HOUSE OF COMMONS

Business, Energy and Industrial Strategy Sub-Committee on National Security and Investment

Oral evidence: Information sharing by the Investment Security Unit, HC 1118

Tuesday 28 March 2023

Ordered by the House of Commons to be published on 28 March 2023.

Watch the meeting

Members present: Darren Jones (Chair); Jane Hunt; Mark Jenkinson; Ian Lavery; Andy McDonald.

Questions 1 - 34

Witnesses

I: Joachim Pohl, Policy Analyst, Investment Division, OECD; Veronica Roberts, Foreign Direct Investment Group Lead, Herbert Smith Freehills; Athene Blakeman, Head of Legal, Oxford Science Enterprises, and Member of the British Venture Capital Association NSI Act Working Group.

Written evidence from witnesses:

- Herbert Smith Freehills (INF0007)
- British Venture Capital Association (INF0008)

Examination of witnesses

Witnesses: Joachim Pohl, Veronica Roberts and Athene Blakeman.

Q1 **Chair:** Welcome to this morning's session of the Business, Energy and Industrial Strategy Sub-Committee on National Security and Investment, for our latest evidence session on the functioning of the Investment Security Unit.

We have three witnesses today: Joachim Pohl, who is a policy analyst at the OECD and is appearing virtually; Veronica Roberts, who is the lead for foreign direct investment at the law firm Herbert Smith Freehills; and Athene Blakeman, head of legal for the Oxford Science Enterprises group and part of the British Venture Capital Association's National Security and Investment Act working group. Good morning to all three of you.

My first question, just to get us started, is to think about how, in comparison to the previous legislative framework under the Enterprise Act, the flow of information has changed with external stakeholders between the Enterprise Act and the National Security and Investment Act.

Veronica Roberts: In terms of the national security cases that we dealt with under the Enterprise Act, there was a reasonable degree of information given out to the parties about what the national security concerns were. It operated very differently. As you know, you had the CMA—the competition authority—looking at the competition aspects of a transaction. They were an interlocutor passing on the Government's national security concerns about a transaction to the parties. That was always at a high level. There were no security-sensitive details disclosed, but there was a degree of information passing back to the parties under that Enterprise Act process.

In terms of what the public saw about a case under the Enterprise Act, you would see a report and, again, the national security aspects of the analysis would be at a very high level. The detail would be redacted where it was security-sensitive, but you would see a description of the transaction and overall outcome. The real difference is that you would see the details of the undertakings that the parties agreed to in order to deal with any national security concerns.

For example, if you look at the Cobham acquisition of Ultra, which was dealt with under the Enterprise Act, you can see the full detail of the undertakings that the parties signed up to to deal with the national security concerns. I am sure that we will come on to it, but that is very different from how the current regime operates, where you see that there has been a final order and remedies have been imposed, but the details of those remedies are not made public.

Q2 **Chair:** You have not been given any rationale as to why that is the case.

Veronica Roberts: Under the current regime, parties will be given an idea of the rationale. On the website, there is an extremely high-level

summary of the rationale for imposing undertakings, but nothing more than that.

Athene Blakeman: I should say that I have not had any direct experience of the Enterprise Act regime. The main comment that I would have is that companies have to think about the NSIA every time they do a transaction or make an acquisition, so it is ever present in industry, whereas the Enterprise Act was a "wait and see if there was an intervention" regime. It is not necessarily a bad thing, but it is certainly always relevant throughout transactions.

Joachim Pohl: I am sorry that I could not come to London for this very interesting event. From the faraway perspective of the OECD in Paris, the main difference is that before there was no aggregate information on the transactions that were looked at over a longer period of time. That is something that, for accountability towards the general public, makes a big difference.

That is the only thing I would like to add to what the other witnesses have said. The new practice seems to have annual reporting, and that gives an aggregate overview. Numbers under the Enterprise Act were not that high either, so annual reports might not have made much sense.

Q3 **Chair:** I seem to remember that with Cobham and others, because of the level of public interest in jobs, investment or location in the UK, publishing those undertakings gave a bit more of a narrative around that. Whether they were entirely enforceable or stuck to for the long term, they at least reassured stakeholders that the Government had intervened on those public interest cases. The concern now is that we just do not know what has been agreed.

