



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

ECONOMICS REFERENCES COMMITTEE

Reference: Foreign investment by state owned entities

THURSDAY, 2 JULY 2009

PERTH

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**SENATE ECONOMICS
REFERENCES COMMITTEE**

Thursday, 2 July 2009

Members: Senator Eggleston (*Chair*), Senator Hurley (*Deputy Chair*), Senators Bushby, Joyce, Pratt and Xenophon

Participating members: Senators Abetz, Adams, Back, Barnett, Bernardi, Bilyk, Birmingham, Mark Bishop, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Cameron, Cash, Colbeck, Jacinta Collins, Coonan, Cormann, Crossin, Farrell, Feeney, Ferguson, Fielding, Fierravanti-Wells, Fifield, Fisher, Forshaw, Furner, Hanson-Young, Heffernan, Humphries, Hutchins, Johnston, Kroger, Ludlam, Lundy, Ian Macdonald, McEwen, McGauran, McLucas, Marshall, Mason, Milne, Minchin, Moore, Nash, O'Brien, Parry, Payne, Polley, Ronaldson, Ryan, Scullion, Siewert, Sterle, Troeth, Trood, Williams and Wortley

Senators in attendance: Eggleston, Joyce and Pratt

Terms of reference for the inquiry:

To inquire into and report on:

- a. the international experience of sovereign wealth funds and state-owned companies, their role in acquisitions of significant shareholdings of corporations, and the impact and outcomes of such acquisitions on business growth and competition; and
- b. the Australian experience of foreign investment by sovereign wealth funds and state-owned companies in the context of Australia's foreign investment arrangements.

WITNESSES

CALDER, Mr Duncan Harvey, Western Australia President, Australia China Business Council..... 1
McNALLY, Mr Norman Stephen, Private Capacity 15
McROBERT, Mr Shaun Barry, Committee Member, Australia China Business Council 1
PHILLIPS, Mr Wayne Frederick Laurence, Director, AV Engineering 15
TAPP. Mr Julian Robin Paul, Head of Government Relations, Fortescue Metals Group 27

Committee met at 10.12 am**CALDER, Mr Duncan Harvey, Western Australia President, Australia China Business Council****McROBERT, Mr Shaun Barry, Committee Member, Australia China Business Council**

CHAIR (Senator Eggleston)—I declare open this hearing of the Senate Economics References Committee for its inquiry into foreign investment by state owned entities. On 18 March 2009, the Senate referred this matter to the committee to report by 17 June 2009. The Senate has since extended to the reporting date for the inquiry until 17 September 2009. The reference seeks to explore, firstly, the international experience of sovereign wealth funds and state owned companies, their role in acquisitions of significant shareholdings of corporations, and the impact and outcomes of such acquisitions on business growth and competition and, secondly, the Australian experience of foreign investment by sovereign wealth funds and state owned companies in the context of Australia's foreign investment arrangements.

These are public proceedings although the committee may agree to a request to hear evidence in camera if so desired or may determine that certain evidence should be heard in camera. I remind witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to the committee. I now welcome the representatives from the Australia China Business Council, Mr Calder and Mr McRobert. Would you like to make an opening statement?

Mr Calder—Yes, please. Thank you very much for the invitation yesterday for the Australia-China Business Council to present to the Senate hearing into foreign investment into Australia by state-owned enterprises and sovereign wealth funds. This is a very important topic to be debated.

The Australia-China Business Council is the premier organisation in relation to Sino-Australian business trade and investments, and the Western Australian branch is the largest state branch measured by revenue. My name is Duncan Calder and I am the President of ACBC here in Western Australia. I am also a partner of KPMG, practising in the area of corporate finance. I am joined today by Shaun McRobert, who sits on the WA board of the ACBC and is also a corporate and resources partner with Deacons, specialising in cross-border investments in Australia.

As the premier national organisation in Australia, dedicated to promoting understanding business and trade with China, the ACBC has a very key role in providing a balanced and rational view in the current national debate over Chinese investment. As the business interface between Australian and Chinese companies and governments, the ACBC is in a unique position to bring both Australian and Chinese perspectives to the debate. Over the past year the Australian media has taken a very keen interest in Chinese investments coming to Australia, particularly into our resources sector, and this interest is only to be expected. China is now our second largest export market, with exports valued at \$27 billion in 2007-08, and is Western Australia's largest trading partner. Total bilateral merchandise trade reached \$58 billion last year, making China our

largest trading partner, and China accounted for a great share of total world growth than the United States last year.

Why does China want to invest in Australia? Three driving factors can be identified. The first is China's need to secure a safe, reliable, high quality and cost-effective supply of raw materials for its controlled industrialisation. As a resource rich, politically stable and institutionally sound investment market, Australia is naturally attractive to developing economics that are seeking to secure supply to support their industrialisation and urbanisation. Chinese companies have generally been comfortable with taking non-controlling shareholding positions in our resources companies at a project level. The impression given in the media that Chinese companies are commonly taking over 100 per cent of Australian resources companies is incorrect.

The second driving factor is the Chinese government's 'zou chuqu' or 'go out' policy. In 2001 the Chinese leadership determined that its national champions needed to seek greater markets abroad and to vertically integrate their production lines. Chinese companies have three major objectives under the 'go out' policy: first, to secure access to natural resources; second, to acquire strategic assets like technology, brand names and know how; and, third, to establish a presence overseas to access international markets.

The third driving factor for Chinese investment in Australia is the need to diversify China's foreign currency reserves. This imperative is more recent and was brought about by the global financial crisis. China has over US\$2 trillion in foreign reserves and the bulk is held in US Treasury bonds. With the US economy in recession and with concern in China that the US dollar could come under future downward pressure, China is seeking to diversify its foreign currency portfolio by recycling her vast foreign currency reserves into long-life, hard assets.

In many ways, the current debate in the Australian media over Chinese investment is a replay of the controversy over Japanese investments in the 1970s and 1980s. The Foreign Acquisitions and Takeovers Act 1975 was promulgated partly to allay domestic fears of the Japanese taking over the country. Some of the language used during the days of Japanese investment is very similar to that used regarding Chinese investment today, and with the movement of wealth away from a North American centred world economy, investments from developing countries like China and India become more important to us here in Australia. Of course, such developing economies traditionally feature a great roll for the state in both the economy overall and in having a greater state ownership or control of businesses in strategic sectors.

So what are the concerns in relation to foreign investment by overseas and Chinese state owned enterprises, and are they valid? I will touch on the two key concerns. The first concern is: China is buying up all our resources. China's first large-scale investment into Australia was the Channar joint venture in 1987 between Sinosteel, at 40 per cent, and Hamersley Iron, now Rio Tinto, at 60 per cent. This was the largest overseas investment by China at the time and, indeed, remained China's single most significant investment in Australia for many years. In reality, Chinese investment in our resources sector only really increased in the last two to three years. Treasurer Swan advise me on the weekend that he has now approved over \$30 billion in Chinese investment. However, an examination of the facts reveals that, compared to other investor countries, China's share of total foreign investment in Australia is still very small and well below what we might expect given the extent of our trade relationship. Investment is critical to add ballast to our key trading relationships. Our largest foreign investors by far are the US, the UK

and Japan, each of whom have, in separate waves, funded massive developments in Australia that have served us well. We need to remember that the growth of Australia has only been achieved off the back of significant foreign direct investment and that Australia currently has the second most restrictive regulatory framework for foreign investment amongst OECD countries, behind only Iceland.

The second major concern is: China does not play by normal market rules. The dual nature of Chinese boards, in which the Communist Party plays a role in the corporate governance framework, is a common feature of Chinese state owned companies. The Australia-China Business Council concurs with the views expressed by Patrick Colmer before this committee that there is growing evidence that corporate China is behaving commercially, or, as the Chinese would say, they are following a policy of 'zhengqi fenkai'—proper separation of government functions from business operations. At the ACBC seminar held last year in which Treasurer Swan was the keynote speaker, several speakers argued that foreign government ownership of our assets was not the issue; what mattered was the presence of effective domestic competition laws, taxation regimes and other regulatory frameworks to ensure that the use of those assets is not against Australia's interests. The ACBC also encourages the Chinese government to reduce its barriers to Australian investment into China, for example through a bilateral trade and investment framework.

In conclusion, our key principles underpinning investments from sovereign wealth funds and state owned enterprises, and Chinese state owned enterprises in particular, are as follows. We welcome overseas and Chinese investment, particularly in greenfield nation-building projects and in joint venture win-win collaborations. Let us not forget that Chinese and other foreign direct investment equals Australian jobs, and that is incredibly important at a time when more and more Australians are losing their jobs. Investment flows between our two countries should be two way, based on equal treatment. We encourage open and transparent investment regimes. And we are of the view that investment approval decisions made by both governments should be based primarily on commercial grounds and should consider national interest issues in a non-discriminatory manner. Shaun can collaborate on those points.

Mr McRobert—Thanks very much, Duncan. I just want to add a couple of points in relation to the act itself, the Foreign Acquisitions and Takeovers Act, which is now becoming quite old. I will read from my statement and then take questions. While there is no need for a wholesale conceptual reform of the Foreign Acquisitions and Takeovers Act, it does contain a number of conceptual and technical issues which require further attention. These include: the definition of mineral right; the definition of Australian urban land and Australian rural land; moving the policy requirements in relation to investments by SWFs and SOEs into the body of the Foreign Acquisitions and Takeovers Act to avoid arguments that the policy requirements may be beyond the ambit of the FATA; enshrining a requirement in the FATA to ensure decisions made under it, including conditions imposed by the Treasurer, are not inconsistent with the other Commonwealth or state legislation—for example, the Corporations Act; reviewing the time taken to make decisions and the loss of confidentiality arising for parties by the use of interim orders; and the use of a hybrid securities and other derivatives, which I understand is a matter already before the committee and is in the process of being reformed through the act at present.

