PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

NATIONAL SECURITY AND INVESTMENT BILL

Fourth Sitting

Thursday 26 November 2020

(Afternoon)

CONTENTS

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

Monday 30 November 2020

The Committee consisted of the following Members:

Chairs: † Sir Graham Brady, Derek Twigg

† Aiken, Nickie *(Cities of London and Westminster)* (Con)
† Baynes, Simon *(Clwyd South)* (Con)
† Bowie, Andrew *(West Aberdeenshire and Kincardine)* (Con)
Fletcher, Katherine *(South Ribble)* (Con)
† Flynn, Stephen *(Aberdeen South)* (SNP)
† Garnier, Mark *(Wyre Forest)* (Con)
† Gideon, Jo *(Stoke-on-Trent Central)* (Con)
† Grant, Peter *(Glenrothes)* (SNP)
Griffith, Andrew *(Arundel and South Downs)* (Con)
† Kinnock, Stephen *(Aberavon)* (Lab)
† Onwurah, Chi *(Newcastle upon Tyne Central)* (Lab)
† Tarry, Sam *(Ilford South)* (Lab)
† Tomlinson, Michael *(Lord Commissioner of Her Majesty's Treasury)*
† Western, Matt *(Warwick and Leamington)* (Lab)
Whitehead, Dr Alan *(Southampton, Test)* (Lab)
† Wild, James *(North West Norfolk)* (Con)
† Zahawi, Nadhim *(Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy)*

Rob Page, Yohanna Sallberg, *Committee Clerks*

† attended the Committee

Witnesses

James Palmer, Senior Partner, Herbert Smith Freehills

David Offenbach, Consultant, Simons Muirhead and Burton

Creon Butler, Research Director, Trade, Investment and New Governance Models; Director, Global Economy and Finance Programme, Chatham House

Will Jackson-Moore, Global Private Equity, Real Assets and Sovereign Funds Leader, PwC United Kingdom

Public Bill Committee

Thursday 26 November 2020

(Afternoon)

[Sir Graham Brady *in the Chair*]

National Security and Investment Bill

Examination of Witness

James Palmer gave evidence.

2 pm

The Chair: We now come to our third panel. We will hear oral evidence from Mr James Palmer, senior partner from Herbert Smith Freehills. This will last until 2.30 pm. Mr Palmer, welcome; thank you for joining us. Would you be so kind as to introduce yourself for the record?

James Palmer: Thank you very much, Chair. I am James Palmer, a corporate mergers and acquisitions, and investments, partner at Herbert Smith Freehills. I have been doing that work for 34 years. I have worked with the Department for Business, Energy and Industrial Strategy on business regulation for over 25 years. I also chair our global board; we are an international firm.

Q107 Chi Onwurah (Newcastle upon Tyne Central) (Lab): Thank you very much, Mr Palmer, for sharing your expertise with us today. I see that you were on the takeover panel for SoftBank's £24 billion takeover of Arm. Did you consider at the time that that might raise concerns for economic security and national security? More generally in your experience of takeovers and mergers, how would you—or would you—distinguish between economic security and national security on a current and forward-looking basis, if I can put it like that?

James Palmer: I was advising the takeover panel and the regulator, not one of the parties, so our thoughts were more about their role in ensuring appropriate regulation of that takeover—not from a foreign investment perspective, obviously, but there was a foreign investment angle to it. I am not a technical expert. My read of that—nothing to do with the work I did, but obviously I followed it and all the other transactions that have been looked at—is that it was more about economic security and positioning than necessarily about national security per se, but I am not the expert on it.

I think the point that you are drawing out—I heard your question earlier today—is a really fundamental one, which is that there is a spectrum of things that can be regarded as matters of national security. Indeed, the Bill papers draw this out. On the one hand, you have things that are clearly national security, like the risk of infiltration of systems that the country's security depends on or that the country's systems depend on—critical infrastructure being an example—but I do think that there are aspects of the Bill that are touching on things that stray more into economic influence and stability.

Again, I am not the expert on this, but I think we all know that in the debate about what is a matter of national security, there is a question of economic dependence, supply chain dependence and so on. That is one of the most difficult areas for this legislation, because where you have a straight, obvious national security real risk of some cyber-infiltration or whatever, nobody is going to argue about that. The grey into issues of supply chain dependency and more economic security starts to raise some of the more difficult areas, which I am sure we can come to.

I do not think that there is a simple binary distinction, and I am not here to give you the answer as to what the right approach is for dependency on China for supply chains. All I would say, having worked out in Asia many years ago, is that the interconnectedness of the world is not going to reduce and we are going to need to find ways of navigating that.

Q108 Chi Onwurah: Thank you, Mr Palmer; those are very interesting and important points. In your answer to my next question, I would like you to reflect on how this could be better. You make points about the spectrum, and particularly about the need for expertise and wide-ranging consideration in this process. Do you have concerns or suggestions about how they could be better reflected in the Bill?

Also, we have heard a number of times today that under the Bill—this will be reflected in your experience—we are going from 12 call-ins to a much bigger number: 90 or 100. And the impact assessment estimates that, I think, 1,870 notifications might come in under the new regime. Could you consider how best to reflect that or to put in place the skills and the resources for the Bill, and say a little about what impact you think it might have on the attractiveness of investing in UK companies and, in particular, small and medium-sized enterprises?

James Palmer: I have focused on the same numbers as you. I hope the Minister will excuse my saying so, because I think the team have genuinely done a superb job of looking at a lot of granularity on a swathe of issues, but there is one data point I did not agree with: the suggestion that there will be an 18% increase in the reviews; it was framed quite narrowly. In my maths, 12 reviews in nearly 20 years going to nearly 2,000 a year is well over a 10,000% increase. I think that that is a very important context in which to look at this—as the world outside looks at this, it is potentially looked at as pretty seismic change by the UK. Again, there is lots that we can go on to as to the ways in which the detailed thinking around this has tried to mitigate that, and I know the Department has worked very, very hard in trying to mitigate it, but I think that we just need to be realistic.

In terms of the skills, there is a fundamental question, which the Bill papers have started to try to set out, which is this: how do we focus the debate so that it is not all-encompassing? Again, the Minister is aware of my views on this. I am extremely pleased—I know that some may not share this view—that the Bill does not catch a broader public interest test. The reason for that is what happens every time we introduce a power for the Government, for very sensible reasons—these things are always about competing tensions with sensible reasons—to seek to interfere, review something and decide who should own it, or whether they want to impose conditions on that.

Let me give you an analogy. Let us say that I invite someone to come and invest in this country to build a house. At the moment, if I invite them to come to this country to build a house—or a business or a small

technology business—they know they can build that house, live in it and sell it to whoever they want. If I invite them in and say, "Come and live in this country and build your house, but I reserve the right to decide who you sell it to and what conditions I impose on who you sell it to," that is a very different prism—a new prism.

The Bill team have done a really good job of trying to narrow that so that everybody does not think, "Help! If I come to the UK, there is a Government discretion," but there is an innate tension between, on one hand, the desire to have a broad power to interfere in circumstances that we have not all thought about to protect something as important as national security and, on the other hand, a desire to give investors certainty. My unhelpful view is that there is not a simple route through that, and I do worry about, in particular, small technology businesses.

Again, the team have done a good job of trying to narrow the sectors. This is a very different proposition, in terms of granularity, from what we saw in 2017 and 2018. But I think a lot of further work may be needed. The Government have been clear that they want to receive further feedback on how to narrow the remit. One example is the breadth of the communications sector, which has no de minimis. Artificial intelligence is not a thing done by four clever businesses anymore; it is a thing done by thousands of businesses. I think an awful lot of businesses are going to get caught that are not actually what the ministerial team are worried about.

The second bit is that, even outside the mandatory regime, other transactions may be judged with hindsight to be a matter of national security. Under the regime, a Minister—maybe not the current Minister, but whoever it is in the future—may decide that it is a matter of national security. As you have already highlighted, there is a spectrum of where economics becomes national security. People are going to worry about the predictability of investing in this country.

I am thinking particularly about smaller businesses. Obviously, there will be huge attractions to investing in the UK for technology. We have skills and expertise that can only be exploited here. The UK has had a very distinctive position as one of the few countries in the world where businesses without a particular nexus to a country have chosen to go as a destination of choice. Those businesses are the ones I am most worried about.

