

Senate Economics Committee : Foreign Investment Inquiry - Darwin Port Lease

Submission by Brendan Doran PSM

The 99 year lease of Darwin Port by the Giles CLP government to the personal company of a billionaire from a region of China where the NTGovt has previously had no contact, has raised concern. This (and other controversial public asset sales) was done without an electoral mandate by an unpopular and scandal-plagued minority sub-national (Territory) government.

The full details of the deal, including the due diligence conducted on short-listed bidders, which included some with longer experience in port and maritime matters than the winner, the specifics on the superiority of the winning offer and the reasons for such a low Australian equity component in a public asset that is oft described as 'strategic', have not been released by Chief Minister Giles.

Nor is it clear which Commonwealth or other northern Australian Ministers or diplomatic or private sector representatives of the users of Darwin Harbour and Darwin Port were consulted or even informed in advance of the decision.

Suggestions that the Commonwealth had no legal power to stop the deal, even if it wanted to do so, are of great concern. The public deserves an explanation particularly as FATA and FIRB relevance was implied from the public statements of some of the main actors.

Irrespective of whatever might be the merits of the decision, its controversial nature, the precipitate manner of the announcement and the failure to prepare the Australian public or the international community was a significant embarrassment and a major public relations disaster for the Territory and Australia. It confirmed the lack of skill of the Giles administration in international matters and highlighted the threat it poses to Australian foreign policy and diplomacy.

The NT multi-party Select Committee of the NT Legislative Assembly on Port lease and privatization options (and some individual MLAs) showed greater sensitivity on national interest and international aspects than Mr Giles and his Ministers.

NTLA Independent Gerry Wood, for one, highlighted the perception, strategic and practical advantages of ensuring 51% Australian equity. He also noted the importance of informing and accommodating the interests of Port-user friends and allies. The obvious question is why this sort of advice was not heeded by the Executive level of the NT Govt.

The Senate Inquiry can help shine a light on the detail of what has happened here. In the interests of transparency, it should press for the public release of all documents, including agreements, MOUs and contracts.

But at Commonwealth level, Prime Minister Turnbull needs to provide a statement that everything has been taken into account and is order with the Darwin Port lease in terms of National Security, Defence of Australia, Alliance and neighbourhood relations and the business case and strategic economic benefits for the deal. Advice of any associated offset measures to counter negative impacts (including Written agreements and regulation and monitoring) on Australian interests of the decision should be provided along with the costs and advice of who will meet them. This should take into account all interests including those arising from the fact that Darwin is used by military and border control vessels, an oil and gas hub, possibly the largest livestock export port in the world and currently directly or indirectly employs lots of Territorians.

Alternatively, a statement that the deal is not in order is required specifying the remedial measures needing to be taken along with costs and responsibilities.

It should be pointed out that monitoring and regulation pose challenges for the small NT Public sector. It is unclear what effort will be put into this. The Harbourmaster, Dept of Transport and Land Development Corporation roles in dealing with Port matters to be retained by the NT Govt will also be costly.

Chief Minister Giles also needs to come clean on all aspects of his Cabinet's decision and on the reasons for the haste in making the winning- bid announcement while a new government was finding its feet in Canberra and against the background of heightened sensitivity on foreign investment matters and discussion of rule changes.

Mr Giles also must be more transparent on all aspects of his travel to China with a large and costly delegation after the Port announcement. Agreements were signed, Sister Province relationships established and undertakings made. These appear to commit future NT Governments to certain actions and expenditure. NT and Australian credibility will be in question if promises are not honored. Giles government funding provision and individual Ministerial responsibility for implementation should be specified.

The public has the right to know the total current and future costs of the Port-lease deal.

Some other matters deserving scrutiny include:

- the facts of the degree of freedom of manoeuvre on decision-making on foreign investment matters by the Australian States and Territories; and whether this should change;
- whether the situation of a Territory is different to that of a State;
- the adequacy of Commonwealth legislation, regulation and processes( including the role of National Security Committees, on foreign investment matters, and what if any changes should be made;
- the adequacy of communications and consultative procedures for State and Territory interaction with the Commonwealth on foreign investment matters;
- the adequacy of information and consultative arrangements between Northern Australian governments on foreign investment.

I wish you well in your deliberations on this important matter.

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