

Yet another Darwin Port fault-finding mission

With a multitude of real and serious problems that require its urgent attention, the new federal government is making a show of addressing an imaginary one. On 8 June, Prime Minister Anthony Albanese announced yet another review of the privatisation of Port of Darwin, in pursuit of an excuse to tear up Chinese company Shandong Landbridge Group's lease on "national security" grounds. The Defence Department and intelligence agencies all approved the deal before it was signed in 2015, stating that it had no national security implications whatsoever, a position Defence reiterated last

year after a review ordered by then-Defence Minister Peter Dutton.¹ The question Albanese's review *ought* to ask is not why a Chinese company was allowed to take over the supposedly strategically significant Port of Darwin, but rather, "Why do we privatise ports at all?" After more than 30 years of privatisation and deregulation, the promised cost reductions to consumers—predicated on a quasi-religious belief in the inherently superior efficiency of "free markets" versus the public sector—have never once materialised. On the contrary, to maximise the sale price of their ports, governments have often deliberately created virtually unregulated monopolies in which the new owners can price-gouge to their hearts' content, and in many cases have actually or effectively banned anyone else from setting up in competition—the very antithesis of the "free market" they purport to champion. If Landbridge's lease on the Port of Darwin should be bought out or torn up, so too should all the others, and our ports (and other essential infrastructure) returned to public ownership where they belong, to be run for the benefit of the national economy and not as corporate cash cows.

Landbridge leased the Port of Darwin for 99 years at a price of \$506 million in October 2015, beating out 32 competing bids. The Northern Territory's then-Country Liberal Party (CLP) government had launched a tender the previous year, after it and every other NT administration had begged Canberra for federal investment in upgrading the port for forty years, to no avail. As former CLP leader Paul Everingham, the NT's first Chief Minister in 1978-84, wrote in a letter published 30 August 2020 in the *Australian Financial Review*: "Darwin Port as a commercial enterprise languished under South Australia, then the federal government and, despite all we tried to do, the self-governing Northern Territory. ... So what to do to attract shipping to a port described by [novelist] Xavier Herbert as having as its principal exports empty bottles and full public servants? ... [T]he Chinese, as a fast rising economic powerhouse, were seen as giving the port a good chance of emerging from Cinderella status."



The Guardian's 15 December 2015 report of Richardson's testimony.

'Security threat' all foam and no beer

Immediately the lease was announced, warmongering Canberra think tank the Australian Strategic Policy Institute (ASPI) and other "security-threat obsessives", as Everingham aptly described them, began clamouring that having the port "controlled" by a Chinese company posed an unacceptable risk. This was slapped down in testimony to a 21 October 2015 Senate Estimates hearing by then-Defence Secretary Dennis Richardson as "absurd ... alarmist nonsense". Said Richardson, "We examined the possible security implications. Within Defence, that involved the three services [i.e., the Army, Navy and Air Force]. It involved the Australian Signals Directorate, the Defence security agency and the strategic policy area of Defence. No part of Defence had a concern from a security perspective in respect of the sale." The other intelligence agencies concurred, Richardson said, and had given written advice to that effect. Then-Australian Security Intelligence Organisation (ASIO) head Duncan Lewis later told the Senate that ASIO had been engaged "throughout the process" advising Treasury and Defence on the deal. "We examined all of the aspects of security that we consider to be important and came to a view that the transaction as proposed could go ahead", he said.

Nothing had materially changed by 2 May last year when Dutton launched his review; rather, his intention was to find a pretext to revoke the lease in the terms of the *Security of Critical Infrastructure Act 2018*, which put ports and airports under the protection of the federal government. When Defence completed its review in October, however, it had once again "found no national security grounds to

recommend the federal government overturn the [lease]", SBS News reported 29 December. Albanese, however, had made an election issue of the Liberals' approval of the deal, and his own claimed opposition to it, to paint his rival Scott Morrison (who was treasurer when the deal was signed) rather than himself as "soft on China". Given his first engagement as PM, the day after his swearing-in, was to fly to Tokyo for the leaders' summit of the Quadrilateral Security Dialogue with the heads of government of the USA, India and Japan, it is likely Albanese was also leaned on by officials of the Biden Administration, which is determined to make northern Australia its "unsinkable aircraft carrier" for a future war on China.²

According to the 8 June *Australian Financial Review*, "Parliament's intelligence committee released a unanimous report just before the election saying the deal should be cancelled under powers given to the foreign minister because the state-owned [sic] company had been linked to a global industrial espionage campaign and sanctioned by the US government." No such report is available on the Parliamentary Joint Committee on Intelligence and Security's website, but presumably this refers to the *Australia's Foreign Relations (State and Territory Arrangements) Act 2020*. The applicability of this law seems dubious, however, since it applies only to arrangements with foreign state entities, whereas Landbridge is in fact a private company; moreover, its supposed links to a "global espionage campaign" exist only in allegations by the US State Department and ASPI, for which they have produced no evidence.

