

CHAPTER 4

THE 1993 DECISION

Introduction

4.1 This chapter will examine the origins and basis of the decision by former Treasurer, Mr J Dawkins, on 20 April 1993 to allow Mr Conrad Black, through his company The Telegraph plc, to increase his investment in Fairfax from just under 15 to 25 per cent. This decision is the one that gave effect to the alleged arrangement between Mr Black and Mr Keating as reported in Mr Black's book *A Life in Progress* and confirmed during Mr Keating's Seattle interview.

4.2 The committee took evidence from Mr Black in amplification of statements in his book and submission about the series of meetings and discussions he had with Prime Minister Keating during 1992 and 1993 leading up to the Treasurer's decision to allow an increase in his investment in the Fairfax group. Mr Dawkins gave evidence as to his role as Treasurer in considering the application that was submitted for approval under foreign investment policy. FIRB staff cited an instruction from the Treasurer for their inability to discuss the case or the advice given to the Treasurer on this proposal.

4.3 Prime Minister Keating has not responded to any of the committee's requests to provide evidence or information which would allow the committee to clarify its interpretation of his remarks about the alleged deal with Mr Black. The Prime Minister's attitude to this committee was expressed in his response to Dr Hewson's question to him in the House on 24 November 1993. He said: 'Listen, brother, I know my place in the world. I do not slum it before Senate committees.'¹

Background

4.4 Mr Black advised the committee of a total of 6 meetings or discussions he had with Mr Keating, identified and described in following paragraphs and referred to as contact 1, 2, etc. Those events and a summary of the relevant discussion according to Mr Black are:

¹ House of Representatives Hansard, 24 November 1993, p 3545

- **Contact 1** - February 1992, meeting at Kirribilli House - discussed burden shouldered by Mr Black in restoring Fairfax. Mr Keating would consider an increase in about six months.
- **Contact 2** - August 1992, telephone call - Mr Keating had not got around to it, but his support for the proposition remained - deferred to November.

4.5 An independent version of events to this point is contained in an article by Tom Burton in *The Sydney Morning Herald* of 24 October 1992. The article reports a discussion between Mr Keating and the new chief executive of Fairfax Mr Stephen Mulholland and subsequent comments by Mr Keating at a lunch with senior editors and executives.

4.6 In response to a question about Mr Black's prospects for gaining approval to lift his investment in Fairfax from the previously approved 15 per cent, Mr Keating referred to the company as being on 'probation'. Mr Keating is reported to have then referred to Mr Black's advice to him of an opposition promise to allow him to own 100 per cent. The report goes on to say that Mr Keating 'embarked on a long rendition why his government should be supported.'

4.7 Burton went on to draw his own conclusion from these statements:

the real issue of Keating trying to suggest the company was on probation, as far as allowing Black to increase his shareholding was missed. Black this week was reported as admitting he would have a better chance under the Liberals, which no doubt will lead to a conspiracy theory about the direction of Fairfax's political coverage whenever an anti-Keating story gets a big run in the lead up to the election.²

4.8 The existence of such comments, a year before the question of a 'deal' between Messrs Black and Keating became a matter of inquiry, is of interest to the committee. Fairfax executives, including Mr Black, were on notice, before the election, that any request for approval of increased foreign investment was subject to a satisfactory 'probationer's' report from the Prime Minister. Fairfax executives were left to draw their own conclusion that the test for a satisfactory report included support for the government.

² *The Sydney Morning Herald*, 24 October 1992

4.9 Mr Black's evidence of conversations subsequent to October 1992 continued:

- **Contact 3** - November 1992, meeting in Mr Keating's Sydney office-Messrs Colson and Black. According to Mr Black, Mr Keating 'urged us to send an application at once to the Foreign Investment Review Board to raise our share to 25 per cent and he would champion it'.³

4.10 This was the meeting at which 'balance' was discussed. In his book Mr Black states that any further increase was conditional on Mr Keating's re-election and Fairfax political coverage being 'balanced'.⁴ In his submission on this matter Mr Black is more specific in saying that Mr Keating indicated in-principle support that 35 per cent was attainable after the election. Mr Black acted on Mr Keating's urging and duly lodged his application for an increase in December 1992. The issue of 'balance' and the concept of a deal is discussed in chapters 5 and 6.

