard Harrington: I thank the shadow Minister for his comments, which I will do my best not to answer—I mean to answer—as best I can. I hope that is made clear in *Hansard*. I also thank my hon. Friend the Member for Windsor for his comment and for his support for the statutory instrument.

The questions certainly went beyond the statutory instrument itself. I will not detain the Committee for too long, but I will answer the question of why it has taken so long. I agree that is has; the paper was in 2015, and we are now three years on from that. From what I have read of the papers, this measure is very delicate and involved a lot of extensive consultation, and I do not just mean a consultation where stakeholders would just email in a comment; it was very complex and, of course, there are genuine views, both ways. The Government wanted to be careful that the measure was proportionate and would not exclude legitimate mergers and takeovers, but would instead provide the necessary level. It has taken longer than I would have liked—I perfectly agree with that—but I do believe that it has been done properly.

On GKN, it is fair to say that national security—with or without this turnover threshold—was the ground upon which this was reviewed. My right hon. Friend the Secretary of State for Business, Energy and Industrial Strategy had a quasi-judicial role in taking advice on the national security aspects. I cannot tell the hon. Member for Sefton Central what that advice was, because I do not know, as it was given in a quasi-judicial capacity. However, I know that my right hon. Friend invoked the clause whereby he got the national security advice, I assume from the security services and others deeply involved in this sector, and took the decision based on that advice. All this statutory instrument does is simply to change the threshold at which that advice would have kicked in, but I would imagine that if the deal was very much smaller and caught within this measure, the advice would have been the same.

I think that what the hon. Gentleman is really alluding to with his comments—he is taking a very legitimate position, although I do not agree with it—is that the Government should have a direct power, and not just

[Richard Harrington]

through the Competition and Markets Authority, which I will come on to in a minute. He referred to it as an “economic benefit test”, whereby the Government could get directly involved in investigating or stopping a merger on grounds other than competition, which is the power that the CMA has, and in a way that goes beyond the direct powers that the Government have now. We have discussed one of those powers today, which is about national security; another is about control of the media, as in the Sky case, which is obviously not relevant here.

That really is a political view. The Enterprise Act, which governs this area, deliberately picks out national security and media plurality—I think the other factor is financial stability—and does not include powers other than those for Government intervention. Much of what the Opposition have said on GKN, on the urgent question the day before yesterday and in the House of Lords yesterday has been based on a whole new power to get involved on the basis of economic benefit—a power that Governments used to have many years ago, and which in the end really became political grounds to get involved.

The Competition and Markets Authority can only look at the competition side and it covers the interests, which are quite wide, of consumers and suppliers. The

good thing about the CMA, as opposed to governmental involvement, is that its process is a public one, so anyone can take part in the considerations of the Asda-Sainsbury’s merger. To give it credit, the CMA is a world leader and has a lot of credibility. In the case of Philip Green and other cases referred to by the hon. Member for Sefton Central, other organs of the state were involved. In the case of Green and BHS, the Pensions Regulator was able to take action.

The hon. Gentleman is right that economic benefit alone is not something that the Government have direct power over, and I really believe in limiting the power of Ministers in this kind of thing, because it is best dealt with by an arm’s length authority. I believe that the Government’s policy is absolutely right on that. I am sorry not to be able to satisfy him on that subject, but I think he would have expected that to be my answer.

I thank the Committee for considering the order and for its valuable contribution to this important debate. I have tried to answer the questions as best I could. I hope that we can move forward with these reforms and I commend the order to the Committee.

Question put and agreed to.

2.49 pm

Committee rose.