

The logo for Optus, consisting of the word "OPTUS" in a bold, teal, sans-serif font.

Submission to the Senate
Standing Committee on
Economics

***Foreign Investment
Reform (Protecting
Australia's National
Security) Bill 2020 and
Foreign Acquisitions and
Takeovers Fees Imposition
Amendment Bill 2020***

Public Version

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INTRODUCTION

1. Optus is pleased to provide this submission in response to the Senate Economics Committee's inquiry into the provisions of the *Foreign Investment Reform (Protecting Australia's National Security) Bill 2020* and the *Foreign Acquisitions and Takeovers Fees Imposition Amendment Bill 2020*.
2. Optus participated in the consultation process undertaken by the Treasury into the exposure draft of the legislation and the draft regulations.
3. We note that foreign investment, and the terms under which it is made, has been the subject of extensive consideration by Governments around the world.
4. Optus supports measures to protect Australia's national interest and ensure that foreign investment is made on appropriate terms.
5. Optus is a wholly owned subsidiary of Singtel, Asia's leading communications group, which is headquartered in Singapore. Since Singtel's acquisition of Optus in 2001, Optus has worked collaboratively with numerous Australian Government agencies in order to comply with the requirements of various items of legislation.
6. Since 2001, with the backing of Singtel, Optus has invested over \$22 billion into network infrastructure - providing vital competition in the Australian telecommunications market and greater choice for consumers. We are also an employer of choice, with a workforce of approximately 7,000 employees, based across all states and territories.
7. Optus believes that the Government has a significant opportunity through this legislative reform process to further protect Australia against foreign acquisitions and takeovers that are not in the national interest.
8. However, critically, the Government also has an opportunity to ensure that investment originating from low-risk nations and reputable organisations is made as simple as possible, in order to maximise new business opportunities and facilitate increased economic growth. This is critical as Australia begins to recover from the COVID-19 pandemic.
9. Optus is pleased to provide feedback on the Bill and to engage with the Committee in any further required consultation.

DEFINITION OF 'NATIONAL SECURITY BUSINESS'

10. Optus notes that there will be a pre-investment notification requirement for an investment or acquisition in a 'national security business'.
11. We note that the definition of a 'national security business' would include those with assets regulated under the *Security of Critical Infrastructure Act 2018* and the *Telecommunications Act 1997*. Optus would clearly be covered by either of these categories and will be considered a 'national security business.'
12. The acquisition of Optus by Singtel in 2001 was overseen by the Commonwealth and was subjected to a very high level of scrutiny – which was appropriate and in line with public expectation.
13. Accordingly, whilst this is a new definition, it is largely consistent with the way that the Government has previously viewed telecommunications companies: as the providers of critical infrastructure and essential services.

14. This definition appears to be most relevant to situations where foreign interests attempt to takeover or establish such a business in Australia.
15. However, it would be very helpful for the Government to confirm how this might impact an existing national security business which is foreign owned; namely, whether the FIRB may expect new or expanded notifications from an existing foreign-owned company which needs to make ongoing investments in significant new assets in Australia.
16. Optus' ownership is well known and understood by the Government and we have various agreements in place with the Commonwealth as a result of our ownership structure. Accordingly, we trust that this new definition would not render Optus subject to any additional, unnecessary, regulatory burden. We also have arrangements in place, as agreed with the Critical Infrastructure Centre, to comply with national security obligations under the TSSR scheme.

REGISTER OF FOREIGN OWNERSHIP

17. We note that the Bill will create a Register of Foreign Ownership of Australian Assets, which shall contain, "information about foreign ownership of certain Australian assets".
18. Optus could reasonably expect that, as a company which is fully owned by a foreign entity, there is the possibility that certain Optus assets could be expected to appear on this register – particularly as we will be classified as a national security business.
19. What is unclear is how this is administered and the extent to which Optus' interests might be captured. For instance, we would query whether all the sites in our mobile network might be captured – which would warrant the disclosure of over 8,000 locations.
20. We suggest the Committee may wish to consider whether a high-level summary may be appropriate to include on the register in some cases; particularly where the foreign-owned company or investor in question is deemed low risk or has a long-standing history of making a positive contribution to Australia.
21. Alternatively, Optus recommends that the Government consider creating a category of exemption for investment in assets that are deemed to be in the national interest and the investor is considered low risk.
22. Optus also notes that some assets or infrastructure deemed to be critical infrastructure may be subject to some sensitivities, and not appropriate to disclose publicly. Some of these sites may also be partly funded by Government.

