

CHAPTER 3

FOREIGN INVESTMENT POLICY AND PROCEDURES

Introduction

3.1 The government members of the committee acknowledge and appreciate the significant contribution which foreign investment has made to the Australian economy during the past decade. Labor government policy on foreign investment, which has been designed to ensure that Australians reap the benefits of the new global economy, has brought new technologies, opened new overseas markets, created employment opportunities and made the domestic economy more competitive. To a large extent these considerable achievements are a by-product of the sound domestic and external economic management of the Hawke and Keating governments.

3.2 We recognise that these advances occurred within policy constraints to limit the extent of foreign control over Australian economic interests. We also recognise that, in part, these limits were based on a responsible approach to ensuring that the Australian culture is allowed to coexist with overseas cultures. Of equal importance is the fact that Australia's economy is small in world terms. If there were unlimited foreign investment, there would be a real risk that local firms would be taken over or, in the short term, priced out of the market by more powerful overseas interests. This would result in less competition in the longer term. Another consideration is that there are industries which are part of the national infrastructure, for example, defence industries, which should remain in Australian hands. It is with these sorts of considerations in mind that we support a mature policy stance to foreign investment and the concomitant development of procedures which will achieve the policy goals.

3.3 The print and broadcast media are key areas of economic and cultural activity which will need effective and on-going regulation. To this end, we support the need for overseas ownership limits on print media and other key industry sectors as enunciated in the government's current policy.

3.4 However, given the highly political nature of this Senate Print Media inquiry and its rather narrow terms of reference based on two particular decisions of FIRB with a focus on media ownership, it is extremely difficult

for us to make findings on foreign investment policy generally. Notwithstanding this, we believe that before the commencement of the next cyclical surge of capital inflow the government should implement changes to our foreign investment procedures. We also believe that there is widespread community support for these changes.

3.5 Accordingly, we have made recommendations which focus on increased consultation, the introduction of public notification of proposals, enhanced reporting requirements and, finally, improvements in policy compliance procedures.

Increased consultation

3.6 In assessing the merits of applications under the government's foreign investment rules, it is of critical importance that the FIRB have access to the widest possible sources of expertise and advice. In the more significant foreign investment proposals this will mean that advertisements will need to be placed in the national press inviting public comment. In developing procedures to reflect this imperative, a balance between commercial-in-confidence and privacy considerations will need to be struck with the need to assess properly the national interest. However, these processes have time and cost implications which will need to be factored into any changes. The current time limits imposed on the FIRB process may need to be extended beyond the 30 day examination period and the 90 day period for the issue of an interim order (sections 22 and 25(3) of the Foreign Acquisitions and Takeovers Act (FATA).

3.7 Provided overseas investors are alerted to these new rules and the process is conducted in a fair and consistent manner, there should not be an adverse impact on foreign investment flows.

Recommendation

Recommendation No 1

That FIRB processes be restructured to permit a more open and consultative process which will ensure that FIRB has access to a range of expertise and community input on the merits of projects relative to the national interest.

Enhanced notification

3.8 Notification of proposals, decisions and, where appropriate, reasons for decisions, is another important feature of any changes designed to make FIRB a more open and consultative organisation. The government members of the committee believe that FIRB should be obliged to issue press releases on all major approved proposals, all rejections and all proposals for which orders have been issued under the FATA. The system of notification should be applicable to investments which exceed a certain threshold value, say \$50 million. Reasons for decisions should be published for those investments which exceed the threshold value and any caveats or conditions attached to decisions should be specified and published.

Recommendation

Recommendation No 2

That FIRB develop a comprehensive system of notification which involves the publication of significant decisions, the publication of reasons for these decisions and the publication of conditions applicable to approved proposals.

Reporting strategy

3.9 We believe that FIRB should develop a comprehensive reporting strategy which meets the information needs of both the Australian community and potential overseas investors. The strategy should include provisions for publication of FIRB Quarterly Monitors which will contain

statistics relating to applications, FIRB decisions, the aggregate dollar value of foreign investments, and a description and analysis of emerging foreign investment trends.

3.10 The Monitors could include case study material on recent applications and information about the success or otherwise of previous decisions. Where applicable, reference could be made to 'follow up' on compliance matters and other regulatory activities.

Recommendation

Recommendation No 3

That FIRB develop a comprehensive community and investment client reporting strategy designed to engender certainty and confidence in Australia's foreign investment policy.

Compliance activities

3.11 As foreshadowed in the previous section, the government members on the committee believe that FIRB needs to develop a more pro-active compliance strategy. It is important that investors adhere to the conditions of any FIRB decisions and comply with Commonwealth and State law. In the event that an investor breaches the terms of a FIRB decision, FIRB has an obligation to detect such breaches and formulate an appropriate response.

