

CANADIAN COMPETITON PANEL SUBMISSION

January 11, 2008

By William J. Mandzia

Investment Canada Act (ICA)

General

Under the ICA, the Minister when examining a reviewable transaction must be satisfied that the proposed investment by the non- Canadian is likely to be of net benefit to Canada. In Section 21 of the ICA, the factors to be taken into account and considered under the net benefit test are listed.

The Panel members should consider this question. - **Should the test of net benefit stay, be changed or eliminated?**

1) The test stays as is-

The Panel needs to obtain meaningful information through its own research in order to answer the following sub- questions. Many outside observers are poorly placed to make a proper and analytical assessment of 20 years plus of ICA investment review when lacking comprehensive base information, which only the review agency has. Investment Canada should make the required and vital information available to the Panel's researchers and this can be done without destroying confidentiality.

Has it (the net benefit test) worked adequately in the 20 years or so since its creation, including with respect to job creation and/or employment conservation? Has the test been applied consistently in a material way, which is measurable in terms of the principal factors employed by Investment Canada and its various Ministers of Industry since 1985? Has it screened out any proposed investments that were not of benefit to Canada and in which way and why did this occur? If less than 5% or 10% of the transactions presented for approval have been rejected (including any withdrawn), has the test been put into legislation at a meaningless and too low a level or been applied not rigorously enough, as far as screening out unacceptable transactions goes.

If the test is to stay "as is" or even emerges in a modified form, then we need to and should have greater and meaningful public disclosure of (i) the reasons for Investment Canada and the Minister being satisfied with an investment, and (ii) the actual representations and undertakings provided by the investor. (More on this point later)

In any event, it makes eminent good sense in a public interest and policy sense to preserve the policy flexibility, which past Governments had and our Government of the day has to act and take measures under subparagraph (e) of section 20 of the ICA. This section states:

20. For the purposes of section 21, the factors to be taken into account, where relevant, are

(e) the compatibility of the investment with national industrial, economic and cultural policies, taking into consideration industrial, economic and cultural policy objectives enunciated by the government or legislature of any province likely to be significantly affected by the investment; (Bolding added by writer for emphasis)

The writer contemplates that the other subsections of section 20 would stay, if a decision is made to take the stay as is approach of retaining the “net benefits” test. However, the Panel should not contemplate or recommend subsection 20 (e) being eliminated. It permits a Government to have significant manoeuvring flexibility and the ability to adopt the type of policies contemplated, depending on the needs of, conditions and circumstances in the country and the provincial communities from time to time. It is tantamount to the legislation (first passed in 1985 and still law) and our nation having a type of **national interest** test Canada can look to for input when reviewing foreign investment applications. Obviously, this is the case to the extent that such national, economic or cultural policies do exist or are promulgated in the Years ahead.

2) Changing the net benefits test in a substantial way by legislative change-

The issue arises as to what flexibility Canada may have retained to legislatively stiffen (make more onerous) the present net benefits test. Under article 1102 of the NAFTA Agreement, each NAFTA COUNTRY is required to place all NAFTA investors on an even playing field with respect to the acquisition, sale or /other disposition of investments. Canada has comparable obligations with respect to investors from WTO countries. (1) In addition, Canada must also take account of its country to country investment agreements, but only if they have relevant provisions.

Together with specialized counsel and trade experts, the Panel needs to carefully examine what flexibility Canada has in 2008 to make the net benefits test different in a more onerous sense. It is reasonable to assume that if Canada chooses to, it may lessen in some measurable fashion the net benefits test on a go forward basis.

3) Eliminating the net benefits test

Taking this third course of action does not appear to be a practical or desirable solution, considering Canada being a middle power (geographically situated in North America), our population and capital markets sizes, and the political and economic realities we live with . Present trends in other G-7 countries and jurisdictions (including the EU) demonstrate that national security or vital asset or infrastructure protection concerns have been acted on, or are being seriously considered and may be acted on . (2)

Interestingly, in 2007 the United States enacted law changes (effective in October 2007) that require the Committee on Foreign Investment in the US (CFIUS) to include in national security screening an assessment of a transaction's impact on critical infrastructure, energy assets and critical technologies. (3) This change appears to widen the scope of legal screening beyond a narrow traditional consideration of "national security". Whether the Canadian Government will adopt a narrow or wider interpretation of "national security" is not known. For the purposes of its work, I suggest that the Panel assume our Government may adopt the narrower approach, and therefore in its report the Panel should deal with critical infrastructure, energy assets and critical technologies.