GENERAL FEEDBACK AND SUGGESTIONS

23. There are some specific sub-sections of the Bill which Optus have identified as warranting our direct feedback, and which are set out below.

Streamlining the FIRB process for less sensitive businesses and investors

24. Optus would welcome any process under the FIRB which makes it easier for financial support for businesses to flow from investors who are deemed "less sensitive."
25. We note the proposal to amend the definition of a "foreign government investor" and that some entities currently classified in that way will no longer be considered as such.

26. We would also urge an extension of this category to include a category of exemption for investment in assets that are deemed to be supporting an essential service – when the investor is considered low risk and has long-track record of supporting the Government on national security matters.
27. The ideal application of this amendment would be that where an ownership structure is well known and understood by the Government, investment by a foreign owner into an Australian-based company would not be subject the current levels of compliance or administrative hurdles. This should be of particular priority where the investment is in the national interest.

Increased fees

28. We note that the Government is committed to ensuring that the FIRB framework is self-sustaining, which will involve, in part, an increase in the fees schedule. Optus also notes that this will allow for an increase in the resources available to the FIRB.
29. Under the new, proposed fee schedule, initial fees are lower, but the rates then increase to become substantially higher than the current fee. Optus notes that the cost of fees depends on the value of the transaction.
30. Optus notes the reasons given for the proposed increase in fees. However, we suggest that increased fees could be likely to impact the amount of investment into Australia.
31. In Optus' situation, any substantial or unreasonable increase in fees payable could impact the levels of investment made into our network infrastructure, which is likely to be to the detriment of customers around the country, particularly in regional areas. Optus recommends that fees are waived or moderated for investments into critical infrastructure, such as telecommunications.

New powers granted to the Treasurer

32. We note that the Treasurer will have new powers related to the “calling in” of certain investments, as well as a last resort power on national security grounds
33. We note that the telecommunications sector is specifically referred to in the explanatory memorandum as being captured under the national security test.
34. We also note that the explanatory memorandum suggests that the opportunities for self-disclosure mean that the call-in power is likely to be “used sparingly.”
35. We understand the need for this power in the current global environment. To ensure this does not deter investment from countries or foreign government investors considered to be low risk, it is important that there is transparency as to the circumstances in which this power would be exercised. The exercise of such power should also be subject to appropriate scrutiny by appropriate parliamentary channels.

Importance of a unified approach across Whole of Government

36. We also understand that legislative changes to the Security of Critical Infrastructure framework are imminent.
37. Optus enjoys a very productive working relationship with the Department of Home Affairs, and we collaborate on a number of important operational and policy matters.
38. We appreciate that various matters allied to the FIRB's mission need to be handled by the Department of Home Affairs. We also understand that it may be possible that there are some implications for the FIRB process which arises from the work in the Home Affairs

portfolio. Optus notes previous feedback that the Treasury and Department of Home Affairs will continue to work with one another to ensure a unified approach.

39. Optus is supportive of FIRB and Home Affairs processes being as complementary as possible, as to avoid confusion on the part of industry, but also to ensure that compliance regimes are not incompatible or unnecessarily burdensome from a regulatory standpoint.

CONCLUSION

40. Optus has a long-standing history of investment in Australia and we have shown strong commitment to improving the infrastructure available to Australian consumers. We remain committed to investing in Australia and delivering further options and value for our customers.
41. Optus appreciates that the Government must carefully balance the economic opportunity of foreign investment against significant risks to Australia's national interest.
42. Nevertheless, we encourage the Government to ensure that barriers are not placed in the way of investment which originates from low risk investors and nations, particularly where that investment is made on behalf of parties whose corporate character is already well-known to the Government and who have made a long-standing positive contribution to Australian consumers and the broader national interest.

(ENDS)