FREEDOM OF INVESTMENT, NATIONAL SECURITY AND 'STRATEGIC' INDUSTRIES:

Tour d'Horizon of Recent Developments – Replies by New Zealand

December 17, 2008

This document sets forth the oral response made by New Zealand during Roundtable IX on "Freedom of Investment, National Security and 'Strategic' Industries" on 17 December 2008 [under item 3.a. of the draft agenda DAF/INV/A(2008)4]. In it, New Zealand answers the questions posed to it in DAF/INV/WD(2008)16.
NEW ZEALAND

Press article
Canada Pension Plan's bid for Auckland Airport fails
By MarketWatch. Last update: 4:06 a.m. EDT April 11, 2008

HONG KONG (MarketWatch) -- Shares of Auckland Airport fell sharply Friday after New Zealand's government rejected a NZ$1.8 billion ($1.4 billion) bid by Canada Pension Plan Investment Board for a 40% stake in the airport operator.

Shares of Auckland Airport (NZ:AIA: news, chart, profile) ended 9.4% lower at NZ$2.13, compared to Canada Pension Plan's offer of NZ$3.60 a share.

New Zealand's government said the bid by the Canadian pension fund for the operator of the nation's busiest international airport fell short of investment criteria which regulate ownership of strategic assets, according to wire reports.

Canada Pension Plan won't appeal the decision and has no plans to sell its less than 1% holding, reports said.

The bid by the Toronto-based pension fund had received enough support from shareholders to move ahead with the offer at a vote held last month.

In the weeks running up to the March 13 deadline on the offer, the government implemented changes to tax rules and passed other legislation which were seen as designed to make it more difficult for the Canadian pension fund's bid to succeed.

Rating agency Standard & Poor's said Friday Auckland Airport's "A/A-1" credit rating remained under observation for a possible downgrade noting the company's capital structure and future ownership strategy "remain unclear."

Questions:
Can New Zealand provide additional information about the background for this decision?  
Can New Zealand elaborate on its approach to “essential security interests and public order”? 
What risks has New Zealand identified that might be posed by international investment flows? Based on this analysis, what “strategic” or security-related concerns were raised by the proposed investment by the Canada Pension Plan Investment Board?
Response of New Zealand (provided orally on 17 December 2008):

[Note: The response provides some general comments about New Zealand’s investment regime and then goes into some of the details behind the regulation change referred to in the article.]

- New Zealand retains an open and welcoming stance to international investment in recognition of the benefits that this investment may provide.
- Our focus overall in our foreign investment policy is to balance between having a very facilitative investment regime that welcomes and encourages foreign investment and at the same time adequately protecting sensitive assets.
- Many countries internationally screen foreign investment in sensitive sectors of the economy and may entirely prohibit investment in strategic sectors or where there is a perceived threat to national security.
- New Zealand does not exercise an absolute prohibition on investment in any sectors of the economy, but does screen investments in sensitive assets (significant business assets, sensitive land and fishing quota).
- New Zealand recently made a change to the Overseas Investment Regulations 2005 that allowed Ministers to consider control of “strategic infrastructure assets” when determining whether an investment in sensitive New Zealand land will provide a benefit to New Zealand. (Strategic infrastructure assets have not been defined.)
- The recent change did not change the scope of investments that are screened, but did expand the number of factors that the relevant Ministers may consider in determining whether an investment in sensitive land will provide a benefit to New Zealand.
- The recent change only applies to investments in sensitive land. Sensitive land is clearly defined in the Overseas Investment Act 2005.
- Ministers were not satisfied that the proposed investment by the Canadian Pension Plan Investment Board would benefit New Zealand. Ministers made their decision by considering the application against all the relevant factors that may be used to assess benefit of overseas investments in sensitive land. These factors are outlined in the Overseas Investment Act and Regulations.
- Ministers determined that nine of these factors were of high importance in determining the benefit of this investment to New Zealand. Ministers did not find sufficient evidence to conclude that the proposed investment will, or is likely to, benefit New Zealand against any of those nine factors. The factor relating to New Zealand control of strategically important infrastructure was only one of those nine factors considered to be of high importance by Ministers.
• In relation to that specific factor, Ministers noted that “We consider that the Applicant’s investment is not likely to assist maintenance of New Zealand control of this strategically important infrastructure, and that would be particularly so if the Applicant’s investment is taken in conjunction with potential further small acquisitions of shares by overseas investors in AIAL.

Footnote 1: A full description of how Ministers reached their conclusion is available at: http://www.beehive.govt.nz/release/ministers+release+decision+overseas+investment+proposal+auckland+international+airport

Footnote 2: The Regulations Review Committee of the NZ Parliament enquired into the making of the new regulation and there was significant public comment about the imposition of this new regulation even though the regulation was not determinative of the outcome. The Regulations Review Committee recommended that the Government “Review the regulations, and consider whether the Act should be amended to address strategically important infrastructure as a class of sensitive asset separate to sensitive land.” The government is considering its response to the Committee, which will be made in March 2009.