SUMMARY

Even with the ownership limitations that exist at present, as to certain designated business sectors and the net benefits test, Canada is quite open and highly liberal towards receiving foreign investment and foreign investors. In view of other leading developed and other countries' present attitudes to outside investment and review mechanisms, eliminating the net benefits test would not be in Canada's national interest or seem needed at this juncture. It should stay.

We are very much part of significant international councils and bodies (like the IMF, World Bank, WTO, OECD, NAFTA, the UN, NATO, OAS etc) and can play meaningful roles, whether in an economic, investment, stabilization or political sense. I expect that our presence there and future participation will influence our views and have an important bearing on our attitudes to the world, including in the global economy and for investment climate purposes. Canada is not an isolationist nation; nor do I expect it to become one in its trade and investment activities, particularly as we become, out of necessity, even more globalized.

MORE DISCLOSURE NEEDED AS TO WHY THE MINISTER OF INDUSTRY IS SATISFIED WITH AN INVESTMENT THAT HE APPROVED

In recent years (and increasingly so), we have heard more persons calling for greater transparency, accountability, and more disclosure from both the corporate and its related world and the governmental, non-governmental and academic sectors. As a principle, disclosure is accepted and expected.

On the other hand, when an investment is approved under the ICA, we have little, if any, relevant or meaningful information provided by Government on the Minister's reasons for his decision, or information as to the representations or undertakings given by the investor to facilitate the approval process. Since the Act's inception, there have been more than 1500 approvals given. Our understanding of the reasons for these approvals and the nature of undertakings given is basically non-existent or especially thin. If there existed in the early 1980s a policy rationale for there being virtually no disclosure beyond bare bones information, this approach is not suitable some 20 plus years later in a connected, more open and information accessible based world.

In a number of instances and if one undertakes a Google search, we can uncover and glean some information from press releases issued by successful approved investors under the ICA.(4) Based on this research, it appears there is more information provided by private sector approved investors than through the Government's bare bones information released to the public. Examples of the Government information available are found in Appendix B.

Investment Canada is in effect a regulator of certain proposed investment and business activities under the ICA. As that regulator, it reviews applications and makes binding decisions that affect and decide significant financial and business activities. I believe that our Government should furnish more meaningful and detailed disclosure to the general public as to the reasons for the approvals it gives and the representations and undertakings provided by the successful investors. Legislation may be needed to have this done, but that step should not constitute an obstacle for not proceeding with enhanced disclosure that is vitally needed.

By way of comparison as to public disclosure, we can look to the published decisions of the Canadian Radio-television and Telecommunications Commission . (Recently in December of 2007, the Commission published detailed reasons as to its decision in the CanWest, Goldman Sachs and Alliance Atlantis transaction, where there were issues of ownership, control and foreign investment and corporate governance ruled on.)

If there are aspects of confidentiality that an investor may believe should attach to disclosure of some aspect of the representations and/or undertakings given, then (barring an ability to agree on terms with Government, that contemplate meaningful disclosure), the applicant investor should have an opportunity to have a mediator or, failing mediation, a court expeditiously review its concerns as to the Government's proposed disclosure. The court would decide how much disclosure is needed in the public interest and the extent to which proprietary valuable information of the investor, having competitive considerations of an advantageous nature, needs to be protected.

SPECIFIC RECOMMENDATIONS ON ICA

I have dealt above with some general principles dealing with the net benefits test. I now wish to make a few specific comments and/ or recommendations on the ICA.

1- Reciprocity

The jurisdiction which a foreign investor (a non- Canadian investor) originates from should have laws on foreign investors and their investments, which would be equally accommodating to a Canadian investor wishing to make a controlling investment there. If Canadian law is welcoming to foreign investors (even taking account of tests like the net benefits hurdle), then the foreign jurisdiction should be equally accommodating and reciprocally minded to Canadian investors. Canada should add to its Guidelines this reciprocity condition, which would be viewed as a "highly desirable" characteristic to be satisfied by the foreign investor.

