

Inquiry into foreign investment proposals answers to questions on notice from public hearing
Friday, 7 August 2020
David Richardson, Senior Research Fellow – The Australia Institute

Questions on notice

I offered to take on notice the following question from **Senator Whish-Wilson**:

Your submission seems to point in particular to competition [inaudible]—let's say, purchases potentially by state owned enterprises. You raise dairy in your submission, and fact that the product seems to be going from a domestic market to one market in particular, rather than to other export markets. Why did you raise that particular issue around mercantalism? You didn't use that word, but that's the way I interpreted it. Do you think it's more of a competition issue that needs to be addressed for any foreign investor?

In the submission I was thinking in particular of examples such as Kodak Australia, a subsidiary of an American company, which came to attention when Kodak was threatening to close its Australian operations. The Australian government offered assistance to Kodak Australia but an important issue at the time was that Kodak Australia was prohibited by its parent from exporting product made in Australia. We understand this is a fairly common practice but a practice that is rarely aired publicly. However, it is something that could be addressed as a standard practice in examining foreign investment proposals.

The following is something I wrote but not yet published:

Arndt and Shirk (1959) examined the restrictions on exports by subsidiaries of multinational corporations and their conflict with Australian aspirations of developing world class manufacturing industries with a strong export orientation. On that point a useful summary of the views on export restrictions from head office on foreign affiliates is provided by the Industry Commission (1992). Despite canvassing evidence from people like Greg Crough as well as the Metals and Engineering Workers Union and the Australian Manufacturing Council the Industry Commission thought it was best to leave it to the market. The Centre for Future Work (part of The Australia Institute) hosted a National Manufacturing Summit at which one of the speakers referred to the problems Australian manufacturers have convincing head office that they are in a position to export (Ives 2017). While the struggle was expressed positively—the struggle to get a mandate to export—the issue remains the same—overcoming export franchise restrictions. This remains a serious issue for a country whose corporate sector is 43 per cent foreign-owned. The foreign-owned protected manufacturing later promoted Senator John Button to refer to a “classic colonial culture industry” in Australian manufacturing. The colonial culture he referred to involves foreign-owned or controlled enterprises establishing subsidiaries in Australia with a brief to manufacture for the local market only (with perhaps some exports to the South Pacific), using old technology and little or no local R&D, design etc., little regard for their competitiveness or productivity, and generally inward-looking and isolated from the international market in which they could operate.

This is indeed a type of mercantilism but one practiced by multinationals. The interests of far-flung subsidiaries are ignored and their operations are expected to serve head office interests. In the case of State-owned enterprises there would be no reason to believe they would act differently and they may well mix national interests with head office's commercial interests. I would add that as we think about foreign investment issues they quickly raise industry policy questions as well. The Committee may wish to consider whether industry policy is too often ignored by housing foreign investment policy and operations in the Treasury portfolio.

Senator Whish-Wilson asked;

We have seen a situation recently where Bellamy's, and other foreign government interests, had put some enforceable undertakings on keeping their headquarters here and keeping staff employed in Australia. Do you have any views—perhaps you could take it on notice, and also Professor Fernandes—on whether it should be a recommendation of the committee that we should be making undertakings enforceable and having the resources to audit those things? And my second question, which perhaps you could answer now, is to me an important question. I noticed in your submission you talked about protection of Australia's market based system from manipulation that would benefit proposed foreign investment or investors. Do either of you have a view on perhaps a blanket ban or very strict conditions being applied to the takeover of Australian companies if they're being bought by foreign government interests and that foreign government also is a key competitor of the Australian company and is in a position to influence their sales in their market?

An example there that I raised publicly was Bellamy's. Bellamy's was selling infant milk powder into China. Their key competitors were Chinese state-owned companies. The Chinese government didn't give them their licence for many years. Their share price languished. They didn't have much of a future. And they were then bought by their competitor. We know of other examples that have been given to me. Do you think we should just have a blanket ban on those conflicts of interest within our market system?

I agree undertakings should be enforceable. Indeed, it could be taken further and suggested that the new foreign owned entity should act in its own commercial interests and maintain some separation from the parent entity. However, as I pointed out in the submission, the Shell proposal was salutary. It was rejected on the grounds that, basically, it was not possible to design undertakings that a subsidiary of Shell not act in Shell's global interests. In the case of the dairy industry, while I do not claim to be across all the details, I would imagine that it would be hard to draft conditions that the new entity has to be 'good'. That would be grounds for refusing approval as was the case with Shell and Woodside. Note too that it was always open for a Chinese company to set up a greenfield operation to purchase milk and manufacture milk powder for export.