Anti-competitive scam

Fears of looking soft on China are also reportedly the reason for the Morrison government's last-minute kibosh on cofunding a major port upgrade at Newcastle in New South Wales, 160 km north of Sydney, which Morrison himself had personally backed. "The Morrison government came within 24 hours of unveiling a \$250 million infrastructure package to support the establishment of a container terminal at the Port of Newcastle [reportedly the world's largest coal port] during the election campaign", the 24 May *Newcastle Herald* reported, "but dumped the announcement over concerns it would be seen as promoting Chinese interests in Australia", given the majority state-owned China Merchant Port Holdings Co. holds a 50 per cent stake in the consortium that leased the port from the NSW government for 98 years in 2014. (The other half is owned by Australian investors, including superannuation funds, and is administered by Macquarie Bank.) The announcement was expected by some to be a "game changer" for the Liberal-National Coalition in the contest for the electorates of Paterson and Hunter, the *Herald* reported. "But former Deputy Prime Minister Barnaby Joyce, who was due to announce the funding on Friday 6 May, confirmed concerns about the port's ownership stopped the announcement. ... '[W]e didn't want to be seen to be giving a whole lot of money to the Chinese government.'" In the end Labor retained both seats—one more way in which the Coalition's Sinophobic election campaign became a rod for its own back.



The Port of Newcastle is an example of how privatisation benefits the buyer at the expense of the public users of the assets. Photo: Wikipedia

The greater scandal regarding the Port of Newcastle, however, is the anti-competition clauses the Liberal state government of then-Premier Mike Baird wrote into the privatisation contract to plump up the sale price. When the Baird government privatised Port Kembla (at Wollongong) and Port Botany (Sydney) in 2013, the *Herald* reported, "Port Commitment Deeds (PCD) were signed ... [which] require the state government to compensate those ports if container traffic at the Port of Newcastle exceeds a cap. When the Port of Newcastle was privatised ... another PCD required that port's operators to reimburse the government for any compensation paid" to the NSW Ports Consortium, which operates Kembla and Botany. The *Herald* reported 10 June that the PCD applies for 50 years (!), and that the "indexed" cap began at 30,000 containers a year, and currently sits at 57,000. "The compensation would effectively double the cost of moving a container at Newcastle", the paper reported, "giving NSW Ports a state-wide monopoly." (Mind you, the Port of Newcastle operator is no angel either; in 2016 it was successfully sued by mining company Glencore for exploiting its own unregulated monopoly to double its profits by hiking its port access charges to coal exporters by 40-60 per cent.)

Similarly, the *AFR* reported 27 July 2016 that before the Victorian government of Labor Premier Daniel Andrews privatised the Port of Melbourne in 2016, it first hiked the rents charged to stevedore DP World by 750 per cent, apparently to fatten up profit projections and thus increase the sale price. Nor

were rents included in the proposed regulatory regime, meaning the buyer could have charged stevedores whatever it wanted. DP World complained to the Australian Competition and Consumer Commission (ACCC), whose chairman Rod Sims “threatened to seek an access declaration [from the Australian Competition Tribunal], which would have derailed the sale”, *AFR* reported, after which “the Andrews government caved in at the last minute, struck a lower rent and put in place a rent review process to avoid ACCC oversight.” It did however manage to sneak a non-competition clause into the privatisation contract that reduces practically to nil the chances of a second container terminal being built in Victoria for the duration of the 50-year lease.

Sims, who stepped down this February after more than 11 years as ACCC chairman, was previously a prominent privatisation booster. By 2016, however, a string of debacles in the ports, energy and vocational education sectors had soured him on the notion to the point that he told the Melbourne Economic Forum that July, “I’ve been a very strong advocate of privatisation for probably 30 years; I believe it enhances economic efficiency. I’m now almost at the point of opposing privatisation because it’s been done to boost proceeds, it’s been done to boost asset sales and I think it’s severely damaging our economy.” Of the sales of the Botany, Kembla, Newcastle and Melbourne ports, he added: “Of course you get these lovely headlines in the *Financial Review* saying ‘Gosh, what a successful sale, look at the multiple they achieved’. Well of course they bloody well did: the owners factored in very large price rises because there’s no regulation on how they set the price of a monopoly. How dopey is that?”

In 2018 the ACCC took NSW Ports Consortium to court, alleging that the arrangement established by their and Newcastle’s PCDs was “anti-competitive and illegal”. In June 2021 Federal Court Justice Jayne Jagot rejected the case, ruling that “There was and is not any credible threat of entry by Port of Newcastle into the pleaded market for container port services in NSW.” The ACCC is appealing Justice Jagot’s ruling to the full Federal Court.

Albanese may yet solve the immediate problem, given that he both spoke in favour of the Newcastle container terminal in his own election campaign, and has reportedly flagged an intention to scrap PCDs at the level of federal consumer law. Sims, for his part, demanded in a 30 July 2021 speech to the annual ACCC/AER Regulatory Conference that in future governments should “privatise for efficiency, or not at all”; and suggested a public review be conducted, and strict regulatory barriers put in place, before any asset sale or long-term lease were to proceed, lest they create “unfettered monopolies” that “[make] us all poorer”.

Well and good, so far as it goes; but it misses the point that where so-called “natural monopolies” such as ports are concerned, even with the best regulation, private ownership merely creates an unnecessary extra layer of cost to consumers in the form of corporate profit margins. State-owned enterprises, by contrast, need have no such concerns; they can operate essentially at cost, thereby minimising costs to consumers and increasing productivity overall, while whatever profit they might make is returned to government coffers to be spent on essential services and public works. Given the abject failure of the “free market” to deliver on its grand promises of higher efficiency at lower cost, and the cost-of-living crisis now gripping Australia (and much of the world besides) as a result, the return of such essential assets and services to public ownership cannot happen soon enough.

Footnotes

1. “No ‘security’ basis to tear up Port of Darwin lease”, AAS, 12 May 2021.

2. “Morrison moves to militarise ‘Top End’ for war with China”, AAS, 23 June 2021.

By Richard Bardon, *Australian Alert Service*, 15 June 2022