Mr Calder—Thank you for the opportunity to present our opening remarks. Shaun and I would now welcome any questions the committee may have.

CHAIR—You made the point that there were some comparisons between Chinese investment in the current times and the Japanese investments in the 1960s, 1970s and 1980s. Do you want to enlarge upon that comparison for the benefit of the record and make any comments?

Mr Calder—Any examination of the media at the time—and I think some are disclosed in the submission by Rio Tinto to the committee—shows very similar comments and concerns to those expressed now. China has no military history implications for Australia, but there are concerns that the size of China could create issues for Australia, given it is likely to move to be the world's dominant economy or the largest economy ahead of the United States at some time in the next two decades. I think it is fair to say that Japanese investment at the time it was made was made by companies that were also heavily influenced by the control of the central tiller.

Mr McRobert—There is also evidence in the act to that effect. I have had to explain to parties overseas that mineral interests are captured under the definition of Australian urban land, which is quite an absurd use of the definition in my view. That reflects the fact that a lot of the original act was drafted in relation to residential investments by Japanese investors on the Gold Coast. That is my understanding of where a lot of the act comes from as well.

CHAIR—You made a comment that I think Professor Drysdale and the Lowe Institute made: that Australia has a fairly restrictive foreign investment review process. You said Iceland was the only more restrictive country. Do you want to comment on that? In what ways can it be said that our processes are restrictive?

Mr Calder—That was the result of detailed independent analysis of OECD countries by an independent party. I can arrange for that analysis to be sent to you.

CHAIR—That would be helpful if you could do that.

Mr Calder—I absolutely will do that. The Iceland economy is not a model economy at the moment. There are obviously implications from being seen to be restrictive on the flow of foreign investment. That can extend from regulations through to even concerns of how we operate our 457 visa policy and how we operate Australian standards policies to effectively operate as a trade barrier to overseas companies in the same way that Australians complain that the Chinese use bureaucracy to make it difficult for Australians to invest in China.

CHAIR—I think you said that Chinese investors were not seeking controlling interests.

Mr Calder—Largely.

CHAIR—What would be your views about large state-owned enterprises from China having a controlling interest in, say, an oil and gas development or some other kind of mineral development, like bauxite or iron ore in Australia? What would be the consequences of it that might be adverse?

Mr Calder—It is difficult to talk at a high level on this. You need to look at each individual case. The fact that the current FIRB rules are structured to address individual applications on a case-by-case basis is the correct approach, and it has served Australia well. There are obviously

greater benefits for Australia from foreign direct investment that goes into growing projects and emerging projects than into mature existing production capacity.

For example, if an overseas foreign direct company bought 100 per cent of an Australian project but then spent several billion dollars—as in the case of the CITIC Pacific Sino Iron project in the north of Western Australia—building a concentrator in Australia, a new port in Australia, a desalinator in Australia, creating 4,000 construction jobs in Australia and creating several thousand permanent jobs in Australia for many years, even though that small asset is not 100 per cent owned by Australia, there have clearly been very significant and enduring benefits to Australia in terms of revenue. Overall, win-win models of cooperation are probably better structured around joint ventures than around 100 per cent investment scenarios.

CHAIR—You also stated the obvious, which is that the world financial centre, in terms of India and China, is shifting to our region and yet we are not seeing a lot of investment in this country from India. Do you think we will, and should different rules apply to Indian investment, which has a democratic political system, a British legal system and so on, than apply to China?

Mr Calder—To take the final question, I think we said in our opening remarks that we support investment approval decisions being based primarily on commercial grounds and national interest issues should be considered in a non-discriminatory manner. There are other ways of protecting our interests. If we are concerned about profit being shifted offshore we have effective tax transfer pricing rules in place to prevent that. A lot of the concerns in relation to Japanese investment in the past I think have proven to be unnecessary and I think a lot of the concerns now in relation to Chinese investment are similarly unnecessary as China itself follows a trajectory of development as a nation.

Senator PRATT—You argued that our foreign investment is restrictive compared to that of similar countries. Could you outline what those characteristics are and why you perceive that to be the case?

Mr Calder—I think the easiest way would be for me to forward this independent study to you, because I cannot recall all of the details of it. Generally, the concerns are around the level of regulation and bureaucracy and around threshold and quota levels. We will send to you the detailed study, how it was compiled and by whom it was compiled.

Senator PRATT—How does your organisation perceive community perceptions about foreign ownership of Australian assets? Clearly, the Commonwealth government needs to take account of those concerns because it is part of its political mandate and it is liable for them, irrespective of whether or not those concerns are justified, and the government has recognised that there is community concern about foreign ownership. How do you perceive Australians' views about foreign ownership of investments, in particular state owned investments from a country like China?

Mr Calder—That is a very complicated question. I do not think there is a universal answer to that. There certainly are pockets of concern within Australia. I think that the historical support base for Pauline Hanson type policies still exists in parts of Australia and I think it would be fair to say the majority of that support base would not be inclined towards any overseas investment out of Asia regardless of whether it was state owned or otherwise. I think that the key is to have

increasing community to community involvement and to better communicate the advantages to Australia of trade with China.

Earlier this year the Australia-China Business Council commissioned an independent study of the effects upon Australian households of trade with China. It concluded that on average the benefit was \$3,400 per Australian household, and that is reflected by the fact that we can buy our fridges or TVs cheaper, and lots of other factors, as well as major trading. Also, if you look at states, particularly Victoria and Queensland, they benefit enormously from trade through Chinese students to Australia. Western Australia was underrepresented in that area; I think we have about five per cent of those students against our 10 per cent of population. It is an area that we need to work on as a state. Having more Chinese students is also a great boost to our tourism industry and also increases more community-to-community exchange, so any exchanges like government-to-government, city-to-sister-city and the Western Australian government's relationship with Zhejiang province et cetera, these types of interactions need to be encouraged because it takes time to break down these concerns, which certainly do exist.

Senator PRATT—In terms of those concerns, we have the real ones that are managed through our foreign investment rules, but then we also have some powers that the Treasurer is able to exercise based on the national interest. That can be a pretty nebulous debate depending on responding to the values of Australians in terms of their perceptions. It might be about needing to make sure that we are attracting foreign investment to maintain those jobs, or it might be that there are concerns about the kinds of control that state-owned entities have in terms of debates about human rights within a particular country in question. How do you perceive the debates about national interest versus what actually falls within regulation?

Mr Calder—That is a very complicated question. Feel free to join in Shaun.

Mr McRobert—Obviously there is no definition of national interest, so we are in the hands of politics, and obviously the Treasurer has to respond to the parliament and the parliament's views of what it considers to be in the national interest. So it is probably beyond the scope of either Duncan or I to tell parliament what to do, but there is some public accountability as to the decisions made. There have been cases where previous Treasurers have rejected foreign investment. There have been conditional approvals in relation to foreign investment and there have been cases recently of shifting ground in terms of how we handle approvals and different methodologies for foreign investment under the act and in terms of how the Treasurer responds. Overall, it is a question for parliament; it is a question for the Treasurer at the time to balance those issues.

In terms of perception from overseas, there is certainly a perception that some parties may be treated differently from others. Whether that is affecting the investment coming forward, I am not in a position to tell, but I think there is certainly a perception that there may be some unequal treatment in terms of applications. As stated, it is the determination of national interest, which is Australia's decision at the end of the day, and Australia obviously has the right to make that decision in the best way possible.

Mr Calder—And where there is a lack of transparency in a process, there is always likely to be concern from overseas parties. Also, the other factor is that there has been a lot of concern about the time frame taken over decision making and delays. For example, one of the more

vanilla investments into Australia was Angang's minority shareholding into Gindalbie, which took six months to get approval and which seems very difficult to understand. By contrast, the time taken by the government to consider the Chinalco bid for Rio does not appear to be unreasonable because that is a very major and significant transaction for Australia involving existing mature assets, not just greenfield developing projects. But I think that issue of delay and the lack of accountability does create concerns overseas that different countries get treated differently.

Senator JOYCE—Mr Duncan Calder, I cannot see you, but I imagine you are the gentleman who made a comment about Pauline Hanson-type views. What exactly do you mean by that? And what do you premise that comment on?

Senator PRATT—I think it was a difficult enough question to start with.

Mr Calder—I would just say that there were clearly some parties who supported Pauline Hanson and the views that she expressed. The view overseas of the parties who supported Pauline Hanson was that those supporters had negative views towards Asians and Asian investments.

Senator JOYCE—But you must have seen those comments lately and have some view as to where you saw them. Can you elaborate on where you saw them and how you perceive them to be relevant to this current discussion?

Mr Calder—I have no comment on that.

Senator JOYCE—You have no comment on that?

Mr Calder—I do not recall the details of the articles. It was many years ago.

Senator JOYCE—You have not seen any prevalence of that lately?

Mr Calder—I have not seen too many references to Pauline Hanson in recent times in the media—certainly not in Western Australia.

Senator JOYCE—So what exactly did you mean by your comment that there was a prevalence of Pauline Hanson-type factors affecting Foreign Investment Review Board guidelines?

Senator PRATT—With respect, Senator Joyce, I led a question in relation to, I suppose, Australians' feelings of anxiety about it and where those perceptions come from, which I think is a matter of debate for all of us.

