



Foreign ownership in the telecommunications sector

Since the earliest days of white settlement, Australia has benefited extensively from foreign investment, often helping to sustain vigorous growth rates and an enviable standard of living. However, foreign investment in assets perceived to be of significant national strategic, economic, social or cultural value still raises substantial public concern, as recently witnessed in the case of the Xstrata takeover bid of base metals and uranium miner, WMC Resources Ltd.

In Australia, foreign investment over a specified value is screened by the [Foreign Investment Review Board](#) (FIRB), a non-statutory body which advises the Treasurer on aspects of foreign investment. While generally welcoming foreign investment, Australia maintains restrictions on investment in sensitive sectors, including urban land, banking, aviation, airports, shipping, broadcasting, newspapers and telecommunications. The FIRB seeks to balance the economic benefits of foreign investment with community concerns.

Under the *Foreign Acquisitions and Takeovers Act 1975*, the Treasurer makes the final decision and may prevent investment deemed to be ‘contrary to the national interest’. The national interest is determined with regard to the ‘widely held community concerns of Australians’.¹ Conceivably, this could include economic, strategic, social, cultural and environmental aspects. However, in one view, the failure to define ‘national interest’ in the Act leaves the decision making process open to question.

The situation has in the past led to hyperbole, with the FIRB even being dubbed a ‘secret cabal’ behind which the Treasurer hides, as occurred in 2001 when the Treasurer prohibited Royal Dutch Shell from acquiring a more substantial shareholding in Woodside Petroleum, the operator of the Northwest Shelf gas fields.²

Until the recent passage of the Australia-United States Free Trade Agreement (AUSFTA), the United States remained

opposed to Australia’s continued use of the FIRB screening process and what it termed a ‘relatively broad national interest test’.³

The case of Telstra

Foreign investment in the telecommunications sector—specifically the case of Telstra as the Government seeks to fully privatise its 51 per cent share—is a dynamic and complex issue.

Prior to the 1980s, telecommunications were considered to be natural monopolies, with the Government retaining firm regulatory control (and in most cases, ownership) for a variety of strategic and economic reasons. Led by the United States and the United Kingdom, reform in the sector has since established a norm of liberalisation and de-monopolisation, backed by competition reform and sector specific regulation.

The *Telstra Corporation Act 1991* limits total foreign ownership to 35 per cent of publicly available shares and limits individual foreign ownership to 5 per cent of publicly available shares. In addition, the legislation requires that the board’s chair—and a majority of directors—must be Australian citizens, and that Telstra’s head office, base of operations and place of incorporation must remain within Australia.

In introducing legislation to privatise Telstra in 2003, the Government stated that Telstra would continue to be a majority Australian-owned corporation.⁴ This statement has since been reiterated in the press.⁵ Potentially, this would permit ownership limits to just under 50 per cent, as in the case of Qantas.⁶

It is worth noting that the Canadian Government has commenced proceedings to lift restrictions on foreign investment in the telecommunications sector in response to a parliamentary committee recommendation that found the restrictions limited access to capital, effectively impeding

	Some Overseas Comparisons
Australia	Total foreign shareholding of Telstra (incumbent dominant carrier) limited to 35% of listed capital, with any foreign person or association limited to 5% of listed share capital. Legislation requiring chair and majority of directors to be Australian citizens and that base of operations and place of incorporation remain in Australia. Prior approval required for foreign involvement in establishment of new entrants to, or investment in telecommunications sector.
Canada	Foreign ownership limited to 20% of voting shares in facilities based carrier, with 80% of board required to be Canadian citizens. No limits on non-voting shares. No limits on resellers.
New Zealand	Telecom New Zealand (incumbent dominant carrier) limits foreign relevant interest to 10% of voting shares without prior approval of the Board and the ‘Kiwi Shareholder’. Foreign relevant interest in voting shares limited to 49.9%. No restrictions on other operators in telecommunications sector.
United Kingdom	No foreign ownership restrictions
United States	No foreign ownership restrictions (The Federal Communications Commission may deny radio licences to corporations with greater than 25% foreign ownership subject to public interest).

Source: OECD Communications Outlook 2003

innovation and expansion within the Canadian economy.⁷

The basic arguments for and against foreign ownership are as follows.