Veronica Roberts: That is right. We have been involved in four of the 10 undertakings decisions that have been handed down under the new regime so far. The remedies that are being agreed in practice are not really that different to what we saw in some of the Enterprise Act cases. They focus on the same issues—the flow of information, the protection of national security infrastructure and sometimes board representation. It is worth looking at whether a little more detail could be released about the nature of the undertakings that are being agreed, and certainly that is something that could also be picked up in the annual report.

Q4 **Jane Hunt:** I want to look at new constraints as a consequence of the Act and whether they are worthwhile from your point of view, and also at the variation. Written evidence has indicated that officials cannot advise on whether a transaction is likely to be called in or blocked, because the Secretary of State is now the main decision maker. Does the fact that we have had different Secretaries of State make a difference to the decision-making process and the transactions? Should more guidance be provided? Does it make it quicker to get through to the decision?

Veronica Roberts: We have not seen any real difference in terms of the different Secretaries of State. We have seen undertakings and final orders signed by three Secretaries of State, but I would not say that we have noticed any change in substantive decision making.

It is right to say that the Secretary of State is the decision maker in the process and also has the final say. We have had many constructive meetings with the ISU about cases that we have been involved in, where we have discussed, usually, the type of remedies that might be necessary to receive a conditional clearance. We have had a productive conversation, but then the final word is always, "We will go and check all that with the Secretary of State and come back to you if we have any further questions."

By and large, the ISU has been doing a good job and you get very little follow-up after that, so you stick with what was discussed in the meeting, but it is clear that everything is always overshadowed by needing to make sure that the Secretary of State is happy with the direction of travel.

Q5 **Jane Hunt:** Is that creating any undue delay?

Veronica Roberts: That is more difficult to tell from the outside, but it could well be, because the cases that we have been involved in, where remedies have ultimately been agreed, have certainly taken some months to reach a conclusion on.

Athene Blakeman: It is too early to tell what the trends are in terms of the focus areas of the ISU, which is something that would be useful to know. When one contacts the ISU and asks for guidance, the response is often, "I am sorry. We cannot give guidance. Refer to the legislation." We have had some helpful guidance from the ISU, but it has been on the rarer occasions.

In more routine cases, rather than those that are taken forward through the assessment period, there is an opportunity for better communication with the ISU at an early stage—for example, defining whether something is within the scope of the 17 mandatory sectors, and allowing the market to decide whether to make an application. There are a lot of applications made that are not required at present, because there is a lack of understanding about where the interest lies and where the edge of those sectors lie.

Q6 **Jane Hunt:** That, of course, may create a delay in itself.

Athene Blakeman: It does create a delay, although the delays are not hugely long. Certainly for venture capital, I would say it is two to three weeks on your average transaction, which is normally manageable. It would be nice to take out that delay, particularly in routine cases or those where there are no national security concerns and the parties can see it—for example, for reorganisations or repeat acquirers that have been approved several times before in that space.

Q7 **Chair:** Joachim, is it unusual to have decisions made at such a senior level? Does it constrain the agile nature of a market in being able to go forward with these things?

Joachim Pohl: The level of decision making is typically very high. In the United States, prohibitions are decided by the President. In Germany, you have the Cabinet in its entirety that takes these decisions. I am not saying whether it is a good thing or bad thing, but it is global practice that negative decisions—prohibitions—are decided at a very senior level, so current UK legislation does not deviate from that practice.

I have no insights into the current practice about delays, but when I hear that many decisions are taken within two or three weeks, or sometimes months, that is still well within the frame of international comparison. If the UK is worried about its international competitiveness in that area, I would not be too worried, because decisions can take much longer in other countries.

Q8 **Chair:** Joachim, can I follow up on that? In the United States example, even though the President is the ultimate decision maker, as I understand it the vast majority of cases do not get to the President's desk. A lot of this is processed, as I understand it, at official level, and if it were to be escalated anywhere near the President, the transaction tends to fall apart because no one wants it to get to that stage.

Here in the UK, it seems to me that the Secretary of State is much more involved on an operational level, case by case, as the decision maker taking advice from officials in the way that we are perfectly comfortable with normally here in the UK. Is it just that our systems of governance around officials and politicians mean that it is different in the UK? Or are we escalating things to political decision making much more readily in the UK compared to other countries, to the disadvantage of business and investment decisions?

