Transcript of evidence taken before

The Select Committee on Economic Affairs

FOREIGN TAKEOVERS AND THE PUBLIC INTEREST

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3.30 pm

Witness: Rt Hon Vince Cable MP

Members present

Lord Hollick (Chairman)
Baroness Blackstone
Lord Carrington of Fulham
Lord Griffiths of Fforestfach
Lord Lawson of Blaby
Lord May of Oxford
Lord McFall of Alcluith
Baroness Noakes
Lord Rowe-Beddoe
Lord Shipley
Lord Skidelsky

Examination of Witness

Rt Hon Dr Vincent Cable MP, Secretary of State for Business, Innovation and Skills and President of the Board of Trade
Q14 The Chairman: Secretary of State, welcome to the Economic Affairs Committee and thank you for coming to talk to us today. As you know, we are hearing evidence about how far there should be a public interest test in assessing overseas takeovers of British companies. This follows in the wake of the recent Pfizer-AstraZeneca merger, which of course has now fallen away. Would you like to make an opening statement, or shall we go straight to questions?

Vince Cable: I am happy to go straight to the questions, if you prefer to do that.

The Chairman: I wonder whether we can start with your powers. Can you briefly outline the current regulatory regime for mergers and takeovers in the UK, and what powers you have to intervene in a takeover bid?

Vince Cable: They are essentially contained in the Enterprise Act 2002, which is concerned primarily with competition and is framed by the European mergers and takeovers directives. Essentially the European Union will decide whether it wishes to intervene on competition grounds, but that still leaves the Secretary of State—me—the capacity to make an intervention notice if the European Union does not take an interest, but where we judge that there are competition matters that are relevant to the UK, the matter will be referred to the CMA now, and there is an iterative process following on from that.

Aside from the competition theme of our current legislation and regulation, there are several public interest tests, which in turn derive from the European framework and relate to national security, media plurality, and recently, following the Lloyds-HBOS takeover, financial stability.

The Chairman: So it is the European framework that establishes the tests and the powers that you have.

Vince Cable: That is correct. I very often hear it asked why we do not introduce something at the UK level. It may or may not be desirable in principle, but bear in mind that there is a
European framework overseeing all this that is to do with European competition policy and the single market. That is the framework within which the British legislation is couched.

**The Chairman**: Let us explore whether that framework is adequate for purpose, as you see it.

**Q15 Lord Lawson of Blaby**: The question that I suppose led to our holding this one-day event is whether, in the light of the AstraZeneca-Pfizer affair, as the Chairman said, there should be an additional public interest test concerning research and development. I would like to hear what you have to say about that. You mentioned the European context, but of course the behaviour in different European countries is rather different, even if the law is the same. I would like to ask a number of supplementary questions about that.

First, we had some very interesting evidence before you came in this afternoon, particularly on science, research and pharma from Sir Tom Blundell. It seemed quite clear to me from the evidence that there is a genuine problem about research and development in pharmaceuticals. It is not uniquely a UK problem; it is a global problem, for example with the increasing resistance to existing antibiotics. But it has precious little to do with mergers and takeovers. It is a separate issue that seems to me, and it emerged from the evidence, to need to be addressed separately, if it can be addressed. Do you agree?

Another question is that Ministers have a lot on their plates, as you well know and as I know, too. Do you really think it is credible that a Minister can decide sensibly which merger or takeover is in the long-term interests of the country and which is not? If he does have this power at all, is it not clear that it would be a field day for lobbyists and we would have the sort of problem that there is in the United States, where lobbyists are a blight on its economy?
Do you also not agree that there are pluses and minuses, as there are in everything, but that on the whole this country gains from being more open than pretty much any other major economy in the world, and that you have to take the rough with the smooth?

Finally, perhaps, may I ask one other question? I am not sure whether it is sensible or not. Do you think it might be useful if the law were changed in one very specific respect, so that a merger or an acquisition would need to secure the support not merely of the shareholders in the company that is potentially being acquired but the shareholders in the acquiring company, because it would be all too easy for an empire-building semi-megalomaniac management to bid so much that the shareholders in the company being bid for would be almost bound to say yes?