There is also the cost and risk for small businesses. If I was a European venture capitalist, how comfortable would I be in investing in a technology business in the UK that I will be able to sell it to an American or Danish buyer—not the Chinese—in five years' time, or at least to do so simply? In terms of the call-in power, why would boards take a 1% risk that in five years' time somebody will judge your transaction as being one that should have been notified? Why would I take even a 1% risk of my transaction being unravelled? I think that the Department has worked very hard—this is not just ritual politeness; I really think it has—to try to narrow it, but I do not think it has done so enough, because I think that there will be a lot more than 1,800 notifications.

Q109 Chi Onwurah: Thank you. You made it clear that you are praising the Department for the work it has done, and I accept your reluctance to criticise it; I think you are right—there is a lot of work, and this is a very complex area. Do you have any direct recommendations you would make to the Department in terms of what might need to change and in particular the preparations it should make for dealing with this large number of notifications?

James Palmer: My partner, Veronica Roberts, appeared before the Foreign Affairs Committee on Tuesday, and she and I will be submitting a list to this Committee. I am afraid we do not have time to go through it today, but I will draw out a couple. Some of the mandatory filing sectors are very broad, such as communications. Again, the Government have said that they welcome narrowing those. There are not de minimises in a number of those sectors. It is true that there are other jurisdictions that do not have de minimises, but they are not jurisdictions with as large a proportion of their GDP linked to trade, and they are not jurisdictions that are as much seen as international business headquarters as well as centres of international business; there is a difference.

There is a de minimis for transport, for example, and it is very focused on ports over a certain threshold and on airports over certain levels of traffic. That is excellent, because those are the kinds of business that it makes sense that you would want to catch. The same layering has not been applied elsewhere. In particular, I worry about catching the sale or the licensing of intellectual property in relation to any of the technology areas. I think that that will catch an awful lot of things that people have not thought about yet, and I think that it will create a big burden for those small businesses.

I can conceive that in one or two very narrow areas—in some of the material science and so on, I am told—there may be low-value things that need to be caught. I am personally very sceptical that low-value things need to be caught in many other areas, because how can they be that important to the economy if they have a value that is below £1 million?

One of our concerns is that, although we know that the Government are very committed to a free trade agenda here and trying to make this work, I have worked with new regulators as they have developed for a very long time, and—forgive my saying so—I have never seen a regulator whose remit was only at the level that was predicted when it was set up. All remits expand exponentially, and that is one of the fears we have.

I would certainly advocate ensuring that the factors that the Secretary of State has to have regard to include, for example, impact on trade. The cost-benefit analysis sets out a sensible attempt—again, it is a much more developed piece of work than the, frankly, not-that-great cost-benefit analysis done in 2017-18; this one is a good and credible attempt—to work out what the actual cash costs are. But it does not address, as the Regulatory Policy Committee drew out, the real economic costs. It may all be okay, but the risks there are not hundreds of millions, but absolutely billions, and the UK's competitive positioning there.

Q110 The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Nadhim Zahawi): I was going to ask you about whether the Bill is proportionate between being very focused on national security—albeit, as you quite rightly point out, there is a spectrum of that—versus public interest, but I think that you have answered that issue in saying that you would very much guard against expanding it.

James Palmer: I will just explain why. I remember working when the public interest regime still applied. The move away from the public interest regime started in the 1980s. Pre the 1980s, this country was not an international investment destination; it really was not. We have earned that position. Whatever one's politics—I am not party political—this is something that the UK has earned. We have done that by moving to being pretty open-minded in foreign investment. We have actually not worried that much about national security considerations being controlled through ownership, because again this debate has been—sorry, let me first come back to the Minister's point.

I am very nervous that if you open it up to public interest, you vest that authority in a politician; forgive me, but that is what leads to lobbying, to short-termism, and to completely inconsistent decision taking. I am afraid that whatever Ministers at the time may say about these decisions, there is no external credibility on the predictability of those. It does not matter whether Ministers think they are doing it in good faith or on security grounds. It does not come over that way.

On broadening it to public interest, I completely agree. I am very grateful—because I know that there was a debate about this—that it has been rightly focused just on national security, albeit with a broad ability to intervene to protect the national interest.

Q111 Stephen Kinnock (Aberavon) (Lab): Thank you very much indeed for your useful and interesting evidence. I want to ask about some tangible examples, just to get a sense of where you stand on this spectrum—in this debate between economic openness and national security. You have made your position on it quite clear, which is that we should not sacrifice one to the other. Do you think that the Arm-SoftBank transaction would have gone through under this regime?

James Palmer: My own view is that I actually hope so, because I think that there is a debate here. We all identify a business that has been established in the UK, and we regard it with pride as a national asset. I completely understand that. I am not just interested in global M and A; I am interested in investment in the UK. My goal is not just M and A. It is the investment, which we will not get without M and A at the end, because investors want to know that they have the ability to realise.

My own judgment—I am not an economist, but most of the economic evidence that I have seen supports this—is that you do better by allowing people to come in, allowing them to sell, not necessarily completely untrammelled, but on a broadly liberal perspective, giving them the certainty and confidence to do that.

I think what we are debating here is about those things that are generated solely in the UK—for example, research, work and ideas that are funded by the UK Government. I can see why the UK Government might want to keep control over those things and link their funding to a level of control. If someone takes funding on that basis, I can see that. I do not know enough about the history of Arm, but it was acquired by a Japanese parent, not by a so-called hostile actor. If we are not going to allow Japanese businesses to buy into our technology businesses, I think we look like a less interesting technology investment and growth destination. We might hold on to a business for another five years, but what businesses are we losing for our children and grandchildren in 10, 20 and 30 years' time? That is how I look at the question.

Q112 Stephen Kinnock: What about AstraZeneca and Pfizer, which, of course, did not go through, mainly because of the political debate that raged around it?

James Palmer: Partly. I was involved in that as well—not entirely, actually. By the way, I think there is a misunderstanding about hostile versus agreed deals. Agreed deals, politically, are regarded as generally okay, and hostile deals as not. But it is about price normally. In occasional cases, there may be other factors, but I think that should not be the determinant of whether a deal is favoured or not.

On AstraZeneca-Pfizer, the challenge there is that AstraZeneca is not just a UK company; it is a global company. Most of its business is not in the UK; it is all around the world. It was built up by making acquisitions all around the world. If we say that it cannot be acquired by an American pharmaceuticals company, what message does that give to businesses that want to come and headquarter in the UK to then go and buy elsewhere? The UK has been a net acquirer globally, and I think that our openness is what has allowed us to do that.

I completely understand the concerns about jobs, and I completely understand the concerns about science and the preservation of skills, and I do not dismiss those, but I worry that by trying to hold on to what we have today, we lose the appeal in the long term, a bit at a time, to people coming in the future. It seems to me that if we are going to have research in the UK, which I think we will, it should flow from our research skills, not from holding on to things that want to leave.

Stephen Kinnock: Thanks very much. Do I have time for one more?

The Chair: If it is very quick.

Q113 Stephen Kinnock: Could you just say a word about comparable jurisdictions, such as the United States, where their CFIUS law brings into play the extent to which the acquirer has a history of compliance with US law, and the same for us—not just the acquirer, but perhaps also the state that that acquirer comes from?

James Palmer: There is an interesting issue about compliance with law. You need to be careful, because clearly, the draft legislation envisages—as, by the way, I think, the current very broad discretion, which catches an awful lot of transactions, gives discretion to do—allowing quite a bit of leeway to exercise judgment as to what is a national security issue. If you have an investor that is clearly law-abiding and not about to try to put toxic software into your systems or whatever it might be, you are going to worry a lot less about them, so I do not want to limit the discretion.

Do I think that you need to draw out compliance with law in particular? I am nervous about doing so, because it could become a hobby horse for a company that has breached some law somewhere or other. If a big global company has 50,000 employees, people make mistakes; someone somewhere will do something that will transgress. So I worry about it missing the substance. I think there is a discretion to look more substantively, rather than being too much tied to whether they are law-abiding or not. Again, there is clearly a China focus

here—I am neutral on that issue; that is for you—but you are not going to know whether a Chinese company is law-abiding outside China or in China, in particular if it has not invested outside China before.