Joachim Pohl: It is difficult to make that comparison at that level. Everyone who is watching this space knows that certain decisions in other countries have also been discussed publicly in the press and so on. I do not necessarily think that it is to do with the culture of the unit.

The other issue is that in certain countries such as the US, you have a much longer history of this machinery, so all parties that are interacting in this area will know better what to expect, how decisions are made and what the outcomes might be. It might be just the relatively recent establishment of the UK system in its current form that leads to growing pains in this area, where information might not circulate as easily or there are perceptions that it is more difficult to get decisions or insights on decisions.

Q9 **Andy McDonald:** Could I turn our attention to information sharing during the screening process? We have heard from witnesses that they are broadly complimentary of the investment-screening process, but when it comes to information sharing, that is where it does not really

compare favourably with the Enterprise Act. Could you take us briefly through the investment process and explain at what stages information sharing becomes an issue?

Veronica Roberts: Just to take you through the process, the parties put their filing form together and send it to the ISU on the portal. The ISU then aims to come back to you in around five working days to confirm whether that information is complete and the clock can start running, or whether they require further information to be added to the filing before that clock starts running. You then have the 30-working-day review period, which is the first period of review. At the end of that, almost all transactions are cleared unconditionally.

We tend to receive those decisions towards the end of the 30-working-day period. We have had a couple of cases where there has been financial distress on the part of one or more of the companies. When we have made that known to the ISU, we have certainly seen them react more quickly, if they are convinced that there are genuine circumstances that require that.

Nonetheless, you can then end up being surprised towards the end of the 30-working-day period by suddenly receiving a call-in notice. In some of the cases that we have dealt with, that is the first time that we are made aware that there are potentially national security concerns involved in the transaction.

In my view, it would be helpful—perhaps not straightaway, because the ISU does receive a number of notifications—to have some point during that first 30 working days where you are alerted to whether there might be more questions or something else that they want to look into. The hub-and-spoke model that the ISU uses, where they go out and get evidence from the relevant Government Departments, can sometimes slow down the process.

We received a call-in notice on one transaction only for it to be cleared very quickly in the assessment period. That was simply because they had run out of time, so I would certainly welcome having some point during those 30 working days at which you get a bit more information on the direction of travel for your case.

Athene Blakeman: I would agree with all that. The submission forms are really simple. If you receive an information request notice from the ISU during that initial period, it is very simple to respond, which is a very good thing and makes it a manageable regime.

What we have found slightly difficult is that the information-request notices have sometimes been slightly out of context, so we have not understood what the ISU is interested in and have found it hard to respond constructively to the notice. We have had to guess a little bit in terms of what they want, but it is not a massive issue and could be clarified.

The other thing that I would say is that on one transaction we saw an instance where there was no notification but, after the transaction had completed, we received an information-request notice about the transaction, responded to it, and then received no follow-up at all from the ISU. That was more concerning because, from the company's perspective, we were wondering whether they were investigating this, and it would have been great to understand where the ISU was with that process. It was never concluded. We assumed that it concluded internally.

Q10 **Andy McDonald:** How consistently do these problems occur? I am trying to get a sense of the scale and whether there are particular types of transactions that fall into these difficulties.

Athene Blakeman: Most transactions are very simple. The regime as a whole is manageable. It is not too onerous and it works very well. Veronica has had more experience with the more advanced cases.

Veronica Roberts: I agree. Nine out of 10 of the filings that we make will be cleared towards the end of that 30-working-day period. It is the odd filing where you might be pushed into a further review period, usually because one of the specialist Government Departments has not quite got all the information that they needed about that transaction to get comfortable with it. Then there are cases where there are real national security concerns and they merit more detailed review.

Andy McDonald: But there are no particular types.

Veronica Roberts: Not that I could call out in terms of types.

Q11 **Andy McDonald:** That is really helpful. Joachim, do you want to add anything to that discussion?

Joachim Pohl: I do not have much to add, other than to say that this all sounds very much like what other countries are doing. The delays seem to be pretty similar. The approach is to ask through a form for basic information and then ask follow-up questions. That is what we understand is the practice in many other countries too.

Q12 **Ian Lavery:** Is it an accurate assumption that more engagement between businesses and the ISU is better? Is there a risk that, if the Investment Security Unit had more informal conversations with the parties involved in a transaction, that would create more work for businesses and disproportionately benefit those that can access specialist legal counsel?