As Messrs Roger Martin & Gordon Nixon have written (and which statement resonates with me) :

“...governments around the world have a big incentive to help their global leaders and it would be foolish for Canada to be more accommodating to foreign investors in Canada than their home country governments are to their global leaders. “ (5)

If the reality is that the non-Canadian’s jurisdiction under its investment regimes is not as “welcoming “ to a Canadian investor, then the Minister of Industry should have two options. Option 1, being rejection. Option 2, being consideration of the foreign investor’s application. In that last case, the Minister could still rule favourably (or not) on the non-Canadian’s proposed investment. However, this would be premised on the Minister being satisfied that the non-Canadian’s net benefits package to be received is significant, rather than simply satisfying a net benefits level at a low or minimum thresh hold level. If there was a Canadian investor also bidding for control of the same target company or assets, Investment Canada and the Minister should take account of and assess that bid in terms of our national interest when the foreign investor’s application is under review.

(2) Having Global Multinationals

The Government (and as a result the Panel) is dealing principally with foreign investment in this review.

Is it not time that our Canadian Government also declared itself, as part of a major Policy Statement, favourable to having more Canadian based global multinationals of consequence in multiple sectors of business activity? This would not be said, without it also being clearly enunciated that Canada also welcomes out of country investors and their investments.

Canada has proven itself to have skilled and successful entrepreneurs active in mining, oil and gas exploration and production, both within and outside of Canada. In a technical, exploration and operational sense and servicing sense, we do have a strong knowledge and know how base to be exploited when conducting business in and outside of Canada.

Though shareholders were well treated at takeover time, we cannot be content as Canadians that Inco, Falconbridge , Alcan, Dofasco and others ceased to be Canadian controlled and publicly listed companies of major standing. Was there a failing of wills or capital formation within Canada to act decisively, or did our more conservative attitudes than other foreign nationals and sometimes reluctance to risk take kick in? I find it hard to believe and accept that Canadians are voluntarily prepared to finish at less than the highest levels attainable in a competitive business and investment world. (6)

Investment Canada did succeed in securing certain undertakings, but are they short term or time limited. Secondly, it strikes me that a CEO or CFO or Chief Technology Officer of a Canadian (taken over) company that has become a subsidiary or division of a foreign investor is not the same office holder (in terms of responsibilities, ultimate authority and freedom to act), as an office holder in a Canadian controlled company . Persons holding subsidiary or divisional positions are not the decision makers they may have been, when they had those roles in a Canadian controlled company.

(3) Duration of Undertakings It appears that undertakings are given generally to Investment Canada for three years. (7)

Is this a long enough period? Consideration should be given to having up to an additional 2 year period added beyond the first three that would be based on Investment Canada's assessment of the non-Canadian's investment performance over Years 1-3. The investor would have full rights to comment on its own performance, make specific proposals, and whether there should be continuity by having additional or extended undertakings. Any such undertakings for years 3-5 would take account of the then commercial realities of the Canadian and global business environments.

If during years 1-3 performance of undertakings should be found to be below the levels promised, then there should be a discussion about formally extending or varying or replacing the promises originally made, so they can be met.

I suggest that all of these changes can and should be accomplished by revised guidelines and not by legislative changes.

(4) R&D Undertakings The Panel should examine whether (i) research and development (R&D) undertakings should be sought more often from investors and (ii) if the type of undertakings in R&D, now sought by Investment Canada, need to be enhanced, so as to give us a competitive edge or allow for a reasonable catch up in today's highly advanced technological business and global world.

We like to see it said in media headlines or stories how well educated Canadians (whether born here or not) are in a post-secondary sense. If this is really the case, then hopefully we have people in our work force or about to come out of the educational stream into the work force to allow for strengthened undertakings to be sought out and ultimately satisfied. Investment Canada should not request such undertakings, if they are not commercially justifiable in a R& D sense or reasonable risks for the investor to take. If the Panel concludes that this concept is a reasonably desirable goal, the Panel should recommend revisions be made to the Guidelines under the ICA that could reflect those goals.

