

Submission to the Senate Economics References Committee: Inquiry into the Foreign Investment Review framework

Introduction

1 Landbridge Infrastructure Australia Pty Ltd (**Landbridge**) welcomes the opportunity to provide a submission to the Senate Economics References Committee's (**Committee**) inquiry into the foreign investment review framework. This submission addresses Landbridge's acquisition of the lease of the Port of Darwin to assist the Committee to understand the transaction. This submission does not address the adequacies of the Foreign Investment Review Board's (**FIRB**) process, its powers and whether there are legislative or regulatory changes to the framework to be made.

Executive Summary

2 Landbridge is very pleased to have been awarded a 99 year lease of the Port of Darwin by the Northern Territory Government. Landbridge believes the commercial development of the Port will do much to stimulate the future economic development of Darwin and Northern Australia through the gateway of trade between Northern Australia, China and Asia generally. The commercial operation of the Port of Darwin is a significant part of Australia's public policy objective to encourage private sector investment in Northern Australia and improve trade and investment flows between Australia and Asia.

3 The structure of the transaction for the Port of Darwin lease was determined by the Northern Territory Government based on terms set down in an Information Memorandum and a Deed of Licence with the Department of Defence. Throughout the competitive tender process, Landbridge actively engaged with Defence, FIRB and other relevant agencies to ensure compliance with the tender requirements. Landbridge complied with all regulatory conditions and approvals prior to making its final bid.

4 Landbridge is a privately owned and operated commercial investment company. It is not a state-owned enterprise and does not engage in political activities as has been misreported by some media outlets. Landbridge considered the lease of the Port of Darwin to be a sound investment opportunity to complement its existing port assets in China, and expand its current operations in Australia. Landbridge intends to operate the Port as a commercial port, and plans to develop and expand its operational capacity.

Background to Landbridge

5 Landbridge is an Australian registered company. Its directors are Michael Hughes (**Mr Hughes**) and Cheng Ye (**Mr Ye**). Mr Hughes has more than 25 years' experience in the international energy and infrastructure sectors and has a Masters in Mathematics from the University of Oxford. Mr Hughes runs the day-to-day operations of Landbridge in Australia.

- 6 The shares in Landbridge are held by Landbridge Infrastructure Limited (a company incorporated in Hong Kong). Both entities are wholly owned subsidiaries of the Landbridge Group Co., Ltd (**Group**), of which Mr Ye is Chairman. The Group is an entity registered in the Peoples' Republic of China (**China**). The Group is privately owned by Mr Ye and Ms Ye Fang (Ms Ye is Mr Ye's sister). Attached and marked **Annexure A** is the Certificate of Registration for the Group and corresponding English translation. The Government of China does not own any shares in or hold any interests in the Group. The Group is not a state owned enterprise and does not engage in political activities as has been claimed in some media reports. It is a privately owned and operated investment company.
- 7 Mr Ye founded what is now known as the Group over 20 years ago starting with an investment in petrol stations in Shandong Province, China. The Group has continually reinvested in its petro chemical businesses and expanded into a number of further business areas. The Group is now the largest private enterprise in Shandong Province, China, and has four key divisions: Port and Logistics, Petrochemicals, Trading and Manufacturing, and Real Estate.
- 8 The Group entered the Australian market in May 2014 when it acquired Westside Corporation Limited (**Westside**), a Brisbane based gas producer with gas production, significant reserves and exploration interests in Queensland. This acquisition was subject to, and received, FIRB approval. Mr Hughes was the CEO of Westside and remained on in that role after the acquisition of Westside by Landbridge.

Background to the Port of Darwin transaction:

- 9 In 2014, Mr Hughes identified the Port of Darwin lease as being an asset that may be of interest to Landbridge. The Port of Darwin had synergies with the port owned by the Group in China and Mr Hughes considered that it was a good investment opportunity. In 2015, Landbridge engaged in a competitive bid process for the lease of the Port of Darwin and acquisition of shares in Darwin's Port Operator. The Northern Territory Government issued an Information Memorandum establishing the scope and obligations of the transaction and ran the tender process. The lease did not include all port assets, but rather the commercial port encompassing the East Arm and Fort Hill Wharves. The successful bidder would also be bound by a Deed of Licence with Defence. This Deed of Licence is a commercial-in-confidence document. Landbridge, along with other bidders, made a non-binding indicative bid in June 2015, and a final binding bid in September 2015.
- 10 At all times Landbridge liaised with FIRB. In May 2015, the Northern Territory Government informed Landbridge of the process to submit an indicative bid. After this, and before Landbridge submitted an indicative bid, Landbridge *voluntarily* met with FIRB to advise it of Landbridge's interest in the transaction. After Landbridge made its indicative bid, it submitted an application to FIRB that explained the proposed structure of the bid which was to comply

with the requirements of the Northern Territory Government. Because the transaction was structured in two distinct parts, Landbridge made FIRB applications in respect of both the lease and the acquisition of shares in the Port Manager. Landbridge provided extensive information to FIRB, and complied with all requests for further information from FIRB. Ultimately, FIRB determined that both parts of the transaction – the lease and the purchase of shares – were exempt under *Foreign Acquisitions and Takeovers Act 1975* (Cth) (**FATA**).