Senator JOYCE—Thank you very much, Senator Pratt, but I was actually asking a question of Mr Calder. As there is no answer, let us go to some other things. Mr Calder, you talked about the concerns that have been raised lately being similar to the concerns that were prevalent at the time of Japanese investment in Australia. Do you see the concerns with Chinese investment to be a complete parallel to those with Japanese investment?

Mr Calder—Obviously, the investments have taken place at different times and at different states of development of the Western Australian economy. In many ways, the Japanese investment created the iron ore industry, whereas now there is an existing iron ore industry. The current Chinese investment is looking not at creating new industry but at boosting and increasing existing industry. I think, with hindsight, Japanese investment has served Australia well and also Western Australia well. The joint venture model preferred by the Japanese appears to have served Western Australia well by helping us to develop many new industries and many new projects, which have grown the state, created revenue for the state and created many jobs for Western Australians.

Mr McRobert—There is also a new industry in developing magnetite and hematite. Previously, the emphasis was on hematite. A new industry for magnetite has been developed primarily through the Chinese steel mills, and that has been enormously beneficial to Western Australia.

Mr Calder—Magnetite is basically a low grade iron that was previously treated as a waste product that had no market globally, except in China. China is creating a market for what was previously a waste product in Western Australia.

Senator JOYCE—Let us drill down: Japanese investment is still prevalent. Are those Japanese corporate interests or Japanese government-owned interests?

Mr Calder—When we go back to the sixties and seventies, we see that the degree of influence of the Japanese central government over the trading houses and the major Japanese companies was far greater than it is now. Similarly, we see that the level of influence that the Chinese central government had 10 years ago over Chinese investment has been significantly diluted towards where we are now. In many ways, China is on a similar journey to Japan's, but right now China is at a much earlier stage in that journey.

Senator JOYCE—You mentioned the sixties and seventies, which was when things happened through joint venture arrangements and there was 51 per cent ownership by Australian interests. There was both a benefit to the Australian people and, no doubt, a benefit to the Japanese organisation. Lately, we have seen with the procedure involving Oz Minerals and Minmetals that there can be 100 per cent ownership by the communist People's Republic of China's government over the life of a mine asset. That is entirely different, isn't it?

Mr Calder—I think you have to judge each investment on its merits. I am not personally familiar with the assets that were acquired by Minmetals because I have not been involved in that deal—

Senator JOYCE—It is the second biggest zinc mine in the world.

Mr Calder—but largely because it is not based in Western Australia. If we focus on the Western Australian assets in which Chinese companies have invested and got 100 per cent interest, there are basically three projects. The first, which I mentioned earlier, is CITIC Pacific. It took 100 per cent of part of the land holdings owned by Clive Palmer's company Mineralogy. The second was MCC, which took 100 per cent of the Cape Lambert exploration play owned by Tony Sage's company. If China develops that, it will involve \$3.3 billion or more being invested

in Australia. This will involve building new ports, creating new infrastructure and new jobs, which is clearly in Western Australia's interests and in the Western Australian government's interests. And the third 100 per cent project is Sinosteel's acquisition of Midwest Corporation. That was sparked only after a long and difficult relationship in which Sinosteel was not able to negotiate with Midwest to achieve a joint venture outcome, which was its original and preferred desire.

Senator JOYCE—There is a vast difference between 100 per cent ownership of a mine where Australia's role is to drive a truck at the mine, and a fifty-fifty per cent investment where we are actually also part of the benefaction of the profits of that mine. Surely it is self-evident that a fifty-fifty type arrangement is, in the long term, of greater benefaction to our people and nation than is the case when another nation's government is 100 per cent owner of a life-of-mine project and our only role at that mine is to drive a truck.

Mr Calder—I think the Australia China Business Council said clearly that it is more favourable towards investment in greenfields projects, new ventures, joint ventures and nation-building infrastructure projects. It is easy to demonstrate their win-win outcome. There is no doubt that some 100 per cent investments may not have a win-win outcome, but I also believe that a number of 100 per cent investments could have a win-win outcome for Australia when they generate significant long-term jobs and income, new industries, permanent employment and royalties and also develop businesses for Australia that would otherwise not be developed. It might be preferable to have fifty-fifty but that does not mean that there will not be instances when the development of greater than fifty-fifty ownership interest projects will be in Australia's national interest.

Senator JOYCE—From the Australia China Business Council analysis, can you tell me what proportion of Chinese investment in Western Australia is 100 per cent government owned and also what is predominantly government owned?

Mr Calder—I have not got that analysis to hand. My expectation would be that the greater part of investment in the resources sector in Australia would be through state owned enterprises, although we are increasingly seeing privately owned Chinese companies investing in Western Australian resources projects.

Senator JOYCE—Would you say that 90 per cent of China's investment in mining is by state owned enterprises—basically, the Chinese government?

Mr Calder—I do not have those statistics to hand. I think I said the greater part—

Senator JOYCE—You must have a rough idea.

Mr Calder—And it is also a changing picture of course—

Senator JOYCE—But you must have a rough idea, Mr Calder.

Mr Calder—Yes. As the private companies in China become more important, they are taking on greater importance. As I said, China is on a journey and it is early in that journey. Private companies have come a long way in China in the last three to four years, and in three to four

years time the picture will be very different again. So I expect to see an increasing proportion of investment in Western Australian resources by Chinese 100 per cent private owned companies as opposed to state owned enterprises.

Senator JOYCE—You seem hesitant to give me an answer. Is there any reason why you have that concern about giving me an answer?

Mr Calder—I do not think that I am hesitant at all. I think I was quite clear when I said that the greater part, I expect, would come from state-owned enterprises. But I do not have the statistics to hand.

Senator JOYCE—It does seem strange, because it is the organisation that you are representing.

Mr Calder—I am not sure that that sounds as though you are familiar with the Australia-China Business Council. We are an organisation whose members are predominantly Australian, although we have some Chinese members. We are the Australia-China Business Council, not the China-Australia Business Council. We are based here in Australia to promote investment and trade between Australia and China.

CHAIR—You are a nationwide organisation too, aren't you?

Mr Calder—Yes, Senator, we are a national organisation.

Senator JOYCE—From your knowledge of China, does the Chinese government still call itself a communist government?

Mr Calder—The ruling entities are essentially the Communist Party.

Senator JOYCE—What does the word 'communist' mean to you?

Mr Calder—I am probably not qualified to comment on that, but obviously I observe the economy that operates in China. As the Chinese themselves have said, they are developing a market economy with Chinese characteristics, as opposed to a purely traditional Western model of economy. And I suppose, based on recent events out of the US, the Chinese have some justification for their concerns in just following willy-nilly the North American economic model.

Senator JOYCE—So are you saying that you have no knowledge of what the word 'communist' means or do you prefer not to give an answer to that question?

Mr Calder—The word 'communist' is the name of a political party that followed communist principles and those principles have evolved and changed over time within China, but China remains a single party, centrally controlled.

Senator JOYCE—Do you have any knowledge of a single party, centrally controlled foreign investment policy?

Mr Calder—There is a ‘go-out’ policy which was identified by the change of government in 2001, which promoted the national champions, the largest companies, to go out overseas to try to access international markets to secure sources of supply and to acquire brand names and know-how and technology.

Senator JOYCE—Are you aware that the single party, centrally controlled party has a foreign investment policy where they have to get approval before they go out and invest, that there is a central program of foreign investment on the way out, not just on the way in?

Mr Calder—For investment out of China, depending upon where it comes from—a provincial level or national level—rules apply as to what levels of approvals are required. An extensive article appeared in the *Australian* on this matter published by Mr Paul Glasson, the chief representative of the Australia-China Business Council in China, and I would be happy to forward that article to this committee.

Senator JOYCE—I have read it. With this centrally controlled process of foreign investment on the way out, is it so that they do not have to worry about competing against themselves?

Mr Calder—I think that the words ‘centrally controlled process’ are your words not mine.

Senator JOYCE—You don’t believe the Communist People’s Republic of China is centrally controlled?

Mr Calder—That is not what I said. The way in which investments originate is at a company level based on individual companies within China identifying business opportunities that they wish to pursue in the interests of an individual company. They then have an approval process respecting the fact that they have common ultimate shareholder—

Senator JOYCE—You say that they have a common ultimate shareholder in most instances?

Mr Calder—There is an organisation known as SASAC which is part of the government of China.

Senator JOYCE—It is part of or it is 100 per cent part of? In fact, it is an arm of the government.

Mr McRobert—It is 100 per cent. It is an administrative arm of the government. So basically they exercise overview to make sure that they believe that the investment overseas is sensible and not overpriced, for example.

Mr Calder—There are examples of state owned enterprises competing for the same assets.

Senator JOYCE—Investment that is sensible. At what stage do the foreign actions of these 100 per cent owned corporations working overseas influence how we perceive their actions in our nation? Or should that never be the case?

Mr Calder—It is an unusual question. I think we have been quite clear that investment applications by overseas countries should be assessed in a non-discriminatory manner based on commercial principles and having regard to the national interest of Australia.

Senator JOYCE—A non-discriminatory process—so we should not have any purview as to the actions in other places such as Sudan, North Korea or Burma? That should be outside our purview?

Mr Calder—That is a political question.

Senator JOYCE—It is absolutely a political question. What is wrong with that?

Mr Calder—If it is in the national interest. If the assessment is in the national interest it should be approved through the Australia China Business Council, not as a political party.

Senator JOYCE—So you think there should be a dissimilation between the actions of a country and the commerce of a country.

Mr Calder—Could you repeat that question?

Senator JOYCE—Do you believe there should be an absolute dissimilation or disaggregation between the actions of a country and the commerce of that country?

