

Foreign Affairs Committee

Oral evidence: The FCO's role in blocking foreign asset stripping in the UK, HC 296

Tuesday 8 September 2020

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Members present: Tom Tugendhat (Chair); Chris Bryant; Alicia Kearns; Stewart Malcolm McDonald; Andrew Rosindell; Bob Seely; Henry Smith; Royston Smith; Graham Stringer.

Questions 110-152

Witnesses

I: Elisabeth Braw, Senior Research Fellow, Modern Deterrence Project, RUSI and Professor Jeffrey Henderson, Professor Emeritus of International Development, University of Bristol.

II: Chris Cummings, Chief Executive Officer, The Investment Association and John Fingleton, Founder and Chief Executive, Fingleton.



Examination of witnesses

Witnesses: Elisabeth Braw and Professor Henderson.

Q110 **Chair:** Good afternoon, and welcome to this afternoon's session of the Foreign Affairs Committee, where we are looking into foreign asset stripping of the UK. We have two sessions, and I am going to ask the two witnesses in our first session very briefly to introduce themselves. Elisabeth Braw, would you like to start?

Elisabeth Braw: Thank you for the invitation, Chair. My name is Elisabeth Braw and I am a senior research fellow at RUSI, where I lead the modern deterrence project.

Professor Henderson: Hi, I am Jeffrey Henderson, professor emeritus of international development at the University of Bristol.

Q111 **Chair:** Thank you both for taking the time to join us this afternoon. I will ask open questions at the beginning, but please try to keep your answers brief. If the other person has already said it, please do not feel the need to repeat it. To what extent is the UK under threat from attempts by hostile actors to asset strip key technologies and industries?

Elisabeth Braw: The fundamental challenge we face as a liberal democracy, whether we are the UK or any other European country or, indeed, any other democracy, is that we are fundamentally open, which means that other countries can take advantage of our open society and try to weaken it. Combine that with a globalised society, and you get the fundamental weakness in the business world where entities from other countries can buy up companies here and get their knowledge and assets. As a result, we lose them. What is really important to understand is that unlike 15 years ago, these are not major companies. Fifteen years ago, Chinese companies bought up the likes of Volvo. That is not the trend any more. The trend is, for example, for Chinese companies to buy up cutting-edge technology start-ups, which means that we lose those assets that could be beneficial to us for years to come, so it is a fundamental threat. I hasten to add that it comes not just from China but from any country that may wish to strengthen its position globally, and which decides that it will use the strategy of essentially buying up the best and brightest of our tech start-ups in particular.

Professor Henderson: I agree with Elisabeth on that. Let me elaborate on a couple of things she said. One of the key things about Britain compared with other major European countries, be it Germany or France, and particularly concerned with the United States, is the real weakness in the regulatory and screening regime for foreign firm acquisitions in this country. The recent developments in Germany, for instance—I can talk about them in more detail if you wish—and in particular recent developments with the Committee on Foreign Investment in the United States really do underline how far behind Britain is in this sense. It is in those ways, given the reasonable presence of high-tech related innovation and its associated IP, that Britain compared with equivalent countries is not uniquely vulnerable but certainly very vulnerable.



HOUSE OF COMMONS

Elisabeth Braw: If I may, I will give an example of what Professor Henderson just said. I looked at the number of cases that the Government had intervened in between the passing of the Enterprise Act 2002 and 2018. It intervened in only eight transactions, which is obviously nothing. It is interesting that it did not intervene in the acquisition of Imagination in 2017, which became a quite famous case when, as the Committee knows, the ultimate beneficiary owner wanted to take control of the board as well. So, eight cases, whereas CFIUS in the United States, which Professor Henderson mentioned, screens hundreds of cases every year.

Professor Henderson: I will give a couple more examples to add to the Imagination case which Elisabeth just gave. This is not acquisitions by Chinese companies but acquisitions in the first instance by a Japanese company and, in the second instance, by a US company. They are first the cutting-edge semiconductor firm Arm, based in Cambridge, which was acquired by the Japanese SoftBank a few years ago and now could well be sold to the American company NVIDIA, with very serious consequences for the loss of its IP.

Secondly, a little earlier than the Arm case, DeepMind—again, a cutting-edge AI company—sold to Google in 2014, with similar consequences. They are examples of how there was no intervention, as far as I know, by the British state in either of those cases. This is a serious issue—there is no question about it.

Q112 **Chair:** You raise some interesting questions about the boundaries, effectively, because what you have been talking about, in terms of buying up start-ups, is of course the nature of start-up technology in many ways. Google does it all the time. Apple does it all the time. What is the difference here? What are you identifying that is different and hostile, and what are you identifying that is, frankly, just normal business and the normal process of a start-up founder getting to the first £1 million or £10 million or whatever, selling and then going and founding something else while the existing company takes it further?

Elisabeth Braw: That is the challenge, because we think of business globally as proceeding along the lines that you just described—you start a company, then you sell it. I witnessed this during five years as a technology correspondent in San Francisco. Usually you found a company, then you get venture capital, sell it and start your next company. The Government, legislators and regulators find themselves in a completely new situation because we are essentially witnessing business activities that, on the surface, seem completely legitimate, because that is how you do business, but because the buyer may represent or may be based in a country that is trying to weaken our countries, we have to treat those buyers differently from, let us say, a German or Norwegian buyer. That is why this whole conversation feels so uncomfortable, because we are considering the Government intervening in what would be considered free enterprise, but free enterprise is only free if it is free in every country.

The reason that we are having this conversation—not only us but legislators in many countries—is because China, in particular, operates its



HOUSE OF COMMONS

own fusion strategy, where companies operate in conjunction with the Government to achieve a national goal, which in the case of China is economic superpower status. That is why we need to look at what would seem completely ordinary acquisitions rather differently.

Professor Henderson: Following on from what Elisabeth said, the problem with corporate takeovers of start-up, high-tech, highly dynamic, innovative companies, irrespective of the nationality of the companies doing the takeovers, is that that innovative capacity, and potentially the intellectual property associated with it, is lost to the British economy. That has at least two major consequences. First of all, it weakens the competitiveness of the British components of those industries of which those particular firms are part. Secondly, it potentially has a negative effect on productivity. As many Committee members will know, over a significant period of time, compared with equivalent economies around the world, productivity in the British economy has been abysmal. Frankly, we cannot allow this to be damaged any further if we are to rebuild the British economy as a dynamic, high-wage, innovative, generally prosperous economy.

There are issues, of course, specific to Chinese takeovers. The United States is not governed by the Chinese Communist party, and we have in the Chinese Communist party probably the smartest communist party in history that we have had to deal with. However, I hope members of the Committee will understand that it is not merely acquisitions by Chinese state-owned companies that we need to be concerned about but acquisitions by Chinese privately owned companies and the various variations and hybrids in the context of China, particularly larger Chinese companies, as I guess you will know, because those companies, since 2013, have been required to hold branches of Communist party.

Let me give one example, which you may know about. In the case of Huawei, Huawei's party secretary is a member of its 10-member supervisory board. There are particular issues with regard to takeovers by Chinese companies, but those put a very particular type of spin on the problem, which in many ways is more general than merely Chinese takeovers per se.

Chair: Thank you for that. Bob Seeley, you wanted to come in.

Q113 **Bob Seely:** I have three questions, but they are reasonably brief. I want to explore, so that we can move on, by putting the free market, laissez-faire argument. Is some of our success as a dynamic information economy due to the fact that it is easy for people to sell their firms without, in effect, too many questions being asked by the state? Those people have set up their firms, so if they want to sell them to China, America or Japan, why can they not do so?