(5) Control of Large Natural Resource Entities What about reserving to Canadian investors the control of companies in the natural resources sector, subject to a specifically prescribed high level test ?

Mr. Dominic D'Alessandro, a prominent business person and CEO, has spoken to such an idea and suggested that the "reservation in the natural resources sector" apply only to companies of more than \$10 billion in market capitalization. Taking such an approach (or one comparable), can be justified in a policy sense as prudent planning for and commercially reasonable, attending to our interests in the event of future emergency or shortages emerging within Canada or even North America. Further, we may argue that having such a policy is legitimate and part of normal governmental policy in order to encourage the creation of employment opportunities for graduates of our universities and community colleges to work for Canadian companies.

I support the establishment of a high enough threshold (but not at \$10 billion). This type of "reservation" in the natural resource companies sector would also allow (at below the threshold) for (i) maximum freedom of capital generation, and movement of capital and risk money by domestic and foreign entrepreneurs and investors, and (ii) the continued application of the net benefits test under the ICA at levels below any newly established threshold.

In my opinion, a threshold of \$10 billion is too high a level in today's market trading levels and likely leads to too few champions, and should be lowered. Should it be 5 or 6 billion, to be more appropriate? I believe so. The Panel should assess if those lower levels would seem appropriate under this new investment threshold suggestion.

As Mr. D'Alessandro wrote in May 2007:

"Does anyone believe that globally successful companies are created all on their own, without the benefit of nurturing and support policies? How many Toyotas, Nokias, Aramcos, BHP- Billitons would there be absent the encouragement of their home countries?

.....
I observe that there is a sharp divergence in theory and practice. While everyone talks a good game about letting markets sort out things, the reality is something else..... When push comes to shove, everyone, everywhere looks after the home team first. That's human nature....." (8)

I hope that the Panel will seriously study such a champions (high end) industries approach, limited to the natural resources sector. We do have in Canada a significant knowledge base and know-how acquired over a long time, particularly in the minerals, oil and gas fields. With an appropriate threshold test to be triggered, Canada maintains an open environment for commercial transactions at the lower levels and gives us sound reasoning to argue our case credibly in business, government and circles here and outside Canada.

I see the approach suggested being reflected in modified Guidelines and not being implemented by way of legislative changes. This also allows for future review or updating.

(6) Amend our Corporate and Securities Laws

It has been said that **our securities laws need an overhaul in order to make it easier for Canadian companies to fend off unwanted takeovers.** (9)

Mr. Garth Girvan, a leading and respected Canadian merger and acquisitions lawyer has recently said:-

“The reality is that in very few circumstances in Canada where somebody announced a bid, does it not result in a transaction.”

“The result is that over time, Canadian boards have been advised their ability to take action versus a hostile bid is limited.”

“The arbitrageurs are into the fact that once a Canadian company is put in play it’s almost certain that it will go to somebody. “ (9)

I am led to believe that US boards of directors have much more legal and fiduciary scope to say no or question more effectively a bid after it is made, provided that the board’s conduct can be reasonably defended before the courts, particularly in Delaware. If this statement is substantially correct, then we appear to need changes to our companies and/or securities laws. Another idea floated is to give takeover targets at least four plus months to explore other alternatives. (10) A slight rebalancing of interests may be warranted. I encourage the Panel and its staff to have these ideas and others proposed more thoroughly researched, explored and weighed for a recommendation(s) to Governments

SOVEREIGN WEALTH FUNDS

You have stated in the Consultation Paper that issues related to state- owned enterprises will not be subject to review by the Panel. In addition, the Government of Canada (through the Minister of Industry) issued on December 7, 2007 new guidelines on how the net benefit to Canada requirement will be applied when state owned enterprises, such as sovereign wealth funds (SWFs) acquire major investments in Canada.