The only other thing I would say on comparator regimes is that the whole debate on this has been framed, as it was in the 2017 paper, around the main rationale, which was, "Other countries are doing this, so we need to look at it." A much better rationale, which has also been articulated by the Government, is, "We're coming out of the EU. We've got EU-based legislation at the moment. It's actually the right time to take stock, rather than necessarily that the old regime was hugely defective." I do not think it was as defective as everybody is saying.

We keep talking about France, the US and Australia. My firm is the largest law firm, or one of the largest law firms, in Australia, and we are in all the markets—France, Germany, Italy and Spain—that keep being cited. Those countries are our very friendly trading partners, but none of them has the reputation for being as open and free trade-oriented as this country. I think we need to be careful about setting comparisons with the most controlling of our friends, not the least controlling, because there are a whole load of countries that have not been named in any of the discussions that are not doing any of this.

Take Ireland and technology. Maybe, under pressure from the EU, they will introduce something, but the Irish have been trying to grow technology; so have the Danes and the Swedes, and the Dutch as well. The Dutch will come out with some proposals in this area, but my expectation is that they will be much more limited. The Dutch are very internationally competitive. For new industries—for green tech, which we really want to be in—the Nordic countries are significant competitors, and I do not think they are going to have all this. I think that, for investors, that is a factor we just need to bear in mind as we try to find the right balance.

The Chair: We have less than five minutes left, so I suspect that this will be the last question. Mark Garnier.

Q114 Mark Garnier (Wyre Forest) (Con): When you were answering Chi Onwurah's question, you posed the question, why would you buy a company if there is just a 1% risk that you would not be able to sell? I was going to ask you how the Bill could be market distorting in terms of the valuations of some of these businesses. You raise a very good point about investing in a business where you think you have fewer buyers than there were originally because of the Bill. That is a very important point. The flip side of that is the extent to which the Bill could be used as a frustrating measure for hostile takeovers. Have you done much on the price-distorting nature of what is going on?

James Palmer: I have not done any analysis, and I have not read the economics—that is beyond my pay grade—but I have worked on hostile takeovers for a very long time, and I have been involved in loads of auctions of businesses, with debates about who the buyers are and so on. It is blindingly obvious, isn't it, that if you have fewer buyers, it has a price impact? I think the question is, what is the appropriate, proportionate acceptance of that? I do not think we should kid ourselves; if we want to dial up focus on national security, there will be a level of impact. I think what the Government are trying to do—they have sent very strong signals that this is their goal, which I am supportive of—is to ensure that, yes, we do it, and, yes, there may be a little bit of consequence, but that we try to keep it in proportion.

I think the risk we have here is not with the 10 or so active interventions that the Minister and Lord Grimstone have talked about in briefings on this, which is a very positive signal and a big reduction from the 50 or so that were consulted on before—that gave us, frankly, very high levels of concern. The concerns are, first, will that be held without a really rigorous review mechanism that ensures there is accountability over that review? I would raise four-year, eight-year, 12-year, continual reviews, where you actually look at economic impact and there are evidence-based requirements. I would also bring in proportionality on those to the judgments, because if you ask a group of very intelligent civil servants to think about risk and say that their job is to protect national security, you can find national security risks in almost anything.

I think there will be market distortion impact. John Fingleton, the former chief executive of the Office of Fair Trading, has commented broadly on this. *The Economist* wrote in an August article about the negative economic impact on US GDP being significant from its equivalent step up of the CFIUS rules. I think it is about trying to thread the needle in a way that keeps that very narrow and limited.

Q115 Mark Garnier: Very quickly, although this looks at equity investment, do you have any thoughts about the fact that debt holders can be much more influential and therefore possibly get away with the assets?

James Palmer: I heard the question that you raised this morning on that. I am not troubled by that. I think debt is a bit of a myth. The material influence test that the Government have picked is lower than a number of other EU countries have gone for but is at least consistent—it is levered off the test we already use, which I think is helpful—so I am personally a bit less worried about that than some others are. Finance does not worry me that much. If somebody seeks to foreclose and exercise, they are not going to be able to do so if they are going to be caught. I think we could get ourselves in a knot, and I think the London financing markets could be disastrously impacted if we were to start to try to regulate lending heavily on this.

The Chair: I am afraid that brings us pretty much to the end of the time available. Many thanks, Mr Palmer, for your time and your assistance to the Committee.

We will move seamlessly on to the next session and hear evidence from David Offenbach, a consultant at Simons Muirhead & Burton. While he is taking his seat, let me say to those members of the Committee who were not able to ask questions last time that I will try to make sure that you get an opportunity on this occasion or a future one.

Examination of Witness

David Offenbach gave evidence.

2.29 pm

The Chair: Welcome, Mr Offenbach. May I ask you to introduce yourself for the record?

David Offenbach: Yes, thank you very much, Sir Graham. I am consultant solicitor with Simons Muirhead & Burton solicitors, a firm of some 32 partners, and I have been there 19 years. I am here in a personal capacity. Previously, I was a senior partner of the law firm founded by my late father, and I merged my practice with Simons Muirhead in 2001.

I have acted for small public and private companies, and for 15 years, I was a non-executive director of a fully listed plc. I have been involved professionally in takeovers, and I have written on the subject. Currently, I am updating a paper I wrote previously called—this may be of interest to you—"Takeovers and the Public Interest".

I have recently ceased being a further education college governor and non-executive director, after 18 years' service, and I was with a social housing company for 15 years. In fact, one that I finished a term of six years with was the subject of one of the largest takeovers in the social housing sector. It is now one of the biggest housing associations.

Briefly, I welcome this Bill very much; but the UK has changed fundamentally since 2017, when the Government started their consultation on this, so I think that it is good, but it could be better. If the United Kingdom is going to build back better, as the Chancellor said yesterday, after covid and after Brexit, whether there is a deal or not, then this legislation needs to be wider than it is now, and I have some suggestions on how it could be improved and some amendments that might be made to it. Excuse me; I've got a bit of a cough.

The Chair: That's all right. Thank you very much. Shadow Minister, Chi Onwurah.

Q116 Chi Onwurah: Thank you very much, Sir Graham. Welcome, David, and thank you so much for sharing your expertise and experience with us and for giving me an opening, which I cannot resist: what are your suggestions for improving this Bill?

David Offenbach: Well, there are three categories. First, are the 17 subjects that are referred to in the paper sufficient? Sir John Redwood, in the debate last week, said that food should be included, because there is nothing more important than food security. Mr Tim Loughton said that pharma and biotechnology should be included. There is not really very much on energy in the 17 subject matters. So I would like to see those included.

The next is the definition. National security is not defined in the Bill, which I actually approve of, because once it becomes too closely indicated, then it is not easy to decide what should be in it, or what should not be in it. I would like to see a definition that includes what Lord Heseltine said when Melrose took over GKN, that research and development should be a subject of importance; it should be included.

The other thing I would like to see included, contrary to the last speaker, is a general definition of public interest. The reason for that is that when you look at recent examples, you see that it is very easy for things to slip through the net that actually might be both in the national interest and in the interests of national security as a specific point.

Some of these examples have already been mentioned: SoftBank's purchase of Arm. Now, that was world-beating British technology. It is in every computer, it is in every telephone and it came from Cambridge. It is now the subject of a bid by an American company owned by a Japanese bank. Do we really want to try and hang on to the research and development—as someone said in the House of Commons debate last week, the Crown jewels, or as Harold Macmillan said many years ago, the family silver? At this economic time, is it not desirable that we try and hang on to these important assets that are homegrown? Is self-reliance something that we should bear in mind?

Similarly, in 2014, Google bought DeepMind—world-beating British technology in artificial intelligence. Should that have been the subject of consideration? Recently, Lady Cobham was bemoaning the fact that Cobham had been sold to private equity for £4 billion. She said she only wished that the Act had already been in existence, and then perhaps the nine divisions that have now been reduced to four and the sell-off that started would not have happened. Of course, one of the problems is that the post-offer undertakings that can now legally be provided by companies to the takeover panel are fairly feeble and do not really deal with the issues to protect the necessary research and development and public interest.