Vince Cable: There are lots of tricky questions there. Maybe I will start with the third, which was whether we think it is a generally good thing to have an open economy and to attract inward investment. The answer is yes: that is the Government’s broad approach. We have successful examples of companies. I suppose the most obvious and famous is Jaguar Land Rover, which was a foreign company that took over an ailing British company. There was a lot of protest at the time, but it turned it around and delivered a lot of very substantial value. There are other examples, too. So the fundamental premise of the argument is clear: we do value an open economy.

Going back to your first question about whether there is a public interest, particularly in pharmaceuticals, the Government took the view—I certainly took the view—that there is a wider public interest in the life sciences area. In economic jargon, there are externalities here, not least because the Government invest very heavily in R&D. About £2 billion a year of public money goes into this sector. It is not a purely private transaction, so we have an interest in its health. We took the view in government that that public interest needed to be expressed, and we expressed it by engaging with the companies. We talked to Pfizer and
made very clear what we expected, and in the event those conversations were not tested because they went away: at least, they have gone away for the time being—we do not know. We certainly recognise that a public interest was involved and we sought to engage with them because of that.

I might have missed one of your questions, but I think the last one was about the relative role of the shareholders of the acquired and acquiring company. I can see where you are coming from, because I think the economic research anyway tends to show that takeovers on balance tend to be good for the shareholders of the acquired company but detract from the value of the acquiring company. I am not sure how that would work, because in many cases we are talking about an overseas company acquiring a British-based company—and how would we insist, even if we wanted to, that the American company in this case should get the approval of its own shareholders? It would be extending extraterritoriality in quite an ambitious way. I can see the economic logic of it, but I think it goes rather further than we envisage as a practical initiative.

Q16 Lord Carrington of Fulham: Secretary of State, it is a very dirty trick to throw back at somebody quotes from over 10 years ago. When the Enterprise Bill went through, you said, “It is right that we should move away from the vague public interest test to a competition test”, which rather suggests that competition should be the criterion as to whether a takeover like this should happen. Do you still hold that view?

Vince Cable: Put in those terms, yes. A general test of public interest has the problem which Lord Lawson has just identified: who decides? Does a Minister with many other commitments—as I think Lord Lawson put it a minute ago—sit down at a desk and say, “I like this and I do not like that”. It is propitious and not a very sensible way of making government decisions. What I said was not platitudinous but it was certainly the common
view at the time. I was essentially endorsing the government view, and indeed the broader European view, that what we were trying to encourage in this market was competition.

There is a general argument, which was shared by the Labour Government at the time, that there were merits in a private enterprise system in having a competitive market in ownership. Otherwise, what happens if you have a failing company? There has to be competition for ownership, and that was the sort of framework from which we started. But that does not mean to say that there are never any issues of public interest; of course there are. As I said, three are defined in legislation, and we can have a debate as to whether there are others. But the language you quoted me as saying I would defend.

Lord Carrington of Fulham: I understand you as saying it does not matter whether a British company is being taken over, or is being proposed to be taken over, by a foreign company that is headquartered overseas—of course the definition of what is British and what is foreign becomes quite difficult in a global market economy, but simplifying it down to that—provided that it is in a competitive market that would, of its nature, suggest that it would keep employment, and for example a research base when it comes to big pharma, in the UK.

Vince Cable: As I have said, I see no merit in making a decision based on whether something has a union flag on it or not. In the case of corporate ownership, that is likely meaningless anyway. AstraZeneca—which is a very good company, although one could take a view on that—is Anglo-Swedish, not British. Its shareholders are international, it has many American shareholders and its chief executive is French. What is a British company in this context? At the moment, going back to the example I gave earlier, you could argue that the best and leading British manufacturing company is Tata, which happens to be Indian. What is British? I think the crude test of nationality has no merit.
Lord Carrington of Fulham: Right. Finally, just to try to pin this down, the public interest test would have to be at a very high hurdle. In other words, outside perhaps defence for instance, it does not actually matter who owns a company and therefore there is no public interest.

Vince Cable: I think the last point is a bit of a non-sequitur, if you do not mind my saying so. There may well be a public interest, independently of whether there is a British or foreign owner. If there are, as in the case of research and development, wider spillovers and benefits to the economy, of course the Government have to be involved in some way. That does not mean to say that you invent or create a new kind of public interest test—I am not sure how you would do that anyway, given the legal framework we operate in. But you can do what we did, which was to engage with the companies and make it very clear what we thought the national interest was, which was in maintaining a very strong R&D base in the UK, which we made very clear to the parties.