4.11 The other discussions between the Prime Minister and Mr Black were:

- **Contact 4** - April 1993, telephone discussion - Mr Black inquired as to the status of the application to go to 25 per cent. Mr Keating indicated it would be considered in two cabinet sessions from then and that he was hopeful it would be approved;
- **Contact 5** - May 1993, meeting in Canberra - Messrs Colson, Black and Mulholland - the application to go to 25 per cent had recently been approved. There was passing reference to going higher than 25 per cent; and
- **Contact 6** - November 1993, meeting in Canberra - Messrs Black and Colson met Mr Keating, who advised them the issue of going higher could be raised when appropriate, but gave no commitment.

³ *A Life in Progress*, p 453

⁴ *A Life in Progress*, p 453

FIRB procedures

4.12 Consistent with the above sequence of meetings and discussions and Mr Keating's invitation in November 1992, an application for foreign investment approval to increase its shareholding from 15 to 25 per cent under the Foreign Acquisitions and Takeovers Act was lodged with FIRB on behalf of The Telegraph plc on 11 December 1992.

4.13 On 11 January 1993, Treasurer Dawkins issued an order under the Act prohibiting the proposed acquisition for a period of ninety days. The effect of this order was to defer the decision until after the then imminent election which was held on 13 March 1993.

4.14 The committee has been prevented by the Treasurer, Mr Willis, from gaining access to the FIRB advice to the then Treasurer Mr Dawkins, when he was considering the matter after the election.

4.15 On 20 April 1993, the Treasurer issued a press release advising of a change in foreign investment policy in relation to mass circulation newspapers. This change in policy, resulting from the Telegraph's application and discussion with Mr Keating, allowed approval for the Telegraph to increase its stake in Fairfax to 25 per cent.

4.16 The press release also advises that a single foreign investor can have a shareholding of up to 25 per cent, with unrelated foreign interests allowed to have non-portfolio shareholdings of up to 5 per cent.

4.17 Subject to FIRB guidelines requiring all proposals for foreign investment in newspapers to be subjected to case-by-case examination, it is, therefore, at least theoretically possible for four foreign investors to each acquire 25 per cent in Fairfax. While other permutations on shareholding can be calculated, it is important to understand that under the existing foreign investment policy 100 per cent foreign ownership of Fairfax is a possibility.

4.18 Ironically, another beneficiary of this policy change was Dr Tony O'Reilly. His company INP was thereby able to increase to 25 per cent in its investment in APN, the publisher of regional papers in Queensland and New South Wales.

Treasurer Dawkins

4.19 Mr Dawkins gave evidence of his role and the actions he initiated in his consideration of Mr Black's application to raise his shareholding in Fairfax to 25 per cent.

4.20 With respect to FIRB's advice on this matter Mr Dawkins stated that the advice was that the proposal 'was inconsistent with policy'.⁵ That left the government with the option to reject the application as inconsistent with policy, or to change the policy. In this case the government decided to change the policy.

4.21 Mr Dawkins outlined the discussions he had with Mr Black in which he advised of FIRB and government processes for consideration of the application. The government's approach to the issue was discussed by Mr Dawkins with Mr Keating, and Mr Dawkin's later took a submission to cabinet to determine the matter in view of the change in policy required.⁶

4.22 Media reports at the time indicated opposition to the proposal from within the Labor Party and the ACTU. A number of Labor members including Party President, Mr Barry Jones, signed a letter to Treasurer Dawkins expressing opposition on a number of grounds. ACTU President Martin Ferguson is reported to have forwarded a letter on behalf of the ACTU in which he questioned 'What is so magic about his desire to own 25 per cent when he has shown that he has a dominating influence over the company with a 15 per cent holding?'⁷

4.23 Adequacy of control at 15 per cent was obviously an issue in cabinet's consideration of Mr Black's application, particularly given that caucus policy set in 1991 included a requirement that foreign control not be extended.

4.24 Mr Dawkins' stated reasons for approving the application were to allow Mr Black to secure his management control of the company so as to safeguard his financial and managerial commitments. Mr Black at that time was proposing to increase the company's investment in plant and equipment.

