

Senate Economics References Committee

Inquiry into Foreign Investment Proposals

Answer to a written question on notice by Chow Tai Fook Enterprises Limited

25 September, 2020

Question:

“For each of the conditions listed in this document, could you please provide the committee with an analysis of how and why CTFE would consider any of these conditions to be sensitive or commercial-in-confidence to CTFE’s operations in Australia.”

Answer:

1. CTFE notes that the Senate Committee (**Committee**) is broadly aware of the conditions imposed by the Foreign Investment Review Board (**FIRB**) which permitted CTFE to acquire 100% of Alinta Energy Limited (**Alinta**), as a result of the documents tabled by the Acting Chair at the public hearing on Friday, 15 May 2020. The documents tabled include the Alinta Energy FIRB Condition Compliance Policy, October 2019 (**Alinta Compliance Policy**).
2. The Alinta Compliance Policy was compiled by Alinta based on information contained in an approval letter dated 24 April 2017 from FIRB to the legal counsel acting on behalf of CTFE (**Approval Letter**) which is expressly designated “commercial-in-confidence” by FIRB. The purpose of the Alinta Compliance Policy is to assist Alinta personnel in ensuring that Alinta’s business activities will be conducted in a manner which is compliant with the conditions imposed by FIRB as set out in the Approval Letter (**FIRB Conditions**). The Alinta Compliance Report contains an outline summary of the FIRB Conditions (**Summary**).
3. It is CTFE’s position that the FIRB Conditions (a) were formulated and imposed on a “commercial-in-confidence” basis, and (b) are commercially sensitive. The FIRB Conditions dictate the parameters within which a CTFE subsidiary is permitted to operate in Australia, including matters fundamental to its commercial strategy, such as the scope of permissible commercial relationships and certain limitations on the conduct of its day-to-day business. In the commercial context in which CTFE operates, the continued confidentiality of these matters is critical to the ongoing competitive position of CTFE in the market.¹ If these requirements were made known to competitors and counterparties (this includes both foreign investors as well as local Australian parties), this could materially and egregiously harm CTFE’s operations in Australia through the introduction of an asymmetry of information. This would have a high potential to diminish CTFE’s competitiveness.

¹ As explained by Mr Jeff Dimery of Alinta at the public hearing on 15 May 2020 (page 6 of the transcript), the FIRB Conditions are prescriptive and their disclosure would have a detrimental impact on commercial negotiations across a broad range of services and other requirements.

4. While CTFE welcomes the opportunity to assist the Committee, given the Summary in the Alinta Compliance Report is derived from and reflective of the confidential FIRB Conditions, CTFE cannot comment further on the Summary.
5. CTFE is concerned that any publication of the FIRB Conditions would enable its competitors and counterparties to exploit this confidential information to the disadvantage of CTFE. Conversely, CTFE has no similar knowledge, and would not normally expect to have such knowledge, of the specific conditions (if any) pursuant to which its competitors and counterparties operate in Australia (beyond the requirement to comply with all applicable laws and regulations). The prospective risks posed by any disclosure of the FIRB Conditions are therefore unacceptable to CTFE from a commercial perspective.
6. CTFE also notes that it complied with its duty of disclosure as a foreign investor into Australia in respect of the FIRB approval process on the faith of a regulatory regime that upholds and respects the confidentiality of any information so shared. CTFE should be able to rely upon the promise of confidence provided by FIRB (as an agency of the Australian Government) in respect of the information it provided, and this is important in order to protect CTFE's existing and future investments into Australia.
7. CTFE would like to assure the Committee that it takes regulatory compliance obligations seriously and is committed to its Australian investments, which also support thousands of Australian jobs. Insofar as Alinta is concerned, the Alinta management has the full support of CTFE and the Alinta Board of Directors to ensure that all FIRB Conditions are complied with, and that relevant remedial measures are implemented in accordance with the timetable agreed with FIRB.