At Immarsat, as those of you who drive around Old Street roundabout in the middle of London's tech city will know, there was a £4 billion takeover of world-beating satellite technology. It started as a United Nations organisation, then became private and was quoted on the London stock exchange and has now gone to private equity.

Nvidia is buying Arm. When they bought Icera in 2011 in Bristol, they closed it down, 300 people lost their jobs and the technology went abroad. One that might now cause a bit of embarrassment is the case of Huawei, which bought from the East of England Development Agency the Centre for Integrated Photonics in 2012. Another piece of world-beating technology owned by the British Government has now gone abroad.

Those are just some of the numerable examples of assets that, at this difficult time, we really ought to try and hang on to. I do not want to decry the argument that Britain is open for business and that we believe in free trade. We do. There is twice as much foreign direct investment into Britain as there is into France and Germany. Several hundred thousand French people live in London. It is the fourth largest French city for French citizens. Why? Ask anybody. It is much easier to do business in London that it is in Paris.

As for the other argument—that if we do not make the business climate easy, people will start up their businesses elsewhere—the answer is that they will not, because in the other places where they want to open their businesses the regimes are tougher than here, so that argument does not wash. France has just passed its recent new law. They use a slightly different test that is strategic. Their test is not quite as wide as public interest. Of course, a right to intervene on strategic grounds is what Mr Tim Loughton and Mr Bob Seely suggested in the House of Commons debate last week, and Mr Tugendhat was very sad about the fact that Google had bought DeepMind and that SoftBank had managed to acquire Arm. For all those reasons, I think we do need to add to the definitions. That is the position.

Q117 Chi Onwurah: I have a quick follow-up question. Should we consider a separate test of public or strategic interest, or are you saying that our economic and security interests are intertwined, so it is the definition of security interests that needs to be expanded? What are your views on that?

David Offenbach: It is very difficult to separate these. When you look at GKN, for example, 50,000 people—even now, after covid—are headquartered in Redditch, near the Minister's constituency. It is one of the largest industrial companies worldwide, 250 years old, and a defence contractor to the Ministry of Defence, but the question is whether the amount of defence work it does, apart from its other engineering, is sufficient for it to be called in under the existing legislation. Clearly, the decision was made that it was not appropriate, and it is the same with Cobham. Cobham clearly had a national security element, but it was not sufficient for it to be called in and blocked by the Minister, so I think it is very difficult to separate the economic from the national interest, because these companies are multi-layered; they operate in different markets; some of their work is sensitive, and some of it is not sensitive.

That is why I think it is better to try and improve this Bill than deal with it under a separate Bill. The problem is that it has taken three years to get to where we are with this Bill. If we are just going to say, "Let's deal with it another time", it might take another three or four years before we get to consider that, so while it is here, while it is on the table, let's try to improve it now and make it really work for Britain, so that we can build back better—to use a phrase—going forward.

Q118 Nadhim Zahawi: Welcome, Mr Offenbach; thank you very much for making the time. I wanted to get your view on how you think the Bill deals with the range of sanctions available to the Secretary of State in order to protect national security. How do you see that?

David Offenbach: I am very pleased with it. It is much better than the previous regime, because now, rather than just having post-offer undertakings that are subject only to contempt of court criteria if they are breached, we have a proper statutory framework that will enable the Minister to impose orders so that for non-compliance, there is a breach of statutory duty, not merely a breach of an undertaking. Of course, one of the problems with the takeover code is that the object of a takeover code is to protect shareholders and to encourage fair dealing in takeovers. It is not there—and this has never been its job—to protect the public interest; it is there to protect the shareholders who are in receipt of an offer, so that they have been given fair treatment. For example, if you take SoftBank and Arm at the moment, we do not know whether or not they will have complied with their post-offer undertakings when the five years is up, because the price that is being paid now is more than was paid in 2016. There is no complaint. Public interest is irrelevant to the job of the takeover panel, which is why this new regime is a very welcome improvement on the old regime.

Q119 Sam Tarry (Ilford South) (Lab): Thank you, Mr Offenbach. This is very interesting evidence, and clearly you and the previous witness have really exposed this tension—this debate—between having an open and liberal economic approach, and our self-interest and national security. This is not a new debate: Peter Lilley had his famous Lilley doctrine, and earlier this week, we heard from Sir Richard Dearlove. Most of the Committee members listened in earnest to that discussion.

For me, there is something really important we need to explore a little bit more when it comes to our approach, in terms of rushing to be the most open, the most liberal, the most pro-business country we can possibly be, and the exposure that is left—in this case—to China. Just thinking about that, are there particular areas of law that you think need to be tightened up and thought about alongside this, and that need to be looked at in tandem, perhaps around IP protection, licensing and that kind of thing?

David Offenbach: I think this actually does most of what is necessary. I do not think it needs to be improved in that regard. One thing that does slightly worry me is that the present regime, which is essentially a competition regime, has the Competition and Markets Authority as a statutory body, having lost national security to the new unit that will be set up inside BEIS. They only have financial stability, media plurality and public health, which was added this summer, but it is a proper organisation that deals with public interest in those areas. Public interest is the only area.

It is quite important for us to think that one of the reasons why one wants to extend the definition of national security to a public interest element is because there are many more areas of public interest, other than those three that are now left in the CMA. There is a little bit of an anomaly, because national security does not have its own separate statutory body to deal with these issues. It suggests that this is going to be put into a little hole somewhere in BEIS and that somehow competition is more important than national security, because it has a statutory body.

I wonder whether there should be a parallel statutory body, which could be called the national security investment commission, or something like that, that actually dealt with these things separately, outside BEIS. That would deal with some of the objections that people have and that a Minister is going to be lobbied about. It would be dealt with in more of a quasi-judicial way, in the same way that the CMA now deals with referrals to it. I wonder whether the Minister would like to consider that, as part of the amendments.

Q120 Sam Tarry: Clearly there would be some serious resourcing implications around that. Thinking about what you said earlier, about a number of different examples that have been in the press about major UK-owned companies that were the subject of various takeovers, would you like to say a little about how industrial strategy could also relate to national security?

David Offenbach: I listened to and read the Second Reading debate in the House of Commons last week. I know that a lot of Members were concerned to try not to let issues of industrial strategy stray into areas of national security. It is a subject that I do not really want to go into.

Some people have expressed anxiety about the activities of sovereign funds in other countries posing dangers to assets in this country. Is there more of a risk from investments in China? Somehow, people feel that those investments are connected with the Government and that they are not really independent. I think the necessary protections are in this new statute that will prevent that from being an issue.

So far as industrial strategy is concerned, people are worried about sovereign funds. I think Britain should have its own sovereign wealth fund, like Norway does and like we used to have with the Industrial and Commercial Finance Corporation, and then with 3i. There are amazing investments that could be made and wonderful technological discoveries that Britain should be able to get the profits from, and that should not be going overseas. When I went on a trade visit to China a few years ago, I saw the China Investment Corporation. They said, "We are really pleased with our investment in Thames Water. We do nothing every year. The dividends come and it doesn't cost us any money." I thought, "Why shouldn't Britain have the advantage of the dividends, rather than the China Investment Corporation?" Norway's sovereign wealth fund is worth more than £26,000 for every citizen in Norway and is one of the most successful. That is something that really we ought to look at.

Q121 Simon Baynes (Clwyd South) (Con): Thank you very much, Mr Offenbach, for your interesting comments which, as my colleague has said, are in sharp contrast to Mr Palmer's point of view—so that is helpful to us. I have two questions. Apart from the lack of inclusion of public interest, are you broadly happy with the Bill as it stands, in terms of what it is seeking to achieve? I suspect you are.

David Offenbach: Yes, I am.

Q122 Simon Baynes: You refer to other regulatory regimes being tougher, but I think Mr Palmer's point was that there would be other regimes that are weaker and more liberal. I think the point that he was trying to make is that if controls are tightened here, the capital, knowledge and companies will go elsewhere. Do you not see that as a risk?