Mr Calder—I do not think I have said that. I would have to reflect on that. I have not thought about that question previously. I guess I have to reflect on that and respond at a later date.

Senator JOYCE—So you think there should be or there should not be?

Mr Calder—I am not sure I fully understand the implications of the question. That is why I am not answering it.

Senator JOYCE—If we were looking prior to the Second World War and the actions of Krupp, would you be happy to deal with them? It is an instance that is always brought up. Why would people deal with Krupp when Krupp were building gas chambers before the Second World War? But people did. Is there ever an instance where the actions of a corporation should be taken into account when determining whether or not you deal with them?

Mr Calder—I think that is an extreme example; but, again, that is more of a political debate rather than a business debate on the benefits to Australia from overseas foreign investment. I think we have quite clearly said that the issues of managing the specific national interest can often be dealt with through other regulatory requirements rather than by banning any investment. Controls over how assets are used can be put in place to make sure that the ownership of the assets by the foreign party does not create any negative national interest implications for Australia.

Mr McRobert—I think Australia is a party to a number of international conventions which apply as well.

Senator JOYCE—The other day, we received evidence of Shenhua, which are buying 195 square kilometres of the Liverpool Plains in northern New South Wales. Can I buy 195 square kilometres of an agricultural plain in China?

Mr Calder—I am not certain exactly what the issues are in relation to that. As we said, the Australia China Business Council encourages the Chinese government to have similar, two-way, equal-treatment investment flows and opportunities, but we have to recognise that China as a country is at a much earlier stage of development than Australia, which is a mature, Western world country.

Senator JOYCE—You are part of the Australia China Business Council, so you must have some view. Can I go to China and buy 195 square kilometres of part of the agricultural production going on in the Yangtze Delta?

Mr Calder—I do not know.

Senator JOYCE—I do, and I am not part of the Australia China Business Council.

Mr Calder—I think I just told you, Senator, quite clearly that I do not know but there are different rules that apply for each country. Perhaps if I just say quite clearly that the Australia China Business Council strongly promotes reciprocity of investment opportunities and encourages China, as it increasingly follows a pattern of opening up its economy to foreign investment, to allow Australian companies to participate. This is an opportunity for Australia to benefit Australia perhaps through the further development and finalisation of free trade agreements with China

Senator JOYCE—In that encouragement, that program and process of reciprocity, do you think that it would be fair enough to say: ‘We will allow you to invest in our nation on the terms that you allow us to invest in yours or at least even vaguely on the same terms. But if you completely preclude us from an investment in your nation and then you have a high expectation that you are allowed to invest in ours, there is something inherently unbalanced and unfair and that certainly does not encourage reciprocity and in fact allows you to stagnate in the position you are in.’

Mr Calder—To repeat the point, we encourage a movement by China towards increased reciprocity but we also need to recognise the fact that the trade relationship between Australia and China is very much in Australia’s favour. We as a nation remain exposed if our trade relationship is not underpinned also by an investment relationship and we need to protect our trade relationship through greater investment ties. Therefore we need to view the opportunities for cooperation on an individual case-by-case basis and to recognise that China is on a journey which is moving quite quickly and we need to work together to pursue win-win opportunities to trade and invest together for mutual gain.

Senator JOYCE—Are you aware of any instances where China wishes to bring in their own workers to work in the mines in Australia?

Mr Calder—I am not aware of any such situation. I am sure many Chinese companies would like to bring in workers to work on construction projects in Australia but the Australian

regulations are very prohibitive in relation to that. Australia has rules that are very defensive of construction jobs. In fact, there are many market commentators out there who believe that Australia is missing out on a lot of development and long-term permanent jobs for Australia as a result of a preference towards construction jobs.

Senator JOYCE—Do you believe that diplomatic influences can be both implicit and explicit and that China is quite able at delivering implicit affect to their foreign investment programs in other nations.

Mr Calder—I do not understand the question.

Senator JOYCE—Do you believe that the actual power of China allows them to get greater leverage in how they deal with people in other parts of the globe and that it is quite implicit that this power is an exertion beyond what might actually be written on a contract on a piece of paper. There is implicitly a desire by the Communist People's Republic of China that in your dealings with them you will not create a mechanism, for want of a better word, that will cause them to lose face.

Mr Calder—I am not sure that I quite understand the question. It was quite a longwinded one. If I could just say that in my experience in commercial negotiations, each party in a commercial negotiation takes advantage of its bargaining powers, positives and positions in the same way that in our dealings with the United States, the United Kingdom and other countries they frequently take advantage of their relative bargaining strength and position of power to protect and promote their interests. I would not expect India, China or any other sovereign nation to do otherwise.

Senator JOYCE—Thank you very much.

CHAIR—Thank you, Senator Joyce. I thank the witnesses for appearing. It has been very helpful evidence.

Proceedings suspended from 11.05 am to 1.36 pm

McNALLY, Mr Norman Stephen, Private Capacity**PHILLIPS, Mr Wayne Frederick Laurence, Director, AV Engineering**

CHAIR—Welcome. In these inquiries we ask you to make an opening statement and then the senators question you. The session lasts for about 45 minutes. Would you like to make an opening statement, Mr Phillips?

Mr Phillips—Yes. I am here to voice my concerns about the potential loss of control of the country's basic assets. In my 30-year career I have worked with different companies and watched what can happen to larger companies that may become dysfunctional or debt burdened. They will be looking for ways out, such as to bring in shares from other entities. The fallout is what can happen after takeovers when things do not pan out as they should. I have seen people invest quite large sums of money. When the security of that money is jeopardised, things can fall apart. Members may be looking at what assets are left to sell off or to raise shares on. Sometimes those assets may not belong to them. I think about the minerals that are being mined and whether they are a national asset. They should stay under the control of the Australian nation. It is also about providing jobs. When we have that type of control then we can provide the work that is necessary.

I have experienced in my family a legal battle over intellectual rights. It looked like that intellectual property was going to be sold and, if that had been the case, we would have basically lost everything we had worked years for. A decision was made to keep that intellectual property. It was a very hard battle for my family, and my father in particular. When he was able to go on trading using that patent it was good for our community. The company is still there and still employing people. It has been trading and employing people over the last 20 years and has successfully developed a number of pieces of agricultural machinery. If that patent had been lost, the company would have had nothing to be built back up on.

I take the same view when it comes to watching what is happening with these larger mining companies. They might be looking at the only tangible asset that they have, and it may be the minerals that are in the ground. They are going to raise funds and use those minerals as securities. If the company keeps floundering and these new investors get to the point where they have invested or have shares over a certain amount—and controlling shares—what happens from there? That is my major concern. I think we have all seen large companies get into those situations. Pretty much every year, a company gets into a situation like that and shareholders—whether they be foreign shareholders or domestic shareholders—can lose everything. I have had friends who are going into retirement and they have invested all their superannuation moneys into companies that have gone bust and they have lost everything. We have all heard stories like that. That is basically where my concerns are coming from. I see this as quite a huge concern, and some of the other companies I will talk about are not on the same scale as these bigger mining companies.

CHAIR—Thank you, Mr Phillips. Mr McNally, would you like to make an opening statement?

Mr McNally—Thank you very much, Senator Eggleston. I would like to read from start to finish the statement that I have prepared, if you do not mind.

CHAIR—You can do that.

Mr McNally—I just want to qualify my position here. I did not expect to end up at this hearing. I sent through a submission, which is largely disjointed, for general reading by members of the committee and whoever else. Nevertheless, having spoken to Tim, I am here.

CHAIR—We are very pleased to see you here.

Mr McNally—First of all, I want to go through a bit of introductory stuff. I am not xenophobic, I do not have any Sinophobia and I am not a Sinologist. I mention that because I will be talking about China a little bit. I do not have any connection with the companies I might mention. I have no financial interest in the mining sector or any shareholding that might be affected by any outcomes from this Senate inquiry. I simply think that there might be a better way of dealing with massive investment into Australia by foreign governments.

I note that information provided to me about the Senate hearing process includes a statement about offences by witnesses et cetera, wherein a witness shall not give evidence which the witness does not believe on reasonable grounds to be true or substantially true in every particular manner. I must stress that my statements are largely matters of personal opinion that are based on media releases, press publications and other information I have found through web searches. As far as everything I say being substantially true in every particular manner, that I cannot guarantee but my view is that what I say is based on fact.

Senator PRATT—Thank you.

Mr McNally—My interest in the subject of investment and company takeover in Australia by foreign sovereign governments through the use of state-owned entities or enterprises was initiated about 18 to 24 months ago, when there was a fair bit of publicity about takeover activities in the midwest region of Western Australia. There were various stories in the media about a Chinese state-owned company called Sinosteel that was making noises about wanting to take over Midwest mining, one of the major local mining companies located in the midwest region. Apparently Sinosteel had a certain number of shares in Midwest, and Sinosteel was looking at strategies to acquire the whole of the Midwest operations. It was also revealed at about the same time that Midwest had signalled their intention to take over or merge with Murchison Metals. Sinosteel also had a share holding in Murchison. It looked to me as if Sinosteel had intentions to get total control of both the Midwest and Murchison companies.