Events in the global financial capital markets in the last 8 or so months of 2007 highlight the significance of investments or commitments made or placed by SWFs, particularly in major financial institutions.-

Financial Institution Invested in	Investor	Amount in US\$ (Billions)	
Merrill Lynch	Temasek	5	
UBS	Singapore Investment Corp	9.5	
Citigroup	Abu Dhabi Investment Authority	7.5	
Carlyle Group	Al Mubadda	1.35	8

Bear Stearns	CITIC Securities	1
Standard Bank (South Africa)	China Investment Corp	5.6
Barclays Bank	Temasek	2
Barclays Bank	China Development Bank	3
Blackstone Corp	China Development Corp	3
HSBC	Dubai International Corp	(unknown)
Morgan Stanley (11)	China Investment Corp	5

Interestingly enough, prior to the Government's announcement on December 7th last as to new Guidelines as for SWFs, Abu Dhabi National Energy Co (Taqa) made three acquisitions of Canadian energy entities, totalling \$7.5 billion, in the Canadian natural gas, and oil and gas businesses. Taqa is 75% owned by the government of Abu Dhabi and 24% by shareholders resident in Abu Dhabi. (12)

The magnitude of all these investment flows indicates the importance of the funds available and being invested by SWFs. The Australian Treasury in a study estimates that SWFs by 2015 could reach around \$15 trillion (US). (13) Morgan Stanley analyst Huw Van Steenis estimates that SWFs have invested \$47 billion in Western Financial institutions, asset managers and hedge funds.(14)

It would be a constructive step for the Panel to take and, instructive for Canadians, if as part of its overall research, the Panel could have studied the impact of sovereign wealth funds as investors in 2007 and into the future. Foreign investment in Canada is investment in our country, whether it originates from the private sector, institutional investors or SWFs. It also competes with other investors. This is a relatively new investment reality of consequence that Canada and other G-7 countries are facing . These investors will not disappear from the economic, investment and business scenes in the foreseeable future. The potential impact of SWFs should not go without consideration by the Panel.

BANKING SECTOR & FOREIGN OWNERSHIP

As you report in your paper, banks ,chartered in Canada, with equity of \$8 billion or more and large demutualized insurance companies must be widely held. Consequently, no person may own more than 20% of any class of their voting shares. (15)

Our 6 largest Canadian banks are subject to the ownership restriction. It is noteworthy that the five largest banks in the U.S., the U.K., Australia, France and Germany are widely held and are not subsidiaries of a foreign entity. (16)

The financial institution framework for our banks was updated in March 2007, and the next review is expected in 2012. There are currently difficulties being experienced in global credit markets, the US subprime and collateral debt obligations (CDOs) and our

non-bank asset based commercial paper market is frozen and not yet reorganized. With this climate, there is a need to continue to proceed with care to manage and protect the soundness of our financial system.

From time to time, there occurs a public discussion as to whether the larger Canadian banks should be opened to foreign bank takeovers and acquisitions. If we wish to look at the theoretical issue of one or more of our Big 6 Banks being acquired by a foreign entity, we should examine these factors:

(i)The market caps of each our three largest banks- Royal (RBC), TD Bank & Scotiabank is currently somewhere between around 65 to 48 billion.

The largest US bank market caps as reported recently were:

	<u>(US\$)</u> <u>Billion Cap</u>	<u>Valuation Date</u>	
Citigroup	\$174.71	11/05/2007	(17)
Bank of America	196.46	“	“
J.P. Morgan Chase	143.05	“	“
Goldman Sachs	86.10	“	“
Wells Fargo	112.9	unknown	(18)
Wachovia	90.8	“	(18)

Among European banks’ market cap information posted in the Eghonder International site, we find: HSBC of the U.K.- \$201 Billion (‘B’), UBS \$127 B, Royal Bank of Scotland- \$106 B, Santander of Spain- \$95 B & BNP Paribas of France- \$87 B.

With the caps shown for the US and the other banks and if Canada had an open borders regime for foreign banks’ acquisitions, these foreign banks should normally have a relatively easy ability to acquire one or more of our Big 5 banks.

Mr. Dominic D’Alessandro, who has an immense depth of knowledge (acquired at 2 banks and now Manulife) said in May of 2007.