David Offenbach: No, I do not—not in the slightest. I am thinking of clients of mine—French—who moved from Paris to London because it is easier to set up and promote business here. Why did they not stay in France? Because they know that the regime is more restrictive. Why did they not go to Australia? Because they are a similar regime. They are more restrictive. We are a very open environment to do business, in this country. You can come here and set up a company in 24 hours, and start trading. You cannot do that in France: it is much more difficult. In Germany, it is much more difficult, and in Australia. Those comparable regimes, if you like, are less favourable. That is why people come from the Baltic countries to set up business here. It is much easier to do business.

Q123 Simon Baynes: I think that Mr Palmer's point, if I understood him correctly, was that if we bring the Bill in, we create a tougher regime than there is at the moment. I think he used the example of Ireland, and I hope I am not misrepresenting what he said, but he said it was potentially an environment that would have a less structured regime, and therefore could take business away from us, to put it crudely.

David Offenbach: We have the issue that we do not know what difference being out of the European Union is going to make to future investment; but Ireland has been very attractive for many years, partially because of the tax regime—and for lots of other reasons—so will people choose Dublin rather than London if they want to do business? They might very well, but the fact that Britain is open to trade is an important part of the British economy. People will still come here and work here, open businesses and enjoy the infrastructure of the technology and the various businesses that are already here, and that they can feed off, so I am not worried about that in the medium term.

Q124 Peter Grant (Glenrothes) (SNP): I see from the profile that we have been given that you have considerable experience in land transaction—the legalities of land transactions—as well as company law and so on. Given that part of the Bill that we have not looked at much so far is about controls on the purchase and acquisition of land and other physical assets, as well as companies, are you comfortable with the fact that the processes for controlling potentially hostile purchases of land assets are similar to those being proposed for company takeovers or company acquisitions? Is there any reason why there needs to be different processes for them both?

David Offenbach: It does not need to be any different at all. I was pleased that land was included. Certainly one knows from seeing property transactions and looking at title deeds, sometimes where the owners of these companies are or purport to be is very curious. The Bill covers that very adequately.

Q125 Peter Grant: One important distinction is that while companies legislation is almost entirely reserved to the UK Parliament, a lot of legislative authority for land registration is devolved to the Scottish Parliament and the Scottish Government. Is there a risk of an unintended consequence—that we end up with legislation being passed here that could have an impact on the devolution of land use and purchase regulation to the Scottish Parliament?

David Offenbach: I do not know. I am sure that officials in the Minister's Department have thought about whether or not this is an issue for the devolved Administration, but I do not think it is a problem.

Q126 Peter Grant: Finally, going back to the acquisition of companies, although it could also be relevant to the acquisition of properties, a key factor is going to be the identity of the person or the business who wants to make the acquisition. That is okay if everybody can see who the owner is. Is the Bill tight enough to give adequate protection against a potentially hostile buyer who sets up a holding company under an anonymous name in some offshore jurisdiction, so that the ultimate buyer of the asset in the United Kingdom is not made public? Is the Bill strong enough to protect against anybody using that as a way of buying up assets that they would not have been allowed to buy up if they had done so in their own name?

David Offenbach: Yes, it is. The first thing that will be looked at is where is the beneficial ownership. It is, first, follow the money and, secondly, follow the beneficial ownership.

Q127 Peter Grant: But what about once you get to the point where you follow the beneficial ownership and find that it is a company registered somewhere offshore, where the identities of the directors, who have ultimate control, or the shareholders, are not made public?

David Offenbach: Then you block it.

Q128 Peter Grant: So you are suggesting we need to block any purchase of a sensitive asset from a company whose ultimate controlling partner is registered in a tax-haven type regime overseas. Would you go as far as that?

David Offenbach: Yes, I am sure that is what the security unit will do. If it cannot be established where the beneficial ownership is, then they will block it, and so they should.

Q129 Peter Grant: You were suggesting earlier that the definition of the national security interest needs to be widened to include other national interests such as the strategic economic interest. Are you suggesting that there are some businesses or some assets in the United Kingdom that, although they do not have any national security implications, should not be allowed to be bought over by a company whose ultimate controlling partner remains anonymous?

David Offenbach: Well, I remember there was an outcry years ago when Michael Portillo was a Defence Minister and they were going to sell the Ministry of Defence. There was an outcry and it was withdrawn. Should Admiralty Arch become a hotel or is that an asset? These are the sort of issues which, if they come up, will be dealt with at the time. I like to think that certain things are fairly sacrosanct. We would not sell Buckingham Palace or Windsor Castle to a foreign buyer if we did not know who they were—or at all, in fact.

Q130 Andrew Bowie (West Aberdeenshire and Kincardine) (Con): Mr Offenbach, thank you very much. I have a very quick question. You ran through a long list of acquisitions at the beginning of your evidence, most of which I think you would suggest were not in the national interest, although people may disagree. Given the Bill as it stands, which, if any, of those acquisitions would have been thwarted or prevented by it? Which, if any, of those acquisitions would have fallen foul of running the risk of being a threat to national security?

David Offenbach: The answer is that one is not quite sure. That is why I want to widen the definition. The reason why there are 17 different areas and categories in the Bill is that it is hard to know what national security is at any particular time and how it is reflected in the business that is actually being considered. The only way to make sure that something does not slip through the net is to have a slightly wider definition. There is no definition of national security itself in the Bill, which is perhaps why strategic, research and development, innovation or other issues should be brought in. Then one can be quite sure one has not accidentally lost an asset where there are national security issues.

Q131 Matt Western (Warwick and Leamington) (Lab): Thank you, Mr Offenbach, for your evidence this afternoon. I am interested in the example you gave in your statement. Has the pandemic changed the way you view national security?

David Offenbach: Completely. It has also changed how the Government view it. In the summer, public health was added to the list of items on which a public interest intervention notice can be given. So it is clear that, in the face of the national emergency that, alas, we face—according to the Chancellor it is the greatest economic crisis for 300 years—we have to hang on to our assets. That is why the Bill is even more necessary than it was before. The pandemic gives added weight to the arguments that I was making even before we had covid. We need to have a wider test to protect our national assets.

Q132 Matt Western: What is your view on the Bill's assessment that state entities and funds pose less of a risk than private entities to the UK?

David Offenbach: I am not personally worried about state entities being said to pose more of a risk, because I think that the Bill is strong enough to make it possible to intervene where necessary. Although one is entitled to look at the asset being purchased, the acquirer and the person from whom it is acquired, I do not think that it will be a problem under the Bill as it is drafted.

Q133 Matt Western: Going back to my previous question, do you think that we should think about areas such as climate change and other things that are perhaps not necessarily of immediate urgency—some would say, of course, that climate change is urgent—as matters of national security?

David Offenbach: I do not think that there is anything other than the 17 already mentioned and the ones that I mentioned, most of which came up in the debate last Tuesday. I think that telecoms might be mentioned as well, but the list really covers all the areas where national security is a significant risk.

Q134 Stephen Kinnock: Thank you very much for this useful and important evidence. I have one relatively specific question based on your expertise in real estate. The statement of political intent states:

> "Land is generally only expected to be an asset of national security interest where it is, or is proximate to, a sensitive site, examples of which include critical national infrastructure".

Do you think that scope is too narrow? For example, we know that property in London is used to launder large amounts of money—nefarious organisations often own property in London and use it for nefarious purposes. London is sometimes referred to as a laundromat for dark money. Do you think that that is a national security risk and should be included in the scope of the Bill, and that the land definition in the statement of political intent should reflect the money laundering issue?

David Offenbach: I am not sure I quite agree with the statement of intent as part of the Bill papers. The drafting of that section of the Bill is wide enough to include the issues that you raise. It would be open to the Minister to intervene in the cases that you mention without any change to the drafting of the Bill being necessary.

The Chair: If there are no further questions at this point, I will say thank you very much, Mr Offenbach. The next witness is not due until 3.15 so we will have a 10-minute suspension.

3.5 pm

Sitting suspended.

3.15 pm

On resuming—

Examination of Witness

Creon Butler gave evidence.

The Chair: We will now hear oral evidence from our fifth panel. We welcome Mr Creon Butler from Chatham House. We have until 4 o'clock for this session. Mr Butler, may I welcome you to the Committee? Please will you introduce yourself for the record?

