



Department for  
International Trade



Department for  
Business, Energy  
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15 March 2021

Dear Andrew,

### **National Security and Investment Bill – control of entities**

Thank you for your contributions in Lords Grand Committee on 9 March on the National Security and Investment Bill. You asked about obtaining control by stages – in particular, the precedent in section 29 of the Enterprise Act 2002 – and I committed to writing to you.

As I said in the House, the Bill covers a much broader range of circumstances than the Enterprise Act 2002. As such, while there are some elements of commonality with the competition-focused assessment framework for the merger regime, the Bill creates a bespoke regime reflecting its sole focus on national security.

Nonetheless, clause 12(1) of the Bill broadly mirrors section 29 of the Enterprise Act 2002 by providing that: “if a trigger event takes place over a period of more than one day, or if it is unclear when during a period of more than one day the event has taken place, it is treated for the purposes of this Act as taking place on the last day of the period”.

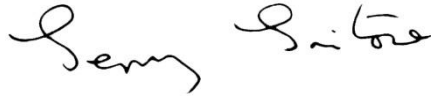
This means, for example, that the acquisition of various rights and interests on different dates in, or in relation to, a qualifying entity that together enable the acquirer materially to influence the policy of the entity may be treated as taking place on the date of the last such acquisition by the Secretary of State.

That is different, however, from there being a ‘scale’ of material influence as I believe your remarks sought to query. The Enterprise Act 2002 operates on a similar basis, whereby ‘material influence’ is the lowest rung on the ‘ladder’ of control. Section 26 of that Act distinguishes between three levels of interest (in ascending order): material influence, de facto control, and a controlling interest (also known as ‘de jure’ or ‘legal’ control).

Paragraphs 4.40-4.43 of the Competition and Markets Authority’s *‘Mergers: Guidance on the CMA’s jurisdiction and procedure’* also reflect this reading of the section 26 provisions, where acquiring control by stages refers to moving between the three levels of interest set out above, rather than within a scale of ‘material influence’.

I hope this is a helpful clarification on both pieces of legislation. I am placing a copy of this letter in the Libraries of the House.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Grimstone". The signature is written in a cursive style with a large initial 'G' and a long, sweeping tail.

**Lord Grimstone of Boscobel, Kt**  
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