11 Throughout the transaction, Landbridge was in contact with the Department of Defence (**Defence**) to ensure that it did not have any concerns with Landbridge's acquisition of the Port. At no stage did Defence raise any concerns about Landbridge's acquisition.

Landbridge's acquisition of the Port Package

12 In December 2014, the Northern Territory Government engaged Flagstaff as its financial adviser for the potential divestment of the Port Package. At this time, Landbridge expressed to Flagstaff that it was interested in the acquisition of the Port Package.

13 In May 2015, Landbridge received a letter from the Department of the Chief Minister of the Northern Territory detailing the requirements to submit a non-binding indicative offer for the Port Package. This letter outlined the Northern Territory's prescribed structure for the transaction.

14 The Northern Territory prescribed the following structure for the transaction:

- (a) the grant of a 99 year lease over the Port Package property and assets from the Northern Territory Government, in return for payment of an upfront lease premium;
- (b) acquisition of shares in the Port Manager for consideration; and
- (c) entry into a Port Operating Deed and other transaction documents.

15 The lease does not cover the entire Port of Darwin, but rather only the land at East Arm Wharf and Fort Hill Wharf. The Port Package excludes Stokes Hill Wharf and the Fisherman's Wharf precinct which comprises Frances Bay Mooring Basin, Fisherman's Wharf and Hornibrook's Wharf. Attached and marked **Annexure B** are two maps detailing the leased area. The first map shows the leased area at Fort Hill Wharf (section 10187) and the second map shows the leased area at East Arm Wharf (sections 7219, 7216, 5719, and 5783).

16 To ensure it would be ready to lodge a bid, Landbridge first met with FIRB voluntarily on 19 June 2015, and continued to engage and communicate with FIRB throughout the entire transaction.

17 In late June 2015, Landbridge submitted a notification to FIRB in respect of both the lease and the purchase of the shares in the Port Manager. This was because the grant of the lease and

- the purchase of the shares were treated differently under the provisions of FATA. Landbridge provided extensive documentation to FIRB at this time. On 9 July 2015, FIRB requested further information from Landbridge, to which Landbridge complied.
- 18 In early July 2015, Landbridge, through Mike Hughes, informed the Department of Defence of Landbridge's interest in the Port Package.
- 19 In mid-July 2015, Landbridge was advised that it had been shortlisted by the Northern Territory Government to participate in the binding bid phase of the transaction. Attached and marked **Annexure C** is a copy of the binding bid phase process letter. By this letter, Landbridge was informed that the Northern Territory Government required each bidder to have a minimum 20% "meaningful level of Australian equity".
- 20 In its FIRB application of 7 July 2015, Landbridge submitted that it was unclear whether the Port Manager would be an exempt corporation and accordingly, enclosed a notice under section 26 of FATA for the acquisition of shares. At this stage in the transaction, the bid price had not been allocated between the lease and the shares. This is because the allocation depended on the specific assets to be leased and the value of the shares in the Port Manager. Landbridge did not have the required information about the Port Manager to allow it to form a view on the allocation of value at this time.
- 21 On 13 August 2015, Landbridge withdrew its FIRB notice, and resubmitted a fresh notice (because the statutory time frame was due to expire). At this stage, neither Landbridge nor the Northern Territory Government knew of the allocation of the bid price between the lease and the share purchase. Throughout the transaction, Landbridge continued to engage with FIRB, assisted FIRB with its application, and responded to all requests for further information.
- 22 On 11 September 2015, FIRB notified Landbridge that it was seeking confirmation from the Northern Territory Government about the allocation of the bid price before responding to Landbridge's FIRB application. What price the Northern Territory Government allocated to the share component of the transaction would guide whether or not the share transaction required FIRB approval. Landbridge was not involved in discussions with FIRB and the Northern Territory Government about the allocation of value for the shares. The Northern Territory Government informed the Committee at the hearing that the value of the transaction was verified by the Auditor-General of the Northern Territory Government, and that this information was provided to FIRB (Hansard reference page 51).
- 23 On 15 September 2015, FIRB notified Landbridge that the acquisition of the Port Package, in respect of *both* the lease and share purchase, was exempt under FATA. A copy of the letter from FIRB is attached and marked **Annexure D**.