Creon Butler: I am Creon Butler, the director of the global economy and finance programme at Chatham House. I am very pleased to have the opportunity to give evidence.

Q135 Chi Onwurah: Welcome, Mr Butler, and thank you for sharing your expertise with the Committee. Your expertise is considerable, given that you have advised on policy issues such as climate change, national resource security, global health security and economic security. There are clearly many aspects of security. Are both the distinction and the links between national security and economic security appropriately reflected in the Bill, or could they be better reflected?

Creon Butler: You get right to the heart of the matter and, indeed, to one of the points I wanted to make. Yesterday I looked at how national security is defined, and the "Collins English Dictionary" defines it as preventing a country from being attacked by hostile powers. One very important thing in relation to this Bill is that, first, while there is a good justification for having a broad range of powers to intervene, given the breadth of those powers to intervene and collect information, it is important that the Government define more clearly than they have hitherto exactly what those powers will be used for and, in those terms, use them in relation to national security. Specifically, I mean investments that could lead a hostile power to have technology that would enable it to make better weapons to attack us or would enable it to intervene in our critical national infrastructure.

There are other aspects of economic security, such as having a major industry in AI, renewable energy or something of that kind, that could be relevant to broader security in the future. You may well want to have a strategic intervention to ensure that the UK has that kind of industry, but I do not think this is the Bill for doing that. I think there are other tools you would want to use, including competition policy, strategic investments, contracting, R&D and so forth. That is one of the points I wanted to make.

Q136 Chi Onwurah: Are the other tools or powers needed to make interventions with regard to strategic capability in place under the Enterprise Act 2002, such as for the Arm takeover? I am not sure that they are. Given your experience, will you say a bit about the level of resourcing and expertise the unit would need to make such assessments?

Creon Butler: On your first question, I do not think we have that yet as a country. Actually, with the previous Prime Minister we had a clear definition of a number of sectors that were felt to be very important, but it is a continuing story in terms of exactly how we are going to intervene to ensure that those sectors are strong. We have some powers, but there are a range of tools. I previously mentioned public contracting, where we do our research and development, and competition policy specifically to make it impossible for British companies to develop in those sectors, and so on. There is a broad range of policies for ensuring we have those sectors, and I think they are continuing to evolve.

Your second question is a really crucial one. I guess a key point is that this is not an absolute thing: you cannot protect the country from all possible national security risks through this route. The only way you could do that, potentially, is by having every single investment notified and examined. That would create an enormous bureaucratic monster, which would really not be what we want.

The further point is that when you are looking at the right cases, you want to be sure that the judgments that are made trade off with the national security risk, as I have defined it, but also with the potential economic benefit of having an investment in that area. To do that, you need expertise among the people who are making such judgments, which spans security expertise but also economic, investment and commercial expertise. It is very important, first, that there enough people to do the judgments properly, and secondly, that you have a breadth of expertise. Certainly in the past, we may have swung from one side to the other. Sometimes you have had what people would describe as a securocrat approach: "There is a possible risk here. Let's go for it—let's eliminate it, whatever the economic cost." Sometimes, on the other hand, you have had the alternative situation: "Let's encourage investment, whatever the risk might be." I think it is important that we get a balance between those two.

Q137 Nadhim Zahawi: Welcome, Mr Butler, and thank you very much for your attendance. Reflecting on the changing nature of the national security threats that we are now facing, which you alluded to in your answer to my colleague, the hon. Member for Newcastle upon Tyne Central, how do you think the Bill builds on the Enterprise Act 2002? It has been 18 years since that legislation was introduced, so it would be great to get your take on that. Given your CV, it is worth getting your reflection on that while we have you here.

Creon Butler: I think—I am sure many people have said this—it is very clear that the previous legislation needed updating and was not fit for purpose, given both the way in which the global economy as a whole has evolved and the way in which the threats have evolved. It is both necessary and urgent to update that, and the way the Bill has done that, in terms of this first phase of creating the powers both to collect information and to intervene, makes a lot of sense. We have to fine-tune it and make sure it works properly, but this is a good first step. As I said, though, it is really important, if you are going to have such broad powers, to define exactly how you will use them—and much more precisely than the Government has done hitherto.

The further point is that this piece of legislation does not do everything. Alongside it, we need to strengthen our ability to collect the information we need about those threats. There are a number of elements. One that I have some experience of and that is really important is the question of who actually owns and controls companies that are operating in the UK—the question of beneficial ownership transparency. If you do not know that a hostile power is influencing a company that might be

registered in an overseas territory or something of that kind, you will not be able to take the steps that you need to take.

A further area—it is a step in the right direction, because it gives us the powers to engage with this issue—is through international co-operation. Looking forwards, we need to strengthen and enhance our international co-operation with like-minded partners by going beyond the Five Eyes and including other really key partners, such as Japan, the EU and so on. That will enable us to do two things. First, it will enable us to share information about the things that can happen, such as the techniques that hostile powers are using. You may see it come up first in one country, and if we can share that information, we know that we can be prepared for that. Even more importantly, you may have a hostile power that does a number of things in different parts of the world, and it is only when you see the entire picture that you can see what the threat is.

Having that kind of international co-operation to do that is really important. These powers are necessary to get us in the same place as some of our key allies, in terms of what we can do. I do not think we are ever going to be able to standardise the areas of intervention or the nature of powers, but we should push very hard to enhance the sharing of information in the way I described.

Q138 Stephen Kinnock: Thank you very much for the very interesting evidence that you are providing. I want to focus on the acquirer risk element of the Bill. The statement of political intent states that

"the National Security and Investment regime does not regard state-owned entities, sovereign wealth funds—or other entities affiliated with foreign states—as being inherently more likely to pose a national security risk."

Do you agree with that assessment? Logic would seem to suggest that the closer an entity is to a foreign Government, the more likely it is to pose a risk to our national security.

Creon Butler: Clearly, some state-owned enterprises can be a significant risk, but some clearly are not. VW has a significant state element in it through North Rhine-Westphalia, but that does not make it a national security risk. At the same time—this goes back to the point I was making about who actually controls companies—you could well have a company that is registered in another country and, particularly if that country does not have very beneficial ownership transparency laws, as even some very close allies such as the US do not, the company emanating from it could have ill intent towards us.

For that reason, I think the Bill is right not to make a special regime for companies that are state owned, because that could go wrong in two ways: either you could be looking at only one set of companies when there are others that are potential threats, even though they come from close allies, or you may end up spending a lot of time looking at companies with state shareholdings that are really no threat at all. Clearly, when you come to do the analysis, whether there is a stake from a hostile state will be an important part of the analysis that you do in assessing that threat. I think the Bill gets it right in not creating a special regime, but that does not mean that this will not be an important part of the analysis that you do in assessing the threats.

Q139 Stephen Kinnock: The Bill does not suggest a special regime, but it also seems to say explicitly that the state-owned characteristic should not be considered, because the statement of policy intent says that it is not inherently more likely to pose a national security risk. It does not seem to do either of the two things you are suggesting.

Creon Butler: I did not read it quite that way. I read it more as meaning that that is not a reason for having a special regime, but when it comes to doing the assessment, you look at whether there is a state element of ownership and from which country that state element of ownership comes. That would be a factor when you are examining the likelihood that that particular investor could pose a threat to us. I am not a lawyer; I just read it that way. If the way you are reading it is the correct way to read it, I do not think that is quite right.

Q140 James Wild (North West Norfolk) (Con): Mr Butler, given your experience in the National Security Secretariat, I want to ask you a few structural questions. How you think the NSS should be linked into the new investment security unit in BEIS?

Creon Butler: It is a constantly evolving picture. The benefit that the NSS can bring is a strategic overview. When you want to put the element of national security protection in the context of broader economic security issues, it is really important that the NSS plays a key role. I do not know the precise detail of exactly what the linkages are between the new unit and the NSS. I would think, from the way I worked in the NSS, that they will be very close in term of people, exchanges, links and so on.

In terms of the respective roles, the strategic role is one that the NSS should play, looking at this element alongside all the other elements of national economic security. As I understand it, it is very important that this unit has a very strong operational focus and effectiveness, the skills that enable it to do this, and the space in which to do it. If I was in charge of designing the relationship, that is how I would design it.