Q17  Lord Shipley: Secretary of State, I wonder whether we might look at the example of France and the French Government, which recently brokered a deal for General Electric to take over Alstom’s energy businesses. The French state will have a minority stake in that French company and the French Government will impose penalties on General Electric if it does not meet promises to add 1,000 new jobs over the next three years. That happened at the end of June. Back in May, speaking to the House of Commons Business, Innovation and Skills Committee, you said that you did “not think it is correct to say that other European countries operate according to different rules where takeovers are concerned”. There is of course a European framework for that statement. Has the French decision altered that situation?

Vince Cable: I do not think it has, for several reasons. First, the purpose of Mr Montebourg’s intervention was to stop the GE takeover, but that takeover actually
happened. One can argue about the conditions, but he did not do what he set out to do, which was to stop the takeover and replace it with a Siemens arrangement. He did not achieve that objective. Secondly, my understanding is that the French intervention is contrary to the European framework of law. Nobody has so far tested this out—they may not wish to do so—but it is yet to be established that it would be held to be legal in European terms. I think the judgment on the French intervention is not yet clear, nor where that will lead.

I would just make one other point about the French intervention. What was significant about it was that Mr Montebourg brought in widespread, sweeping powers, giving the French state powers to intervene in the case of takeovers. We actually have that power in this country. Sitting there in the background is the Industry Act 1975, which gives me almost unlimited powers to nationalise almost anything, although of course those could not be used because it would be illegal in practice. In a way, he is doing, 40 years later, what the British Government did in the 1970s. The issue is not whether you have those powers on the book, but whether they could in practice be implemented. We could not use our 1975 Act and are rather sceptical that the French state can actually implement the powers that it has taken to itself.

The Chairman: Can you envisage, Secretary of State, certain circumstances where you would like to be able to intervene in the same way that your opposite number in France has?

Vince Cable: One is always tempted. But it is very important that Ministers are surrounded by appropriate legal checks and balances, otherwise we would do all kinds of capricious things. In the particular case of Pfizer and AstraZeneca, concerns, which I shared, were expressed in Parliament and outside. We did not just sit back and watch things happen but engaged with the company trying to do the takeover. We tried to be clear about what the public interest was, and I certainly made it very clear in Parliament that we wanted to see
meaningful and binding obligations. In the event, they backed away and it never happened, but it was not a question of just sitting back and ignoring it.

Q18 Lord Rowe-Beddoe: Secretary of State, the Pfizer bid was, I think, the first that has taken place since the 2011 Takeover Code. In the light of that, would you like to comment on whether anything came out of the Pfizer bid that you think needs to be taken further with regard to the code itself?

Vince Cable: I hope you do not find this an evasive answer, but I have to be a little careful because once the statutory period has elapsed, Pfizer could come back. That is one option open to them, and I obviously do not want to disclose how we would deal with it if it happened. In a way, you are best asking neutral third parties about what might be done in that situation.

Lord Rowe-Beddoe: So at this stage you do not want to comment?

Vince Cable: I would rather not say more, no.

The Chairman: One of the issues that arose—let us deal with it generically—is the question of undertakings: how they can be enforced and what sanctions there would be if the company chose, for business reasons, to adopt another strategy after a few years.

Vince Cable: The Takeover Panel provides the existing framework for deciding whether a takeover has been conducted properly, and there are legal remedies for companies that believe that there has been a breach of undertakings. Obviously, we are reflecting at the moment on whether that is a satisfactory structure. I think that is the area to look at.

Lord Skidelsky: A previous witness gave us his view that undertakings of this kind are usually quite valueless and very difficult to enforce. It came up particularly in connection with research and development undertakings.

Vince Cable: I do not know about that because we were never tested in practice. As has just been pointed out, this was the first major test of our system since I came into this role.
It was never followed through, so we have no experiment to evaluate. What I am sure of is that the company, Pfizer, was very conscious of its own reputation, which was subject to very sharp scrutiny in the eyes of public opinion. I do not think it trivialised the promises that it was making.