Professor Henderson: Let me throw a question back to you. We hear a lot about the fact that Britain is a dynamic information economy but, when compared with equivalent economies—many of the leading economies in Europe and certainly the United States—it does not come out well.



HOUSE OF COMMONS

Everyone knows what the economic structure of the British economy looks like, and most people on the Committee will know what key elements of that structure are responsible for GDP. We have to temper our concerns here about the current state of Britain's information economy—in my view that is nowhere near as significant as its competitors'—against taking cognisance of, and thinking very hard about what we want to be in 10, 20, 30 or 50 years' time as an information-based economy. It is in terms of the future that I am largely concerned about what is happening in the British economy with regard to these technical issues, rather than the present.

Q114 **Bob Seely:** To paraphrase, Jeffrey, in effect you are arguing that we are out of sync with other free market economies in our balance between allowing entrepreneurs to sell and a sense of social responsibility while also looking at it from a national perspective.

Professor Henderson: Correct. That is absolutely the point. May I underline what I said with a comment that some Committee members might find controversial? I, together with a lot of people, take the view that the principal obligation of all companies in any economy, irrespective of ownership, is to contribute to the common good. There are various ways in which to contribute to the common good. Maybe, in some cases, that revolves around, more or less, free market-type arrangements, but in others it involves all sorts of state assistance and state orchestration of development in various ways. The north-east Asian cases—Japan, South Korea or Taiwan—or China today, in a very different sort of way, are obviously very good examples of that, as have been some of the European cases, such as Germany and the Scandinavian countries in the recent past and, to some extent, still today.

Q115 **Bob Seely:** You talked about China. You made a distinction—of sorts—between the Chinese state and Chinese private companies. Considering China is a one-party state, I am curious about this. The Government have said repeatedly that Huawei is a private company, but in a communist state, do you really get private companies?

Professor Henderson: That is a very interesting question. First, there is an enormous variety of corporate ownership in China. Even companies that are regarded as state-owned companies, in some cases have majority private ownership—they are floated on the Shanghai, Shenzhen and occasionally Hong Kong stock exchanges. There are also largely state-owned companies that are controlled not by the central state, but by provincial Governments, for example.

A good case is Zoomlion, for example, which is controlled by the provincial Government of Hunan and has made major acquisitions in Italy, among other places in Europe. Zoomlion is only 25% owned by the Government of Hunan province. The rest of its ownership was floated. That is my first point.

The second point is about privately owned Chinese companies; I will draw the connection between these two in a minute, Bob, if I may? For a



HOUSE OF COMMONS

significant period, since the economic reforms that involved manufacturing companies began to move ahead, from roughly the mid-1980s onwards, private companies were never like those in Britain or the United States. That was clear for a variety of reasons, not least that with many of those manufacturing companies—Huawei is a case in point—the entrepreneurship came from people who were officers in the People’s Liberation Army. That is the case with Mr Ren, as you well know, who is the founder of Huawei.

The key issue is the relationship between the Chinese Government and the Chinese Communist party. In many ways, it makes no difference how you talk about these two entities, but in some ways it is important to make distinctions between the Government and the party; the governance of larger private companies in China today is one of those instances. Since the accession to power of Xi Jinping, and the people around him, in around 2013, there has been a requirement for larger Chinese companies to host their own branches of the Communist party.

The figures are obviously very difficult to come by, but the only set that I have seen show that by 2018 something like 95% of larger Chinese, notionally private, companies and around 68% of all Chinese companies had party branches in them. That is part of a Xi regime project to take deeper control of all sectors of the Chinese economy and civil society. Shall I go on or am I going on too long?

Bob Seely: I would love you to go on, but I am slightly wary that Tom probably wants to move on. Do you mind, Jeffrey—

Professor Henderson: Let me come to the crunch. The issue is that Huawei’s ownership structure is about 99% owned by a trust fund that is governed by Huawei’s employee trade union. Because that is a legal trade union in China, it is affiliated with the All-China Federation of Trade Unions, which is, of course, a branch of the Communist party and—

Chair: I am going to draw this to close because I do not want to go through the ownership structure of Huawei. That is not relevant to this element of this inquiry. Can I bring in Graham Stringer, please?

Q116 **Graham Stringer:** Professor Henderson, you seem to be making a distinction that, fairly obviously, Chinese or Russian interests are hostile to this country, but you are also making the case, I think, that American and Japanese takeovers are an economic threat to this country. Do you think it would be possible to protect against both those threats, as you see them, in one piece of legislation?

Professor Henderson: I have been talking quite a lot so far, so can Elisabeth respond to that in the first instance?

Chair: Forgive me, but the microphones in this room are extremely unresponsive. Please could someone sort that out, so when people speak we can hear them? There is a ten-second lag at the moment.



HOUSE OF COMMONS

Elisabeth Braw: That is the fundamental challenge. We have countries that are clearly competing against us with unfair leads in the business domain. We also have friends that compete vigorously, but not unfairly. For example, Germany has some of the world's very best space start-ups, and the Americans are energetically scouting them out and investing in them, because that is the best way to get access to cutting-edge space technology for the Space Force and other things.

With regards to your question, I do not think it is possible to get both friend and foe in one piece of legislation. The only way to get a workable screening mechanism in place is to have a white list of countries that we fundamentally consider our allies—EU countries, Japan, Canada, Switzerland, the United States and maybe a few others—where companies from those countries would be able to invest and acquire companies in our countries, or the UK in particular, without having to go through Government screening. Then everybody else would have to go through Government screening above a certain level—for example, 10%, 20% or 25%, which is the level that those other countries have for Government screening. But how to distinguish between friend and foe when both compete in a globalised market, with one more aggressive than the other, is a dilemma in a globalised economy.

Q117 **Chair:** Professor Henderson, do you have something to add?

Professor Henderson: The issue for me on this question is bound up with what your definition is of strategic industries and strategic companies. If you are going to think about strategic only in the standard international relations way—geopolitical security and industries that are fundamental to the functioning of the rest of the economy and society—that is one thing. It may well be that one can have a looser regime for screening for Britain's allies and countries that have more or less similar liberal values and democratic political systems. But if you are also concerned about strategic companies in the sense of being commercially strategic, that raises interesting questions. This is why I referred to the examples of Arm and DeepMind in my earlier contribution. You need to be very careful, and you need to look at countries—in terms of these technologies, particularly at the United States—because therein you have large capacities and large potential for absorbing British companies of that sort. Whether it can be dealt with in the same legislation—yes, I don't see why this should not be possible in the ways that Elisabeth indicated. Indeed, in terms of the mechanisms through which this can be effected, it could be fairly straightforward. If you wish, I have something to say about the sorts of mechanisms that could be quite useful, in terms of the screening process and—

Chair: Forgive me, but can I draw this to a close? We have quite a lot to get through, and it is dragging on.

Q118 **Royston Smith:** I think we all know what we are talking about, but perhaps both of you could put it on the record. What are the strategic advantages of one country having exclusive access to certain cutting-edge technologies? What is their strategic advantage? I think we all know



HOUSE OF COMMONS

the answer, but let's get it on the record.

