

Inquiry into foreign investment by state-owned entities – Economics Committee

Dear Senators,

I thank you for the opportunity to make the following submissions to your enquiry.

SUMMARY OF SUBMISSIONS

1. Australia to follow Europe and America in calling for sovereign wealth funds to:
 - provide greater transparency;
 - cap the size of their investments to less than 10 per cent; and
 - forgo shareholder voting rights
2. A show-cause pre-condition that a proposed acquisition is in Australia's economic interest, applied before any consideration of the proposal.
3. A standard condition that a company owned or controlled by a foreign government should be listed in Australia and accessible to Australian shareholders.
4. Conditions should be readily enforceable and breaches easily sanctioned, for example by use of heavy fines and performance bonds in escrow.
5. There should be stringent examination of conflicts of interest among board members and executives of an Australian company who are recommending acquisition of their company's assets

As an Australian shareholder and citizen I am concerned at the naiveté and irrationality that now impairs principles for assessing acquisitions by sovereign and state-owned companies.

The Australian government has lost sight of earlier requirements that foreign acquisition should bring something new to this country, rather than merely taking over an already going concern. That applies to Chinalco's Rio Tinto proposal, as well as the Minmetals acquisition of Oz Minerals.

The most recent example is the extraordinary acquisition of Oz Minerals' zinc assets by the Chinese government controlled company China Minmetals. This is to be on absurdly generous terms and to the detriment of this country's international standing, as we will lose Australian ownership of the world's no. 2 zinc producer (see below)

I submit that we should follow Europe and America in calling for sovereign wealth funds to:

- provide greater transparency;
- cap the size of their investments to less than 10 per cent; and
- forgo shareholder voting rights

(Reported by John Garnaut, Business Age, 20/04/09)

That is being resisted, for example by China Investment Corporation chief Lou Jiwei: "If we invest in something we must have voting rights," he said. "How can we just abstain from exercising voting rights? We cannot accept this principle."

However, I respectfully submit that Australia should adopt the European and American terms.

The Treasurer originally, and very sensibly, put forward the principle that only proposals bringing fresh activity to Australia would be considered. Those that merely involved acquiring a going concern would not be countenanced. That principle should be reinstated, in particular with reference to Rio Tinto.

FRIB and the Treasurer commonly set conditions on acquisition by a foreign sovereign wealth fund, but as many have pointed out, enforcement of such conditions is problematic. Warfare is not a likely option. Given that *ex hypothesi* the Government would already have made concessions by granting the acquisition in the first place, there is little chance of energetic enforcement when a breach occurs. This should be provided for pre-emptively, with automatic economic sanctions incorporated in all approvals.

Those would take the form, for example, of swingeing fines of billions of dollars, deducted from earnings at source in Australia. The fines would have to be so large as to make deliberate breaches unattractive.

Similarly, cash performance bonds should be paid before any transfer occurs.

The Treasurer and FIRB should examine any possible conflict of interest in boards of Australian companies advocating sovereign fund or state-backed acquisitions: in particular, inducements to board members and arrangements for Australian board members or executives to take up positions in the acquiring entity.

The bank accounts of board members should be examined for at least 2 years following an acquisition.

OZ Minerals

Sadly, the Minmetals acquisition of most of OZ Mineral's assets has already been approved, and it remains a case study for what should NOT be allowed to happen in future

The loss to Australia's place in the international economy is enormous. OZL's website proudly proclaims that :

*"OZ Minerals is Australia's **third largest diversified mining company** and is the **world's second largest producer of zinc** as well as a substantial producer of copper, lead, gold and silver."*

<http://www.ozminerals.com/About-OZ-Minerals.html>

The Australian government's decision means that overnight the world's no. 2 zinc producer will cease to be Australian, with not one cent of Australian shareholder ownership in the Chinese company to be permitted.

China is paying AUD 1.75 billion. Total OZL Assets are assessed at 5.3 billion (OZ CEO Andrew Michelmore in a speech to the Brisbane Mining Club, 16/4/09).

Subtracting remnant assets retained by OZL leaves more than AUD 3 billion of assets going to China. 2008 revenue was \$1,218.4 (2008 Results at p 13). So China is buying the assets for not much more than one year's revenue (Prospect Hill only started up this year, so was not responsible for any 2008 revenue).

I am grateful that such an enquiry is on foot, and await with interest news of its outcome. I would welcome the opportunity to attend a hearing in Melbourne.

Dr Peter Freckleton