Recommendation

Recommendation No 4

That FIRB develop a plan of action to ensure that it monitors progress on those projects for which have been given approval subject to special conditions. Breaches of FIRB decisions should be the subject of appropriate FIRB action as provided for in FATA.

Independent Newspapers Pls (INP) and Australian Provincial Newspapers (APN)

3.12 INP, an overseas consortium informed the committee of its interest in acquiring an even greater shareholding in APN, 'to the maximum allowable'. Currently, in accordance with ownership limits imposed by policy, it holds a 25 per cent share. INP expressed satisfaction with the ownership guidelines, but submitted that a special case could be made for the government permitting a relaxation of these limits, particularly as applied to regional newspapers. INP believes that, as concentration of ownership occurs, foreign ownership limits may result in an even greater concentration of the print media in the hands of a few domestic firms. Should the cross-media rules be relaxed, there would be an even greater likelihood of concentration.

3.13 In making this recommendation, INP pointed out that the policy should distinguish between the capital city and provincial newspapers, citing its belief that the coverage and editorial policy of the major national dailies has a far greater potential to impact on 'national life and thought'¹.

3.14 The government members of the committee are of a view that INP's arguments do have a number of persuasive qualities which should be further examined. As the terms of reference did not require the committee to report on the matter and as competing evidence was not taken, we are not in a position to come to a conclusive view. But the matters raised by INP should be the subject of government examination in the context of the enhanced procedures which have been identified in the recommendations in this chapter. Those procedures would allow the Australian community and INP an opportunity to participate in an open and informed process which would allow the government to make a fair and well-reasoned decision on the INP application.

Policy backflip on part of coalition members

3.15 In an attempt to salvage something from the ashes of the 'balanced coverage' component of the inquiry, the coalition members of the committee have decided to recommend changes to the nature and shape of FIRB. This decision is both cynical and hypocritical. The Coalition Policy in 1990 stated:

¹ Evidence p 313

We will ensure that there is a more effective review and monitoring of foreign investment in Australian enterprises. This will be done through the Federal Treasury, rather than by a costly Foreign Investment Review Board.²

3.16 Likewise, the 1989 coalition policy statement called for the abolition of both FIRB and general controls on foreign investment.³ These two statements confirm the sheer hypocrisy of the policy U turn of the coalition parties. It is therefore difficult to give any credence to the recommendations in chapter 10 which call for changes to foreign investment policy and procedures.

Press release by Senator Alston

3.17 The other 'backflip' worthy of note is the change in attitude by the Coalition members to the Tourang consortium. The majority report both explicitly and by inference is hostile to Tourang. Yet, when the 1993 decision was made, the chair prepared a media release in support of the decision to permit Tourang to have a greater stake in Fairfax:

The coalition is not opposed to an increase in the level of foreign direct ownership investment in Fairfax...⁴

3.18 Senator Alston's statement also acknowledged:

Any increase in foreign ownership, particularly in the area of the media is a vitally important and sensitive issue which sends signals to both domestic and overseas investors and must take full account of all the relevant factors.

Australians are entitled to expect that a government will only approve an increase in direct foreign investment where there is a compelling case to do so.⁵

² Liberals and Nationals, *Northern Queensland Policy*, 1990

³ Liberal and National Party Economic Action Plan, 'Economic and Tax Policy', October 1989

⁴ Media release dated 20 April 1993

⁵ Media release 20 April 1993

3.19 The very words in this release acknowledge the correctness of the government's 1993 decision. The coalition was not opposed unless there were compelling reasons. In the case of the 1993 decision - there were compelling reasons. These reasons were given in the Treasurer's statement at the time, and in the Prime Minister's statements since. They related to the large investment in new equipment required at Fairfax and to Mr Black's need for a measure of control in order to implement these improvements.

Conclusion

3.20 Throughout the inquiry it has been quite apparent that the government has an effective overall foreign investment policy. That policy is superior to the 'no policy' of the opposition, which in the case of Fairfax, for example, would have permitted up to 100 per cent foreign ownership in the major Sydney and Melbourne broadsheets. The government has manifested a consistent policy in respect of the maintenance of a FIRB, whereas the opposition policy has been an 'on/off' arrangement based on political opportunism. Had the Liberals won the 1993 election it is likely that their economic rationalist tendencies would have resulted in the abolition of FIRB and the commencement of an 'open slather' foreign investment policy. We therefore find the position on foreign investment which they have taken during the inquiry to be gross hypocrisy.

3.21 The preceding recommendations have been predicated on FIRB continuing to be a viable and effective organisation responsible for providing government with sound foreign investment advice. The significant difference, however, is that under our recommendations, in keeping with the trend for a more open government, which is a hallmark of the Keating government, FIRB's processes will be more open and transparent.