Elisabeth Braw: I can start. I don't think that it is a question of one country having exclusive access. It is a question of a country losing the access it once had—for example, if it loses the tech start-ups with a particular specialisation because another country decides it needs that expertise and simply buys it out. That is what distinguishes an ally from a strategic competitor: the strategic competitor takes no consideration of the wellbeing of countries such as the UK that may lose that access.

If I may just give you an example, the best study of the acquisitions we are talking about was conducted last year by the Swedish Defence Research Agency. The team there found that since 2001, 51 Swedish companies had been acquired by Chinese buyers. Most of them had been acquired since 2014, and half of them were in the areas of the Made in China 2025 plan, which illustrates what we are talking about here. It is not just major acquisitions because it looks good if such-and-such a country owns a major consumer brand; that is not what we are talking about anymore. We are talking about healthcare technology, biotech and so forth, where companies may be so small that we are not even familiar with their names, which is why investor screening is so essential. We cannot have a situation where a commercial move is prevented only because a few alert MPs rebel. Sorry, I steered a bit in another direction, but that is the fundamental challenge.

Q119 **Royston Smith:** Did you want to add something to that, Professor?

Professor Henderson: Yes. Your question was, "What's the problem with one country having monopoly access to particular technologies?" Is that it?

Royston Smith: Yes, that's it.

Professor Henderson: Because in contemporary economies, and the likely future of the most dynamic and prosperous economies in the world, those technologies are going to be central to their competitiveness and their capacity to grow prosperous, relatively egalitarian economies. Countries that do not have some control over those technologies are going to be in trouble; it is as simple as that. We are increasingly moving away from the open, globalised economy that we have known for the past three decades or so, and inevitably—this is shown particularly in the United States itself, of course—control of, and national anchorages for, these types of technologies is going to be crucial to the economies concerned, and therefore to prosperity and all the rest of it. That is why: if Britain is not in this game, it is in serious trouble. That would be my point.

Q120 **Royston Smith:** Agreed, and understood. We mentioned the Made in China 2025 policy. Are there any other countries that have a similar approach? Russia, for example?

Elisabeth Braw: I am glad you asked that question, because it would be unfortunate if this turned into a discussion about China and how we stop China. The biggest challenge we have today is China, but any other



HOUSE OF COMMONS

country with access to a certain amount of capital can decide that it too wants to gain economic power. It will never become a superpower, of course, because only the US and China can currently make a claim to that status, but any other country that gets access to a considerable amount of capital can decide it wants to become a much more important player than it currently is, and could then start an acquisition spree similar to what we have seen from China.

At the moment, Russia does not have access to that amount of capital, and if Nord Stream is blocked, it will not even get that capital from selling gas. It just does not have the sort of capital floating around where it could go on a buying spree, and frankly—this may be a controversial view—I doubt it is as united as the Chinese Government in a way that would enable it to pursue that sort of very strategic path. Again, however, the point is not about blocking China; it is about keeping our economy safe so that others cannot raid it, so any screening should be adversary agnostic. That way, we keep our assets safe while being reasonably open to the global economy.

Professor Henderson: My short response to your question with regard to Russia is that it is not a problem. Cyber-security, yes; acquisitions of British high-tech companies of sort that we are talking about, no. The reason for that is the structure of the Russian economy. Something like 90% of Russian GDP is generated through oil, gas and other minerals and chemicals, and the other 10% is made up largely of financial speculation and real estate speculation of various sorts. Russia simply does not have the companies that have the capacities to absorb the sorts of British companies that we are talking about. So in my view, in terms of national concerns, I would say that number one is China and number two is the United States.

Chair: Alicia, you wanted to come in.

Q121 **Alicia Kearns:** This is a follow-up to that point, Professor Henderson. Countries such as Russia may not engage in what we call straightforward asset stripping, but obviously they do conduct sophisticated industrial espionage. Should we not consider espionage and takeovers on the same continuum of economic interference?

Professor Henderson: Clearly, those issues overlap, but it surely needs to be done on a case-by-case basis. It ought to be able to have parallel mechanisms—they already exist, of course, to some extent—that can deal with the issues of cyber-security. What we are really talking about, in terms of asset stripping and acquisitions of British high-tech companies, is the companies of other countries, for better or worse, absorbing that innovative capacity and IP, and building up their corporate base in those areas as a result of that. So those are, in some cases, related issues, but it seems to me they need to be kept separate to a large extent.

Q122 **Alicia Kearns:** Ms Braw, I can see that you wanted to come in on that.

Elisabeth Braw: Yes, I think there is a fundamental difference between the two, which is that espionage is illegal and buying companies is legal.



HOUSE OF COMMONS

That is the juncture where we are now—where aggression can take forms that are not prevented or banned by legislation, but that clearly need to be addressed by legislation. Otherwise what is to prevent countries, through their companies, continuing to weaken us? That is where the fundamental difference is.

Q123 **Alicia Kearns:** I agree. I think the issue is that if we think of it in terms of what is currently legal and what is not—espionage—we almost fall into the trap, which is that we recognise that those states do not operate based on what is legal and what is not, and they would deploy any lever of influence they have to effect their goals. In terms of that, I think it is important that we move to seeing asset stripping as on a spectrum, shall we say, with economic interference—sorry, espionage. In terms of the implications of hostile takeovers, can we yet categorise the types of technologies that are most sought after by hostile actors? On the other level, while they might not those most sought after, which types are most concerning and should be most strongly protected?

Professor Henderson: Shall I go first here? First of all, we are not merely talking about hostile takeovers. Imagination Technologies' sale to Canyon Bridge in the first instance was not a hostile takeover. Hostile takeovers may occur. Clearly, they can occur in an economy such as Britain's where the vast majority of investment finance is raised through capital markets, which are by definition open, much more easily than in the German or Japanese economies, where most of the corporate finance comes through bank loans. It is much more difficult to engage in hostile takeovers in those circumstances. That is the first issue. Hostile takeovers may be a limited feature here.

In terms of the actual technologies, I do not want to say too much, but I want to emphasise the point I made earlier. This is bound up, as far as I am concerned, with what the working definition of a strategic industry and a strategic company will be. Will it only be in terms of the notions of strategic that we are predominantly talking about here, and which the Foreign Office is, presumably, most concerned about, or will it also be strategic in a commercial sense? Let me give you two examples of what I mean by the latter.

Jaguar Land Rover is in serious financial trouble. It has a joint venture arrangement to produce cars in China with the state-owned Chinese auto company Chery. A few months ago, Tata, Jaguar Land Rover's owner, on behalf of JLR, borrowed something in the order of half a billion dollars to support Jaguar Land Rover from Chinese banks. My guess is that Jaguar Land Rover could, in the very near future, be heading for ownership by a Chinese state-owned company. Is that something we need to be concerned about?

Let me give you another example, which crosses over between the sorts of technologies that we have been talking about and the commercial dimension—strategically commercial. Rolls-Royce engines, again, is in financial trouble, partly because of covid. If it seeks investments from outside the country, they may come from all sorts of places. They could

come from General Electric or Pratt & Whitney in the United States or where have you, but, in principle, they could come from China's Aero Engine Corporation, a centrally state-owned company. How would members of the Committee and the Government feel about a Chinese state-owned aero engine company taking even 10% in Rolls-Royce engines? You have to work out what you are talking about here in terms of strategic companies and technologies.