Port lease: exempt under FATA

- 24 An interest in Australian urban land is exempt from notification under section 12A(7) of FATA. In its application, Landbridge recognised that because the port lease was to be acquired from the Northern Territory Government, it was exempt from notification under FATA.
- 25 Despite lodging an application for FIRB approval, FIRB approval for the lease was not required. If approval had been required, Landbridge's application with FIRB would have been progressed. This position is consistent with the Group's previous acquisition of Westside which was subject to FIRB approval.

Acquisition of shares: exempt under FATA

- 26 The acquisition of the shares in the Port Manager was not exempt from notification under section 12A(7) of FATA. The Port Manager was a company established under the Corporations Act, and accordingly the A\$252 million total assets threshold applied to determine whether it was an exempt corporation under section 13A of FATA. As detailed in paragraph 21, the value of the shares in the Port Manager was confirmed to FIRB by the Northern Territory Government.
- 27 On 30 September, Landbridge made a binding offer for the Port Package which was accepted by the Northern Territory Government. The agreement was signed on 13 October 2015, and the transaction completed on 16 November 2015.
- 28 A more comprehensive background to the transaction and interactions with FIRB, the Northern Territory Government and the Australian Department of Defence is attached as a timeline of events.

Interactions with Defence

- 29 Throughout the indicative and binding offer stages of the transaction, Landbridge interacted and corresponded with Defence.
- 30 On 1 July 2015, Mr Hughes had a conversation with Defence to indicate Landbridge's interest in the acquisition of the Port and on 18 August 2015, Landbridge met in person with the Director General of Military Strategy, Brigadier Michael Mahy.
- 31 At no stage did Defence raise any concerns about Landbridge's potential acquisition of the Port.
- 32 At the Committee hearing, Defence commented that they exercised due diligence and looked at the transaction very carefully. Defence consulted with Australian Signals Directorate, the Australian Defence security agency and ASIO. Defence advised the Treasury that they had no objection to the arrangement with Landbridge. Landbridge is also bound by a Deed of

Licence with Defence. At the Committee hearing, Defence commented that the Deed of Licence (commercial-in-confidence) is the most extensive they have with any port in Australia (Hansard reference page 11).

33 Landbridge will work closely with Defence and enable Defence and other visiting navies to ensure they continue to receive the same access to commercial facilities and services that they currently enjoy at the Port. Landbridge has been in contact with Defence since the transaction completed to reaffirm this commitment.

34 Based on the evidence provided by ASIO at the Committee hearing, Landbridge is also aware that ASIO was consulted throughout the entire process and reviewed the transaction from a national security perspective (Hansard reference pages 28, 29, 32). ASIO concluded that “there was no reason, based on security consideration..., as to why this transaction should not go forward with the two deeds in question and the mitigations in place” (Hansard reference page 28)

Landbridge’s commercial operations at the Port of Darwin

35 Landbridge is honoured to have been awarded the Port Package by the Northern Territory Government and intends to operate the port as a commercial port.

36 Landbridge currently owns another port in the Shandong province in China, and sees this investment in the Port of Darwin as an opportunity to increase two way trade between the ports, and increase trade between Australia and Asia generally. Being strategically located in Northern Australia, the Port of Darwin is well placed to take advantage of growing Asian markets. The Darwin Port has strong commercial growth prospects through exposure to a variety of trades and its position as the major export terminal from the central Australian resource corridor.

37 Landbridge is able to bring its significant financial strength, operational experience, industry knowledge and strong network of relationships to assist in growing the commercial enterprises of the Port of Darwin. Initially, Landbridge intends increasing utilisation and throughput at the Port. Increasing the commercial size of the Port will also assist in stimulating the economy and increasing the number of jobs created for the Northern Territory.

38 Landbridge intends to operate the Port of Darwin in a collaborative, open and transparent way with the Northern Territory Government (and Defence) over the entire lease term. In essence, Landbridge views the lease of the Port of Darwin as a joint venture between Landbridge and the Northern Territory Government to allow the Port of Darwin to be developed and expanded to deliver not only improved financial and commercial outcomes to Landbridge but also for the Northern Territory.

Conclusion

39 Landbridge wishes to thank the Committee for the opportunity to provide this written submission to the Committee. If the Committee requires any further information, please contact Amy Hoban (General Counsel) on +61 7 3020 0933.