In the meantime, Midwest and Murchison had separate submissions with the WA state government to construct and operate the proposed Oakajee port just north of Geraldton. This included construction and operation of the rail network throughout the midwest region to service existing and proposed mining activity. Midwest's submission was made through an entity called Yilgarn Infrastructure. Murchison's submission was made through an entity named Oakajee Port and Rail. The latter entity was made up of a joint venture with the Japanese company Mitsubishi and others. When I looked at the make-up of Yilgarn Infrastructure, I found it was made up of five separate entities: China Railway Materials Commercial Corporation, for construction of and

equipment for the railway system; Anshan Iron and Steel Group—AnSteel—for all steel production for the project; China Railway Group for rail planning, design et cetera; China Communications Construction Company for marine engineering and port construction; and Sinosteel, again, for general management, ore trading and investment. Sinosteel is—or was two years ago—the key materials supplier and sales agent for major Chinese steel mills. All of the entities, including Sinosteel, mentioned in the Yilgarn Infrastructure configuration—which was published, of course—are state-owned entities administered by the central administration committee of the People’s Republic of China, either directly or indirectly.

Had the Sinosteel push to take over the midwest’s two biggest mining companies been successful, and had Yilgarn Infrastructure’s bid to construct the Oakajee port and associated rail system been successful, practically the entire future mining port and rail operations in the midwest region of Western Australia would have been under the control of the People’s Republic of China’s central administration, either directly or indirectly. I thought this was not a good position or outcome from a commercial point of view as far as the future of the midwest mining region of Western Australia is concerned and, further, as far as Australia is concerned.

Subsequent to all of this activity, other matters began to arise, such as Chinalco’s interest in Rio Tinto and Minmetals’s interest in the whole of OZ Minerals. Many other situations came to light where Chinese state-owned entities were seeking out JVs or takeovers throughout Australia and many other parts of the world: Africa, South America, Indonesia et cetera. After a little bit of research, I came across a publication by Bellabona and Spigarelli, two recognised Sinologists. A copy of that is in my submission to the Senate committee. The submission was named ‘Moving from open door to Go Global: China goes on the world stage’. After reviewing this document by the two notable Sinologists, I realised that all of the local Chinese activity was not just happening by chance. It appeared to me that the Chinese central administration had embarked on a deliberate program to secure joint ventures and takeovers throughout the entire world, not just in mining enterprises. According to Bellabona and Spigarelli, the Go Global program is an integral part of the Chinese administration’s 11th five-year economic plan. There are other articles. The *China Daily*, for example, had an article on 26 January 2007—a really relevant date as far as we are concerned—about Sinosteel looking to go global. So it is not a disguised approach by any means; the approach by the administration is generally known.

State-owned enterprises were directed by a cashed up Chinese central administration to go abroad and purchase assets to secure the Chinese economic future. In Australia’s case the most desirable assets were related to mining activities, as noted above. Australia has been inundated with JV and takeover proposals from various Chinese entities, mostly state owned and state administered. Should Australia be subject to such a broad number of takeovers and buyouts by entities that are directly controlled by a foreign government? My answer is no, especially in the mining sector.

If the situation described earlier in relation to the midwest mining precinct in Western Australia had come to fruition, we would have the Chinese government controlling extraction, processing and shipping of Western Australian iron ore into Chinese government-owned steel mills located in China. How would this process affect the operation of iron ore sales to China by existing companies operating on a free market basis? The answer is debatable, but the outcome would not likely be positive as far as existing major and minor Australian private and public company operations are concerned.

An analogy might be where major supermarket chains buy or contract farms, process their own products and create their own supermarket brands. The supermarket brands are placed alongside other major brands, usually at cheaper prices, regardless of the fact that those other major brands have kept the supermarkets afloat for many years. The consumer has a choice, so that is seemingly all right. The new supermarket brand of products now appears on a daily basis. It is good for the consumer and there are more in-house profits for the supermarket chains. It is too bad for the long-established major brands.

In applying this analogy to the mining sector, where the farms are the current and future mining operations in Western Australia, there is a fundamental difference because the consumer is the same entity as the producer—that is, the newly established mining enterprises owned by a foreign sovereign government will be producing, extracting, processing and shipping iron ore and selling it to themselves. Where is that going to leave free market operations? Where is that going to leave the well-established brands—being the existing major resource miners—let alone the small mining prospects?

There is much more that could be said about the ins and outs of the commercial structures and intricacies of the individual mining sector proposals but do we want a foreign government to take over the obligations and commitments that are part of our mining leases and tenements created under our mining legislation? Of course, there will be economic benefit to local communities through employment and services support, but the bulk of the benefit, especially in the midwest, will go to the entities controlled by the foreign government.

There will still be royalties paid to the state for all that is extracted, but those royalty levels have been negotiated in the past based on the assumption that the mining lessee or operator will be an Australian based entity or a commercial entity that will deliver direct economic benefits to Australia through profits, employment and ownership via a direct corporate relationship with Australia. This is not the case with these foreign state-owned entities. Try buying shares in a company that is fully controlled by the central administration of the PRC.

CHAIR—Mr McNally, how are you going? We have only a limited time. We can kick off with some questions if you like, or would you like to finish your statement?

Mr McNally—I am nearly there. If a foreign state-owned entity manages to establish itself in Australia by way of a takeover of an Australian based company or companies then I believe the royalty level payable to the particular state should be adjusted to properly reflect, one, the economic opportunity cost that is lost to Western Australia—for example, due to the importation of plant and equipment that is manufactured overseas by a foreign state-owned entity in itself, whether directly or indirectly—two, the opportunity cost lost by other modes of operation that might replace those locally based operational systems that would normally have delivered direct economic benefits to local businesses and communities.

Reference to Beladonna and Spigarelli will show that many Chinese state-owned entities are new to major international negotiation. Beladonna and Spigarelli suggest that many of the JVs that have been established end up failing and in many cases the outcome is not what the Chinese government intended. It is my observation that Chinese state-owned entities more often than not rely on the advice of high-powered international legal firms to establish their footholds. The result is that we have the Chinese government backed by a high-powered international legal

firms dealing with directors and executives of all types of Australian mining companies—well-established companies, major companies, new companies and minor companies. Most of these directors and executives have only one thing in mind: the profits to be gained for their company and their shareholders. I would expect that, when a company has a major debt to be serviced, inevitably the intense negotiations become even easier and a potential takeover or buyer looks even prettier. The result of this procedure is that the FIRB, the Foreign Investment Review Board, ends up with a mountain of proposals to process and there are often related and delicate political decisions to be made by government before a proposal is given the green light or, alternatively, knocked back. The directors and executives of these companies should refrain from dealing directly with foreign governments and their legal advisers in relation to transactions that might have significant sovereignty issues attached.

It is my view that with respect to major investment of foreign sovereign funds into Australia, governments should deal with governments. The Chinese government administration should deal with the Australian government administration—not the directors and executives of privately-owned or shareholder companies. The FIRB is set up to deal with all types of foreign individual and corporate investment into Australia. Are they set up to deal with massive investments of sovereign funds by foreign governments such as China? I do not believe that was the intention of setting up the FIRB.

It is my view that the Australian government should establish a semiautonomous body that has the expertise and the authority to deal directly with the issue of massive investment of foreign government sovereign funds into Australia. If the Chinese government wants to establish state-owned commercial entities in Australia in any business, industry or resource area then the first stop for negotiation for the Chinese government entities will be this newly-formed authority. If an Australian company wants to seek out investment or joint venture arrangements with a foreign government, then their first port of call would be this newly-established body. Issues of sovereignty and proprietorship may then be dealt with early, fairly and amicably in the interests of Australia. The fair management of foreign sovereign funds might also be achieved by achieving the economic and commercial outcomes desired by the particular foreign government.

The obligations, commitments and commercial benefits conveyed on a lessee under a Western Australian mining lease are conveyed under our mining legislation in anticipation of a range of economic benefits being derived by the state of Western Australia and the public of Western Australia. After all, it is the state that continues to own the mineral resources while they are still in the ground. These obligations, commitments and commercial benefits that occur under a mining lease to or with an individual or corporation can be transferred by the lessee to other individuals and corporations, provided all the terms, conditions and covenants of the particular lease are met and satisfied.

This process assumes the state of Western Australia will continue to derive benefits and opportunities as intended. It is my view that the transfer of these obligations, commitments and commercial benefits to an entity that is fully controlled and owned by a foreign government may not deliver the same structure of benefits to the people of Western Australia. It might be appropriate if we have legislation enacted by state and federal governments that annulled the possibility of a private individual or private or public corporation from transferring any or all obligations and commitments under the terms and covenants of an Australian mining lease or tenement to an entity that is fully owned or controlled a foreign government unless with the

explicit approval of both the federal government and the government of the particular state, with or without any conditions and renegotiations as required.

Basically, there is nothing wrong with China wanting to go global and take over companies and establish resource reserves all over the world. But, with respect to Australia, I believe that the deliberate political intention of the Chinese central administration must be controlled for the benefit of both Australia and the People's Republic of China. My three basic elements, as noted above, are as follows. Firstly, an authority that is separate from the FIRB should be set up to control and administer the investment of sovereign funds into Australia, especially into the mining and resource sector. Secondly, legislation should be enacted that annuls the ability of a mining tenement lessee to negotiate the transfer of any interest to a foreign government-owned entity without the prior explicit approval of the relevant state government and the federal government, with or without any conditions as required. In the event that a foreign state-owned entity is given approval to undertake resource mining activities within Australia for its own consumption, then the royalties to be paid to the Australian state must reflect the economic opportunity cost lost to the state and Australia.. Royalties would then substantially increase. The fourth point on my wish list is that any shareholding in all investment by a state-owned entity, SOE, or a group of SOEs in any Australian corporation or connected group of companies be limited to a percentage that will ensure that the control of the Australian corporation cannot be assumed by the foreign state-owned entity unless that entity has converted to a fully listed and publicly accessible corporation in the control of a shareholder elected board and with an appropriately appointed executive.