Veronica Roberts: I do not see a risk of that, because in my experience the ISU has been very good at making sure that the company is involved in the call as well as the legal adviser. Usually, they are most interested in hearing from the company about particular UK activities or, indeed, hearing from the investor about what their plans for the company might be. If the ISU was careful to make sure that it was engaging all parties, that would generally be very welcome indeed.

Athene Blakeman: I would agree. I do not think that engagement and giving guidance to certain advisers would necessarily create an industry that we have to always go to in terms of external advisers. As long as the ISU engages with all parties involved in submissions, that would be helpful all round, and as an industry we could share our experiences. It would be helpful if they could publish guidance on certain areas as well. Where there are certain limitations on the scope of the 17 sectors, for example, or where they have particular areas of focus, that would be really good to see published if it were possible.

Joachim Pohl: It is not quite clear under the different regimes what informal or formal contacts are. It depends very much on the design of these processes, but we can say that many countries encourage these informal contacts, including pre-filing of transactions. That is to clarify what needs to be filed and the merits of these cases.

It is also true that many Governments respond to recurrent questions by issuing guidance. France just put out several dozen pages of information on how they apply and interpret their rules. Canada has guidelines on this, and the US also put out information in an executive order in September last year. This information is most certainly informed by questions that are recurrent, so I believe that this documentation is an aggregate of responses to questions that are recurrent.

Whether it is informal depends on the design. The investment-screening authorities try to create as much transparency as they can by providing general answers to questions that they often get.

Q13 **Chair:** On the question of guidance, the Department has produced guidance around the definition of sectors and the process. Athene, you just called for more guidance; can you flesh that out a bit? Do you mean in terms of the weighting that they give to different factors for particular sectors? What is it that you are looking for?

Athene Blakeman: In certain of the 17 areas, the way the legislation is drafted and, in fact, supported by guidance is still very broad, so you can catch companies that very obviously do not have a national security problem or interest. By way of example, we have had hot water tanks caught under artificial intelligence. We knew that it was not relevant, but we still had to make a mandatory notification and go through the process. I would emphasise that it is not that onerous a process, and it was not a problem, but there could be some guidance that says, if there is clearly no issue, "Come and talk to us," or "Do not make a mandatory notification in this case." The sectors are still too broad in some areas as drafted.

Q14 **Chair:** Some stakeholders will say that there will be some technologies or bits of sectors that you might not readily assume have a national security risk, but the know-how or parts of the technology procurement or supply chain for that business, or the way in which you might be able to apply that technology to another application, which might have a national

security risk, does then, by its very nature, have one, even if it is a hot water tank or a washing machine or something. Do you buy that argument? Or do you think they are just trying to keep the guidance as broad as possible so that they can go wherever they want?

Athene Blakeman: I definitely buy that argument. One of the strengths of the NSIA is that, essentially, it was a clear statement of policy that said, "We are interested in protecting critical assets in all these areas." From the Enterprise Act, it expanded the potential scope of areas that you have to think about as a strategic asset for the country. That is a really wonderful thing and it gave industry a mandate to think about that also in a broader scope of sectors, and to be more proactive about the decisions that they make about where they take assets and how they deal with them. I completely buy that, although you are right that it will never be perfect. Perhaps that is a cost of having this broader definition and more protection.

Q15 **Chair:** Joachim, in terms of comparing with other jurisdictions, you talked about how France and others have produced more guidance. Has that guidance had the effect of reducing the scope of their use of the powers, or is it merely about advising how broader powers are used in practice?

Joachim Pohl: Specifically for France, the endeavour is to create greater clarity. The legislation in France sets the exact outline—pretty broadly, by the way—of what falls under the Act and requires a mandatory notification. The guidance is more to communicate to the users of the legislation and rules what is to be expected. In Australia, you see similar things with guidance notes, where the idea is, "Let us communicate so that people know better."

I would suspect that screening authorities are not interested in receiving irrelevant cases either, so everyone has an interest in getting a pre-filtered set of cases for review, and no one is interested in getting random cases on washing machines, say, where there is virtually no implication. At the same time, we know from some cases that certain enterprises have a broad range of products, one of which might be sensitive and others not. It looks like washing machines, but there are also articles in their list that are more sensitive, and it is for that reason that these transactions are being reviewed.