Elisabeth Braw: A very useful guide is the 10 areas of Made in China 2025. I will just highlight a few: next generation information technology, robot technology, space technology and innovative materials. A very important one is biomedicine, which makes technology in medical equipment. Another useful guide is the main areas of Chinese FDI in the EU in 2018. The main areas of investment were automotive, financial and business services, health and biotechnology and ICT. There is an overlap there between the areas that are the pillars of Made in China 2025 and where they invest in Europe. When it comes to which areas we should be concerned about, clearly it is those.

It is also useful to think about how we would operate if there was a crisis and we did not have that capability in the country. For example, as we saw in the early stages of covid-19, when we discovered that we did not have PPE, production capability was all in China. Well, it is easy to convert a factory to PPE production—even Burberry made PPE—but it is less easy to convert a factory to microchip production; in fact, it is extremely difficult. It is not like every single good has to be made here because supply chains could be disrupted at some point and we would find ourselves without them—that would be autarky—but we clearly need to keep highly-complicated or complex products and services here to keep the economy going and, of course, to keep it vibrant. It is not just about when there are disruptions, but about keeping expertise in the country.

Q124 **Chris Bryant:** I understand that there is a particular nexus where you have high-tech and security issues, allied with the national interests of countries that have an ideological determination about how the future should be driven and that have large number of state-owned businesses to be able to effect that state strategy. I could argue that Cadbury was strategically important to the industry of the south-west—to Bristol and large chunks of the west midlands—and that the takeover by Kraft was not in the interests of the economy. How do you draw a distinction, or should you not draw one?

Secondly, I rather like the idea of a country having an ambition to be world leader in 10 different high-tech industries. Would it not be ideal if Britain had such a strategy?

Elisabeth Braw: We should have a Made in Britain 2025.

Q125 **Chris Bryant:** Well, why can't we? Is there a reason why we could not or should not?

Elisabeth Braw: That is the advantage of an authoritarian system over a liberal democracy: we are just too disorganised. We do not have a



HOUSE OF COMMONS

Government that can command other parts of society to be part of a national plan, not just for the next year, but for the next 10, 20 or 30. Moreover, if I may be so bold, the problem, particularly in economically liberal countries such as the UK, is that business leaders and businesses have been told for many years that they should just look after themselves and their shareholders, and not consider their obligations to the country. Now we have reached a point where businesses go on their merry commercial way and strike commercial deals without consideration for the country, but I think pleas could be made to them that what is good for the country is ultimately good for them, too, even if it may derail certain immediate deals that they have in mind.

Q126 **Chris Bryant:** France seems able to invoke the national security clause far more rapidly. Am I being unfair in saying that, professor?

Professor Henderson: You are not. The issue is fairly straightforward: Britain is simply on the extreme neoliberal end of the world's principal developed economies. It is a deviant case, and I include the United States in this comment. The vast majority of the world's most dynamic economies have interesting, complex and nuanced mixtures of state and private involvement. That is the problem that we have in Britain—we have had it for many years—and it has been one of the principal sources of Britain's relative economic decline.

Chris Bryant: Thanks. With that, I think I will hand over.

Chair: I think that made it clear. Royston, did you want to come in?

Q127 **Royston Smith:** I did—thank you, Chair. In stark terms, what frameworks should the UK implement to ensure that it can prevent the loss of sensitive companies? What should we actually do to stop that?

Professor Henderson: Can I go first, Elisabeth? First of all—I am sure you are doing this anyway—you need to take a look at the countries and other agencies that have effective screening mechanisms at this moment in time. The EU itself is clearly not one of them, because it lacks the executive authority, and it operates more as a co-ordinating mechanism for the nation states in this area, as in others. In the European case, the German legislation is the most interesting. It has recently been tightened, dropping the threshold for screening from what was previously more than 25% of the equity down to 10% of the equity.

It is the Committee on Foreign Investment in the United States that really is the benchmark that needs to be looked at. I would recommend that you take a look, in particular, at the way its screening mechanisms have been tightened up. That was done in January this year. There are a number of interesting ways in which they have been tightened up. They focus not on ownership per se. That is, to a large extent—particularly with regard to China—a misnomer. The issue is: who controls the companies that do the takeovers and the companies that are then taken over? The new US legislation focuses not merely on formal mechanisms of control, but informal mechanisms of control. That seems to me to be crucially



HOUSE OF COMMONS

important. I strongly recommend that you look at the new legislation in the United States as a possible benchmark for British purposes.

However, I think there is a much easier, much less bureaucratic and probably cheaper way of doing this. It is one of the few advantages that we have to being outside the European Union. It is this: having identified which industries and companies are strategically important, the Government merely takes a golden share in those companies and places a non-executive director on their boards. If that were to be done, problem solved. As members of the Committee know, the golden share has in Britain's economic past been evident. The last case I remember was the golden share in BP. If you take a golden share in those companies, you know straightaway if there are problems brewing, in terms of takeovers by foreign companies that, for whatever reasons, would be problematic for that company, the British economy and wider security issues.

Q128 Royston Smith: Let's assume, then, that the UK follows one of those strategies. You said—and I think we all agree, but for different reasons—that China and the US are the biggest threats. What would be the potential damage to diplomatic relations if we were to implement one of those strategies?

Professor Henderson: Diplomatic relations with the United States, or do you mean China?

Royston Smith: Not so much China. I am sure with the United States it would probably be more significant.

Professor Henderson: Well, the United States does this anyway. That is what its committee does. It screens not merely for China but for other foreign takeovers as well, so it is easily dealt with in the United States case—in other words, it is merely a quid pro quo.

In the case of China, I think the strategy needs to be two-pronged. First, make it clear which industries and which areas of the British economy are potentially open to Chinese investment, be it by private companies or state-owned companies. Clearly, there is not much problem if there are takeovers of various sorts of financial companies. There is certainly no problem if Chinese companies take over more football clubs in Britain, or whatever it happens to be. It could be made clear that there are areas of the British economy where Chinese investment would be welcomed, but there are other areas where it would not. In explaining why those other areas are not open for Chinese investment, you simply refer to the fact that those industries and those companies in China are not open to foreign investment. In other words, there is no quid pro quo in the Chinese case. That is where you start.

Elisabeth Braw: If I can add, the German legislation is definitely the best. With regards to the diplomatic damage that could be done, I don't think there is any harm in saying that the UK belongs to a group of nations that are on friendly terms with one another. Maybe the relations with the EU 27 are not very good at the moment, but it is still a group of allied



HOUSE OF COMMONS

countries. If you are China, or if you are any other country that may wish to invest in UK companies, you are just not part of that group.

If I may highlight one aspect from the newly strengthened Italian legislation, that is the golden power. It aims to preserve the high-tech know-how in Italy, which is really important to bear in mind as a legislative objective.

What is the second step after you ban a buyer or ban a takeover? That is something that is really important to bear in mind when we talk about foreign asset stripping, because the companies that would have been acquired in many cases will be very unhappy if the proposed deal is banned by the regulator.

Professor Henderson proposed golden shares. Another way of going about Government involvement or state involvement is to strengthen NSSIF, which is essentially the UK Government's budding VC.

What about giving NSSIF the funds and opportunity to invest far more widely so that it could invest in high-tech start-ups that would otherwise have been acquired by Chinese companies whose acquisition would be banned under potential new legislation? That would even be a good deal for the taxpayer, because these are companies that will go on to great strengths and if the Government have invested in them, that would be highly beneficial.

