Australian Government
Department of Foreign Affairs and Trade
Australian Trade and Investment Commission

Joint Submission by DFAT and Austrade
Inquiry into Foreign Investment Proposals
Senate Economic References Committee

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CONTENTS

TERMS OF REFERENCE

The review of foreign investment proposals against the national interest test, with particular reference to:

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

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

c. the imposition of conditions on foreign investors;

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

e. the role of the Foreign Investment Review Board; and

f. any other related matters.

INTRODUCTION

The Department of Foreign Affairs and Trade (DFAT) and the Australian Trade and Investment Commission (Austrade) support Australia's open trade and investment agenda. The portfolio promotes and facilitates investment and supports domestic policy settings that help to protect Australia's national interests.

Foreign investment is essential to Australia's economic prosperity and contributes to our economic growth. Foreign investment leads to stronger ties with other economies. It increases our people and business links, and facilitates broader co-operation. While the global competition for capital is intense, Australia has continued to attract and retain foreign investment because of our open, well-regulated and stable economy. Australia's Free Trade Agreements (FTAs) provide an important tool to enshrine our open economic settings in international law, while securing better opportunities for Australian businesses in other countries' markets and safeguarding the national interest, including through the foreign investment review framework.

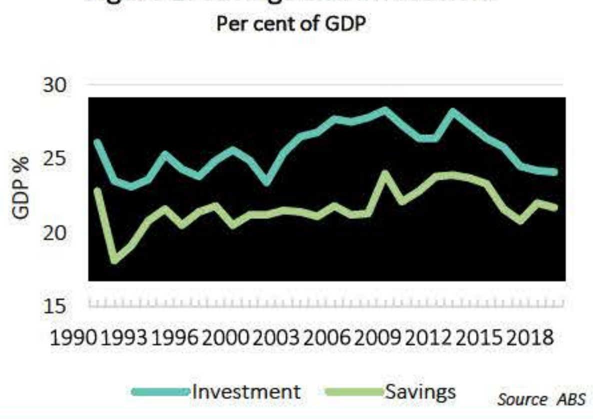
PORTFOLIO PERSPECTIVE ON FOREIGN INVESTMENT

Importance of FDI to the Australian economy

Foreign investment, including Foreign Direct Investment (FDI), is important for Australia's prosperity. It brings capital, skills and technologies to Australia; and helps us achieve significant global success, particularly in the energy and resources, infrastructure, agribusiness, education, tourism and financial services industries. Foreign investment is critical as Australia looks to develop emerging industries such as smart technology, critical minerals and alternative energy. Foreign investment will also play an important role in supporting the growth of our economy following the coronavirus (COVID-19) pandemic.

The gap between Australia's national investment and national savings has been on average around four per cent of GDP over the last few decades (*refer to Figure 1*). Foreign investment has provided the necessary capital to finance this shortfall and enabled Australia to maximise the potential of our vast resources. It also allows Australia to enjoy a share of global economic activity disproportionate to our population.

Figure 1: Savings and Investment



Foreign investment underpins the jobs of one in 10 workers (employing around 1.2 million people) who, on average, earn $20,000 a year more than those employed by local companies.[i] European Union and United States direct investment in Australia contributed to employing over 680,000 Australians in 2017[ii] (*See Case study 1: Boeing*). Despite foreign-owned companies making up less than 1 per cent of the total number of businesses in Australia, they contributed 7.3 per cent of total business taxes paid in 2017-18 ($3.8 billion in tax)[iii].

Case study 1: Boeing – Commitment to build Australia's aerospace industry

Boeing, the world's largest aerospace company, started its Australian operations in 1927 and is now the company's largest base outside of the US. Boeing Australia employs more than 3,000 employees across 27 Australian locations. It is doing leading-edge work on artificial intelligence, digital engineering and advanced composite materials. Boeing's investments contribute to a total of 9,800 direct and indirect jobs; $410 million in taxes paid in Australia; and a $1.6 billion contribution to GDP in 2016. It has partnered with Australian universities, and federal and state governments on research and development projects ranging from unmanned aircraft and autonomous systems, aircraft simulator technologies, manufacturing technologies, and cabin disease transmission. Boeing is partnering with Australian-based firms to supply the global defence market – a demonstration of how foreign investment can enhance linkages for Australian firms into global value chains.

