
MACQUARIE
BUSINESS SCHOOL



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Economics Reference Committee
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Re: Inquiry into Foreign Investment Proposals

I, Dr Farida Akhtar, am a Senior Lecturer in Department of Actuarial Studies and Business Analytics at Macquarie University, Sydney. My research specialises in Merger and Acquisitions (M&A) and Corporate International Finance (please refer to my published work on M&A link here: <https://researchers.mq.edu.au/en/persons/farida-akhtar/publications/>). I feel well-placed to make this submission for the inquiry into foreign investment proposals, having regard to the 'national interest' test – particularly addressing the following terms of reference to:

a. The protection of Australia's market-based system from manipulation that would benefit proposed foreign investment

Foreign investment is critical for Australia's economic growth and the health of its financial markets. However, it appears that Australia may not have managed its foreign investment framework to the level required as a sustainable and robust investment destination for foreign investors. There has been a significant decline in foreign direct investment flows into Australia, mainly due to a decrease in the value of cross-border M&A activities. One of the main reasons behind this decline is the temporary reduction of the monetary screening threshold for all foreign investments in Australia to 'zero' to protect Australia's national interests on 29 March 2020. As result of this, all foreign acquisitions now require Foreign Investment Review Board (FIRB) approval. The time frame for screening has also been extended from 30 days to six months.

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This temporary arrangement has more benefits than costs. For example, it is not feasible to assess complex investment proposals within 30 days as various government and regulatory bodies may require consultation and comprehensive scrutiny on foreign investment may be time consuming. Given the increased instances of money laundering by corporations, individuals and banks which was revealed in the recent banking Royal Commission Inquiry, the increased time threshold to properly vet foreign investment proposals is prudent and clearly warranted. It is also about time that the 'zero' threshold was brought on board. This should be made permanent to protect our national interests from potentially toxic overseas investors.

The downside is that the Australian government will need to increase FIRB resources to appropriately assess all proposals. But for what is worth, this expenditure is necessary to protect our national interest. The second downside is that the lengthy 6-month processing time might deter potential overseas investors. However, it may be argued that genuine investors should respect Australia's need to appropriately vet foreign ownership of national assets. Further work may need to be performed to benchmark the processing time with similar jurisdictions to ensure we are not disadvantaged in this regard.

b. The assessment of the impact of proposed foreign investment on market concentration and competition

Foreign investment is heavily concentrated in most sectors of the Australian economy. For example, foreign investment in the agriculture, mining, water and real-estate sectors are heavily dominated by Asian investors. Caution should be applied that we are not selling off too much of our national resources and letting foreign ownership diminish our authority. Prior approval of these investments should be revisited. Furthermore, prior to any revision of our foreign investment laws a thorough analysis should be undertaken as to whether it would be in our national interest to allow ownership of a large proportion of our businesses and access to our economy to be held by one or more countries. For example, according to a United Nations Conference on Trade and Development (UNCTAD) Report 2020:

- On 16 August 2019, Healius (Australia) dismissed a \$2 billion takeover bid by Jangho (China) because the bid raised concerns about the security of Australian Defence Force medical records.
- On 8 July 2019, Harman International Industries (United States) withdrew its \$59 million offer for Australian audio device maker Nuheara (Australia) after discovering that the disclosure documents had to be submitted to the Australian Securities Exchange.

The above two examples are only scratching the surface of a deep problem we have. It is absolutely necessary that we revise our approach of the mechanisms currently in place of how we allow overseas investors to invest in Australia.

c. The imposition of conditions on foreign investors

The character and attributes of any potential foreign investor and the source of income/capital for the potential investment should be thoroughly investigated. Australia should ensure that it reserves the right to amend/revise its decision should the investor contravene Australian law e.g. be found guilty of corruption after the approval or/and for the duration of the investment. This should include the right of recourse by confiscation of any assets held from the investor in the event of any non-compliance with Australian laws.

d. The extent to which the risk that foreign investment proposals are being used for money laundering is examined

According to a UNTCAD report, several target-country governments raised objections against a number of foreign takeover proposals, in particular where they involved the sale of critical or strategic domestic assets to foreign investors in 2019. Out of a number of cross-border M&A attempts with a value over \$50 million, at least 11 deals were withdrawn for regulatory/political reasons and two more were withdrawn while pending government approval. The gross value of deals withdrawn for the above reasons was roughly \$87.3 billion, equal to 47.3% of all M&A activity in 2019. This figure is approximately 42% lower than for 2018 (\$154.5 billion). The main businesses in which M&A proposals were withdrawn for regulatory or political reasons were critical industries i.e. energy, automotive, information technology, logistics, utility services, medical services, financial services and infrastructure. Among the 13 M&A deals withdrawn in 2019, three were terminated in industries relevant for national security, two of which were related to attempts by Chinese investors to acquire businesses in key industries such as energy and medical services in Portugal and Australia (UNTCAD Report 2020).

e. The role of the Foreign Investment Review Board

The FIRB should continue to engage closely with the relevant regulatory authorities and policymakers to remain alert to suspicious activities, including any corruptive elements that may be present in potential trade and M&A activities.

I am willing to have further discussion if the committee requires further insights. I thank the Committee for giving me this opportunity to contribute.

Sincerely,

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