Q141 James Wild: That is helpful. On the operational point, do you have a view on the timescales for turning round the reviews and assessments within the Bill as it stands?

Creon Butler: There is obviously a trade-off again. My sense was that the provisions that are there now are realistic and sensible, but we need to see how the thing evolves and fine tune it according to the experience that we have had. People have pointed out that this will lead to a lot more cases being looked at than before. I do not think that that is a criticism of what is happening; it is a reflection of the world that we are in. However, in the light of the experience of looking at a much broader range of cases, we should be ready to adjust the timeframes and so on, taking account of that experience.

Q142 Matt Western: I wonder, Mr Butler, if you would elaborate on, and give more examples of, the sorts of international threats that you see us facing, in terms of not just national security but economic security, and the links between the two.

Creon Butler: In my view of economic security broadly, the biggest existential threat is climate change, frankly. We are going through a ghastly pandemic. Fortunately,

it looks like we can see the way out of it, but I do not think that at any point we felt that this particular virus was an existential threat to mankind more generally. My view of climate change is that it is, and it is very close. In any broad assessment of national and economic security, I would put climate change as one of the most important issues. That is why the accelerating efforts both within Governments and in the private sector to deal with it are crucial.

In terms of other kinds of threats, we have had this particular pandemic, which as far as we can see is not an existential one; there could be other pandemics that are. That is why infectious diseases have been so high on our risk register in the past. Steps to ensure that we do not face future pandemics that are even more serious than this one in terms of the threat to human life, or the economy, are a very important priority. Those are two examples of broader threats beyond hostile powers that we should incorporate in our approach to national and economic security.

Q143 Peter Grant: Good afternoon, Mr Butler. You highlighted the problem of identifying the fact that an acquiring party may have hostile intent towards us if we do not know who is really in control and who the ultimate owners are. One way of addressing that is simply to have a built-in presumption against allowing any acquisition of a security-sensitive asset or business by a company whose ultimate owners are not identified. Do we need to go as far as that? If not, what else could we do to protect ourselves from hostile elements, which will undoubtedly use that back-door access, if it is left open?

Creon Butler: It is a good question. It is something I worked on when I was in the Government. There is a pending proposal in relation to property, to ensure that no foreign company can invest in UK property without some means—whether their own register of beneficial ownership or a regime put in place in the UK—of ensuring that transparency. That is in relation to ownership of property. It did not go much broader than that, because it involves a major bureaucratic process and there is the issue of not interfering too much with the way the economy works. If we did do that, it would help in relation to one of the national security concerns we have, which was highlighted in the Bill, where a hostile power buys some property close to a very sensitive site.

I need to think about it a bit more, but I do not think it would make sense at this stage to require that we can identify the ownership of every single investment. For example, in the US they do not have consistently strong beneficial ownership rules. You might find a situation in which several US investments in the UK did not meet those transparency requirements. If they were in non-sensitive sectors and did not pose a threat to us at all, it would create a considerable burden.

Thinking it through on my feet, the logic would be to do something of that kind, where it related to sectors that we knew to be sensitive. Indeed, those are already covered by the mandatory notification case. Where you have the mandatory notification, it will presumably trigger information about who owns the company that is making that investment. If that is not clear now, that may be the route to make sure that this element is covered.

Q144 Peter Grant: To be clear, you mentioned in your answer the need to regulate foreign-registered companies from certain types of acquisitions. Does that also apply to UK-registered companies, which are in turn owned by foreign companies? The bad guys will set up a UK company to do all the bad stuff through. Do you agree that we need to follow the chain of ownership and control right back to the ultimate controller?

Creon Butler: Absolutely. We currently have a public register of beneficial ownership for all UK-registered companies. That was a major and important step. There are issues about whether we are doing enough to enforce those legal requirements. That area could be looked at helpfully in this context. When that regime was designed, the view was that market forces, external pressures and gathering information from NGOs and others would ensure that the information on the register was accurate. I am not sure that we can now be sure that is the case. We want to get that transparency for UK-registered companies, and we may need to do more in that direction, particularly through the enforcement process in Companies House.

Q145 Stephen Flynn (Aberdeen South) (SNP): Thank you, Mr Butler, for your evidence so far. It has been incredibly enlightening. It is probably fair to say that national security—what is tantamount to national security—is an ever-evolving feast, particularly given the technology that is now available. Do you feel that the scope of the Bill, particularly the consultation of the 17 sectors that have been included, satisfies your concerns around national security? I am particularly thinking of social media and the level of data that is pertinent within that. Do you think that is adequately covered by the Bill as it stands?

Creon Butler: I think this comes again to the point about how we will tightly define national security in relation to these broad powers. I think you are thinking of a hostile power investing in a social media platform that can then be used to attack the UK—I guess that is what you have in mind. It is, again, something that I have not thought through. Probably, I would not see the nature of the threat as being so great that we would necessarily make it a mandatory notification, but by using other sources to collect information about threats, we might use the other powers in the Bill—the calling in and those kind of powers, and the voluntary notification—to make sure that we had covered the threat. I do not think I would put it in the mandatory category, but I would want to use other information and powers to collect information, and to call in a particular investment if I felt it was a threat.

The Chair: There are no further questions, so thank you, Mr Butler, for your time and your assistance to the Committee. We have our witness for the sixth and final panel in the witness in the room, so we can move on seamlessly and a little early.

Examination of Witness

Will Jackson-Moore gave evidence.

3.41 pm

The Chair: We have until 4.30 pm at the latest for this session. Mr Jackson-Moore, will you introduce yourself for the record?

Will Jackson-Moore: I am a partner at PricewaterhouseCoopers. I am responsible for our relationships with private equity, infrastructure, real estate and sovereign funds on a global basis. I started working in our Sheffield office, predominantly with small and medium-sized industrial organisations, before moving into our deals practice, where I spent the majority of my career working with corporates and private equity houses, undertaking transactions here in the UK and abroad. I then relocated with my family, while still at PWC to the middle east, where I spent a number of years —I got quite a lot of exposure to the sovereign funds there—before moving back to the UK and into my current role.

My areas of expertise are flows of international capital and the deals market. I am not a specialist in national security matters.

Chi Onwurah: Thank you for sharing your expertise with us, Mr Jackson-Moore. What impact do you expect the measures in the Bill to have on the sovereign funds and others you represent—the investors and potential acquirers of UK assets? You said clearly that you were not an expert in national security—why should you be? —but how will you identify those acquirers who may be considered to pose a national security threat? What kind of engagement would you expect to have with the Department for Business in order to make that sort of call?

Will Jackson-Moore: That is a two-part question. On how the proposed Bill will impact the flow of capital into the UK, generally these are sophisticated investors who operate across the globe, investing in territories that already have equivalent legislation, so the actual legislation itself will not come as a surprise or a barrier. It is in the application of it that there will be concerns, in that, quite rightly, the definitions are drawn quite broadly and we believe that a significant number of transactions and inbound investments will be brought into this—in many cases, voluntarily, so people can get guidance. That will be an area of concern, in terms of whether it will create a barrier, either through publicity or with the timing of bringing capital into the UK. That is probably one of the main concerns right now.

In terms of sovereign funds, I am not in a position to say whether an individual investor or fund is a threat to national security. That is not something I would be looking to comment on.

Q146 Chi Onwurah: Would you be expecting to advise your clients as to whether the proposals in the Bill might impact on them? Would you expect to be able to engage with the Department in order to establish that? Have you made, for example, predictions of the number of transactions in which you are involved that might be subject to the proposals in this Bill?

Will Jackson-Moore: In terms of how we might engage with organisations on the applicability of the Bill, I think we would be asked questions about the industries that are covered, the definitions of an industry and what a business actually does. Whether an organisation is drawn into the legislation—whether it is considered a national security threat—is not something we would be involved in. I would be pointing organisations in the direction of their legal advisers on that.

As I said, there are something in the order of 6,000 investments into venture capital in the UK each year. There are approaching 10,000 mergers and acquisitions transactions a year in the UK, plus a number of infrastructure investments, and many of those will fall into the definitions within the Bill. I do not think it is entirely clear to buyers yet whether they would be caught. A traditional private equity house or a venture capitalist looking to invest in a start-up in the UK, may well be owned by Britons, with a management team who are British, but they may have structures that include overseas entities, and many of their investors will be overseas investors. I think that many of those organisations will be wanting guidance as to whether they will be considered an overseas acquirer, even though on the face of it they appear relatively British.