I have one last point. If we ban buyers from particular countries, we should then also think about the sort of companies that could pop up to buy the company instead. Grindr in the US is a good example. Grindr was acquired by a Chinese company and then it woke up to the fact that for a gay dating app, that data being made available to Chinese authorities is not a good idea and it forced a reversal of the acquisition. Then it was sold by the Chinese buyer and now it has been acquired by a completely new entity that is owned, as it happens, by people connected to the original Chinese buyer. So that is the second step—a nominally domestic company may pop up to buy the company instead and we may find out that it is very closely connected to the original intended buyer. The second step is really important. If not the Chinese, then who? Or if not the company from the country that we have concerns about, then who?

Q129 Chair: We are talking widely about the strategic nature of companies and you have raised various different elements there, Ms Braw. Can I come back to the question of a golden share? I am just going to push back on it. It was obviously the answer in the 1970s when strategic companies grew relatively slowly. I think we can all list companies that have gone from nought to dominant in the space of 12 to 24 months. At what stage in a start-up venture should the Government be thinking about taking a golden share and in what kind of company?

I declare a slight interest here in that I am an investor in various start-up technology, and some of them that I thought were going to develop in one area did not and developed in another—either profitably or not. But the



HOUSE OF COMMONS

underlying technology that was thought to be neutral may turn out to be something quite different, because the nature of information technology today means that the underlying algorithms determine success and can be applied in not just dual use but triple, quadruple or even more. At what stage in the journey should the Government take a golden share of somebody coding in their attic? Should it be when they have their first employee or when they raise their first angel round? Should it wait until series A, B or C? Frankly, these days series C can often be far, far too late.

Professor Henderson: I agree that it could well be far too late. I do not think there is a hard and fast rule here that we can come up with; it depends on the company itself. What I would recommend, however, is that the Government develop an institutional capacity to monitor corporate emergence and corporate developments within those industries associated with those technologies they are principally concerned about.

There may be some parallel here to how I understand some venture capital companies go about taking their decision about whether to invest in a small company or not. My son, for instance, is a scientific adviser to a venture capital company in New York. He spends his time tracking down biotech start-ups, looking at their scientific case and making judgments about what stage they have reached in terms of their scientific development to pass on to his colleagues, who look at the business case. In other words, these are highly variable things and I do not think you can say: intervene across the board at this point in a company's development, or at that point.

Q130 **Chair:** Even that level of intervention requires a much more interventionist state than the UK or the United States. The level of intervention that sees a venture capitalist trawling a particular industry or market is a significantly greater level of input than most Western states have done since the war. It would really be a radical transformation in the UK's economy.

Professor Henderson: Maybe these are the times when we need radical transformations in the British economy.

Q131 **Chair:** Sure, but it would change it from being an open market to a controlled market. That is the point I was making.

Professor Henderson: Not necessarily. I do not think so.

Elisabeth Braw: In-Q-Tel is a good model: not direct Government intervention or action but a Government-owned outfit operating like a private one to the benefit of national security. In-Q-Tel obviously focuses on start-ups relating to intelligence in the wider sense, but why would that not be possible in other areas? Yes, it is an unusual level of Government involvement in an otherwise private sector, but if the Americans dare to do it, the UK should dare to do it, too. Ultimately, it is not to the detriment of the taxpayer, which is an important consideration.

Chair: Forgive me—all of that was raised really because I remember in, I think, the Iraq war, sanctions were put on one of the game providers



HOUSE OF COMMONS

because the technology going into video games was such that it was now dual use and able to control missiles, and that was 10, 15 years ago. Now, the information that goes into many of the most basic forms of algorithm that control various aspects of life—whatever it is—could be applied in various different ways.

Chris, you wanted to come in.

Chris Bryant: That has pretty much covered it.

Chair: If there are no last points, I will draw this session to a close. Bob, did you want to make a last point?

Q132 **Bob Seely:** On the question 6 stuff, I think we have answered a lot of it and we have certainly talked around what lessons the UK can take from other countries, but can I just ask Elisabeth something very briefly? She said that German legislation is the best. Why is it better, for example, than the stuff we more commonly look at, which very often is Australian and sometimes from the United States? Is there anything she could point us to that we could read? Is it that the legislation is the best, or is it the political determination behind it or the economic power given in the legislation? What makes Germany so good and what are the critical ingredients that we should have? Should we look at companies and universities, for example?

Elisabeth Braw: That is a very good point about whether it is the legislation or the political will. What is so good about the German case is that they had an early mishap and learned from it, so for them it is not an abstract consideration but an absolute lesson learned—that lesson learned was, of course, when an industrial robot maker was acquired by a Chinese company and became a Chinese company—and the fact that they intervene quite quickly and without a lot of fuss. For example, recently one of the German space start-ups that I spoke with had been approached for takeover by a Chinese firm, but the German Government just quietly told them that that would not be happening. Now, that company may receive an American investor instead, and we can argue whether that is good or bad, but it clearly works.

My concern about the UK and the proposed legislation that was included in the Queen's Speech is that a lot of it is based on self-reporting to Government by the company wishing to be acquired. It seems a little bit risky to rely on that, although I guess the alternative is that energetic MPs discover something is afoot and then make a fuss about it. More comprehensive attention to the deals that may be about to happen is really important. It is also important not to shame the other country and make it feel unwelcome, because there is no benefit in that and in fact there would be diplomatic damage in doing that, but simply to go ahead and communicate that the deal will not be happening.

Q133 **Bob Seely:** One tiny final point: is international co-ordination necessary? You used the example of Grindr, where the Chinese tried to buy Grindr because they said, "There's lots of great information here.", but the



HOUSE OF COMMONS

Americans said no and it got bought by somebody else who then involved the Chinese. If I were a Chinese company and really wanted to be crafty, I would get a British company to buy a German company, and then the Chinese company would buy the British company, and that would get around German legislation.

Professor Henderson: Absolutely. That is a very serious consideration, I think, Bob. In a way, that is the sort of thing I suspect the new German legislation is designed to pick up, because it screens not merely for current risk, but for future risk. Clearly, if Imagination had been screened for future risk, then it could probably have been foreseen that behind private equity was state equity, in the Chinese case. That seems to be crucially important, but the issue that you asked Elisabeth about is decisive: Germany is good because of the political will involved behind it. Bear in mind that article 14 of the German constitution, on private property, says in its second clause that property holders must contribute to the common good. That is an indication that there is a very different economy in Germany from what the British one has traditionally been. Political will is crucial.

Chair: Thank you both very much indeed, Professor Henderson and Ms Braw. I am very grateful for your time. At that, we are going to stop this session and go on to our next two witnesses.

Examination of witnesses

Witnesses: Chris Cummings and John Fingleton.

Q134 **Chair:** Can I ask both witnesses to introduce themselves? Mr Cummings, why don't you go first?

Chris Cummings: I am Chris Cummings, chief executive of the Investment Association, the trade body that represents the interests of UK-based investment managers.

John Fingleton: I am John Fingleton, former CEO of the Office of Fair Trading, which was succeeded by the Competition and Markets Authority, which plays a central role in national security and mergers. I advise Ministers on regulation. I am also the senior independent member of the Innovate UK council, but I am speaking in a strictly personal capacity.

Q135 **Chair:** Thank you both for joining us. Mr Cummings, you have observed the UK investment market for many years. Have you noticed any changes in the patterns of UK tech company investment in recent years in terms of the number of investments, the size of investments or the degree of control by foreign companies?