Australia's world class research and development organisations have a strong tradition of partnering with foreign investors to develop new technologies and solutions for business. This engagement benefits business and consumers community-wide, and is crucial to maintaining the competitiveness of our economy. It also encourages local businesses to innovate, fosters productivity and encourages employment generation through the establishment of new businesses or the modernisation of established ones, including in our regional centres (*See Case study 2: Hakubaku*).

Case study 2: Hakubaku - Bringing new technology and industry to regional Australia

Japanese noodle company, Hakubaku, established a noodle factory in Ballarat, Victoria, in 1996. Hakubaku Australia has contributed significantly to the regional economy through employment, contracting and active community involvement. As around 70% of Japanese noodles manufactured in Japan use Australian wheat; the company made a decision to open a factory located between the organic wheat farmers of southern New South Wales and the port of Melbourne. Producing noodles in Australia helped the company address strict Japanese import quotas on unprocessed grain. Having originally been setup to solely export product to Japan, Hakubaku noodles are now prominent in the Australian market and the company has also diversified to international export markets in the US, Europe and Asia.

Foreign investment trends

The Australian economy has benefited from large-scale foreign investment in the mining industry over an extended period. In the last decade, Australia's FDI landscape has undergone considerable change. While mining is still the largest recipient of foreign investment, a greater proportion is now being seen in the real estate market and the financial sector (*refer to Figure 2*). Within the mining, resources and energy sectors, investments are beginning to diversify into renewables, hydrogen, gas and critical minerals (*See Case Study 3: Inpex*). The United States and Japan

Figure 2: FDI by Sector, 2014 and 2018

are the biggest foreign direct investors in Australia, followed by the United Kingdom, Netherlands and China.

Case study 3: INPEX - Fuelling Australia's oil and gas industries

At an initial value of US$34 billion, the Ichthys gas project represents the largest ever foreign investment by a Japanese company. The gas-condensate rich Ichthys field is expected to produce 9 million tonnes of LNG and 1.6 million tonnes of LNP annually, along with 100,000 barrels of condensate per day at its peak. The construction of the project has contributed more than $16 billion to the national economy, of which the Northern Territory alone has enjoyed $9 billion from activity associated with the project. The company's Industry Participation Plan supports 60 Indigenous businesses, employing 1,400 Aboriginal and Torres Strait Islander people, and providing work to 11,000 Darwin locals over the lifetime of Ichthys. With substantial demand from neighbouring Asian nations, the project is expected to generate $195 billion in exports, add $190 billion to Australia's GDP and deliver $73 billion in taxation revenue for federal, state and territory governments over its lifetime.

The World Bank's Global Investment Competitiveness[iv] survey of 754 executives found that investors regard sound legal and regulatory environments and political stability as the most important factors for investment. Investors value these factors over low tax rates and lower costs of doing business. Australia must ensure its regulatory environment remains internationally competitive so that it is effective in promoting new — and retaining existing — investment.

The portfolio is focusing on addressing a number of investment impediments through working closely with industry and the Commonwealth, state and territory governments. By addressing inconsistencies in planning regimes across state jurisdictions, getting the visa settings right for major investors, and advising investors on social licence issues, the portfolio is helping to ease the investment process for investors and maintain Australia's competitiveness.

Recent development – COVID-19

The COVID-19 pandemic is expected to cause a sharp drop of around 30 to 40 percent in global FDI flows for 2020-21.[v] Australia already faces increasing competition for FDI, including from Asian economies. In post-COVID-19 recovery environment, we foresee the competition for global FDI to further intensify as the demand for capital increases while the FDI pool shrinks. To ensure Australia remains competitive in attracting foreign investment it is important we maintain our reputation and credibility as an open and welcoming place to invest.

