

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

First Delegated Legislation Committee

DRAFT ENTERPRISE ACT 2002 (SHARE OF
SUPPLY) (AMENDMENT) ORDER 2020

Monday 13 July 2020

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Friday 17 July 2020

© Parliamentary Copyright House of Commons 2020

This publication may be reproduced under the terms of the Open Parliament licence, which is published at www.parliament.uk/site-information/copyright/.

The Committee consisted of the following Members:

Chair: CAROLINE NOKES

- | | |
|--|---|
| † Anderson, Stuart (<i>Wolverhampton South West</i>) (Con) | † Tarry, Sam (<i>Ilford South</i>) (Lab) |
| † Bailey, Shaun (<i>West Bromwich West</i>) (Con) | Thompson, Owen (<i>Midlothian</i>) (SNP) |
| † Barker, Paula (<i>Liverpool, Wavertree</i>) (Lab) | † Tomlinson, Michael (<i>Lord Commissioner of Her Majesty's Treasury</i>) |
| † Bowie, Andrew (<i>West Aberdeenshire and Kincardine</i>) (Con) | † Twist, Liz (<i>Blaydon</i>) (Lab) |
| † Bradshaw, Mr Ben (<i>Exeter</i>) (Lab) | † Wakeford, Christian (<i>Bury South</i>) (Con) |
| † Buchan, Felicity (<i>Kensington</i>) (Con) | † Wood, Mike (<i>Dudley South</i>) (Con) |
| † Gideon, Jo (<i>Stoke-on-Trent Central</i>) (Con) | † Zahawi, Nadhim (<i>Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy</i>) |
| † McCabe, Steve (<i>Birmingham, Selly Oak</i>) (Lab) | Anwen Rees, <i>Committee Clerk</i> |
| † Millar, Robin (<i>Aberconwy</i>) (Con) | |
| † Onwurah, Chi (<i>Newcastle upon Tyne Central</i>) (Lab) | † attended the Committee |

First Delegated Legislation Committee

Monday 13 July 2020

[CAROLINE NOKES *in the Chair*]

Draft Enterprise Act 2002 (Share of Supply) (Amendment) Order 2020

4.30 pm

The Chair: Before we begin, I remind Members about social distancing: spaces available to Members are clearly marked, and unmarked spaces must not be occupied. Our *Hansard* colleagues would be grateful if notes could be sent to hansardnotes@parliament.uk.

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

That the Committee has considered the draft Enterprise Act 2002 (Share of Supply) (Amendment) Order 2020.

It is a pleasure to serve under your chairwomanship, Ms Nokes. Before we begin, I will take a moment to thank our colleagues in the other place for their scrutiny of these orders. The Secondary Legislation Scrutiny Committee has indeed brought this order and the section 58 order to the special attention of its House, which add a new public interest consideration on the grounds of public health emergencies to the Enterprise Act 2002. The Committee reported on these orders, noting that it “considers that the policy changes made by the two Orders are potentially very significant.”

I value the continued work of both Houses in considering these legislative changes, and look forward to debating them today.

Investment, particularly overseas investment, is the lifeblood of our economy, and it is more important now than ever as our companies seek a much-needed boost to recover from the impact of covid-19. The UK economy is open to the world. International trade, investing abroad, and welcoming foreign investment at home are all central to our economic approach. The UK is often considered one of the best countries in the world in which to do business, if not the best. This is in no small part down to our educated workforce, world-beating science and sound regulatory framework, supported by an accessible and robust legal system. Last year, inward investment created more than 57,000 UK jobs. The vast majority of such investment raises no national security concerns whatsoever.

However, we need to be alert to the potential risks involved in ownership or control of critical businesses, which can provide opportunities to undermine our national security through espionage, sabotage or exerting inappropriate leverage. In the light of technological advancements, economic developments, changes in the national security threat, and of course the covid-19 emergency, it is now time for reform. Our international neighbours have acted decisively to address similar issues in Europe. Further afield, Australia has also amended legislation and processes. The pandemic has magnified the risks to our national security. We are now more exposed to opportunistic investors due to the depreciating

effects of sterling and the financial pressures of a decrease in investor confidence, which has beset equities and the markets more widely.