Q147 Chi Onwurah: Specifically on whether they meet the definition of an overseas acquirer, I was also interested in this. I think one of the assumptions has been that there will be a large number of self-notifications in order to get guidance early on, but you seem to be implying that that might be considered to be declaring yourself as a threat to national security, and that might be a barrier.

Will Jackson-Moore: No. The way traditional fundraising for a start-up or a transaction takes place is that a business is either put up for sale or seeks investment from a number of parties; the entrepreneur wants to raise finance and have a competitive situation in which the providers of capital are making the most attractive offers possible to reduce the cost of capital for the organisation. I think there would be an incentive for them to be able to say to potential investors, "We are not going to be considered as an asset that is important to national security". The definitions are quite broad and many organisations will have technologies that right now appear relatively benign and are used for purely civilian purposes but are cutting-edge and on a trajectory whereby in two years' time they may have military applications or other things that could be a threat to national security.

Q148 Chi Onwurah: What that says to me is that, while the impact assessment looks at the cost to the acquirer, there will actually be a cost to the acquired party in terms of clearing themselves in advance or clarifying what their situation is, and I do not think that is covered in the impact assessment as it stands.

Will Jackson-Moore: Yes, in many cases it is a raising of finance for a partial stake. It is an entrepreneur looking to attract capital to expand their business, seeking to bring in an investor to provide maybe 25% of additional equity capital. They want to have a competitive situation where people are offering the most beneficial terms possible. Many of those investors will be overseas investors.

Q149 Nadhim Zahawi: Following on that, Mr Jackson-Moore, the current regime under the Enterprise Act 2002 stipulates that the assessment of transactions is dealt with on a case-by-case basis by the Government. This legislation effectively puts into law the timeline by which assessments are made. Do you think that and other provisions in this Bill will send a message to the industry and to the investment community of a slicker, more efficient way of dealing with assessment of transactions?

Will Jackson-Moore: For the vast majority of existing transactions, the existing legislation was not really a major factor; it only addressed a handful of transactions

each year, whereas this is much more in the mainstream of the M and A market and therefore it will be much more on people's agenda. We already have a number of organisations reaching out to us to understand the potential implications for ongoing transactions.

I do not think the timeframe in itself represents a barrier, since it is not that dissimilar to other jurisdictions, but again it is the application. If you look at Australia, for example, buyers have the ability to pre-clear themselves, and that type of amendment would be very helpful to ensure the free flowing of capital.

The Chair: Stephen Flynn.

Q150 Stephen Flynn: You caught me making a note there, Sir Graham; apologies. Thank you very much for your evidence so far, Mr Jackson-Moore. It has been incredibly helpful. If I have picked you up correctly, you perhaps inferred that the level of guidance that companies would be seeking in order to provide that assurance is not necessarily there. If that level of guidance is not there, do you feel that that will have an impact on investment ultimately?

Will Jackson-Moore: Yes, it potentially could, because it will create an additional uncertainty. In order to attract capital, you need as much certainty as possible. An ability to say to investors that we do not believe we are in an area of investment that presents a national security threat is important.

Q151 Stephen Flynn: As a follow-up to that, in terms of the fact that the Bill is obviously coming before the consultation has been concluded on the sectors and the consequences therein of being caught within a sector or not, do you think that that timeline will have an impact on investment in the short to medium term?

Will Jackson-Moore: It is already having an effect, in that it is being discussed by organisations that are considering investments into the UK right now. People do not necessarily want to be seen as a guinea pig or have high-profile investments unless they really have to. It is not that it is stopping it; it is just another factor on the balanced scorecard as to whether you are going to make an investment. It is one factor to consider and it is a degree of uncertainty, which is never helpful.

Q152 Andrew Bowie: Earlier on today, and two days ago, we discussed the link between national security and national interest, and I am sure you would agree with me that attracting inward investment is very much in the national interest. We have just heard from the hon. Member for Aberdeen South about the effect that this might be having. We do very well as a country in terms of attracting inward investment; I think we are No. 1 in Europe. As the Bill stands right now, do you think it will have a detrimental effect on our ability to attract inward investment to the UK?

Will Jackson-Moore: Not as the Bill stands in its own right. As you say, we are the largest inbound country for venture capital, for private equity and for infrastructure, and we have been seen as the gold standard for the location in Europe to invest into. Many other European territories have equivalent legislation, but again it is about the application of the legislation, in particular the process, the ability to pre-clear and the timelines actually being met. To understand some of these technologies is not going to be straightforward. These are emerging, cutting-edge technologies in some cases, and the talent required to assess that will not necessarily be easy to attract. Some consideration needs to be given to partnering with research institutes or academia in specific areas, so that there is a panel available to assess certain technologies, not only to understand its position right now but also its trajectory—where that technology may go in the next two or three years.

Q153 Stephen Kinnock: Thanks very much for that helpful evidence. I want to focus on this issue of the target risk and the type of asset that is potentially being acquired. I am interested in the role of private equity in the residential care home sector. Large swathes of our residential care homes are owned by private equity companies. I just wonder whether you think residential care, and social and public services of that nature, should be defined as a critical national infrastructure?

Will Jackson-Moore: It is not something I have specifically considered. It certainly would not that be within what I considered to be a matter of national security under the auspices of the Bill. I do not think I am in a position to comment any further.

Q154 Stephen Kinnock: I am sorry; I saw that you have done a lot of work with private equity and thought that you may have been involved in that aspect of it. On sovereign wealth funds, do you see the China Investment Corporation—I do not know if you have ever done any work with it—as an arm of the Chinese Communist party?

Will Jackson-Moore: I am not in a position to talk about specific individual organisations. A number of sovereign funds in China are very well regarded in the international capital markets. However, in terms of their interaction with Chinese Government, that is not something that I have a perspective on.

Q155 Mark Garnier: My apologies for not being here at the beginning. I am interested in your work on sovereign wealth funds and private equity funds, in terms of working out the value of an investment asset. We heard evidence in the first session this afternoon—I do not know if you were here—than the fact that this Bill will restrict the number of potential buyers out there might then restrict the amount of interest coming in to start with; an investor with a target company to invest in may have limited numbers of people that they could sell it to when they want to exit, which will adjust the price. Have you had any thoughts about that at all?

Will Jackson-Moore: As I mentioned earlier, the UK is the gold standard for a location to invest in, particularly within Europe. Investors like investing in the UK because of the fairness and transparency, UK law and UK courts, and as a place to be based and to live, so there is an inherent benefit to doing UK-based transactions. However, and as we sit here right now, on a scorecard-type approach, the UK is not as attractive a location as it has been historically. We have the uncertainties of Brexit and we have a number of other territories looking to recover and rethink their economies given the situation we are all in, so there will be more—

Mark Garnier: Competition?

Will Jackson-Moore: Yes, there will be more competition for international flows of capital. As I have said, I do not think this Bill in its own right fundamentally changes the attractiveness, but it does create another level of shorter-term uncertainty, just because people have not seen it operating in practice yet.

Q156 Mark Garnier: Let me rephrase the question, then. Countries have directions of travel. Do you think that our direction of travel, as evidenced by things like Brexit and possibly this Bill and others, is a direction to a less attractive place, or not? If you were in government with a five-year plan to try to make us attractive, would this be part of your plan?

Will Jackson-Moore: It is entirely appropriate to have legislation to protect matters of national security, so perhaps this puts us on a level playing field with other nations. But does it specifically enhance our position for the attraction of international capital? The answer is not specifically, but it sets a standard that the international capital markets expect us to put in place.

Mark Garnier: That is very helpful. Thank you.

The Chair: We have no further questions from the Committee, so thank you very much, Mr Jackson-Moore, for your time and assistance. We are finishing slightly ahead of time, but I invite the Government Whip to propose to adjourn.

Ordered, That further consideration be now adjourned. *—(Michael Tomlinson.)*

4 pm

Adjourned till Tuesday 1 December at twenty-five minutes past Nine o'clock.