Screening mechanism

Australia has been screening foreign investment for around 45 years. Over this time, the foreign investment review framework has been adjusted, as necessary, to respond to different issues that have emerged. One such issue is the COVID-19 pandemic which has fundamentally disrupted the Australian, and global, economy. To ensure the Government has appropriate oversight of proposed foreign investment during this crisis, the Government has introduced a temporary measure to screen all proposed foreign investments subject to the *Foreign Acquisitions and Takeovers Act 1975*. This measure will be in place for the duration of the crisis.

Reputation for regulatory integrity

Australia has legislation and regulations at the Commonwealth, state and territory levels that ensure fair competition, sufficient protection for businesses, and integrity in the market. Australia's financial system and capital markets are governed and supervised by three separate regulatory agencies and a central government agency – Australian Prudential Regulation Authority (APRA), Australian Securities and Investments Commission (ASIC), Australian Competition and Consumer Commission (ACCC), Reserve Bank of Australia (RBA) and Treasury. Collectively, these agencies work to ensure the fidelity and stability of our financial regulatory framework, including through prudential supervision, safeguarding market integrity and consumer protection. ASIC's work seeks to protect markets and consumers from manipulation, deception and unfair practices and to promote confident participation in the financial system.

Australian agencies such as the Australian Federal Police (AFP), Australian Criminal Intelligence Commission (ACIC) and the Australian Transaction Reports and Analysis Centre (AUSTRAC) add to Australia's solid reputation as a safe and reliable country to invest. The Australian public and foreign investors can be assured by the protection of our strong foundations and respect for the rule of law.

DFAT and Austrade's Roles

Investment promotion, attraction and facilitation

Central to advancing our business interests in overseas markets and on home soil, DFAT and Austrade lead the Government's "Open for Business" and Economic and Commercial Diplomacy agendas. Our extensive domestic and international networks work to support and secure Australia's commercial interests.

In the areas of FDI promotion, attraction and facilitation, Austrade works with Commonwealth agencies (including Home Affairs, the Treasury, and the Department of Industry, Science, Innovation and Resources) and state and territory governments to help investors navigate government institutions at both federal and state government levels. Along with advising on key investment opportunities in Australia, Austrade also advises investors that foreign investment takes place within a legal framework and encourages investors to engage with the Foreign Investment Review Board (FIRB) as appropriate.

Free Trade Agreements (FTAs)

FTAs agreed by successive governments over nearly two decades reflect two enduring interests. First, to attract beneficial investment, showcasing Australia as an open and attractive investment destination through FTAs with comprehensive investment provisions. Second, to preserve the operation of Australia's foreign investment framework, which allows screening of investment.

The 2005 Australia-US FTA is an example of Australia's approach and includes strong investor protections to attract additional investment from the United States. It also promotes productive foreign investment in Australia by liberalising the threshold for screening of foreign investment proposals in non-sensitive sectors. It balanced this by retaining the Government's ability to examine significant sensitive foreign investment proposals at a lower threshold. This feature has been replicated in subsequent FTAs struck since then.

In addition to screening thresholds, Australia's FTAs include other safeguards that protect the operation of our foreign investment framework. This includes, for example, exempting investment screening and FIRB-related processes from dispute settlement mechanisms. Such an exemption was included for the first time in the 2009 Australia-Chile FTA for Investor State Dispute Settlement (ISDS) only. This was subsequently broadened to include both State-to-State disputes and ISDS, and has become standard practice in Australia's FTAs. Such an exemption was included most recently in the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) and our FTAs with Hong Kong, Indonesia and Peru. All of Australia's FTAs also include safeguards to preserve the Government's ability to pursue essential security and legitimate public policy objectives.

Treasury, as part of the foreign investment review assessment process, consults with DFAT and Austrade on specific investment applications. DFAT and Austrade provide information of relevance to the portfolio's areas of responsibility and interests. This can include whether there are implications arising from our international trade and investment obligations and information on individual applicants and businesses. The Australian Government has the authority to reject foreign investment applications or impose conditions on approvals where such actions are judged necessary to safeguard the national interest.

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[i] ABS cat 5494.0
[ii] US Bureau of Economic Analysis and Eurostat
[iii] ATO Corporate Tax Transparency Report 2017-18
[iv] World Bank Global Investment Competitiveness Report 2017-18
[v] UNCTAD Investment Trends Monitor 27 March 2020