Chris Cummings: You are right to start with the tech industry as one that is both a potential source of competitive advantage for the UK and one that is particularly of interest to investment managers. As I know you know, but to inform other members of the Committee who might not be as familiar with the industry, we manage £7.7 trillion of other people's money. It is savings from UK citizens around the country. Some 75% of



HOUSE OF COMMONS

UK households use the services of an asset manager. We also look after pension scheme money and funds from insurance companies. It is a very diverse ecosystem of pension savings that our industry is entrusted to manage. We do that in order to seek out high-growth, long-term investments in companies that we think are long-term viable and good bets, as well as trying to identify those who are going to be the success stories of tomorrow. So the technology industry is one that is near and dear to our hearts. In fact, at the Investment Association we feel so strongly about the role of technology that we launched our own FinTech accelerator unit a couple of years ago. That is a little unusual for a trade association, but we wanted to make sure that we were bringing together the best of FinTech and investment management to create the businesses of tomorrow and to help our members invest in the growing FinTech revolution.

What we have seen over recent years has been the growth in tech companies here in the UK. It is still true to say that the UK has leadership in technology and technology investment. It is a hugely competitive environment both here and in Europe, with major moves by the French, who recently established a major facility just outside Paris, and Berlin trying to really grow its tech centre. Looking more globally, the US continues to be a natural home for tech companies seeking not just the first round of investment, but looking to bring growth companies to the market. That is why we are so keen to work with the listings authorities here in the UK to make sure that the UK continues to be a great place for those companies to get beyond venture and angel capital and start to grow, develop and mature and take their businesses to market.

There are other areas that I would like to speak to the Committee about in terms of co-investing with Government, or how we would evaluate an investment with other international investors and how investment patterns have changed. Perhaps I should take a breath there and allow John to make a comment.

John Fingleton: I won't answer that question. I think Chris has answered it.

Q136 **Chair:** How would you change the regulatory landscape?

Chris Cummings: What we are very keen to see is that the investing ecosystem is made as attractive as possible, as low cost as possible, but also maintaining high levels of investment standards. To drill down on those points a little, the UK has an unrivalled reputation around the world for good corporate governance and stewardship. From my members' point of view, we seek out companies both when they are ready to go to IPO and before. One of the major growth trends over the last few years has been the development of what we call private markets: investment managers looking for companies in those early stages of growth that are not yet ready to list their businesses but are looking to grow their operations. There has been a real and significant increase in private market activities by investment managers giving the growth capital. FinTech, bioscience and life science companies need to finance their



HOUSE OF COMMONS

growth. Obviously that is good for the UK economy, and it is one of the reasons why we are able to put some £1.7 trillion to work in finance in the UK economy on behalf of UK savers and pension funds.

We want to create an environment that maintains high standards of corporate governance, and where transparency is absolutely key. As investors, we can rely only on publicly available information. We want to work with the regulatory authorities to make sure that, as companies come to market, we as investors have confidence in the information that they are publishing, and that we can rely on the authorities to make sure that the market is well policed but also remains attractive. It is really noticeable how in other parts of the world, particularly in the US, we have seen different standards of corporate governance, but I still think the UK has an appeal for being a world leader in setting standards. We are doing some work at the moment with the Treasury, looking at a review of stewardship to make sure that the stewardship code that we have been so proud of here in the UK can still be fit for the 21st century and our post-Brexit world.

Q137 Chair: I believe you were listening to the session earlier. Do you recognise some of the elements that we were raising about state-owned enterprises and some hostile state powers?

Chris Cummings: Indeed. There were some absolutely appropriate warning bells rung, and I would agree with some of the comments that were made earlier. The silver bullet in all of this, of course, is transparency. When we are looking at investing in a company, whether it is a tech company or any other type of company, we are really trying to identify not only whether that company is long-term viable, but whether it is a good long-term investment. We want to make sure there is clarity of ultimate beneficial ownership. If it is a technology company, we want to make sure that the IP is properly protected. We worry a bit about group companies, because there can be related company transactions where you think you are buying a company but, actually—whether it is a state actor or a diverse group—the assets are moved from the company that you think you are buying into another company. We as investors have no foresight of that, which is a great concern. We also expect to be able to hold the boards of those companies clearly to account. It is not the role of an investment manager to run the company, but it certainly is the role of an investment manager to deeply understand the strategy of the company, to have confidence in the management team running the company, and to make sure that the investee company conforms to the levels of high standards that you as a Committee would absolutely want to see.

Q138 Chair: Can I come back on an element of this? Clearly, what we are discussing here is an element of balance. We would not say that every single purchase of any of the many thousands of companies that are listed at Companies House needed to be approved by the Government, but nor would you say that every purchase or acquisition is free. How do you see that balance, and how do you see ideas such as a golden share or an identified list of companies?



Chris Cummings: We start from a point of view of wanting to make sure that there is a vibrant market, where the UK really maintains its position as being an open and innovative market—a great place to start up and grow a new business—but these are changing times. We therefore have to recognise and respect the desire of Governments, particularly the UK Government, to oversee the market from a national security point of view. The challenge as an investor—I can speak only on behalf of the investor—is to fully understand what co-investment with Government would look like. There was a comment about a golden share from Professor Henderson a little earlier. I know that BAE Systems has a golden share apparatus. However, from our point of view, it really should be one share, one shareholder, one vote¹, because that protects the democracy of investors; it protects minority shareholders as much as majority shareholders. We certainly worry about a retrospective move to introduce a golden share system.

Having clarity of investment and on the rules of the game is absolutely essential. Perhaps, in thinking about some of the proposals that the Government have put forward—the Enterprise Act and so on—having a degree more specificity, so that we are not caught out, would be even better than where we are today. We encourage the Government to do some more consultation and really clarify what they are trying to achieve and the difference between a national security interest, which I think speaks to what many of us want to see, and something a little wider—a public interest—which I think could be worrisome and could lay itself open to future abuse. Those are areas that we want to gain a granular understanding of.

Q139 **Chair:** Can I perhaps summarise this? Effectively, you seem to be saying that the important thing is that the rule of law is predictable, whether national or international, and that in that predictability lies the strength of the British economy. If you cannot predict, you cannot invest. If you are not certain of a treaty, if you do not know which bits apply and which bits do not, or if one side violates a treaty that you thought they had signed but it turns out that they have torn it up, you are leading to unpredictability, you are undermining the economy, you are weakening the structure of the state and you are making it much harder for companies to invest for the future. Is that correct?

Chris Cummings: Indeed. There are certain historical competitive advantages that the UK can still pride itself on. The rule of law is paramount among those, and one reason why 50%, I believe, of the world's commercial contracts are written using the law of England and Wales. Our court system is held in such high regard internationally, and it forms part of the weft and weave of what makes the UK attractive, along with that regulatory system that ensures fair play. We would worry if the Government were overstepping the mark and interfering in every commercial transaction, or even if there was a worry that they could start to interfere in different transactions where there was ambiguity about

¹ Note by witness: In referring to the phrase “one share, one shareholder, one vote” I misspoke. I meant to say “one share, one vote”.



HOUSE OF COMMONS

whether it was public interest or national security that was really driving the Government's motivations at that particular point.

From an investor point of view, I can only say that it would reduce the attractiveness of particular categories of companies or industries to invest in, which would then depress the returns and ultimately may lead to lower levels of investment return and pensions for those investors who decided to invest in those companies.

Q140 **Chair:** So undermining the rule of law would cost the United Kingdom and cost the British people? Is that what you said?

Chris Cummings: Yes. Sorry; I was nodding along vigorously—a substantial yes.

Chair: Bob, you wanted to come in.

