



## The Ausgrid decision: new questions

**Bids by China's State Grid for electricity distribution assets in South Australia (2012) and Victoria (2013) were approved on the basis that they were in the national interest. On Thursday Treasurer Scott Morrison blocked State Grid's bid, along with that of Cheung Kong Infrastructure's, for NSW electricity distributor Ausgrid. He said it was his preliminary view the deal was contrary to the national interest on the grounds of national security. On Friday the Treasurer said that Ausgrid's assets and the structure of the deal was different to previous cases.**

1. In 2015 State Grid was amongst a group of bidders cleared by the Foreign Investment Review Board (FIRB) to purchase the lease to operate Transgrid. At the time a spokesperson for Treasurer Morrison pointed to: extensive consultations over the last several months; each bidder being fully aware of the national interest requirements; all relevant Commonwealth agencies being involved in the discussions.<sup>1</sup>
2. Ausgrid's assets provide power to 1.7 million homes and businesses throughout Sydney, the Hunter and the Central Coast.<sup>2</sup> Transgrid's assets provide power and telecommunications services to government departments, defence bases and intelligence agencies in NSW and Canberra.<sup>3</sup>
3. Expressions of interest to acquire a 50.4 percent share of the lease to operate Ausgrid's assets – the deal that Treasurer Morrison

rejected on Thursday August 11 – commenced on November 24 2015.<sup>4</sup>

4. On December 4 2015 Treasurer Morrison appointed former ASIO head David Irvine to the Foreign Investment Review Board to boost its capacity to provide advice on matters relating to national security.<sup>5</sup>

5. In response to Treasurer Morrison's decision to block the sale of Ausgrid, NSW Treasurer Gladys Berejiklian said: "The NSW Government and all bidders who submitted binding bids have been engaging with the ACCC, ATO and FIRB since December 2015".<sup>6</sup>

6. In another comment on Thursday August 11 Treasurer Berejiklian added: "There were a number of people who came forward as bidders in December last year. At that time the Federal Government gives its indications as to which bidders were OK to proceed from that point in time. So along the process the Federal Government and its agencies had given the

<sup>1</sup> Michael Brissenden, Interview with Scott Morrison: "Treasurer Morrison says Ausgrid investment block 'not a country-specific decision'", *ABC AM*, August 12 2016 <http://www.abc.net.au/am/content/2016/s4518244.htm>.

Treasurer Morrison's spokesperson on Transgrid - Angela Macdonald Smith and John Kehoe, "China test for Mike Baird as TransGrid bidders cleared by FIRB", *Australian Financial Review*, November 22 2015 <http://www.afr.com/business/energy/transgrid-bidders-cleared-by-firb-20151120-qj440c>.

<sup>2</sup> On Ausgrid's assets - NSW Treasury, "About Ausgrid", NSW Government [http://www.treasury.nsw.gov.au/electricity\\_network\\_transactions/about\\_ausgrid](http://www.treasury.nsw.gov.au/electricity_network_transactions/about_ausgrid).

<sup>3</sup> On Transgrid's assets: NSW Treasury, "About Ausgrid", NSW Government [http://www.treasury.nsw.gov.au/electricity\\_network\\_transactions/about\\_ausgrid](http://www.treasury.nsw.gov.au/electricity_network_transactions/about_ausgrid); Paul Barnes and Peter Jennings, "NT deal shows FIRB must be given new national security credentials", *Australian Financial Review*, November 13 2015 <http://www.afr.com/opinion/nt-deal-shows-firb-must-be-given-new-national-security-credentials-20151112-qkxvz4>.

<sup>4</sup> NSW Treasury, "Electricity Network Transactions", NSW Government [http://www.treasury.nsw.gov.au/electricity\\_network\\_transactions](http://www.treasury.nsw.gov.au/electricity_network_transactions).

<sup>5</sup> Scott Morrison, Media release: Security and business expertise added to Foreign Investment Review Board, December 4 2015 <http://sim.ministers.treasury.gov.au/media-release/021-2015/>.

<sup>6</sup> Gladys Berejiklian, Media statement: Ausgrid transaction process, August 11 2016 [http://www.treasury.nsw.gov.au/\\_data/assets/pdf\\_file/0006/129057/11082016\\_-\\_Ausgrid\\_transaction\\_process.pdf](http://www.treasury.nsw.gov.au/_data/assets/pdf_file/0006/129057/11082016_-_Ausgrid_transaction_process.pdf).



bidders every indication that they could continue through the process”.<sup>7</sup> That includes the short-listing process in March that narrowed the field to three companies, all Chinese.<sup>8</sup> This raises the question: what changed in recent months?

7. Commonwealth Treasurers rejected three foreign investment applications between 2001-2015. Two applications have been rejected in the last four months, both involving Chinese bidders.<sup>9</sup>

8. In rejecting a bid by the Singapore Stock Exchange to acquire the Australian Stock Exchange in 2011, Treasurer Wayne Swan said: “My decision was based on unambiguous and unanimous advice from FIRB that the proposed transaction was contrary to the national interest”.<sup>10</sup> In rejecting the bid by State Grid on Thursday August 11, Treasurer Morrison made no mention of FIRB saying only that: “...during the review process national security issues were identified...”<sup>11</sup> This raises the question: where did the Treasurer get his advice?

<sup>7</sup> “Ausgrid lease: Treasurer Scott Morrison blocks sale to Chinese, Hong Kong bidders”, ABC News, August 11 2016 <http://www.abc.net.au/news/2016-08-11/scott-morrison-sale-of-ausgrid-to-chinese-consortium-blocked/7720530>.

<sup>8</sup> Phillip Coorey and Lisa Murray, “Ausgrid veto sparks criticism over investment policy”, Australian Financial Review, August 11 2016 <http://www.afr.com/news/politics/ausgrid-veto-sparks-criticism-over-investment-policy-20160811-gqqi5v>; “Ausgrid lease: Treasurer Scott Morrison blocks sale to Chinese, Hong Kong bidders”, ABC News, August 11 2016 <http://www.abc.net.au/news/2016-08-11/scott-morrison-sale-of-ausgrid-to-chinese-consortium-blocked/7720530>.

<sup>9</sup> In 2001 Treasurer Costello rejected a bid by Royal Dutch Shell for Woodside Petroleum. In 2011 Treasurer Swan rejected a bid by the Singapore Stock Exchange for the Australian Stock Exchange. In 2013 Treasurer Hockey rejected a bid by Archer Daniels Midland for GrainCorp. In May 2016 Treasurer Morrison rejected a bid by Shanghai Pengxin Group for S Kidman and Co.

<sup>10</sup> Wayne Swan, Media release: Foreign investment decision”, April 8 2011 [http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2011/030.htm&page\\_ID=003&min=wms&Year=&DocType](http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2011/030.htm&page_ID=003&min=wms&Year=&DocType).

<sup>11</sup> Scott Morrison, “Foreign investment applications for the 99-year lease of Ausgrid”, August 11 2016 <http://sim.ministers.treasury.gov.au/media-release/067-2016/>.