My written submission to the Senate committee largely deals with the deliberate 'go global' policy of the Chinese central administration and how much of the interest in the Australian mining sector in the past two years is more likely related to the implementation of that policy rather than being the result of an apparent surge in the appearance of cashed-up Chinese entrepreneurs wanting to make their mark in the Australian mining sector. Australia should acknowledge China's worldwide expansion ambitions, as we would acknowledge the ambitions of any other nation. We should assist and appropriately manage where we can and where we must, without selling off future localised benefits and opportunities and without disrupting the sovereignty of Australia that rightfully belongs to our future generations. Thank you very much for your patience.

CHAIR—Thank you very much indeed, Mr McNally. You talked about a new body to replace the Foreign Investment Review Board, to deal with applications by state-owned enterprises to invest in Australian resource projects. I wonder if you could not just rejig the Foreign Investment Review Board and change what is regarded as a substantial interest, which is 15 per cent or more, or increase the financial level, which is currently set at \$100 million or more, and use the same process. In the end, the test really is the national interest, and that is determined by the Treasurer, who make these decisions. I wonder whether you feel that within the existing structure we have not got a mechanism whereby we could accommodate the kinds of concerns you have.

Mr McNally—I believe that the problem of sovereignty levels of investment or shareholding changeovers is that they are placed before the FIRB after all the initial negotiations have taken place between the corporate entities, the SOEs and the companies. They have made up their plans and then they are submitted to the FIRB for approval or rejection. The concept I have is

that there be an authority set up to deal with all the issues at the beginning of the negotiations between the SOEs and the global corporations so that all the issues of sovereignty levels of investment et cetera are dealt with then. The process may then include the FIRB as well, but the object of the exercise is to get the matters dealt with early.

CHAIR—I wonder if you could enlarge the FIRB to provide a consultation process and an assessment process so that SOEs seeking to invest in Australia would be guided by that regulatory body to come to a proposal that would be more acceptable. You would marry these things. What you are really talking about is the need for more consultation, isn't it? I would have thought that that is something that could have been accommodated reasonably well.

Mr McNally—I think so. Government is government—and it is broken up into different divisions. If this early consultation facility were incorporated in the FIRB then so be it.

CHAIR—Thank you very much.

Senator PRATT—I want to talk a little bit about your submission, Mr Phillips. One thing you are pointing to is the feeling of insecurity that small communities or nations have that the rug will be pulled out from underneath them because those capital investments big and small mean a lot to them. That is something we are all very sensitive to at the moment because we are in the midst of this global financial crisis. Is that part of the message that you are trying to explore in your submission, Mr Phillips?

Mr Phillips—Pretty much. It is maintaining control over the basic assets. From my experience it was intellectual property and, with the debate over the mining industry, it is with the minerals in the ground. It is basically maintaining some kind of control, like Norman has talked about, that will allow the flow on of other opportunities whether it is engineering infrastructure for mining companies or rail infrastructure. My concern is that those opportunities will disappear or not be available to Australians.

Senator PRATT—How do you think we get that balance right between having opportunities for investment in Australia that can create Australian jobs if we do not have enough of our own capital to create opportunities and setting too many rules and having too much regulation to the extent that we drive much-needed investment away? As you have both pointed to in your submissions, it is complex to get that balance right. What do you think is required for the public to have confidence in the decisions that the government is making about the levels of investment and regulating that investment? What is required for people to have confidence in the investment decisions that are made?

Mr McNally—Do you mean what percentage?

Senator PRATT—No. You have pointed in your submission to some of the things that you would like to see happen.

Mr McNally—I will touch on Chinalco as an example. These examples are all past tense because they did not happen; nevertheless, they might have. Chinalco put a bid to Rio Tinto, negotiated and was about to go through an approval process and then it was dropped off. Just prior to the decision being made by Rio Tinto not to proceed, Chinalco had announced that they

had established the funds for their purchase of the stakeholding. The funds came from four Chinese state owned banks for an amount which was a bit above the total takeover price of \$19 billion, \$20 billion or whatever it was. Chinalco was fully funded by the state owned, central administration banks from China, so it was 100 per cent sovereign funds. There is no commercial entity. Chinalco is not a corporate entity putting its own funds in; it is part of the whole system. If Australian entities want to have investment from China then, in my view, they can go directly to these banks. They do not have to sell equities in their corporations to the Chinese government to facilitate access to Chinese sovereign funds for investment purposes. Why don't they set up a system where the Chinese sovereign funds are invested, through normal financial processes, in the companies without selling or signing over the equities, as I said earlier, to the Chinese government or a foreign owned entity?

Senator PRATT—Why should Australia's relationship with China be any different to, say, Australia's relationship with Papua New Guinea? Papua New Guinea is desperate for Australian mining companies to invest. Should Australia in its relationship with China just say, 'Okay we just want your capital, your money, but we do not want the direct investment where ownership is in question'? How is that going to be enough to actually realise that investment?

Mr Phillips—One point Norman hit on before was that resources need to be put in to get these minerals out of the ground, with engineering and a whole lot of stuff coming together. That has direct benefits to Western Australians, whether it is the provision of Toyota cars from a dealership or whether it is the provision of all the structural engineering. China is a major manufacturing country and it has the capacity to build this stuff and ship it in. Those are the checks and balances I would like to see in place.

Senator PRATT—Surely the kind of thing we need to see in Australia is strong checks and balances for everybody, whatever kind of investor they are. The final investment has to be secure and sustainable. That is one of the things that needs to be looked at. Whether you are a bank from the UK or a Chinese state owned entity, we need to investigate that there is longevity and sustainability within the institution underneath that but we also need to make sure that the company is as capable as any other of meeting our labour standards, environmental standards and other rules. Surely those are the kinds of things that the Australian government should be focused on.

Mr Phillips—That is an issue. If you compare a mining operation in China to a mining operation here, I am sure the mining operation here is going to be spending a few more of its resources on the safety of its personnel. That is a concern as well.

Senator PRATT—And that is because we set the rules that require them to do that.

Mr Phillips—And of course keeping all those things covered is a cost to the company. We do hear some pretty horrific stories about mining companies in South Africa and places like that, where they lose a couple hundred workers in a rockfall.

Senator PRATT—They might even sometimes be Australian companies working overseas. Sometimes it is the standards that we set that are the important thing there.

Mr McNally—In response to that, in relation to the proposal in the midwest that did not come to fruition, you were going to have a structure set up as a combination of five Chinese state owned entities, all totally capable of manufacturing, shipping, constructing and locating within the Western Australian region without any assistance from local corporations. All the rails, all the sleepers, all the locomotives and rolling stock and all of the equipment to build the mining infrastructure would be imported. It comes down by ship.

Senator PRATT—I have seen plenty of Australian companies do that too.

Mr McNally—It is okay; we are not talking about—

Mr Phillips—They have no choice in our day and age in some areas.

Senator JOYCE—I really enjoyed the evidence that was given. Mr McNally, I really do not know what question to ask of you; I agree with most of what you said. Unfortunately, I had a little bit of trouble hearing the other witness. My first question is to Mr Phillips. Do you believe that there is a parity between your capacity to participate in the investment by a Chinese sovereign wealth fund's program in Australia and your capacity to participate in an Australian government's or business's program in Australia? Is there any difference in your capacity to have an involvement in a program with a Chinese sovereign wealth fund's involvement in the mining industry when compared to an Australian government's or Australian company's involvement in the mining industry?

Mr Phillips—I do not think so—as long as the same checks and balances are in place—when it comes to what economic benefits there are to the people of Australia, if that is what you mean.

Senator JOYCE—To both of you: there seems to be the statement that the capacity for the power of Australia to obtain royalties is the same regardless of whether it is a vertically integrated state owned entity from China or it is an arms-length commercial mining entity based on the share market in Australia. Would you see that to be the case or would you have concerns about that?

Mr Phillips—I would have concerns about that. It would depend on what position the company was in, I suppose.

Senator JOYCE—I can hardly hear you, Mr Phillips. You are going to have to speak up. Are you finished?

Mr Phillips—I am sorry; I said I supposed it would depend on what situation the company was in.

Senator PRATT—Senator Joyce, in Western Australia we have volume based royalties as opposed to profit based royalties, and that can dictate the outcome.

Senator JOYCE—Ad valorem and profit based.

Senator PRATT—Yes.

Senator JOYCE—Do you think, in a profit based royalties scheme—and in this committee we have had investigations into that in uranium mining—that there would be, in a vertically integrated entity, an immense capacity by reason of transfer pricing to move the profits overseas and therefore leave Australia, which is the site of the minerals, with a very limited capacity to collect anything?

Mr Phillips—It is a possibility that could happen. I suppose that if the royalties are paid on volume of minerals being taken out there is no difference either way. My concern is the—

Senator JOYCE—We have seen China's continued progression into the rare earths section of the minerals market. They are looking, in some areas, at almost towards total control of the rare earths market. Seeing that all the Chinese state owned entities are basically part of the Chinese government, does this have ramifications for the price that we can obtain for rare earths?

Mr Phillips—I am sure it does if they own controlling shares of the companies.

Senator JOYCE—Do either of you see any concerns with regard to selling out of the market—that is, if a vertically integrated, government-owned entity were in the marketplace beside you they would have more inclination to buy from themselves than to buy from somebody else?

Mr Phillips—It is only logical that they would buy from themselves.

Mr McNally—That is the sole purpose of the 'go global' expansion policy of the central administration, from what I have read it. Of course the profits will be reduced and they will go to China. I made a suggestion that if an SOE is set up and appropriately managed and operated within Australia then the royalty level should be increased to compensate for the opportunity cost lost due to these profits being dispersed directly to the Chinese government, or any other foreign government, rather than being dispersed throughout Australia in the form of economic monetary benefits to shareholders, profits distribution, new investment et cetera.