**Lord McFall of Alcluith:** Are you happy therefore with the statement that Pfizer made to the Prime Minister, when it said that it would integrate the operations of the combined company so as to employ a minimum of 20% of the combined company’s total R&D workforce in the UK? Was that comprehensive enough for you?

**Vince Cable:** They volunteered a whole load of other considerations, including manufacturing and other factors. The key phrase that I kept repeating was that any undertaking they gave would have to be meaningful and binding if we were to accept it. We never got to the point of that being tested in terms of what it meant and how you would test it.

**Baroness Noakes:** Would it not be more sensible to ascertain what could be made legally binding, so that we would have a toolkit in the event of any future case that might come up? It seems to me that we have left it in a rather uncertain situation.

**Vince Cable:** You are right but, as I have already said, I would rather not divulge too much about how we are doing our scenario planning should this issue recur.

**Q19 Lord Griffiths of Fforestfach:** Secretary of State, you have touched on this point before, but the former top scientist at Pfizer said that contemporary mega-mergers are “devastating” for research. I have two questions. First, what would your opinion be of that? Secondly, you might have some sympathy with that position, even if you might not put it as strongly as he puts it. You mentioned earlier the £2 billion of government spending in this area. How would you judge what would be an appropriate commitment to research by a
private or publicly traded company and whether government money should be matched or put into it as well?

**Vince Cable**: The first question is easier to answer than the second, which gets us into the detail of whatever undertakings would be required, and I do not want to go further than I already have on that. On the first point, the language is colourful but the principle is right. Very strong opinions were expressed across the scientific community, particularly by those in biological sciences. I think Sir Paul Nurse of the Royal Society, among others, expressed very great concern about the future of the R&D base, given the history of that company. The point I made in Parliament, trying to look at this in a balanced way, is that all pharma companies have of course been contracting their R&D activities recently. It may be a historical coincidence that some of their patents have come to the end of their life, but we also see that there is a new model of innovation taking place in that industry. It is no longer done in-house in big companies but in spin-offs from clever people in universities who launch a business. That is increasingly the model. You may recall that AstraZeneca had also very substantially downsized its British operations. Although we heard and respected the very powerful statements that came out of the scientific community, this had to be put in a slightly wider context: it is not a question of good versus bad, or good companies versus bad companies.

**Q20 Baroness Noakes**: Secretary of State, turning to Lord Heseltine’s report, *No Stone Unturned*, I think you are aware that he had very clear views on the way the Government should interact with foreign investors, or potential foreign investors, and believed that the Government should do more to engage with them in core sectors—it is not just about research and development but the supply base—and should also be prepared to discourage what I think he called “unwanted” investments. I believe that at the time you rejected that, as not being the Government’s view, and did not support that aspect. Would you now hold
to that objection to the Heseltine view, or do you think there was more merit in it than the Government expressed at the time?

**Vince Cable:** I would not reject the proposition that you have just described. I think Lord Heseltine has often been unfairly quoted and is often cited as being somehow against foreign investors and takeovers. He certainly is not, and always makes that very clear when people engage in a serious conversation with him. He has a more nuanced view, which I do as well. I think the way you put it was that where there is a public interest, Governments should engage. Indeed, that is what we did on this occasion. I have done it on earlier occasions, in lower-profile cases. There have been several such acquisitions: there was one in rail supply industry a couple of years ago, where I asked to speak to the companies involved to establish what the implications were. I have done it on several occasions, operating within the current framework of the law. None the less, engaging and trying to establish what the effects will be on British supply capability, R&D, and indeed employment, is a legitimate role for the Secretary of State. I do that.

**Baroness Noakes:** I think Lord Heseltine was going beyond simply expressing an interest and asking the odd question. I think he actually has a more activist view of the relationship.

**Vince Cable:** No, I think Lord Heseltine and I see eye to eye on a lot of these things. Indeed, he worked with me on helping to launch the industrial strategy three years ago. It was a shared position.

**Baroness Noakes:** Excellent. Could I then ask what the Government’s view is about the location of corporate headquarters and whether or not you believe that the UK should be indifferent to the location of corporate headquarters when mergers or takeovers are being mooted?