We in the UK continually review and update the framework of laws and policies that protects our national security. That tradition of refinement and improvement has enabled the UK to remain internationally competitive, and a place where people can invest with confidence. It is time for us to reform again, to send a decisive message to those who would threaten our national security: the UK is open for investment, but not for exploitation.

I will briefly explain the amendments. The changes made by this order relate to the Government’s ability to intervene in mergers and, in the most extreme cases, block them. How and when the Government can intervene in this way is set out in legislation. Section 23A of the Enterprise Act 2002 includes a list of relevant enterprises: sectors where the threshold for Government intervention is lower. The relevant enterprises listed in the Act are all particularly sensitive sectors where there is a public interest or national security case for allowing the Government to intervene more readily. As it stands, there are three such sectors set out in the Act—military or dual-use technologies, quantum technology and computing hardware. However, as many colleagues will know, technology does not stand still. We now need to apply this lower threshold to other sectors too.

That is the effect of the order, which will add three further areas of the economy to the relevant enterprise list: artificial intelligence, cryptographic authentication technologies and advanced materials. Businesses falling within those categories are often at the forefront of research and innovation. They are small, agile businesses that thrive in an open, innovation-friendly economy. Those businesses produce cutting-edge technology, much of which may not yet be commercially viable but could have implications for our national security.

Breakthroughs in artificial intelligence, cryptographic authentication and advanced materials science are fundamental to other areas of social and economic development. They have underpinned advances in the physical and digital world, and continue to do so. Those technologies are critical to a number of our capabilities, including, of course, defence and security. There may be a risk of losing advantage in those areas if UK companies and the intellectual property that they generate are controlled by opportunistic or, dare I say it, malicious investors.

It goes without saying that the Government must be able to mitigate national security risks. Should an opportunistic investor wish to acquire and exploit a business, and if it would pose such a risk, we need to be able to intervene. The order will allow us to do so both by expanding the list of relevant enterprises to sectors where it is likely to be an issue as I have just set out, and by adjusting the test that applies to them.

In 2018, the £70 million turnover test was introduced and was reduced to £1 million for relevant enterprises. In addition, an amended share of supply test was applied. As a result, the Government can intervene where a relevant business that already has at least 25% share of supply is taken over. The acquiring party need not have any share of the supply of the same goods or services for the test to be met. Of course, that is not the case for businesses outside the scope of relevant enterprises.

We now propose to make a second statutory instrument, the day before the commencement of this share of supply test order, by the negative resolution procedure. It will allow the Government to intervene in mergers involving the three additional enterprise categories, if the target relevant enterprise has a UK turnover of more than £1 million, rather than the £70 million currently required by the 2002 Act.

The order has no impact on the forthcoming national security and investment Bill, which the Government intend to bring forward when parliamentary time allows. It is intended as a short-term measure that will apply until more fundamental reforms can be taken forward through the Bill. The provisions are of great importance to our national security and it is vital that the Government should be able to intervene in situations where UK national security is at risk.

4.38 pm

Chi Onwurah (Newcastle upon Tyne Central) (Lab): It is a pleasure to serve for the first time with you in the Chair, Ms Nokes, and on a debate of such national importance.

The Labour party welcomes foreign direct investment into the UK. It helps to protect jobs and keeps us economically competitive on the international stage. The UK has been a magnet for foreign investment, attracting more than any other country in the European Union—when we were in it, of course; and we hope that will not change now that we have left. However, mergers and acquisitions can have implications that go far beyond the companies concerned. They may significantly reduce competition, leaving consumers vulnerable. They may provide unacceptable threats to jobs and communities. They may have an impact on our national security and the resilience of our critical national infrastructure.

With regard to the last two points in particular, enhancements to the Enterprise Act 2002 are required from time to time, to reflect evolving national security and critical infrastructure requirements. We understand perfectly that it is important to maintain national capabilities in key areas. Indeed, if we had acted to maintain capability in the key area of telecommunications, we would be in a much better position when dealing with the challenge of high-risk vendors, such as Huawei, to the security of our mobile communications.