Q141 **Bob Seely:** Your industry facts are all laudable. Effectively, you do not seem to be saying that there is a problem with UK regulation, and you argue that it is in our economic interest to allow a very light-touch, laissez-faire role. We are noticeably more laissez-faire than the United States and Germany, both of which, last time I looked, are free market economies that are taking, arguably, a less naively laissez-faire approach and are thinking about their long-term economic growth and concern over loss of IP to other countries. Do you find that you are arguing against the grain of thought nowadays, because you do not seem to think that there are significant economic concerns out there from systematic purchases of IP, or indeed IP theft, from countries like China?

Chris Cummings: Forgive me if I was overstating the case. I think there are always lessons to learn. When we are reviewing what makes the UK an attractive place for investment, looking at the listings regimes and all the way through to the stewardship code, we are very keen to learn what we see as lessons from good practice internationally. As was referred to earlier, what we have seen in the US recently—although it is not for me to advise the Committee where you should be gathering evidence from, looking at what has happened in the US is a very sensible direction to pursue, as were the comments about the German experience as well.

Q142 **Bob Seely:** Are you saying they are both the same, or are you talking about the Trump statements about trade war and the slightly bombastic approach that arguably that President is taking? Or are you talking about the committee that looks at foreign sales and the German model, which you think would be valuable for this country as well?

Chris Cummings: I was referring to the Committee on Foreign Investment in the United States, which has published some sensible proposals. Forgive me; I can only really speak to these issues from an investment point of view. What we are really looking to do is make sure that there is transparency from an investor's point of view about how to evaluate a company—how we can value the potential investment in a company. We do that, of course, as part of the weft and weave of how the industry works in thinking about who to invest in, but also how to stay



HOUSE OF COMMONS

invested in those companies—whether to exit or whether to increase our holdings in those companies. It is slightly different for index investors who—

Q143 **Bob Seely:** It does sound as if you are basically saying, “As long as we know what the law is, we don’t have a problem with what the law is.” So you are not approaching this from an intellectual property point of view or a national security point of view or a public interest point of view. That is not a criticism; it is just a statement of fact—yes?

Chris Cummings: The national security point of view is, of course, pre-eminent. Everything that we have been through in the ongoing crisis shows that the definition of national security is perhaps a little broader than people would have expected maybe if this Committee had been meeting a couple of years ago, when we would have been keen to talk about technology, aerospace, defence and so on. Having a more comprehensive view of national security is vital. The point I am arguing—forgive me if I am not being as erudite as I should be—is around understanding the difference between a clear definition of national security, because that allows us as investors to bracket those companies together that we understand are mission-critical for national security, as opposed to companies that might be caught by some definition of public interest, which is a little more worrisome.

Q144 **Bob Seely:** But do you accept that China seeking to dominate artificial intelligence and big data not only is an economic aim that it has, but, because of its communist nature, because it has a different value system to our own, you are getting into, certainly, the space of what is in the public good for democracies in a way that maybe one was not doing 10 or 20 years ago? So the goalposts have changed as the nature of state competition is changing and as there is a rivalry of values. Do you at least accept that point?

Chris Cummings: I think that under a definition of national security, this Committee is heading in the right direction. It is completely right to be asking those questions. From a business point of view, we try to not only adhere to direction from Government and guidance from the public authorities, but understand the wider duty to society that we have, as any modern industry would have.

Because as I mentioned earlier, the investments we make are done under the mandate of the pension scheme or the investor whose money we are managing. So it is about getting that balance right of wanting to make sure that we are investing in companies that are long and high-growth companies, where we understand the rule of law is being applied, but also being sharp enough to recognise that if we are investing in that company because we like the technology and the direction, and the IP of that company can be commercialised, we would be rather foolish to put our chips on that investment only to see it undermined by the actions of a state actor or, indeed, by another commercial transaction that we did not have any scrutiny over as investors. We are trying to have clarity about what the motivations really are.



Q145 **Bob Seely:** Thank you, Chris. I don't know whether John wants to come in at this point.

John Fingleton: I am happy to come in. I disagree with what I heard from the last two speakers, in the sense that I don't think golden shares or an enormous bureaucracy of scrutiny would be proportionate to the scale of the issue. It is not obvious to me that people can point to cases in which intellectual property has been taken away from the UK. It is not obvious to me that we have a system that does not work at the moment; we have a system whereby Ministers can and do intervene in these decisions. Ministers just have not intervened. Whether you think that is a good or a bad thing depends on the merits of individual cases. But we have a system that works. I think it could be improved.

The threats around national security are evolving, as the Grindr case shows. But I thought the one interesting thing about the Grindr case was that, while you were urged to copy CFIUS, CFIUS did not work in the Grindr case. The concern in the Grindr case was that China was ahead on quantum computing, and within five to 10 years it would be able to unencrypt the Grindr data and then blackmail future leaders or people of influence, such as future Defence Ministers who happened to be indiscreet on Grindr in their youth. That is a real concern. But the Chinese owned it for a while and so in principle all the data up until then could have been downloaded. So to my mind, CFIUS did not work well there, so be careful what you are copying.

Q146 **Bob Seely:** How would you improve it? What changes would you seek to make to allay broad concerns about national security, looking at national security being IP theft, the loss of cutting-edge technologies to non-democracies? How would you get that balance between a free-market economy and not losing everything to China?

John Fingleton: The first thing, which is often missed in this debate, is investing in the intelligence services and the state's ability to identify risk. At the end of the day, if the state cannot identify the national security risk correctly—that might be an acquirer risk, it might be a risk in the target, or, as in the case of Huawei, it might be nothing to do with the takeover but a component or operational risk—then it will be difficult for any intervention it does do to be anything other than very crude. A very crude intervention will catch lots of false positives and drop lots of false negatives. So the first step is that type of investment.

The second step is to try to limit political discretion. I say that not out of any disrespect for politicians. But, ultimately, the current system shows us that you get a huge amount of political lobbying on which cases get looked at and which cases get determined. For example, probably the most interesting two cases in the past three years, Melrose's purchase of GKN and Advent's purchase of Cobham, have involved a UK buyer of a UK asset, and a US buyer—a well respected private equity firm that owns lots of assets in the UK—buying Cobham.



HOUSE OF COMMONS

Both of those cases illustrate the role of vested interests in the process. The case of Melrose-GKN, where the formal system was not used, illustrates two other things: first, the soft power of Ministers to extract concessions even without triggering the national security apparatus; and secondly, that all the remedies that the Minister sought in that case had nothing to do with national security, but everything to do with workers' rights, pensions and other things, which the company, in principle, should have been complying with in any case.

Chair: Thank you very much. I was going to come to some other areas, but before I do, Alicia wanted to come in.

Q147 **Alicia Kearns:** Obviously, we are rightly focused on malign state actors and their activities. I wonder, in the past few years, have you seen any evidence of non-state actors seeking to acquire technology through acquisitions such as this, or is that still a step too far for most of them? I am not looking so much for cut-outs, where we know they essentially end up being the state, but essentially non-state actor groups.

John Fingleton: I am not aware of evidence of that. People buying companies are trying to buy intellectual property and develop it. In the vast majority of cases, when a company buys intellectual property, it does so with the purpose of using it more widely and disseminating it more widely. In many cases, when UK companies get bought by foreign buyers, the net effect is a scale-up of those companies into foreign markets. We should see that side of the equation, as well as the more sinister one that the UK is being deprived of the intellectual property. I know of no examples that I can think of, or have been brought to my attention, in which intellectual property has been removed from the UK, or in which monopolisation by a foreign firm of intellectual property developed in the UK has deprived UK users of that intellectual property.