**Vince Cable:** I would not be totally indifferent. Having corporate headquarters has certain advantages, but it is not the only locational issue that one has to bear in mind. In the case of
Pfizer-AstraZeneca, one of the issues was not about the global headquarters but about the headquarters of particular subsidiary operations and the tax domicilage, each of which has slightly different implications. There is the question of whether having the corporate headquarters is more important than having the global R&D base, for example. To cite one example, you will remember there was a great deal of drama around the Kraft-Cadbury takeover. That was felt to be damaging because an American company was taking over a broadly British company, with its headquarters here. There were some negative consequences, but what actually happened was that Kraft decided to house its global headquarters for R&D in some specific key areas here. So when we talk about headquartering, it is not just the nameplate; the concept of a headquarters in a complex multinational company is not straightforward.

Q21 Lord McFall of Alcluith: Lord Heseltine rejected the notion that the greater use of the powers under the Enterprise Act would inhibit foreign investment coming into the country. First, do you agree with Lord Heseltine about that? Secondly, do you envisage any areas where the powers in the Act could be used more?

Vince Cable: On the second question, I do not, because they are quite narrow, as you know. If we are talking about financial stability, I do not think there have been any cases that might have provoked an intervention. In terms of national security, there are a few topical things around, but I do not think anybody is coming to me and saying that we should be using, or should have used, that more actively. I will not go into all the media stories—you know the history around that. Those are the powers that we have, but I do not think there is an active constituency out there saying that you should be doing a lot more of it. I think the question was whether new powers, assuming they could be introduced—

Lord McFall of Alcluith: The examples of Australia and America were given.
Vince Cable: Would it deter American and other companies from investing here? Of course, that depends on how it was done. If it was done very much in the French way, I would be very much surprised if it did not deter people. However, if it was done in a more selective and subtle way, such as the kind of thing we did with Pfizer in talking to the company and expressing our concerns about the national interest—a sort of grown-up conversation—I cannot imagine that would deter any foreign investor.

Lord McFall of Alcluith: I am not sure about your answer about the French there. I am only kidding. I raised with Professor Sir Tom Blundell and Professor Kay the issue of superbugs and the risk of returning to the dark ages. Professor Blundell mentioned that a lot of this work on TB is done through the Gates Foundation and not with pharma money. The question is about a model where the market is being used in those areas. Professor Blundell said that he did not see using the market in those areas, and Professor Kay agreed. Given that, is there a public interest or stake for government in these areas in ensuring that there is a market in respect of the diseases that affect poorer people, such as malaria, TB and others, to which the pharmaceutical industry is not currently turning its attention?

Vince Cable: I am sure that is right, and I think I implied that at the beginning.

Lord McFall of Alcluith: So how do we go about changing that?

Vince Cable: In the world of R&D and life sciences, there is clearly a wider public benefit that is not necessarily captured by narrowly commercial interests, as I said earlier. Of course there is a public interest.

Lord McFall of Alcluith: What could you do in that area as a Secretary of State?

Vince Cable: You are talking purely about takeover powers, but Governments intervene in other ways. We have a very active life sciences strategy within our industrial strategy. We engage with companies all the time and support R&D through government, training and public procurement issues that arise. There are many ways.
Lord McFall of Alcluith: We are talking here about market failure and absence. You, as a Secretary of State, should be looking at the longer term and saying, “What can I do to stimulate that so that we get market activity?”.

Vince Cable: As I said, that is exactly what we do within the industrial strategy. We identify market failures, and government has a major role.

Lord McFall of Alcluith: So why was the Prime Minister talking only last week about going back to the dark ages?

Vince Cable: I did not follow that exchange.

Lord McFall of Alcluith: It was very clear. He said that if attention was not paid to superbugs, medicine risked going back to the dark ages. It was the top news item last week I think.

Vince Cable: Sorry, I am just trying to tie this in with the argument about mergers and takeovers.

Lord Lawson of Blaby: The Prime Minister’s remarks do not—

Lord McFall of Alcluith: The issue is about the pharmaceutical industry being absent in certain integral areas. I am asking you to think more widely.

Vince Cable: I completely agree with you. Of course the pharmaceutical industry will produce only within its commercial limitations. It will have a relatively short payback period and it will want to produce products for markets for which there will be sales. They will therefore possibly tend to underestimate the importance of the kind of drugs you are describing and the things that serve poor people. There is a major market failure in that area, which Governments have to address. I do not have any disagreement.

Lord McFall of Alcluith: Sure, not a problem.