By the way, we are still waiting for the telecoms security Bill that was a belated attempt to do just that, so perhaps the Minister can tell us when we will see it. An important example of updating the criteria of the Act in response to evolving requirements was Labour's introduction of the UK's financial system as a criterion in the Act following the 2008 global financial crisis—an intervention that will no doubt be protecting businesses from hostile takeovers during the covid-19 recession.

Labour broadly welcomes the addition of artificial intelligence, cryptographic authentication and advanced materials in the relevant enterprise categories. As the shadow Minister for science, research and digital, I know only too well how vital those sectors are to our national security and infrastructure, and the importance of retaining pioneering tech organisations, but I am concerned that the Government do not value our world-leading tech enterprises enough.

In 2014, Britain had probably the most important and groundbreaking artificial intelligence company in the world, DeepMind, which Forbes described as “world-leading”. Nevertheless, the Government allowed it to be sold to Google for £400 million with no investigation or action, even though its acquisition generated significant concerns of monopoly provision.

Concerns have previously been raised by stakeholders about the suitability of the definitions of the relevant enterprise categories. It is important that the Government show they are listening and respond to businesses asking for further clarity, to ensure that no business falls under the scope of the Act without good reason. The Government will also need to keep the relevant enterprise category lists under review and up to date with any relevant new technologies and sectors as they emerge, with the consent of Parliament.

It is important to know what discussions the Government have had with key institutes and societies in the field to define the categories. For example, have they discussed the definition of artificial intelligence with the Alan Turing Institute? I find the definition quite broad.

Small businesses play a significant role in driving innovation in the sectors that we are talking about, as the Minister mentioned, so Labour supports the principle of lowering the turnover threshold from £70 million, which will be applied by a parallel order made under section 28(6) of the 2002 Act. However, I reiterate the anxieties of trade associations, which say that the £1 million figure that the Minister cited could lead to microbusinesses that develop or trade in products or services that could be a threat to national security slipping through the net.

Why does the Minister think it is necessary to have a threshold barrier to the Government intervening on mergers on the grounds of public interest or national security? Could the Competition and Markets Authority not decide whether a merger was important enough to meet the tests? Why was the £1 million figure chosen? We encourage the Government to remove or review the figure in due course.

One of the main reasons that small innovative businesses actively seek out acquisition or foreign investment is to access finance and resources. Since its acquisition, DeepMind has benefited from significant support from Google, a company whose resources exceed that of many states—although not, I hope, the United Kingdom. Does the Minister have plans to do anything in those key technology sectors apart from blocking takeovers?

When a takeover is blocked on those grounds, what support will be offered to the UK company concerned? For example, if the sale of DeepMind had been blocked, as it could well have been, had the Government understood the importance of artificial intelligence earlier, what support would it have received from the UK Government? Are the Government looking at new models to support businesses in critical areas such as this?

I am referring to something that the Government find it very hard to talk about: industrial strategy. As I have said, we have seen nothing of the promised industrial strategy to diversify our telecoms supply chain. What measures are the Government looking at to strengthen and diversify the supply in artificial intelligence, cryptographic authentication and advanced materials? Earlier this year, I asked in a parliamentary question

[Chi Onwurah]

how much the Government were spending on developing quantum computing technologies, one of the existing sectors. I received a garbled response, which talked of “combined public and private investment through the UK’s ten year National Quantum Technologies Programme”, without actually answering the question.

The legislation will provide a means of stopping companies being acquired by foreign investors but not of helping them. Indeed, it will not even stop companies relocating. I refer the Minister to the example of PsiQuantum, a world-leading quantum computing company credited with building the world’s first useful quantum computer. Quantum computing is already a relevant enterprise category, and the company was started in Bristol by local academics but relocated to Silicon Valley to access greater support. How will the Minister address such cases?