Q16 **Andy McDonald:** Perhaps this might come back to the issue of guidance, but much of the written evidence we have seen advises that the ISU should provide more advice to companies in informal pre-notification discussions. How do we make sure that that does not lead to inconsistent advice or even put better-connected businesses at an advantage? Heaven forbid that a law firm would rack up billable hours and do a job-creation exercise. How do you address those sorts of concerns?

Veronica Roberts: As long as the ISU's door is open to everyone, which is certainly what we have seen over the last year or so, it would be very

useful indeed for businesses to be able to go and seek guidance as to whether a particular activity falls into one of the 17 specified sectors.

We have heard about France; in Germany it is also a tactic that is very commonly used by advisers with companies, or just companies direct, to be able to have an informal conversation with the agency about whether you need to do a mandatory filing. As we have seen in other countries, the guidance that they give can then eventually be published by way of an update to the different sectors.

Athene Blakeman: I would agree with that. As long as the ISU tracks the trends and the repeat questions, as Joachim referred to earlier, and then publishes that in due course, I would not be too concerned about inconsistency in the early stages.

Q17 **Andy McDonald:** Joachim, do you have any observations? What is the practice in other jurisdictions? Is there an industry here on informal discussions?

Joachim Pohl: Obviously there is an industry everywhere, but I do not have anything to add to what has been been said about the global practice in this area.

Chair: For the purpose of declaring our interests, Andy McDonald and I were both solicitors and very used to racking up billable hours before we became public servants.

Q18 **Mark Jenkinson:** Joachim, businesses have consistently asked for more information on the factors that the ISU considers when it assesses national security implications and any mitigations that it might impose. What other information might it be useful for the ISU to publish or share with businesses without revealing anything too sensitive, recognising the trade-offs between predictability and security?

Joachim Pohl: As I already mentioned, some Governments' investment-screening authorities put out quite detailed guidance on the factors that they consider. We have also seen, for instance on mitigation agreements, that Governments—the US, Canada and Australia, for example—put in their annual reports information on what they do in the context of mitigation measures or what they could consider or have considered. It is an open-ended list, but that gives information on the practices.

What is specific about UK is that the system is so recent, so as time passes and practice establishes, including for the investment-screening authority in the UK, this will become more fleshed out and better known. The opportunity here is to make this guidance public, as other countries do. They will eventually aggregate this information in reporting, which is what is useful for business, so that they can anticipate, first, what factors are being considered—so, "Am I potentially concerned?" —and secondly, what can happen in the context of mitigation measures and what the general practice of the investment-screening authority is.

Veronica Roberts: I agree that the reporting could go a long way to help with that. We have the section 3 statement from the Secretary of State setting out the general principles that are relevant for the protection of national security in the UK. We have to be realistic and accept that it is probably difficult and challenging to go into any more detail in terms of what the specific national security threats are, but as long as we can see more evidence of the substantive decision making coming out in the annual report, that will help companies and advisers alike to determine whether their transaction could be potentially tricky.

Q19 **Mark Jenkinson:** Is there a risk that we get concerned about releasing too much information on security risks in annual reports, for example, and that therefore the data that we do publish becomes almost useless?

Veronica Roberts: That is potentially a concern, but I still think that there are—I am sure that you have received evidence on this—different categories of information that could be in the annual report, which would give us more information than we have presently. I know that we had a very curtailed annual report at the start of the regime. It would help us to look at the relevance of the origin of the investor, for example, and the type of activity or the sector covered. That would help with navigating the regime.

Athene Blakeman: I agree with Veronica's comment and have nothing more to add.

Q20 **Ian Lavery:** This is more of a legal question, although not intensely legal. Going back to the question that I asked about communications between the ISU and the parties involved, could the ISU's failure to communicate with the parties involved in a transaction bring into question the legal certainly of the investment-screening system, or even give grounds for a judicial review of the decision?

Veronica Roberts: When you think about the fact that parties can mount a judicial review of an ISU decision, it is important to ensure that they have been given the information that can be given to them and that is not classified, in order to explain the grounds on which the decision has been reached.