Q22 The Chairman: Secretary of State, do you think that the UK companies, because of the very open nature of our market base, are disproportionately vulnerable to takeovers?
Professor Kay rather colourfully remarked that the UK was the favourite hunting ground for investment bankers seeking their prey.

**Vince Cable**: I have some sympathy with that, and I think there are different dimensions to it. The point I would make, which I think John Kay would share, is that there are certain deficiencies in the way UK businesses are financed. It has historically been quite difficult for medium-sized growth companies to raise both equity and loan finance. In the current crisis, that problem has probably been accentuated, but you can go back to the 1920s and to problems such as the Macmillan gap. There is a problem for entrepreneurial companies wanting to expand and finding very difficult to raise the capital without losing their own ownership, and very often finding that an easier option is to simply sell out.

There is an issue around corporate financing, which we are trying to address in other ways, such as the Business Bank, the business growth fund and initiatives of that kind. There may be a deeper cultural problem. In the United States there is an ambition for people to grow their companies until they become Facebook-size, whereas in the UK, for complicated reasons, people prefer to sell out when they get to a certain point. I would prefer to concentrate on the practical things that we can do, which are in the area of corporate funding.

**Q23 Lord Skidelsky**: In the Kraft takeover of Cadbury, short-term investors bought up shares and forced the move. I just want to ask two questions arising from that. First, in your view does the acquisition of British companies by foreign shareholders increase short-termism—in other words, if the purchasers come from abroad? That is one question. There is perhaps a follow-up to that, but I will leave the second question.

**Vince Cable**: I do not think it is a nationality issue, but there is a genuine problem of short-term investors destabilising markets of that kind. One of the first things I did when I came into this job was, reflecting on the history of Kraft-Cadbury, to encourage the Takeover
Panel to look at their rules in order to try to minimise that problem. It was out of that that we got the “put up or shut up” provisions, which have shortened the time periods involved and given less opportunity for arbitrageurs to come in on a big scale. That was one initiative. Under the new takeover rules, there is an explicit emphasis on long-term considerations and consulting workforces—things that did not exist before. One of the big changes that we have made, which I initiated, was the Tachometer Panel reforms in 2010. When people look back on it, they will realise that those changes were actually highly significant and may well have played an important role on this particular occasion.

We looked at other ideas, such as whether it might be possible or sensible to differentiate categories of shareholders, but came to the conclusion that it would be extremely difficult. For example, disfranchising new buyers of shares is superficially attractive, but it would make it impossible for a white knight to enter takeover situations. We did look at a variety of options for reducing the influence of basically the hedge funds in a takeover situation. The Takeover Panel reforms have certainly helped. We have looked at other initiatives but did not pursue them.

**Lord Skidelsky:** Thank you very much. I have just one follow-up question, inviting perhaps a more philosophical reflection. Have you formed a view about what particular ownership structure can assure a long-term commitment to a company’s future? At the moment, there is an argument that people who just come in and out do not have any real commitment to the success of a company. On the other side, there is the view that commitment needs to be tangibly expressed in long-term ownership. Have you formed any view about the best kind of ownership structure?

**Vince Cable:** Yes. I have sort of agonised about it for the past four years. I asked John Kay to do a report for the Government on that exact issue, which was very good. We have acted as far as we could on some of his insights. One of the things I was encouraged to do
was to go to the Law Commission to get a clearer steer on the fiduciary duties of pension funds, insurance companies and financial intermediaries, because it was not totally clear to them whether they had an obligation to apply a long-term test in making financial decisions. We got their reply back last week, which was quite unambiguous: they did have a long-term duty as part of their fiduciary duty. Once that is internalised, it will help to shake the behaviour of companies in quite a significant way. I tried to make sure, when we established the CMA, that in considering competition rulings it should look at things from a long-term rather than a short-term perspective. The whole industrial strategy is based quite explicitly on the idea that it is important for companies—certainly those in key sectors of the economy, such as automobiles, aerospace, life sciences and energy, including energy supply chains—to think long term. Indeed, that is exactly what we are trying to incentivise.