PsiQuantum and DeepMind exemplify the fact that, although our security concerns might currently be directed towards China, takeovers may come from anywhere in the world. Indeed, many of them have come from the US. The Minister seemed to imply that the legislation would be used only against malicious takeovers and mergers, but does he recognise that many takeovers and mergers are made on purely commercial grounds but may nevertheless have the effect of reducing our capability in a critical national area? DeepMind was one such example. I do not consider Google to have been a malicious actor on that occasion, but perhaps the Minister would like to correct me on that. Does he agree that the measures must not be targeted at one particular country or purely at what are considered to be malicious actors?

Lastly, we ask the Government to commit to a formal review of the order in due course, in order to assess the additional administrative burden on businesses that now fall within its scope and any negative impacts that it has had on foreign direct investment overall. Britain is a world-leading science country, but we do not benefit as we should from the commercialisation of the science. We also need to recognise the strategic as well as the commercial importance of critical new technologies to our national security. Labour welcomes measures to support our national security in mergers and acquisitions.

4.48 pm

Nadhim Zahawi: Let me attempt to address some of the issues raised by the hon. Lady, who is a fellow engineer—we need more of them in Parliament. She rightly asked what will happen after a deal is blocked, and how the Government would intend to support a business that needed liquidity. The first thing to remind the Committee is that the Government have never blocked a deal, although it is important to retain the power to do so, given that some mergers may be such a risk to national security that softer remedies are not possible. It is far more likely, however, that the Government will work with the relevant parties to agree undertakings in lieu of a phase 2 CMA investigation. The UK Government have only ever agreed undertakings and have not yet blocked a deal.

With regard to injecting liquidity and providing urgent liquidity to small and medium-sized businesses by different routes, I hope that the hon. Lady would agree that the coronavirus business interruption loan scheme, the large

business interruption loan scheme and the bounce back loan scheme have been truly innovative interventions in the economy to help businesses weather the storm of covid.

The hon. Lady also asked what plans the Government have to expand the concept of the public interest regime. The mergers regime is designed to offer clarity for businesses and build investor confidence, because that confidence makes our economy so dynamic and, as a result, highly regarded the world over. It is based on transparent rules, administered consistently by expert bodies—namely, the Competition and Markets Authority. Our regime restricts Ministers’ ability to intervene to public interest grounds, covering only national security, financial stability, public health emergencies and media plurality, hence why we are making these orders.

Chi Onwurah: Just to clarify, I was not asking whether they have plans, or suggesting that they should have plans, to expand the regime. I wanted to understand what additional support, outside of the mergers and acquisition regime, would be given to companies that fell under this provision. Having identified these sectors as being key, what other support, apart from in mergers and acquisitions, is being offered?

Nadhim Zahawi: The hon. Lady will forgive me if I strayed into areas that she did not ask about—additional transparency is always good for the Committee. She is right to talk about that, but we should look at the Chancellor’s track record. When many companies in these emerging technologies were deliberately loss making, the Chancellor acted immediately with the future fund to bring liquidity to those businesses, matched by their current investors. That fund has been incredibly successful. I remind the House that this Government are committed to raising investment in research and development from £12 billion a year, where it is today, to £22 billion a year by 2024-25. That is a truly ambitious target to invest in emerging technologies.

I will conclude shortly, but first I will respond to a couple more things, including the question about whether the provision chokes off investment for these firms. I do not believe it will, but rather it will allow us to focus more on becoming an innovative knowledge economy in the future.

Chi Onwurah: Can I remind the Minister about my question regarding the £1 million threshold?

Nadhim Zahawi: I was about to come to that. Forgive me; that was my final response to the hon. Lady. To remind the Committee, the question was about worries about small companies below the £1 million threshold. We currently have a range of powers to ensure that national security remains protected. The lower threshold of £1 million is considered to be an appropriate level of turnover to capture those businesses that, although small, may have a critical role in matters that may affect national security.

I will end by thanking you, Ms Nokes, and the Committee for its consideration of the statutory instrument and its valuable contribution to this important debate. The amendments contained in the SI are essential. Without this SI, the Government would not have the powers we need to protect our national security in the specific enterprise categories outlined in the order.

The order is a proportionate amendment to ensure that the Government can scrutinise the most worrying of mergers in three sensitive areas, at an unprecedented time, and I commend it to the Committee.

Question put and agreed to.

4.54 pm

Committee rose.