“With a market value on demutualization of some \$9 billion, we would have made a tasty morsel for someone. I believe that the same is true of our banks. Absent ownership restrictions, they would all be taken over. Is that what we would want? I don’t think so. Without a public policy that prohibited anyone from owning more than 20% ownership of our shares, Manulife would not have survived to grow to be the \$60 billion company we are today.....” (19)

(ii) Let us assume that the roles were reversed and one of our Big 5 banks launched a bid for control of one of the larger US banks in the Table. In my judgment, the Canadian bank could expect to be met with an unfavourable reception from any one or more of the following:

- (1) leading figures in the US Congress,
- (2) possibly the Treasury Dept. and the US Administration of the day,
- (3) possibly the US Federal Reserve Bank, and
- (4) possibly other US federal or state regulators or elected political figures.

We can safely assume that the potential Canadian acquirer now would face significant obstacles in the CFUIS review process. We need only to recall the hostile reactions that Dubai Ports ran into with leading members of the US political class in attempting to take over US port facilities and the Chinese Oil Company when bidding for Unocal.

(iii) Taking over a number of our Big Banks would have major negative effects by reducing the pool of quality shares, that are dividend paying and available through the TSE. This would be negative not only to individuals, but also institutional investors like mutual funds and pension funds. This potential situation has been exacerbated by the more recent foreign acquisitions of shares of Alcan, Dofasco, Inco, Falconbridge, etc.

(iv) A taking out of several of our big banks by non-Canadian entities would lead to significant head office job losses and down grading of the role of executive and senior management officers or their replacements, who would become subsidiary officers. Major credit decisions would ultimately be made at the top of the decision making chain, located in New York, Charlotte or Europe in the case of a European bank being the acquirer and not in Canada.

(v) Canada might wish to compare itself to Australia and their merger policy- that is foreign banks acquiring Australian banks. Australia's population is estimated at 20.43 million as compared to Canada's 33 million.

In April of 1997, the Australian Treasurer (comparable to our Minister of Finance) in response to the Wallis Group's report on the Financial System said:

"The Government has ... decided that mergers among the four major banks will not be permitted at this time..... Any proposed foreign takeover or acquisition will need to be assessed like any other proposed foreign takeover....., on a case by case basis on its merits.In making these assessments , however the Government will apply the principle (as concluded by the Inquiry) that any large scale transfer of Australian ownership of the financial system to foreign hands would be contrary to the national interest." (20)

(vi) The foreign investments made outside of Canada by our largest banks and insurance companies are considerable. In the last two years, we have witnessed important amounts newly invested by our five largest banks in the U.S, Latin & Central America, the Caribbean and Thailand.

Foreign Direct Investment in the US (FDUIS) from Canada and Mexico were made between 2000 and 2005 and recorded in a study. The largest share was represented by financial services (\$60 billion), most of which came from Canada. (21) These are important investment flows from Canadian financial investors that for statistical purposes offset US investments flows into Canada, including by way of acquisitions.

William J. Mandzia

- END -

This submission to the Panel and the opinions expressed in the Submission represent solely the personal views of the writer and not those of any other person or party he may have been associated with previously.

Mr. William J. Mandzia is a graduate of the Université de Montréal Law School (1965, with distinction). He has been a member of the Bar of the Province of Quebec since July of 1966.

His major legal careers consisted of being with a natural resources group headquartered in Montreal (1970-75). From 1975 on, he worked in the financial and banking industry: (1) from 1975-76 he was associated with a Montreal legal firm specializing in banking matters, (2) from 1976-1984 he acted as Director of Legal services of a major Canadian bank at its Montreal head office, and (3) from 1984- 2005, he was General Counsel (1984-93) and Assistant General Counsel (1994-2005) of a major Canadian bank at its Toronto Executive Offices. He has had extensive experience in several spheres : bank acquisitions and divestitures, domestic and international financing, powers and governance matters, technology, business continuity and litigation and dispute management in Canada, the U.S. and other countries.