Senator JOYCE—I can hear you clearly, Mr McNally. Mr Phillips, if you are near the same microphone could you speak into Mr McNally's microphone. You also called into question the interplay between the financing of projects in Australia with Chinese money from 100 per cent owned communist People's Republic of China banking facilities. Do you think the delivery of finance also is a substantial lever on control of an organisation; that, even though the equity may be less, the fact that you are relying on your financing conditions, your debt conditions, is by proxy another form of substantial control?

Mr McNally—I am not an expert in this field but I do not believe that funds coming from a state-owned bank in China by way of various security documents would be any different from funds coming from England, France or America with the same security documents. Is that a response in the area that you were seeking?

Senator JOYCE—What I am saying is basically this: going back to Chinalco they may have gone to a deal which was 18 per cent but in some instances that was 50 per cent ownership of strategic assets. If the large amount of money on top of that to finance the project from that point forward was also Chinese money, that is another form of control. You can have control by equity

or you can have control by debt. Conditions on debt are just as sufficient as the ownership of equity in controlling an enterprise. That being the case, it should be an element of consideration for the Foreign Investment Review Board—that is, where you are getting your debt from and whether you are getting it from the same entity or related entity as where your equity is coming from.

Mr McNally—I agree with that. If a local corporation wants to extract or borrow funds from China, say, they will have to go through an approval process. I would imagine the finance documents would have the covenants that can be accessed in default.

Senator JOYCE—You had concerns about what would happen with the midwest mining province on the progression of Chinese influence. Where would you see that ending, Mr McNally?

Mr McNally—Where would I see the overall influence of China?

Senator JOYCE—What is the endgame? If it just goes on unrestricted, if there is no real control over it, where does it all end up for the people of Western Australia?

Mr McNally—In my view the stance of the central administration is that the expansion is not only in Australia, it is worldwide. If they wanted to, they being the People's Republic of China, they could probably buy up every mine in Australia. That is the extent that it could get to. It is a progression. It is like a commercial invasion: you have a beachhead and then you expand. That is my concern about what is happening. If all the small mining companies and entities that are locally based decided to make a quid quickly, they would flog off their rights to mine to some state owned entity. We could end up with the whole shooting match in the hands of a foreign government.

Senator JOYCE—What is often brought up is that they say, 'Ultimately the mine remains in Australia, it is a sovereign asset of Australia and Australia could flex its legislative muscle to reassert its position.' But once you are reliant and overexposed to a certain power, especially if that overseas power is quite substantive and your power is disproportionately small, the history of the world from Roman times forward says that the person that owns the mine and owns the wealth exerts their power not just in legislation but as an implicit threat, 'Don't touch my asset, its mine, watch out.'

Mr Phillips—That is exactly my fear. We have seen companies flounder and go looking for investment and that investment will come easy, and it will be in the interests of the investor to keep control over that investment. If he sees that the business is going ahead okay and it has a good future but the current management system is floundering, he might need to introduce more funds—that is easy—and then, all of a sudden, the original owners just do not have the equity any more. It is too easy to get out. It might be good for some of the executive to get out of it, but it might not be good for the general community that is involved. We do see that happen.

CHAIR—Senator Joyce, we are going to have to wrap up pretty soon.

Senator JOYCE—I just have one question. It is great to get witnesses who are basically Australian citizens to come forward. There is an amazing capacity for them to step around the

political correctness which sometimes completely shrouds the issues that are involved here. Do you think that the public discussion that revolves around Chinese investment in Australia has started to develop a form of political correctness—that is, we cannot say anything too bad about China because we might cause a loss of face with the Chinese and that would have ramifications for us?

Mr Phillips—I do not think it is about a loss of face. What have we taken from the Chinese? We have not taken any of their security. It is all about future security. I do not think loss of face comes into it that much.

Mr McNally—We are talking here about China, which has been around for 10,000 years. They are big boys. They are not going to be concerned, I should not imagine, about what Australia decides to do. They make decisions every day, from what I read and see, totally, 100 per cent, in the interest of the Peoples Republic of China. They fully understand. If Australia said, ‘Righto fellows, if you want to invest in mining in Australia, these are the rules; we don’t want your government coming in and being the proprietor of these operations,’ I do not think that they would respond in a negative fashion to do that. We as a sovereign nation have to be able to stand up and make that decision, without all this pussy-footing around and saying that we will lose face and all that sort of stuff. It is a decision we have to make in our own right. I am sure that will be respected fully and completely and probably honoured by the Chinese and any other nation.

Senator PRATT—We did not say that to Singapore over their Optus investment.

Mr McNally—I consider Singapore as a company, as a corporation. It sits there and it is a commercial entity.

Senator JOYCE—Thanks for that Mr Phillips and Mr McNally. I apologise for the bad line. I was finding it difficult to follow Mr Phillips, but I heard your submission, Mr McNally, and it was very good.

Mr Phillips—I feel a bit out of my depth here, Senator Joyce.

Senator PRATT—You have done very well.

CHAIR—We thank you both for appearing. Thank you very much indeed.

[2.33 pm]

TAPP. Mr Julian Robin Paul, Head of Government Relations, Fortescue Metals Group

CHAIR—Welcome. Would you like to make an opening statement?

Mr Tapp—Yes, I would; thank you. I represent Fortescue Metals Group, a company founded in the middle of 2003. The project that we are now in production with crystallised during the latter part of 2003. We set about getting environmental approval and native title approval for the project. The environmental approvals came through in three stages: the first in October 2005 for the port and rail, another one in December for more rail and one of the first mines, and the final one, which is the mine that we are actually mining from, in April 2006. We signed land access agreements with native title claimant groups in October 2005 and we negotiated two state agreements with the government of Western Australia, one covering the port and rail facilities, which was signed in November 2004, and one covering the mining activities, which was signed in December 2005. We raised, initially, \$70 million in a convertible note in January 2005, and then a further \$3.2 billion was raised in August 2006. Most of that was raised through bonds issued in America. We signed our first iron ore sales agreement in October 2004, and by March 2007 the first 45 million tonne of capacity was fully sold, all of it to Chinese entities. Work on the port started in February 2006. We got a special railway licence issued in November 2006. By April 2008 we had already put the first ore on the train. Our first ore was shipped in May 2008. The infrastructure project and the construction of the mine, the port and the rail were all signed off by July 2008. By October 2008 we had already shipped over 10 million tonnes of ore.

At the end of last year and the beginning of this year, we found ourselves needing more money to ease our cash-flow situation. The project was not ramping up quite as quickly as we would have liked. The project was funded predominantly with equity and bonds. The bonds required the interest to be paid. We also wanted money to finance some initial expansion activity. We spoke to a number of entities. Hunan Valin agreed to invest in Fortescue. That agreement was announced in February 2009. We received approval from the Foreign Investment Review Board in March. The deal involves, essentially, Valin investing in up to 17.55 per cent of the equity of Fortescue in exchange for investing around \$650 million in the company. For that investment they get the right to have one board member. They are not allowed on any of the subcommittees. As a condition of FIRB approval, they are required to re-sign up to our code of conduct, which is essentially what would be required under the Companies Act but it was attached to the FIRB approval, which gives it additional weight.

In relation to state-owned entities investing in Australian assets—and I am particularly thinking about the iron ore industry, which is where I am coming from—there are two differentiating factors that I would draw to your attention in relation to the iron ore industry. One is the fact that the prices usually—and, until recently, almost exclusively—are determined by the benchmark pricing system, whereby the producers negotiate with the consumers and agree a price that will prevail for the following year. The reason why that is important is that it is not necessarily a market clearing price that will be dictated as if it is a completely free market. It reflects the negotiating strength of the two parties. Although that is clearly related to underlying

supply and demand, it also reflects the profitability and various other factors that go into your negotiating position.

The point I want to make about this is that having information about the cost structure of Australian entities could potentially be damaging to those undertaking benchmark negotiations. It is not clear how long the benchmark system will continue to run. But certainly our view is that for the Japanese joint ventures, to the extent that they have had a look through to mining costs, that has favoured them when it comes to the annual benchmark negotiations because they have an understanding of what the cost position of the person they are negotiating with is.

The other differentiating factor about iron ore in this context is that it is clearly an important industry in terms of Australia's exports; it is also an important industry in terms of China's imports and, indeed, the development of the Chinese economy. Unlike most other entities, you have to be careful of investment in Australian assets where there is an element of control by a company such that they are able to dictate that the entity will expand, even though it may be commercially unjustified. The issue at stake here is that, ultimately if uncommercial expansion takes place for the purpose of driving down the price, that will be damaging to Australia's national interest. Let us be clear: when Fortescue sought investment and got investment from Hunan Valin, we were quite clear to restrict their shareholding, their board positions and their ability to look through to our costs. We see no threat or concern about it, given the way that the investment has been structured. Thank you.

CHAIR—Thank you very much, Mr Tapp. That is a very interesting submission, because you are in effect saying that, to protect your company's integrity and bargaining position in price negotiations, while you have taken in Chinese equity capital you have greatly limited their access so that they cannot undermine your position. How would you see that approach translated into some sort of general policy applied by the Foreign Investment Review Board?

Mr Tapp—As far as we are concerned, what was imposed on Hunan Valin was entirely consistent with our own corporate code of conduct and entirely consistent with the Corporations Act. If you are a director of a company, you have duty to declare when you have a conflict of interest. If you are on that board representing the Chinese government or, indeed, a steel mill, you have a conflict of interest when it comes to negotiating the price. So we were quite clear: yes, they could be on the board; yes, they could be part of discussions, but if it involved anything to do with our cost or pricing structure they would have to excuse themselves from the discussion and not be circulated with any of the relevant information.