Chris Cummings: I was going to echo that. Our experience in the technology sector, in talking to the high-growth tech companies, is that what they are really looking for is clients, investors or indeed purchasers, because they recognise that they need the scale-up capital. Capital in exchange for equity, or selling the company, is seen as a very welcome business strategy.

Q148 **Alicia Kearns:** Then how does the Foreign Office go about defining what a hostile party is? Obviously, there is a difference. We might say, "The following states are ones that we always look into, if a certain state is behind the purchase." Do you think it is feasible for us to have such a grouping—to say that states in this category are hostile? Or does it have to be on a case-by-case basis, and that we must create a framework that allows us to do that?

John Fingleton: I think the latter. We have a framework in which the Foreign Office can do that. In a letter from the Foreign Secretary to the Committee Chair earlier in the process of these hearings, the Foreign Secretary indicated that the Foreign Office's views had been sought and given on a particular transaction, so I think that the system works at the



HOUSE OF COMMONS

moment. I would certainly say that the Foreign Office is an important voice in advising other Government Departments on what the risk might be, particularly the risk around the acquirer. It is very difficult to have a blanket rule on, for example, all state-owned enterprises globally. There was a period, when Peter Lilley was Secretary of State, when there was a Lilley doctrine of trying to control acquisitions by state-owned enterprises. I think that lasted about a year before it was abandoned. It is quite a difficult thing to have that sort of hard and fast rule.

Chris Cummings: If I may go further, I would suggest an even closer degree of dialogue and co-operation—perhaps even a standing group—between industry and the FCO, or BEIS and other relevant Government Departments. So much can change very quickly, even mid-transaction, that I am sure Government would find it very useful to be able to draw upon such real-time industry input—certainly investor input.

Q149 **Chair:** May I go back to a point you were making earlier, Mr Fingleton? You were talking about heads of agency effectively making these decisions, at CFIUS or whatever it might be. Will you expand on that a little? Many of these decisions appear to many people to be more political than simply technical. Therefore, the judgment on whether to intervene can be finely balanced.

John Fingleton: Absolutely. Thank you for that clarification. It is absolutely right that, if national security is going to be used to block a transaction, that decision should properly be taken by a Minister. In doing that, the way you limit, for example, the private interest pressure on a Minister is to involve independent agencies as much as possible. We do this with media plurality very well at the moment: the Secretary of State for DCMS makes the decision, Ofcom feeds in its view and the CMA runs the process—it works very well. With national security, the one subtle difference is that certain details might need to be redacted, but we already redact details in existing merger cases for commercial confidentiality, so there should be no reason not to redact such details. You might want delayed publication of certain details.

I also think that the remedies available to the Minister should be limited to national security. If a national security case ends up with a Minister, requiring a commitment on keeping employment in a certain region of the country, that does not seem to me to be related to national security, and then I think those remedies should not be available. I do not think we should take politicians out of the decision making, but I think we should try to limit as much as possible what they can be lobbied to do, because the issues that Ministers get lobbied on are rarely the national security ones, but every other gripe that every other stakeholder has about the issue.

Chair: Thank you very much for that clarity. Bob, you wanted to come in.

Q150 **Bob Seely:** Yes, just on a point of principle about high-risk vendors from high-risk states and critical national infrastructure. There is a layered approach: an interesting start-up with a great idea is not going to



HOUSE OF COMMONS

endanger the future of the UK, but clearly, buying into the nuclear industry, or British Telecom or parts of critical national infrastructure is. I am just curious to tease out what the two witnesses think about the layers of sensitivity, and the layers of rules and regulations, that encompass those different types of investments.

John Fingleton: There are two separate issues: one is intellectual property theft-type issues, and the second is national security—the ability to take down our power system or our communication system. Malign foreign actors have much cheaper, more efficient, and usually illegal ways of doing that sort of damage to the UK economy than buying an asset and then destroying it, so I do think we should ask about motivation. Why would you make an investment in the power transmission system in the UK, for example, and then use it to shut it down, and destroy that value and your reputation? That is a pretty nuclear option. As the Novichok and other incidents show, malign state actors prefer to engage in other strategies—illegal ones.

On the intellectual property theft point, espionage, stealing talent and so on are probably the preferred routes, rather than actually buying the assets. Buying them on the open market means you pay the market value for the IP; going in and using espionage, spying or whatever, or hiring key talent, is often a way of getting them more cheaply. To my mind, a risk-based approach would look at those other avenues and then narrowly focus on where we think the actual risk lies. Then I would use the security services to try and ensure that we monitor—as we were on the path of doing with Huawei before that path moved—we get the security services to monitor what they are doing if they are involved.

Q151 **Bob Seely:** I think Huawei is a complex, separate case—I will give you that much—but there is a third way, which is owning something or having a significant stake in a country in order to have political influence, and if you are a mercantilist state, to make it more difficult to go against the interests of that state more broadly. That is the middle ground here—not buying something just to trash it, but buying something as a way of having influence in a country if you are not a natural free market state, but a communist or an authoritarian state that uses trade in a mercantilist way.

John Fingleton: That is an important consideration. How you apply it to individual cases is extremely challenging.

Chris Cummings: I would simply add that looking at the record of investment in UK utilities by friendly powers, we have seen a lot of French investment in water, energy and so on. We would always encourage case-by-case assessment, based on relationships with individual state actors. The Foreign, Commonwealth and Development Office has huge experience in bringing its diplomatic insights to bear on these cases, and could act more to advise Government and this Committee about what the proper structure should be.

Of course, the intellectual property point is hugely meaningful from an investor point of view. But we are absolutely not blind to the final point you just made about states using their economic might to try and influence other Governments, other countries, and companies within those countries to have a different direction to the one they could have pursued. That is why as investors, there is always a need to be thinking about the long-term investment profile of both the company that we are investing in and the wider ecosystem that that company operates in—rule of law and so on, but also the strength of the demos in that country. I am thinking about some of the experience of oil production companies in Africa and other parts of the world as well. It is important in these discussions to think about it from a UK context, but also as UK investors investing in other parts of the world. That gives an opportunity to project some soft power, to talk about raising corporate governance standards and to demonstrate what best in class looks like.

Q152 **Chair:** Before I close, may I thank you both very much? I have one last question, John. In your former life, as it were, you have been at the advising end on mergers, and on the way politics and technical advice come together. When you look at that balance, how do you think it is best done? Do you think it is best done publicly, with as much Committee—we are here right now—and other public scrutiny as possible? Or is it best done in private, with explanations coming out later?

John Fingleton: Where possible, it is best done in public. That is an open process. Going back to Chris's point, one of the reasons we have those foreign investments in our regulatory and due diligence sector is because not only is it a well-regulated sector, with predictable regulators, but the processes that they use are very transparent and give people a voice. I generally think that the more open it is, the better.

With certain types of national security there are confidentiality issues, but I don't think those issues are as great as people sometimes think they are. In the example of the Grindr case, there was nothing particularly confidential about understanding why there was a national security risk there. That is often the case.

Chair: Unless there are any further points, I will close the hearing there. Thank you very much, Mr Fingleton and Mr Cummings—I am grateful for your time. Professor Henderson, I can see you there. Thank you very much for having stayed this long—it is very kind of you.