APPENDIX A- END NOTES & REFERENCES

- (1) For further discussion of this issue, Blakes' International Trade Bulletin- Foreign State- Owned Investors Spark national security Concerns, October 2007, Page 2
- (2)) EU to rule on sovereign wealth funds by Ambrose Evans-Pritchard- Telegraph Media Group Limited (from www.telegraph.co.uk), 29/11,2007
- (3) Dewey & Leboeuf Client Alert Publication- Exon Florio Changes Broaden & Intensify Scrutiny of Direct Investment in the United States- Updated 11 October, 2007; and Sherman & Sterling LLP Client Publication- New Law heightens Scrutiny of Foreign Acquisitions of U.S. Companies, July 2007
- (4) Rio Tinto News Release – 18 October 2007- “ Rio Tinto Offer for Alcan Investment Canada Approval received; Xstrata News Release- 25 July 2006- Investment Canada Act Approval; Kinder Morgan Release – November 16, 2005, Kinder Morgan receives Final Approval for Terasen acquisition; Investment Canada Approves deal
- (5) A Prescription for Canada: rethink our tax policy by Roger Martin & Gordon Nixon, as found in the Globe & Mail, July 1, 2007- see part dealing with “ Screening of Foreign Takeovers”
- (6) Let's reward CEOs with guts and vision, by Tom Axworthy (Chair- Centre for Study of Democracy at Queen's University), Toronto Star, May 20, 2007. (Note- This article is included for general reading purposes.)
- (7) Foreign Investment review under the **Investment Canada Act** by Neil Campbell and Omar Walsil of McMillan Binch LLP to the Centre for International Legal Studies, Foreign Investment and Doing Business Conference, Kitzbuhel Austria, 13th January,2004
- (8) Back the Home Team, an article in the Financial Post, May 19, 2007 by Dominic D'Alessandro
- (9) Little Fish in a Big Pond- by Sean Silcoff in the National Post's Financial Post, January 3, 2008
- (10) Stem the Foreign raiding by Derek DeCloet- Globe & Mail Update, May12, 2007 (He quotes from leading figures in the financial industry and makes his own comments.)
- (11) Foreign Nations Snap up U.S, European bank shares by Mark Turnbull, The Christian Science Monitor, December 21, 2007; Banks Fight to rebuild balance sheets by Sean O Grady, The Independent, 31 December 2007.

(12) The Globe & Mail Report on Business , November 21, 2007- New Hurdles will Test Taqa ambitions

(13) Curb Sovereign Funds, warns treasury, by David Urin- NewsLimited (the AustralianNews.com) December 18, 2007.

(14) Abu Dhabi s Citigroup Bargain by Stanley Reed Business Week (on its web site), November 27, 2007

(15) Consultation Paper of the Competition Policy Review Panel issued October 30, 2007.- End note 60 and page 46 of the paper (“Paper”)

(16) *ibid*- P. 46 of the Paper

(17) Erasing \$120 billion in Market Cap by David Gaffen- WSJ Online Journal , November 5, 2007

(18) A comparative of consolidation in the U.S. and Europe by Andrew Lowenthal and Alan Hilliker of Egon Zehnder International; Drawn from the web site www.egonzehnderknowledge.com on 04/12/2007. (Market caps shown are likely taken on a business day before 11/5/2007 .)

(19) *ibid* endnote (8)

(20) Release of the Report of the Financial System Inquiry and Initial government Response of Mergers Policy by the treasurer of Australia, 9 April 1997. Side letters from the Australian & US Governments dated 18 May 2004 confirmed this policy. These side letters are part of the United States- Australian Free Trade Agreement.

(21) Inbound and Outbound US Direct Investment with leading Partner Countries by Laura Bloodgood, Journal of International Commerce and Economics for June 2007, P.15. At page 24, we learn of some specific Canadian investments made:

Manulife for John Hancock- \$10.4 Billion

TD Bank for Banknorth – \$3.9 Billion

Royal Bank – a number of deals, totalling \$3.9 Billion

APPENDIX B- Government Provided information on its approvals under the ICA, excerpts are drawn from the Internet web site of Investment Canada



Investment Canada Act

October 2007 Decisions

Investor:

Rio Tinto Canada Holding Inc., Montreal, QC, CDA (UK)

Canadian Business:

Alcan Inc., Aluminum Company of Canada Limited, Alcan International Limited, Alcan Adminco Inc., Alcan Management Services Canada Limited, Alcan Realty Limited, Alcan Packaging Capalux Inc., Interglass Inc., Technologie Pechiney Limitée, The Roberval and Saguenay Railway Co., Alcan Shipping Services Limited and Corporation de Pêche Ste-Marguerite Inc., Montreal, QC

Manufacture and distribute plastic bottles, corking capsules and pharmaceutical tubing, provide technology and marine consultation and railway transportation services, and operate a fishing club.