⁵ Evidence p 519

⁶ Evidence pp 506-7

⁷ *The Age*, 19 April 1993

The press release advising the change in policy concluded that further increases in the level of foreign ownership would not be countenanced.

4.25 Regardless of this apparent restriction on future increases, which is similar to the restriction announced with the original decision to approve the Tourang II bid in December 1991, Mr Black remains of the view that he should be allowed to increase his holding to 35 per cent. In concluding his opening statement to the committee on 21 April 1994 Mr Black said:

Finally, on the issue of foreign ownership, our contention is that, since neither the Prime Minister nor the Leader of the Opposition - I will leave the former Prime Minister out of it - objects in principle to the idea of us going to 35 per cent, and since no-one that I am aware of has claimed that our stewardship at Fairfax has been anything other than adequately competent and conscientious, consideration should be given to our going to 35 per cent and, in the unlikely event of a takeover bid being made that we would consider hostile, to our being able to protect our position at 35 per cent.⁸

4.26 Under the current policy Mr Black's request to go to 35 per cent requires consideration by caucus. The committee notes Mr Black's evidence of Mr Keating's in-principle support for him to gain that increase at the appropriate time.

4.27 The committee has had no evidence from Mr Keating and, therefore, refers the question to the Prime Minister. Did he tell Mr Black that 35 per cent is 'ultimately attainable'?⁹ If so, when will Mr Black be advised to lodge his application for approval under the foreign investment policy, as he was advised in November 1992? The committee understands that there is no such application before the FIRB, at the present time.

4.28 What is particularly perplexing about the 1993 decision is that it 'flew in the face' of recommendations contained in the House of Representatives Select Committee on Print Media Report. That committee recommended:

- the Foreign Investment Review Board continue to examine all foreign investment proposals in the print media;

⁸ Evidence p 662

⁹ Submission No 3

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- Government guidelines for foreign investment in the print media be amended to show that, subject to the normal national interest requirements, proposals with up to 20 per cent foreign control be approved;
 - for all proposals above 20 per cent a case would have to be made that the proposal is in the national interest or that special arguments (eg failing company) apply; and
 - the Treasurer publish reasons for accepting or rejecting foreign investment proposals in the print media. (Paragraph 9.93).¹⁰

Conclusion

4.29 With respect to the origins and basis of Mr Dawkins' decision to approve the increase in Mr Black's shareholding from 15 to 25 per cent, the committee has been hampered in its investigation by the unwillingness of certain officials, under instruction from the Treasurer, to provide evidence and by the Prime Minister's repeated failure to respond to requests for information.

4.30 The committee has considered Mr Black's evidence about his communications with Mr Keating. As with any two party situation it is difficult to conclude a view if only one party's views are taken into account. Nevertheless, the committee has explored the issue of 'balance' in chapter 5 based on Mr Keating's statements to the media. A number of questions await response from the Prime Minister. These include:

What part did you play in the 1991 decisions regarding bids for Fairfax?

What contact did you have with Mr Pooley or any other FIRB member during Jan-June 1991 (as Treasurer), and June-December 1991, regarding Fairfax bids?

What undertaking did you give to Mr Black regarding foreign ownership limits?

What undertaking did you receive from Mr Black concerning election coverage by Fairfax press?

¹⁰ *News & Fair Facts*, pp xxxiv-xxxv

How do you account for discrepancies between your version of those conversations and Mr Black's version?

You have indicated that you and the Cabinet were sufficiently satisfied with the performance of the Fairfax press in the 1993 election to approve increased ownership for Mr Black. Can you inform the committee of the criteria which you and the Cabinet used to assess this performance?

On what grounds and with what advice was the 1993 decision to increase foreign ownership limits taken?

Did you ever tell Mr Black that 35 percent foreign ownership was ultimately attainable?

Having regard to Mr Black's written submission, when will 35 percent be attained?

4.31 Mr Keating has not responded to the committee's correspondence on this question. Accordingly, the committee has had to refer to Mr Keating's remarks in the Parliament and in the media. The committee's findings in respect of balanced coverage and the 1993 decisions can be found in chapters 5 and 6.