There has been a case in the US where a decision that CFIUS had made was the subject of a judicial review, on the basis that the committee had not given the Chinese acquirer the non-classified information that was available to explain to them why this particular wind farm acquisition could give rise to national security risk.

Under the regime, we will undoubtedly see more judicial reviews as time goes on. We have not yet seen the outcome of one publicly, but it is important for the Government to strike a balance. Where information is available at a high level and is not security sensitive, it would be wise to make sure that the parties are given that information to try to avoid that judicial review challenge.

Athene Blakeman: I am definitely not an expert in this space, so I shall defer to my colleague.

Q21 **Ian Lavery:** Have there been many judicial reviews or any legal challenges with regard to this?

Veronica Roberts: I am not involved in the one that I am aware of, but it is reported in the press, most recently on Sunday, that there is a judicial review against the decision about Nexperia's acquisition of Newport Wafer Fab. That is going through a judicial review and legal papers have been lodged, but I do not know when the case is due to be heard. To my knowledge, that will be the first judicial review of a decision under the regime.

Chair: Our sub judice rules mean that we will not comment any further on that transaction.

Q22 **Andy McDonald:** Can I turn our attention to information requests? You will know of complaints about the way in which the ISU issues information requests to the parties. Looking at other regulators in the UK and in other countries, have you any views about what the best practice might be for information requests? I do not know whether Joachim might be able to think about this. Is there a characteristic of information-request systems in other jurisdictions that you might be able to help us with?

Joachim Pohl: I am afraid not, because I am not involved in individual cases. We have an approximate understanding of how that works in different countries, but we lack the detailed insights to make a meaningful contribution.

Athene Blakeman: One thing that I would say about information requests under the NSIA is that they are not heavy-handed. Under certain competition regulations, you see some massive requests for vast amounts of information. These are really moderate and it normally means that the company can respond to the requests in-house, does not need external counsel and does not spend a lot of money. I would say that is very important and that we should retain that as a practice.

They do stop the clock ticking when you receive an information request, and that can extend your timetable. There is sometimes a frustration that there is not a lot of clarity about how long a timetable might be extended for while responding to information requests. There is a balance to be struck there, because the ISU needs time to digest the new information and the company needs time to produce the information. While I can understand why that happens, it does cause unpredictability.

Q23 **Andy McDonald:** I was going to pursue this and suggest whether a less formal approach could be beneficial, but you are suggesting that it is not that heavy-handed to start with.

Athene Blakeman: It is not heavy-handed, but we could probably deal with a number of issues through a phone call. That would be great. Where that was not enough, you could then move on to an information request. That would be excellent.

Veronica Roberts: That is also my experience. Perhaps one suggestion, which we do see the merger-control authorities adopting and which would not change the informality that Athene has talked about, is that you could issue an information request in draft and send it to the parties—you could send it to the company and/or the legal advisers. That then at least gives the parties an opportunity to have a discussion about the type of information. We have seen some information questions from the ISU that have been really very broad, and we have ended up interpreting them ourselves, whereas if you could have a quick phone call, so the information question is issued in draft and finalised, and then you respond to it, that would be very helpful.

Again, we do not see the requests for internal documents that we are very used to seeing in a merger-control review, which is a good thing, because that makes the process quicker as a general rule. We have occasionally seen requests for internal emails, and then it is even more important to issue it in draft, so that everybody is very clear about exactly what time period you are looking at and what type of keywords you want the search to cover.

Q24 **Chair:** On this stopping-the-clock business, the British Venture Capital Association's written submission said that you probably should not stop the clock when you are having more of a discussion around information sharing. Veronica, you said earlier that if cases are getting backlogged at the end of the 30 days, some of them just naturally tip into the next review period because they do not want to time out, so I can see why the Government do want to stop the clock. Presumably, when they stop the clock, they do not tell you for how long they are stopping it.

Athene Blakeman: That is right.

Q25 **Chair:** Maybe the halfway house is some kind of service-level agreement around how long the clock should be stopped for, as opposed to just stopping it altogether. Would you agree with that?

Veronica Roberts: I agree. I would add that you could do what merger-control authorities will quite often do, which is to give a time period for a response to those questions. If you do not comply with that, the clock is stopped. That might be an alternative.

