Discussion paper for Inaugural National Meeting of China Matters Young Professionals

Session II

How to ensure that PRC investment does not compromise Australia's national interests?

Justin Steele

Chinese investors love Australia. According to KPMG, Chinese investment in Australia totalled over A$15 billion in 2015. The growth rate of Chinese investment in Australia is more than twice the global trend, reflecting Australia's reputation as a stable and mature economy with a transparent legal system. It is worth noting, however, that Chinese investment accounts for only 2.5% of the total stock value of foreign investment in Australia, and is dwarfed by US and UK investment. Nonetheless, every day our papers are filled with stories about Chinese investment; there were a record 65 legally binding deals involving Chinese parties last year.[1] However, something is different this time around – Chinese money is now being invested in a range of sectors, not just in mining and energy industries. Corporate targets in sectors as diverse as infrastructure, renewable energy, health and agriculture are receiving attention from Chinese investors. At the same time, concerns about Chinese investment continue to be widespread among the Australian public. A 2016 poll by the Lowy Institute for International Policy found that 59% of Australians do not approve of Chinese investment, an increase from previous years. The average Aussie, it seems, is growing more distrustful of Chinese investment every year – a disconcerting reality for anyone involved in the development of the Australia-China relationship.

Such strong levels of public opposition to Chinese investment may have played a role in recent government decisions, such as Treasurer Scott Morrison's rejection of both bids put forward by Chinese companies for a 50.4% stake in Ausgrid, the New South Wales electricity distributor networks. The bids, by Chinese state-owned enterprise State Grid Corp and Hong Kong-listed Cheung Kong Infrastructure, were deemed to be "contrary to the national interest". So too was the bid in April by Dakang Australia Holdings to acquire the S Kidman & Co. estate. But what exactly is encapsulated by our "national interest"? Is it being adequately protected by Australia's current foreign investment framework? And how can we ensure that PRC investors continue to invest in Australia's economy, given our dependence on the injection of foreign capital?

Perhaps we need a better understanding of what Australia's "national interests" are. The *Foreign Acquisitions and Takeovers Act* does not define the term, and rightly so. Rather, the Australian government notes that it considers "a range of factors" on a case-by-case basis, some of which are outlined in the latest *Australian Foreign Investment Policy* document. Those factors include national security, competition, other Australian government policies, the impact on the economy and community, as well as the character of the investor. For investments in the agricultural sector or investments involving a foreign government investor, there are additional sets of factors that the

[1] KPMG & University of Sydney, 2016, 'Demystifying Chinese Investment'

Australian government will consider. This is all well and good, however a raft of recent deals involving Chinese investors have shown that Australia's foreign investment framework leaves a lot to be desired. Of note are the two deals referred to earlier – Ausgrid and Kidman – as well as the 99-year lease of the Port of Darwin to Landbridge, a Chinese company that attracted controversy over its owner's connection to senior officials in the Chinese Communist Party. In contrast, in 2014 the 50% sale of Port of Newcastle to China Merchants barely made the news, and in September 2016 the response to state-owned China Investment Corporation's 20% stake in the Port of Melbourne was decidedly muted. These deals raise questions about the consistency of foreign investment review processes in Australian infrastructure.

To prevent Australia's national interests being compromised, do we need a list of "no-go" assets, so that there can be no confusion or deals that slip through the net, such as the Port of Darwin? Some observers would consider such a list to be a form of discrimination – as well as a potential source of hypocrisy. For instance, both rejected bidders for Ausgrid, State Grid and CKI, have in the past made significant investments in Australia, including into electricity grid assets. Should Treasury and FIRB be strengthened and given greater resources and powers to review investment proposals? It is well-known that FIRB is under-staffed, with their existing workforce sometimes lacking real-world commercial experience that can only be achieved from being on the other side of the deal-table. Secondments from the private-sector and improved staff benefits may be able to fix that problem.

A public, informed and accessible discussion on what exactly is meant by our "national interests" is greatly needed. The lack of transparency in decisions on foreign investment proposals is unhelpful to this discussion. The Australian government could also be clearer on what restrictions are being placed on Chinese companies when their investments are approved, to both reassure the public as well as guide the corporate advisors to Chinese investors.

Two things are certain in the coming decades: one, that Australia will need foreign capital in order to develop much-needed infrastructure. And two, Chinese companies will continue to look to invest abroad. The sooner we can reach some consensus on how to marry these trends the better.

Questions

- What is Australia's long-term strategy given the shortfall of capital in Australia?
- What are the genuine concerns about Chinese investment in Australia?
- Are there ways to mitigate these concerns without deterring Chinese investment, such as a 'negative list'?
- How should the Australian government manage public expectations regarding Chinese investment?

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