Investor:

Rio Tinto Canada Holding Inc., Montreal, QC, CDA (UK)

Canadian Business:

Pechiney Plastic Packaging Canada Inc., Brampton, ON
Manufactures plastic bottles and packaging.

Investor:

Rio Tinto Canada Holding Inc., Montreal, QC, CDA (UK)

Canadian Business:

Alcan Packaging Canada Limited, Toronto, ON
Manufactures food, tobacco, pharmaceutical, cosmetic and flexible packaging.

Investor:

Rio Tinto Canada Holding Inc., Montreal, QC, CDA (UK)

Canadian Business:

Aluminerie de Bécancour Inc., Bécancour, QC and
Aluminerie Alouette Inc., Sept-Îles, QC
Manufacture primary aluminum.

Investor:

Rio Tinto Canada Holding Inc., Montreal, QC, CDA (UK)

Canadian Business:

Électrification Charpente Levage Services Inc., Québec, QC
Provides smelter equipment engineering, construction and installation services.

Investor:

Rio Tinto Canada Holding Inc., Montreal, QC, CDA (UK)

Canadian Business:

Alcan Alesa Technologies Limited, Mont-Royal, QC
Provides engineering services.

July 2006 *Decisions*

Investor:

Xstrata Canada Inc., Zug, SWI (UK)

Canadian Business:

Falconbridge Limited, Toronto, ON
Produces copper, nickel, zinc and aluminum.

November 2005 *Decisions*

(Note: Only certain of the Kinder Morgan approvals are shown here.)

Investor:

Kinder Morgan, Inc., Houston, Texas, USA

Canadian Business:

McPherson & Thom Ltd., Calgary, AB
Designs, builds, operates and services water treatment facilities and distribution systems.

Investor:

Kinder Morgan, Inc., Houston, Texas, USA

Canadian Business:

West Shore Environmental Services Inc., Calgary, AB
Operates and maintains sewers.

Investor:

Kinder Morgan, Inc., Houston, Texas, USA

Canadian Business:

Terasen Waterworks (Supply) Inc., Terasen Utility Services Inc., Terasen Environmental Services Inc. and Terasen Water Inc., Richmond, Abbotsford and Langley, BC
Distribute water and wastewater infrastructure products and supplies, energy programs and metering solutions.

Investor:

Kinder Morgan, Inc., Houston, Texas, USA

Canadian Business:

Terasen Pipelines Inc., Terasen Pipelines (Corridor) Inc., Terasen Pipelines (Trans Mountain Inc. and Terasen Pipelines (Jet Fuel) Inc., Calgary, AB
Provide crude oil, refined products, bitumen, diluent and jet fuel pipeline transportation services.

Investor:

Kinder Morgan, Inc., Houston, Texas, USA

Canadian Business:

Terasen Gas (Vancouver Island) Inc., Terasen Gas Inc., Terasen Gas (Squamish) Inc., Terasen Gas (Whistler) Inc. and Terasen Multi-Utility Services Inc., Victoria, Burnaby, Squamish and Invermere, BC
Process and distribute natural gas and propane, and provide multi-utility services.

Investor:

Kinder Morgan, Inc., Houston, Texas, USA

Canadian Business:

Terasen Inc., Vancouver, BC
Through its subsidiaries, provides energy distribution and transportation, and utility services, and distributes related products.

Note the information Investment Canada provides on completed (approved) acquisitions consist of four headings:

1. The name and address of the *Investor*, with the country of origin in brackets if different from the address;
2. The name and address of the *Canadian Business*;
3. A short *English description* of the Canadian business activities.
4. A short *French description* of the Canadian business activities.