The other point that I would flag, which we have experienced in some of our cases, is that, if there are multiple parties to a review—and there often are, if you have a consortium, for example, as an investor and you are also looking at the UK company—and the clock is stopped for one of those parties, it is not necessarily the case that all other parties will be

told. A bit more transparency about whether the clock has been stopped in your matter generally would also be really helpful.

Q26 **Chair:** Or maybe even an online portal that tells you the status. It might be a bit whizzy for Whitehall, but that would be good.

Veronica Roberts: That would be excellent.

Q27 **Chair:** You do not have a named point of contact, do you? There is just a shared inbox and a shared telephone line and at one point in the transaction you might speak to somebody, and in another point in the transaction you speak to somebody else. Is that fair in terms of the rough idea that we have of the number of officials in the unit compared to the number of transactions? Or do we really need to move to a position where there are case handlers who you can speak to directly? I suspect that will probably be your preference, but is there enough capacity for that to be done?

Athene Blakeman: If there were infinite resources, it would be great to have a case handler on every case, but there are not. I would say that for the simpler cases it seems reasonable that we do not. It would be useful to have more responsive guidance, but not necessarily a case handler. When a case goes through to an assessment period—Veronica and I were talking about this earlier—that is when it becomes more important, because at that point the parties do need more information and understanding about what the ISU is thinking, so that they can respond and engage helpfully. At that point, that would be my priority.

Q28 **Chair:** I suspect you would agree that it would be better to have someone who you could pick up the phone to.

Veronica Roberts: I absolutely agree. In an ideal world, it would be good to have a touchpoint on around day 20 of the first 30-working-day period to say what the direction of travel is in the case. If the direction is, "We still need to ask some further questions," it would be really helpful to have a case officer name at that point.

Q29 **Chair:** I think I am right in saying that the CFIUS regime in the US is a bit like planning applications in the UK, where you can put in a pre-application to get an early steer on whether it is likely to go through a formal process. I do not think we have that in the UK, and maybe officials would argue that these first 30 days are that process, but when the system is more advanced, would there be an ability and a benefit for this pre-notification—that is probably the wrong language, but you know what I mean—or early sign as to whether it is going to be something of interest?

Athene Blakeman: It is such a simple process for most transactions that you almost do not need it.

Q30 **Chair:** That is good. It is not often that we get an answer like that. Joachim, in terms of this call for sharing guidance and more detail, as

Mark Jenkinson referred to earlier, some people will say, "If you produce all this detail, hostile state actors will know how to manoeuvre their way around it in terms of how they structure their businesses or the way in which they try to access particular types of technology." In other jurisdictions, has that been a live concern? Or is it, in practice, just an academic risk that has never materialised?

Joachim Pohl: I am not sure whether these hostile state actors are such an entity that will design their procedures and their approaches. The knowledge about practices is going to lead to circumvention attempts. We can see from the rules that have been put in place that there are circumvention attempts—for instance, unusual or disproportionate rights for minority shareholders that are given in the context of a transaction. These loopholes are being filled because they reflect a circumvention.

I am not sure whether these hostile state actors should be kept in the dark, because, eventually, what makes our democracies democracies is transparency of the administration. I do not think that withholding information would be a good example for administrative practice in this area, or indeed in any area.

Chair: I agree with that. In fact, producing the guidance shows what an excellent regime we have and, therefore, will make hostile state actors go somewhere else, presumably.

Q31 **Ian Lavery:** The ISU's first annual report is due later this year. What information do you hope to see in it?

Veronica Roberts: We are looking forward to seeing it. As I said earlier, the first version covered only about the first three months of the regime, so it will be very interesting to see the report. A couple of facts could usefully be added in. One is to have data by origin of investor, so that we can see where the cases are focusing. The Government have always been very clear that the regime is not about any particular country and, in fact, as we know, it applies equally to UK as well as non-UK investors. To see that breakdown of cases—notifications and also the remedies, decisions, and perhaps even withdrawal of notifications by investor state—would be very helpful indeed.

I would also like to see the number of unconditional clearances that are happening. It may be they are already planning for that to be in there. Every time there is a remedies decision or a prohibition, we see something being published on the website, so we can keep a tally of that throughout the year. Indeed, we are involved in some of them, but it would be useful to see the number of unconditional clearances and to see those broken down by each of the 17 sectors, and even beyond as well. Those would be my key points.