**Q24 Lord May of Oxford:** You are of course aware, as we have just discussed, of the Kay review, which documents a “substantial body of academic evidence” that often “little or no value is added to business by merger activity”. You yourself, I am informed, giving evidence to the House of Commons Business, Innovation and Skills Committee in March last year, said, “I am sceptical about the value of takeover activity”. But then you added a statement that I find a little mystical, “but recognise that in a capitalist system, you do need to have it”. Fair enough, but I would like to think that you are prepared to look case by case, recognising that there are some things that should take their course and some things that clearly have adverse consequences. You say that on the one hand, but on the other hand in a sort of incantation about the capital system you say that there are some cases where it is clearly going to diminish value and that you should, when appropriate, act. Could you just clarify that for me?
**Vince Cable:** I do not think they are inconsistent. Let us look at the economic evidence; you have probably had this from John Kay already. I commissioned quite a big study that pulled together all the academic evidence, and the academic evidence is very mixed.

**Lord May of Oxford:** Of course, but there are times when it is and times when it is not.

**Vince Cable:** Broadly the summary is as follows. If you put together the results of large numbers of takeovers in recent British history and you add up the values, you probably have a net gain in added value. But if you look at the median case it is probably negative, because there are a few big cases that are highly beneficial—Jaguar Land Rover was one—but a lot that are value-subtracting. That is what the evidence tends to show.

**Lord May of Oxford:** But my question, if I may say so, was: do you not agree that you will do your best to look at it case by case and intervene when necessary?

**Vince Cable:** Yes. That is what I was about to answer. This goes back to the very first question that Lord Lawson asked. Indeed, it is very ambiguous, but would it be better to have a politician sitting at a desk, sticking a finger in the air and saying, “I like them but I don’t like them”? Would that produce a better outcome? I am very doubtful that it would. You need to have a system that is somewhat more scientific. This goes back to the argument that we have had throughout this session, which is that the framework not just of British rules under this Government and our predecessors but throughout Europe has been a judgment that in systems of this kind a competitive market is the best, with some exceptions. We have those exceptions, and I think the question you are trying to ask is: do you want to add to them, and is there a tight argument—

**Lord May of Oxford:** My question is essentially: is this one of the exceptions? The dismissal of opinions of people such as Paul Nurse—
**Vince Cable:** You put the question to me slightly differently. You said, “Would it not be better to look at it case by case?” I think the answer is no, because you would get very politicised decisions.

**Q25 Lord Lawson of Blaby:** Secretary of State, I think that must be right. I agree. I think that Lord May’s idea that a politician knows immediately which takeover ought to go through and which ought not is contrary certainly to my experience of how things work, and I have been interested in this area ever since I was responsible for writing the Lex column in the *Financial Times* more than 50 years ago, which obviously took a great interest in bids, takeovers and mergers. Ministerial discretion, I must say, would be disastrous.

May I ask you a question on this area? I was slightly puzzled, I must say, with John Kay’s report on this front—and John Kay is an economist I have great respect for. You cannot assess the value of an open market in ownership, which you referred to, simply by looking over a period of time at which mergers have proved successful, which have been unsuccessful, and where the balance lies, because of the more general point that the fact that a dozy management may be taken over is likely to improve the quality of management—and that is one of the most important points: the threat of takeover if you are not performing. It is not just a matter of analysing the bids or mergers that have happened. The second thing is relevant, but it is by no means the whole story. Do you agree?

**Vince Cable:** I think on balance that is correct. That is why in practice, although the evidence is very ambiguous, Governments have basically taken the view that, with the exceptions and the public interest exceptions, we let this market operate.

**Lord Lawson of Blaby:** A classic case, which you will recall, as I do, was the ICI bid for Courtaulds. I think it was in 1961. This was the biggest takeover bid that had ever occurred. There was a great battle. Despite the fact that the ICI bid was very big, the Courtaulds shareholders decided eventually to reject it, and they were right to do so, but the price was
that they ejected their old management. Frank Kearton, who, if you remember, was a junior member of the board, became the chief executive, and there was a management revolution in Courtaulds as a result, which would not have happened if it had not been for the bid.

**Vince Cable:** I do not know. Sadly neither ICI nor Courtaulds is with us any more, and much of the industry they represented has gone as well, so I do not know how far you can trace that particular transaction back. But yes, I hear the argument.

