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Restricting takeovers on national security grounds is the same warped logic as Trump's tariffs

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When president Donald Trump justified his aluminium and steel tariffs on “national security” grounds, the UK’s Trade Minister Liam Fox rightly slammed such reasoning for imports from close military allies.

That experience should have been chastening for the Conservatives. Overly broad US legislation allowing “national security” protection was politically abused.

The Trump administration’s move to investigate whether the same Section 232 provision should justify car tariffs was further evidence of how such rules can placate vested interests.

Yet the Tories’ anger over Trump’s measures now looks hypocritical given their proposals for company merger regulation. Once upon a time, the Conservatives understood the importance of independent economic institutions and constraints on political discretion. But with comrade Corbyn waiting in the wings, John Fingleton, the former Office of Fair Trading head, has sounded the alarm about remarkable changes the Government is consulting on for the regulation of takeovers and acquisitions relating to national security concerns.

The proposals would result in a massive expansion of government power to investigate takeovers, investments, loans, acquisitions of intellectual property and more on these grounds. They would broaden the defined national-security risks covered and take power away from the independent Competition and Markets Authority, placing it instead with the Department for Business, Innovation and Skills. There would be no legal restrictions on which national infrastructure sectors this public-interest test applies to (meaning it covers food, transport, finance and much more).

The scale of this change is remarkable. There have been just nine formal public-interest interventions on national security grounds since 2003, and no case where it was considered existing powers were inadequate. Under the new regime, the Government thinks 200 cases will be reviewed every year, of which 50 will be remedied or blocked. The implication, as Fingleton notes, is that the Government must believe many previous mergers, and companies that are currently in the hands of foreign owners, represent threats to our national security.

Such a large regime shift will bring deleterious consequences. The direct costs entail the extra taxpayer resources required, and compliance and legal costs for firms. But the economic costs

are much broader. A culture where foreign direct investment feels less welcome and more uncertain will reduce competition and dampen the transfer of best practice and innovation.

Takeovers and mergers are an important part of a dynamic, healthy economy. They can play a crucial role in disciplining poor performance of top managers in target firms, lead to efficiency-inducing reorganisations, and knowledge transfer of managerial best practice. Evidence already suggests foreign-owned firms in the UK are more productive. The real concern then is that an expanded public-interest regime for national security will be open to abuse.

This is not a theoretical concern. When Melrose attempted to take over GKN in 2018, Unite the union called for the Government to intervene on national-security grounds. Its real concerns, of course, included “job security and investment” and Melrose’s “short-term, profit-first business model”. Greg Clark, the Business Secretary, mulled over such an investigation. Though the national-security concern was eventually dropped, extensive political scrutiny resulted in Melrose having to make commitments on jobs, GKN’s pension fund and offer other restrictions on its activity. Fingleton said that one adviser described it a “drive-by shooting” by the Government.

Politicians celebrate these protections. But the costs are just as real but more diffuse. The Melrose-GKN case, as well as SoftBank’s takeover of British chipmaker Arm Holdings, is leading evidence that national-security concerns will be used for more extensive Government meddling in business decision making. The risk of overreach is real. But none of these concerns will likely resonate with Theresa May or Clark.

The Hinkley Point C decision was reviewed, and even though it cleared, was what led to this review. May’s administration, through its industrial strategy, has a touching faith in how it can shape economic activity and protect and enhance certain sectors.

But May and Clark should consider the institutional consequences of their actions. Economic institutions are only as good as they can perform with the worst leaders in charge.

The consequences to investment, innovation and productivity from the rent-seeking and meddling will be negative enough. But imagining such extensive powers under a Corbyn government is positively frightening. Theresa May and Greg Clark should think again.

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