Session III: Is there a problem with Chinese money?

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Chinese money is flowing into Australia from unprecedented sources through unprecedented channels for unprecedented purposes, creating controversy at every turn. In 2015 the near $5 billion from students was dwarfed by $8 billion from tourists, which was in turn dwarfed by direct investment. All are predicted to continue rising.

Controversies abound. Has the money been acquired legally? Does it raise domestic prices? How many utilities (or ports) controlled by Chinese companies is too many? Do state-owned enterprises demand special consideration? What about private Chinese firms subject to political influence? How should – or could – Chinese investment be managed if bilateral relations deteriorated? Does Chinese investment alienate Australia from traditional allies? The last question is especially pertinent and has generated debate as to whether Australia's social and institutional frameworks can cope with the influx and effects of Chinese money.

Two recent investments – Kidman Holdings and the Port of Darwin – crystallized public opinion and prompted the government to review Australia's foreign investment framework, including the Foreign Investment Review Board (FIRB). The government is faced with a delicate balancing act: foreign investment is necessary and therefore to be encouraged while the public is to be assured that this is all in the national interest.

Chinese investment offers commercial and strategic opportunities (as does all foreign investment). For example, the *Developing Northern Australia White Paper* calls for agricultural development that demands substantial strategic investment from foreign investors. They will only invest if they have commercial and strategic stakes in those plans – as does, for example, China with its demand for Australian agricultural products.

All countries are entitled to regulate foreign investment. In Australia, FIRB (in consultation with other agencies) manages this case-by-case. Controversy arises when politicians or others use public concerns as a reason to question processes. It continues with insinuations that the government should be more restrictive of foreign investment.

One frequently touted means to allay public concern is greater public information and transparency. However, full transparency is difficult for two reasons.

First, FIRB's jurisdiction excludes numerous investment proposals valued below FIRB thresholds. Australia's bilateral trade agreements with China, Japan, Korea and the US set FIRB's threshold for private investment from those countries at A$1,094 million with lower thresholds reserved for special cases. These are A$252 million for 'sensitive businesses' and somewhat lower for agribusiness, agricultural, and residential land.

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Consequently, security oversight and public information dependent on FIRB is generally only available for major proposals.

Controversy over Chinese agricultural and residential property ownership recently prompted the establishment of registers for foreign holdings of Australian agricultural and residential land, substantially expanding public information. The most comprehensive information on new Chinese investments in Australia (including commercial investments over US$5 million) is available at a website sponsored by the Department of Foreign Affairs and Trade: www.demystifyingchina.com.au.

Second, FIRB's authority is limited to upfront assessments of investment proposals. It does not extend to investors' subsequent conduct. This steers public debate to FIRB's gatekeeping role, while the supervisory and compliance-enforcing roles of other agencies are rarely discussed. Consequently there is excessive demand for increasingly complex pre-entry scrutiny, which can easily become politicised. Meanwhile, agencies that supervise foreign investments over their whole lifespan are ignored, despite their roles potentially boosting public confidence in foreign investment. These include the Australian Securities and Investment Commission, Australian Taxation Office and Australian Competition and Consumer Commission.

The United Kingdom provides a case in point. The UK emphasises enforcement of subsequent regulatory compliance over upfront assessment. Subjecting foreign investors to the same supervision as domestic firms improves public confidence in foreign investment while limiting regulatory burdens at the proposal stage to security assessments.

Critical infrastructure also fits this framework. Australia's infrastructure needs (documented in the *Developing Northern Australia White Paper*) mean foreign investment is necessary for both critical and non-critical infrastructure. The Port of Darwin is an early example of corporatised critical infrastructure. Similar cases will emerge if infrastructure is to be built as planned, especially if Chinese investors remain competitive.

An inclusive approach to all foreign investment is therefore needed. Rigidly defining 'critical infrastructure' while only examining initial proposals (instead of lifespan supervision) creates commercial and security risk. Only ongoing government supervision and integration of foreign investments into domestic governance such as the critical infrastructure resilience strategy can mitigate that risk.

Questions:

- What genuine challenges does Chinese direct investment pose for Australia?
- What would we do without Chinese money?
- Are our current institutions sufficiently robust to manage Chinese investors' growing interest in Australia? If not, what needs to change?
- How can we have transparency and accountability without discouraging Chinese money?