



**Department for
Business, Energy
& Industrial Strategy**

The Rt Hon Norman Lamb MP
Chair of the Science and Technology Committee
House of Commons
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Dear Norman,

15th November 2018

Thank you for your letter of 1 November to Sam Gyimah in response to his letter of 23 October regarding the Science and Technology Committee's inquiry into quantum technologies. I am responding as the Minister for Business and Industry.

I would like to thank you for your interest in these important reforms. The proposals in the White Paper are wholly about addressing risks to the UK's national security, whilst ensuring continued high levels of foreign direct investment on which the UK economy relies. As you have heard during the course of your inquiry, quantum technologies have the power to be transformational for our economy, so continued investment in the sector in the UK – particularly in small and medium enterprises whose energy and creative thinking have so often brought new thinking to old problems – is vital. You asked three specific queries about the Government's plans to reform its powers around national security and investment. I will answer each of your questions in turn.

You asked about previous instances where a public interest intervention notice had been issued on national security grounds. Companies that are proposing a merger can notify the Competition and Markets Authority (CMA) so it can assess any potential competition concerns and the companies involved can ensure appropriate regulatory clearance. This can enable parties to get certainty of execution for a deal. The CMA has a statutory duty to notify the Government if it becomes aware of any merger that might raise a public interest concern (covering national security, financial stability and media plurality).

Under the UK's takeover rules, mergers relating to publicly listed companies are announced to the market. Where mergers involve private companies that may give rise to national security concerns, the Government may become aware either because it was notified by the CMA, the company itself, or through other sources such as departmental relationships with the relevant sector or press reporting.

As the Committee is aware, the Government, through the White Paper, has recently consulted on legislating to establish a new investment screening regime to deal specifically with national security issues arising from mergers and other trigger events. This will operate separately from the competition regime.

You asked about the Government's plans for ensuring it becomes aware of trigger events through market monitoring and investment in systems and tools, and what assessment we have made of the residual risk that trigger events will occur without the Government being aware of them within the timescales where it has the power to call-in a trigger event.

Parties will be heavily incentivised to notify in the new regime and a statutory Statement of Policy Intent will provide detailed guidance about the sectors of interest. Parties will generally wish to secure regulatory clearance before completing a transaction and the Government has proposed that voluntary notifications will be screened within 15 working days (extendable by a further 15 working days in particular circumstances), allowing business and investors to plan transactions with confidence in a certain timescale. The Statement of Policy Intent is intended to inform the decisions of businesses and investors, along with their advisers, about whether or not to formally notify a trigger event. We will also continue to encourage parties to liaise with officials in relevant departments to discuss possible transactions involving sensitive companies at an early stage, ahead of notification.

In designing the new regime, the Government is taking steps to ensure that the residual risks of trigger events occurring without the Government being aware are appropriately mitigated. This is in line with our approach to design a regime with strong incentives in place, which maximises certainty for business while also ensuring that the UK remains one of the most attractive destinations for foreign investment.

We fully recognise the importance of an effective market monitoring function to ensure that we have robust mechanisms for identifying trigger events. We will build on the Government's existing sector expertise to ensure that departments work together effectively to identify potential risks and spot patterns or emerging trends. There are already resources in place across departments to monitor sectors and work closely with businesses in their areas – the new regime will add to this. Following the publication of the White Paper in July, the Government has increasingly turned its focus to preparing for implementation of the regime, including the market monitoring aspects.

Finally, the White Paper also sets out a proposed power to call in a case up to six months after a trigger event takes place. You asked why this period is shorter in comparison to other international regimes. Each has been developed under a different legal framework, while some are based upon voluntary notification and others on mandatory notification. Regardless, the Government is keen to strike the right balance between maximising certainty for the parties involved in a trigger event to avoid unnecessarily chilling investment and ensuring we have sufficient flexibility to act to protect national security – particularly in relation to any parties deliberately trying to avoid scrutiny.

It is also worth highlighting that, under the Enterprise Act 2002, the approximate time during which the Secretary of State can act in relation to already completed mergers and takeovers on national security grounds, is in effect two to three months (to allow for his Phase 1 decision on referring or clearing the merger to be taken within four months of completion of the transaction), so this six-month proposal represents an extension of the current powers.

We invited respondents' views about this in the White Paper and the Government's position on acting retrospectively more generally. We will carefully consider all responses to the consultation ahead of bringing forward legislation.

I hope that my letter clarifies the Government's approach in this area.

Best wishes


RICHARD HARRINGTON MP
Minister for Business and Industry