For foreign ownership

Foreign ownership creates a more efficient economy and greater total factor productivity through introduction of new technology and human capital.

Foreign ownership allows the importation of technology at a lower cost than may be available locally. This technology may in turn spill over to the domestic economy through imitation or adaptation, and as technicians, scientists and other employees move on to local firms or self-employment.⁸ Even if the majority of research and development is undertaken in the source country, the technology is still transferred to the target country through application, along with the associated economic benefits.

Evidence suggests that foreign firms provide increases in the value of human capital as management best practice, training and worker productivity increments are spread throughout the economy in a similar way.⁹

Against foreign ownership

Arguments against foreign ownership range from the strategic to the sentimental.

Telecommunications is a strategic sector that is vital for the maintenance of sovereign control of the economy.

Telecommunications remains a fundamental component of all economic activity. However, foreign ownership may make it more difficult for governments to influence pricing and investment in infrastructure and technology, which can facilitate the achievement of national economic and development goals without recourse to excessive regulation.

Similarly, it can be argued that telecommunications is vital to national security. The central fear is that in periods of uncertainty, telecommunications services, given their centrality to economic activity, could be withdrawn or held as a bargaining chip to resolve disputes. This factor was studied closely in 2001 when the Singaporean Government controlled carrier Singtel acquired Optus, which operates satellites used by Australian defence and security agencies.

On the sentimental side, few Australians would like to see Qantas (and its iconic kangaroo logo) owned by a foreign corporation. Although unquantifiable and often irrational, national pride remains a consideration, particularly in cases perceived as being distinctly Australian. Publicity campaigns against foreign ownership of what are perceived as cultural icons, such as the food brands Vegemite or Arnott's, have in the past garnered widespread public support. With its corporate logo in the corner of household bills, whether Telstra shares this iconic status is another question.

In the same vein, it is argued that foreign ownership in the telecommunications sector could, in the future, lead to the dilution of culturally significant content in broadcasting. The rapid convergence of the telecommunications and broadcasting sectors effectively means that the distinction between the two sectors is becoming increasingly blurred. Foreign ownership controls in telecommunications will also

affect broadcasting, which is currently subject to separate legislation under the *Broadcasting Services Act 1992*.

Budgetary and policy considerations

There are also budgetary and policy considerations arising from an increased level of foreign ownership in Telstra.

Assuming that the Government will seek to maximise its return, market conditions will dictate the structure of the sale. Increasing foreign ownership levels in Telstra prior to the sale will allow access to greater capital than is available domestically. This has the potential both to increase the share price and substantially reduce any negative effects such a large sale could have on the domestic stock market.

Regional services are central to any issue associated with the sale of Telstra. There is no theoretical reason why foreign ownership would adversely affect Telstra services in regional Australia. Both foreign and domestic investors seek to maximise profit—profit that arguably does not exist in regional Australia. However, in practice governments may find it more difficult to regulate foreign firms. The key to ensuring adequate services in regional Australia, regardless of foreign ownership levels, will continue to be effective and efficient regulation.

1. Foreign Investment Review Board, Policy Document, 'Summary of Australia's Foreign Investment Policy', January 2005.
2. Margo Kingston, 'Foreign Control', *Sydney Morning Herald*, 6 March 2001.
3. United States Trade Representative (2003), '2003 National Trade Estimate Report on Foreign Trade Barriers', Government Printing Office, Washington D.C.
4. The Hon Dr Brendan Nelson MP, Telstra (Transition to Full Private Ownership) Bill 2003 Second Reading Speech, House of Representatives Hansard, 26 June 2004.
5. The Hon Peter Costello MP, Treasurer, Transcript Interview with Jon Faine on 3LO ABC, 29 October 2004.
6. Under the *Qantas Sale Act 1992* foreign ownership is limited to 49 per cent of issued share capital.
7. Office of the Minister for Industry Canada, 'Government responds to industry committee's recommendations on foreign investment restrictions in telecommunications', 25 September 2003.
8. Steven Globerman, 'Implications of foreign ownership restrictions for the Canadian economy – a sectoral analysis', Industry Canada, 1999.
9. Organization for Economic Cooperation and Development (OECD), 'Foreign direct investment restrictions in OECD Countries', *OECD Economic Outlook*, June 2003.

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