APPENDIX 3

Treasurer's 2008 guidelines for assessing proposals by SOEs

On 17 February 2008, the Treasurer released new (or additional) guidelines for investment proposals by foreign governments or state-owned entities. The guidelines require state-owned entities (including government agencies and sovereign wealth funds) to address six criteria. Of the six criteria 5 out of the 6 would appear to apply to all foreign investment proposals—guideline one deals with the relationship between the SOE and the foreign government.

1) **An investor's operations are independent from the relevant foreign government.**

   In considering issues relating to independence, the Government will focus on the extent to which the prospective foreign investor operates at arm's length from the relevant government.

   It also considers whether the prospective investor's governance arrangements could facilitate actual or potential control by a foreign government (including through the investor's funding arrangements).

   Where the investor has been partly privatised, the Government would consider the size and composition of any non government interests, including any restrictions on governance rights.

2) **An investor is subject to and adheres to the law and observes common standards of business behaviour.**

   To this end, the Government considers the extent to which the investor has clear commercial objectives and has been subject to adequate and transparent regulation and supervision in other jurisdictions.

   Proposals by foreign government owned or controlled investors that operate on a transparent and commercial basis are less likely to raise additional national interest concerns than proposals from those that do not.

3) **An investment may hinder competition or lead to undue concentration or control in the industry or sectors concerned.**

   These issues are also examined by the Australian Competition and Consumer Commission in accordance with Australia's competition policy regime.

4) **An investment may impact on Australian government revenue or other policies.**

   For example, investments by foreign government entities must be taxed on the same basis as operations by other commercial entities. They must also be consistent with the Government's objectives in relation to matters such as the environment.

5) An investment may impact on Australia's national security.

The Government would consider the extent to which investments might affect Australia's ability to protect its strategic and security interests.

6) An investment may impact on the operations and directions of an Australian business as well as its contribution to the Australian economy and broader community.

The Government would consider any plans by an acquiring entity to restructure an Australian business following its acquisition. Key interests would include impacts on imports, exports, local processing of materials, research and development and industrial relations.

The Government would also consider the extent of Australian participation in ownership, control and management of an enterprise that would remain after a foreign investment, including the interests of employees, creditors and other stakeholders.[1]

[1] Principles Guiding Consideration of Foreign Government Related Investment in Australia, http://www.treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2008/009.htm&pageID=&min=wms&Year=&DocType=0 (accessed 28 April 2009).