**Lord Griffiths of Fforestfach:** I would just like to say one thing. I sat on the board of two American companies, one for 21 years and one for 15 years. Neither company was taken over. Both companies felt that they had very strong values and a very strong culture and were long term. However, when we got a letter from one of the shareholders—you might have only 2% or 3%, but you knew they were potentially serious and could become activist—that certainly influenced what the board did and the decisions that we took. I am totally open to the idea that takeovers might not be in the public interest in terms of value creation, even within a narrow market economy sense, but I certainly remember as a non-executive director sweating over some of these letters, because they were certainly serious and they certainly made us move.

**Vince Cable:** I think you can argue this both ways. As it happens, the company I used to work for—Shell—was virtually invulnerable to takeover because of the way the Dutch shareholding operated. It was an independent company for 100 years and it still is, partly because of scale and partly because of the terms of the shareholding. It had one major advantage: the company was able to operate on a very long-term planning horizon, and that was a great benefit. But it meant that there were periods when it felt that it had to acknowledge that it had got behind the curve and had become a bit insensitive to external pressure, and there was a bit of a crisis in the company when that happened. It now has a
reasonable balance between external stakeholder pressure and long-term security, which I guess is the optimum.

**Q26 Baroness Blackstone:** Why do you think Pfizer bid for AstraZeneca? I assume you do not think it was because of dozy management at AstraZeneca? Was the FT right to describe this as primarily an accountants’ merger?

**Vince Cable:** They were quite open that their interests were driven by tax inversion considerations in the United States; they did not hide that. I referred to that in my first response in the House of Commons.

**Baroness Blackstone:** Do you think that is a situation that does require intervention from the Secretary of State if it is purely about tax advantages from the point of view of an American company?

**Vince Cable:** I am not sure that it necessarily involves intervention by the Secretary of State—by me—but there is an issue here, and it is quite complex, because in some ways British Governments and other Governments are trying to attract inward investment because of their tax regimes, and the British corporate tax rates and the patent box are features of the British system that are used to attract inward investment. The tax inversion issue was slightly different because the company was not going to pay tax in the United States because of the transaction, so it was slightly different from the tax competitiveness issue. None the less, since the British Government and others go out and advertised themselves as tax-friendly countries it is difficult to turn around to foreign companies and say, “You mustn’t come here, because you are looking for lower taxes”. That would be a very strange position to adopt.

Tax inversion is an issue for the United States, and American Congressmen are seriously alarmed that some of their leading companies are holding money offshore rather than repatriating income and are using it to make foreign acquisitions rather than returning it to
their shareholders. So this is an issue for American tax policy. I am not quite sure that we would be on very firm ground in saying, “You mustn’t come here because of American tax law”.

**Lord Lawson of Blaby:** May I come back to the question that we asked at the beginning, to which I am not entirely clear what your answer is. Do you or do you not think that it would be desirable to have an extra public interest reason for intervening to prevent a takeover, extra to those that are already under the CMA rubric? If so, what precisely would that public interest test be? It cannot simply be whether it is in the opinion of the Secretary of State that it is in the public interest. It would need to be much more closely defined than that, so what would it be?

**Vince Cable:** You are right: I did not give you a yes or no answer, and I do not think there is one. I think it depends entirely how such a public interest test was framed. It would indeed have to avoid the scope for capricious activity by Ministers, and crucially it would have to be capable of being accommodated within the European framework, otherwise it would have no legal force—a problem which the French are running into. I do not think there is a precise answer to your question.

**Q27 The Chairman:** One area which I think you said was a work in progress was the question of how you take undertakings, negotiate undertakings and enforce undertakings, and what sanction there is if they are broken. I appreciate that you do not want to go into a lot of detail, but are you confident that you will be able to come up with a satisfactory solution to that dilemma?

**Vince Cable:** Yes. I think that is the right sequence of questions. I do not know the answers to some of them, and there are others that I would not want to tell you if I had them, but I am confident that that problem can be solved.
**The Chairman:** Of course, if you are able to solve that question you are then in a position, if you so choose, to require assurances that, if they are not kept, would be quite dangerous and deleterious to the company giving them, and that indeed might make them less enthusiastic to pursue their quarry.

*Vince Cable:* That is correct.

**The Chairman:** Secretary of State, thank you very much indeed for joining us today, and thank you for your helpful answers.

*Vince Cable:* Thank you.