Mike Hughes
Director, Landbridge Infrastructure Australia

Timeline of Events

Date	Event
16 December 2014	Landbridge, through Mike Hughes (Director), first approaches the Northern Territory Government's financial advisers, Flagstaff, to confirm its interest in acquiring the Port of Darwin Port Package.
18 February 2015	The Northern Territory Legislative Assembly resolves that a Select Committee on the Port of Darwin be appointed and that, among other things, the Committee shall inquire into and report on the Port of Darwin lease model proposed in the Port of Darwin Bill 2014 (serial 111) and recommend options to enhance the model. Attached and marked Annexure E is the Legislative Assembly's resolution.
27 April 2015	The Northern Territory Port of Darwin Select Committee delivers its findings. Attached and marked Annexure F is a copy of the Port of Darwin Select Committee's findings. The Select Committee comprised: <ul style="list-style-type: none"> <li data-bbox="564 1043 1115 1070">- Mr Nathan Barrett MLA (Country Liberals); <li data-bbox="564 1115 1139 1142">- Mrs Lia Finocchiaro MLA (Country Liberals); <li data-bbox="564 1187 1166 1214">- Mr Michael Gunner MLA (Territory Labor); and <li data-bbox="564 1258 1034 1285">- Mr Gerry Wodd MLA (Independent)
21 May 2015	Department of the Chief Minister of the Northern Territory issues a process letter to Landbridge setting out details required to submit a non-binding indicative offer.
19 June 2015	Landbridge voluntarily meets with FIRB in person to advise them of its interest in the Port Package. FIRB suggests that Landbridge contact Defence and ATO.
29 June 2015	Landbridge submitted its indicative offer to Northern Territory Government, the terms of which are confidential but have been provided to FIRB.

1 July 2015	<p>Mike Hughes speaks with senior members of Defence (Brig Michael Mahy and Bob McComas) who were responsible for security agency clearances regarding its interest in the Port of Darwin Port Package.</p> <p>The Deed of Licence that was put in place in May this year satisfied their concerns on access.</p>
7 July 2015	<p>Landbridge submits a notification to FIRB under s26 of the <i>Foreign Acquisitions and Takeovers Act 1975</i> (Cth) (FATA) in connection with its proposed acquisition of the Port of Darwin Port Package. Landbridge provides extensive information to FIRB at this time.</p>
9 July 2015	<p>FIRB requests further information from Landbridge regarding its application.</p>
10 July 2015	<p>Landbridge provides responses to additional questions asked by FIRB.</p>
13 July 2015	<p>Northern Territory Government advises Landbridge that it has been shortlisted to participate in Binding Bid phase of the transaction.</p>
14 July 2015	<p>Catherine Bartley from the Foreign Investment and Trade Policy Division of FIRB advises Landbridge that it would be very difficult for FIRB to recommend the proposal to the Treasurer, given the Northern Territory Government's requirement that the bidder structure includes a "meaningful level of Australian equity".</p>
15 July 2015	<p>Mike Hughes and Craig Rogers of King & Wood Mallesons call Treasury - Treasury is unlikely to recommend 100% interest and requires information about development plans.</p>
15 July 2015	<p>In response to Catherine Bartley's advice, the next day Landbridge amends its FIRB application to hold a 90% interest in the Port Manager with the remaining 10% equity to be Australian equity acceptable to the Northern Territory Government.</p> <p>The statutory timeline commences for Landbridge's FIRB application.</p>
16 July 2015	<p>Landbridge receives from the Northern Territory Government a binding offer phase process letter. The Northern Territory Government informs Landbridge that each bidder is required to have a minimum 20% "meaningful level of Australia equity".</p>

16 July 2015	FIRB requests confirmation as to whether or not there would be any change to the consideration following the amended proposal. No change confirmed.
17 July 2015	Northern Territory Government provides to bidders a legal roadmap in relation to the lease of the Port.
27 July 2015	King & Wood Mallesons provides to FIRB further information regarding total asset figure for Landbridge Group and confirms that there is no Foreign Government Investor ownership within Landbridge's corporate structure.
7 August 2015	Landbridge sends a letter to the ACCC regarding the proposed transaction, and sends a copy of the letter to FIRB that same day.
13 August 2015	Landbridge withdraws its notice submitted under s 26 of the FATA and submits a fresh notice to FIRB to restart the 30 day period.
17 August 2015	King & Wood Mallesons speaks to FIRB - no concerns with Landbridge as an investor and FIRB is now just waiting for information about the value of the Port Manager to determine whether a decision is required and the final position on the Australian equity component. There was no need for a meeting.
18 August 2015	Landbridge meets in person with relevant contacts at Defence in Canberra
11 September 2015	FIRB advises Landbridge that it is seeking confirmation from the Northern Territory Government regarding the allocation of the bid price before responding to Landbridge's application. Landbridge withdraws and resubmits a fresh s26 notice for the acquisition as the statutory time period expired today.
15 September 2015	FIRB notifies Landbridge that the acquisition of the port lease and the acquisition of the interest in the Port Manager are both exempt under FATA.
30 September 2015	Landbridge makes a binding offer to acquire Port of Darwin Port Package. This offer included a 20% "meaningful level of Australian equity" in the form of equity held by the Northern Territory Government in the Port Manager company.

13 October 2015	Landbridge signs the transaction documents with the Northern Territory Government.
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16 November 2015	Transaction completes.
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