CHAIR—The benchmark negotiations occur every year between Australia and the Japanese and now the Chinese, and they have been at a very high level. I suppose it is one of those situations where corporate secrecy is very important. There are a lot of countries around the world that restrict foreign investment. A lot of people try to buy houses in Bali, for example, and they find that the title has to be in the name of an Indonesian individual. An Australian cannot buy a house there. The same applies in Switzerland, as I understand it. Many countries around the world have restrictions on foreign investment in the sense of having control. Would you see some sort of limitation of that kind as appropriate in Australia for foreign investment so that in no situation could a foreign investor have majority control of an Australian company, whether it be resources or anything else?

Mr Tapp—A lot of countries treat land separately, and I do not think Australia is any different in that respect. The Foreign Investment Review Board considers the purchase of land separately from other entities. In the same way, state owned entities are treated separately from just any overseas investment. There is an issue when the intended target of a company is significant in size and they want more than 50 per cent of it. I will be quite clear about what our fear is: investment in expanding production for the sole purpose of increasing supply to drive the price down. That is not something you can do unless you control the entity. It is not something you can do if you only control a very small entity.

Clearly, when large companies like Fortescue, Rio or BHP are involved, they are able to increase their production to the point where they can have a material impact on the overall supply situation. I would not want to see a situation where somebody else controlled them to the extent that they had the ability to demand that they expand production. Even though that would be bad for the company, it would ultimately be good for the customer. If you are the Chinese government and you own both the company and most of the steel mills, it can be in your interest to engage in such commercial activity.

CHAIR—In the past we have seen the Treasurer in the Howard-Costello government reject, in the national interest, Shell's takeover of Woodside. Do we need anything more specific than this general 'national interest' provision to protect Australia's interests in the kinds of situations you are talking about?

Mr Tapp—In our view it worked very well. We notified FIRB and they acted with reasonable speed. They put in place exactly the protections we wanted, which, as I said, were entirely consistent with our own code of conduct and with the Corporations Act. So, in a sense, FIRB was just reinforcing existing controls. As far as we were concerned, that was adequate, and would be sufficient.

Clearly, the one you are talking about, the takeover of Woodside, was where you might be concerned that the entity taking it over could, as I said before, demand an expansion of capacity that would not necessarily be commercially justified. In the case of Shell, I do not think that as the threat.

CHAIR—I think the threat was that they might have mothballed the North West Shelf because they had other gas fields. So you think the national interest test is a fairly adequate one for this kind of situation?

Mr Tapp—Yes. We looked at it and we thought it was an eminently sensible test.

CHAIR—Thank you.

Senator PRATT—In your submission you have commented about corporate governance and competition and you have unpacked that a little bit for us in relation to benchmark pricing. In terms of those issues, I would like to explore further any differences with state owned entities and the transparency that attaches there. I suppose it can depend on the integration of their interests, as to whether they are in mining, in the steel mill and through to manufacture. Some submitters have expressed concerns about the effect of investment by state owned entities on

corporate governance. You have explained quite clearly the kinds of things we need to do to mitigate that. Do you think we do enough to mitigate those concerns?

Mr Tapp—Yes, I think so. The other thing that we did was ensured that the representative on our board was a specified person. The reason for that was some concern on our part that the Chinese can at times send a subordinate to fulfil the role, he can be difficult and then, when you have argued with them and argued with them, ultimately they say, ‘Sorry, he wasn’t really authorised to do that,’ and they pull him out and put somebody else in. Our view was that the way to control that was to make sure that it is actually the chairman of Hunan Valin who is on our board and that he is not allowed to send an alternate. That means that whatever he says he has to stand by. In our view that was sufficient to make sure there were no, for want of a better word, games played.

Senator PRATT—Was there a tipping point when Hunan Valin would have said, ‘No, these criteria are too stringent and you clearly don’t want our investment’? How do we make sure we get that balance right?

Mr Tapp—As far as I could tell, because one was negotiating through intermediaries, there was an element of concern on their part about the restrictions that were imposed. But, as we pointed out, they were effectively only what was already in our code of conduct and already in the Corporations Act and therefore there was no reason to object to them. I think they would have liked a bigger stake in the company. We did not want them to have too big a stake in the company, and 17.55 was a reasonable compromise between what they wanted and what we were prepared to offer.

Senator PRATT—Thank you.

Senator JOYCE—Did you have much involvement yourself with the Foreign Investment Review Board and any of their deliberations?

Mr Tapp—Yes, I did.

Senator JOYCE—How did you find them?

Mr Tapp—I found them extremely helpful. When I realised what was happening, and I was over at Canberra at the time, they saw me at short notice. We presented our view to them. We exchanged information to make sure that both sides were happy and we got the approval. We would obviously have liked the approval in a faster time frame, but they acted quickly in terms of their frame of reference.

Senator JOYCE—How long did it take to get the approval through?

Mr Tapp—It took longer than 30 days to get the approval through. I think it would have been around 40 to 45 days.

Senator JOYCE—How big was the deal?

Mr Tapp—It essentially involved them investing around \$650 million.

Senator JOYCE—Did they put forward any major considerations that you had to abide by?

Mr Tapp—No. We explained to them the structure. For our own protection we had made sure there were things in there that protected our interests. Essentially what happened is that FIRB adopted those as conditions of the approval of the deal, which just gave them more force. But as I was explaining before, they were already part of our code of conduct and also required under the Corporations Act. It is just that FIRB gives them an extra level of authority, if you like, towards their enforcement.

Senator JOYCE—They added two conditions that you had, in the structure of your deal, already implemented?

Mr Tapp—They put conditions on their approval that were the same as the ones we wanted as part of the deal.

Senator JOYCE—Were there any major hurdles placed in your way—anything where you thought, ‘That’s onerous’?

Mr Tapp—No, our only concern was that we had signed a deal that required us to get the approval within 60 days of signing it and because of the length of time it took to get FIRB approval we went over that. The time was our main concern. But in the end we managed to get it. The deal was already written out as a proposal.

Senator JOYCE—What were the major considerations of the Foreign Investment Review Board—without disclosing any commercial in confidence arrangements? What did they look at in their discussions and deliberations with you in an active form?

Mr Tapp—Making sure that conflicts of interest could not develop and that confidential information was protected.

Senator JOYCE—What sorts of conflict of interest?

Mr Tapp—Because they are also a customer there is a clear conflict of interest when it comes to pricing and indeed to other negotiations.

Senator JOYCE—How did they suggest that that be managed?

Mr Tapp—We suggested that it would be managed through our code of conduct. We have a code of conduct that basically says that before a director takes his duties he must nominate what his interests are and he must agree to absent himself if a conflict of interest emerges over issues that the board is discussing.

Senator JOYCE—So someone had to exempt themselves from the meeting if you started talking about pricing.

Mr Tapp—Correct.

Senator JOYCE—How are they going to enforce that?

Mr Tapp—There is only one board member from Hunan Valin out of 10 and he should declare what his conflict of interest is and absent himself. If he does not he will be in violation of the code of conduct and it will be pointed out to him.

Senator JOYCE—How will FIRB know about that? They are all back in Canberra having a cup of tea.

Mr Tapp—It is a condition. They have no way of enforcing it but clearly if we have concerns we are able to tell FIRB that they are not abiding by the conditions.

Senator JOYCE—So in actual fact they cannot really enforce it, can they?

Mr Tapp—They would not appear to have a mechanism to know what goes on at board meetings but they can be assured that it is in our interests to make sure that that does not happen.

Senator JOYCE—They have to rely on your interests being their interests?

Mr Tapp—Correct.

Senator JOYCE—Did they ever discuss the Australian people's connection to their sovereign wealth and how in the long term that should be protected?

Mr Tapp—No, they did not, but the nature of Valin's involvement is that it does not really enable them to get anywhere near those issues. You have to understand that Valin, if you like, was wanting to ensure that at least it would be looked favourably on when it sought to get more ore for their province. I know one talks about state owned enterprises as if they are all part of the Chinese government but this is actually Hunan province and it is peculiar in having a lot of steel mills and not much local iron ore supply. My view would be that the driving factor for them was a strategic relationship that made sure that they would be in pole position when it came to trying to negotiate for increasing their offtake agreements.

Senator JOYCE—It seems as though the FIRB's inquiries were not that much different from the ACCC's interests. In fact, FIRB's interests were the ACCC's interests.

Mr Tapp—I do not think the ACCC looked at this particular—sorry, they did but there was no issue.

Senator JOYCE—The main issue was the competition issue.

Mr Tapp—The ACCC did look at it and we were able to show them what we showed FIRB which was that we had dealt with the potential conflict of interest and the issues around flow of information.

Senator JOYCE—From your involvement with FIRB, their primary concerns were competition issues.

Mr Tapp—Competition issues and the flow of information.

Senator JOYCE—A lot of people would think that FIRB was there to actually protect the national interest and to protect our ownership of assets but from your experience that is not the case.

Mr Tapp—From my experience, my understanding is that the valuable asset is the ore in the ground. That is actually the property of the state of Western Australia and you pay a royalty for the right to mine and export it. That is not at threat regardless of who owns, if you like, the mining equipment and the infrastructure that exports it.

Senator JOYCE—Thank you very much.

CHAIR—Do you have any other comments you would like to add for the benefit of the committee?

Mr Tapp—No, that is fine.

CHAIR—In that case we thank you for appearing.

Committee adjourned at 2.57 pm