Athene Blakeman: I would just add that it might be interesting also to see the nature of the transaction that has been looked at and how far it went through the process—so matching the two things up—as well as how many mandatory notifications were made but deemed out of scope.

It would be broken down by sector and would help industry participants to interpret those sectors and where they are falling as an overall trend. I am very much looking forward to the report.

Joachim Pohl: We also look forward to receiving the report. We have studied and submitted in written evidence that the practice in public annual reporting is very different across the world. If you look at G7 countries, for instance, Italy publishes over 120 pages per year, with each and every single case being mentioned. That seems to be possible without threatening Italy's essential security interests. The US offers aggregate data across different dimensions.

I would return to the issue of the industry that is being created, because from these numbers you can glean, maybe by triangulation, certain aspects. I have found it interesting that Italy feels confident to be able to publish all this detail about individual cases, which may not require triangulation, from the data points, of what is happening. We were surprised that some countries felt confident to give hundreds of pages of annual report, and others published just 10 numbers.

Q32 **Ian Lavery:** Is the annual publication sufficient, or should it be published more frequently?

Joachim Pohl: Australia has just moved to a four-monthly cycle, which is an interesting move. It is also true that some countries used to publish individual transactions on the spot. In New Zealand, if my memory serves me correctly, you had monthly reports on what happened. In some countries, you have press releases if a decision has been taken on a specific transaction that has received quite a bit of public attention. There are very different ways. Annual aggregate reports are one option, but Australia has moved to a shorter cycle. There is also the option to provide information on the spot when it arises.

Veronica Roberts: It would be very helpful to receive more regular information than just the annual report. That is definitely the case, and it is interesting to hear the points about other countries. I am also aware of Italy having recently started to publish the list of unconditional clearances for the previous two or three-month period. Something along those lines would be very helpful for companies, as well as legal advisers, to get more of a feel for how the regime is working on a regular basis throughout that one-year period.

Athene Blakeman: I would agree. Particularly in the early years, you could do some frequent reporting and then, as it becomes a more established regime, maybe push out those periods.

Q33 **Ian Lavery:** As well as the ISU's annual public report, the Government will now provide this Committee with a confidential annex. What details do legislatures in other countries look for in reports like these when scrutinising their investment-screening bodies?

Joachim Pohl: The practice is different. For instance, in Germany there are no rules on annual reports, but the Parliament, under its general rules on holding the Executive to account, can ask questions. The Government will produce numbers on demand, as has been done for many years, and it is just under the general rules of Parliament prerogatives.

I am not sure whether there is a universal answer to the question. The French regime also foresees that there is a parliamentary sub-committee that gets more information than the public does. Unfortunately, we do not know what information is being shared there. The practice is very different and is not transparent to the public, for obvious reasons, so we do not have access to it.

Q34 **Chair:** We also have a general rule that when we ask for information, Government are supposed to give it to us, but it does not always work very easily in practice. Of course, we will have this confidential annex with the annual report. I suspect that it might be a bit of a niche gathering of people who are excited to read it, but maybe we can host the annual report party here in Parliament.

There is just one other thing that I want to ask about reporting the notifications that have not been pursued. It has been suggested to us that there will be instances in which an acquirer is trying to acquire a target business, but the target business does not know that they are going to be acquired yet. If you started producing these documents that say, "Investor A was going to try to buy business B," and then business B finds out because the Government put it in a list, that is going to cause a problem. Is that a legitimate pushback to publishing that information? Or is it just a bit academic?

Veronica Roberts: In some circumstances there may be something in that confidentiality. The way that the regime works is that the minute the Government start looking at something, they are obliged, on a statutory basis, to let the target company in the UK know that anyway. Occasionally, there could be grounds for confidential treatment, but that could be dealt with on a case-by-case basis, because presumably the ISU would be aware of that in any event and could make a particular redaction and just say what sector that particular case was in.

Chair: Presumably you agree with that.

Athene Blakeman: Yes, I have nothing to add.

Chair: It should not be a block for everything; it should just be a legitimate exemption as and when the cases come up. I am sure that officials in the Department are listening, so that is very useful.

We have come to an end for today. As I say, the annual report will be coming out soon and we will look at that when it comes, as part of our process of holding the unit to account. No doubt we will hear from you and other witnesses when that report is published. Thank you for your contributions this morning. I now bring the session to an end.