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Lord Faulks KC  
House of Lords  
London  
SW1A 0PW

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*Dear Edward,*

I am writing further to my promise to do so in response to the question you raised in the course of Third Reading of the Digital Markets, Competition and Consumers Bill on 26 March. I will also place a copy of this letter in the House of Lords Library.

The relevant legislation outlining our media mergers regime is, as you stated in your question, the Enterprise Act 2002.

With regard to influence, Section 26 of the Enterprise Act defines that two or more enterprises cease to be distinct enterprises where they are brought under common ownership or common control – including where, as set out at Section 26 (3),

*A person or group of persons able, directly or indirectly, to control or materially to influence the policy of a body corporate, or the policy of any person in carrying on an enterprise but without having a controlling interest in that body corporate or in that enterprise, may, for the purposes of subsections (1) and (2), be treated as having control of it.*

Section 26 (4) goes on to define common control as:

- (a) *being already able to control or materially to influence the policy of the person carrying on the enterprise, that person or group of persons acquires a controlling interest in the enterprise or, in the case of an enterprise carried on by a body corporate, acquires a controlling interest in that body corporate; or*
- (b) *being already able materially to influence the policy of the person carrying on the enterprise, that person or group of persons becomes able to control that policy.*



The effect of subsections (3) and (4) to Section 26 is to define three levels of control of an enterprise. These are:

- (a) material influence over policy;
- (b) control of policy (*de facto* control); and
- (c) a controlling interest in the enterprise (*de jure* control).

What constitutes material influence or control will be considered on a case-by-case basis by the Competition and Markets Authority according to the particular circumstances of a case. Under the respective regimes of the Enterprise Act 2002 and the Fair Trading Act 1973, the Competition and Markets Authority and its predecessors have treated the ability to appoint a director or having a 15 per cent shareholding as sufficient to give material influence for these purposes, though material influence may arise with a lower shareholding depending on how a particular transaction is structured. *De facto* control will usually arise at higher levels of shareholding, and *de jure* control normally requires more than 50 per cent of the voting rights.

The Government's amendment to the Digital Markets, Competition and Consumers Bill establishing a new regime covering foreign state ownership of newspapers replaces the material influence test for cases involving foreign states and UK newspapers. Section 70A(3) of the Enterprise Act 2002 – inserted by clause 338(za) of the Bill – states:

- (a) as a result of two or more enterprises ceasing to be distinct, a relevant merger situation would have been created by virtue of section 23(1) if the modifications in Schedule 6A had effect,*
- (b) one of the enterprises concerned is a newspaper enterprise,*
- (c) as a result of the enterprises ceasing to be distinct, a foreign power is able to control or influence the policy of the person carrying on the newspaper enterprise, or is able to control or influence the policy to a greater extent.*

The modifications made by a new Schedule 6A to the Enterprise Act – also to be inserted by clause 338(za) – are as follows:

- (a) section 23 is to be read as if, for the amount in subsection (1)(b), there were substituted £2 million,*
- (b) section 26(3) is to be read as if — for “materially to influence” there were substituted “to influence to any extent”, and (ii) for “may, for the purposes of subsections (1) and (2), be treated” there were substituted “is to be treated, for the purposes of subsections (1) and (2),”, and*
- (c) section 26(4)(a) and (b), is to be read as if, for “materially to influence” there were substituted “to influence to any extent”.*

*(8) Paragraph 1 of a new Schedule 6B will make provision about the circumstances in which a foreign power is able to control or influence to any extent the policy of a person for the purposes of section 70A.*

As you rightly stated in your question, the effect of these changes is to create a different threshold for influence in newspaper cases involving foreign state ownership. It is therefore a separate concept to that which is applicable to the media merger regime, and does not affect the application of material influence in the media merger and other regimes.

The intention of the new measures restricting foreign state ownership of UK newspapers is to address any potential level of influence by a foreign state, given concerns about the impact that any external foreign state influence could have on media freedom. An acquisition is blocked if there is any direct or indirect shareholdings or voting rights by foreign states, or over a 5 per

cent share for investments via state-owned investment vehicles such as sovereign wealth funds.

The new legislation will ensure that the Secretary of State will have to take swift action in any case where a foreign state could potentially influence a newspaper to any extent. Given the potential for foreign state influence to erode public trust in our news – and, having listened to the views expressed in Parliament about this – we think this is an appropriate and balanced approach to take.

I hope this addresses your query. Many thanks again for your contributions to the debate on this important issue.

*With our best wishes,*



**Lord Parkinson of Whitley Bay  
Minister for Arts, Heritage and Libraries**

