



Australian Government

Takeovers Panel

# MEDIA RELEASE

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No: TP18/40

Wednesday, 6 June 2018

## Finders Resources Limited 03R – Review Panel decision

The review Panel has affirmed the decision of the initial Panel to make a declaration of unacceptable circumstances in *Finders Resources Limited* 02<sup>1</sup> (Annexure A) and (by a 2:1 decision) set aside the initial Panel's decision to make orders and made new orders (Annexure B).

The review Panel considered that the unusual facts of this case left considerable room for reasonable minds to differ on the interaction and effects of the unacceptable circumstances and the application to them of "truth in takeovers" principles. On the majority's views on such matters, it was not open to them to make the same orders as the initial Panel, even though they fully agreed with the declaration. One Panel member (Mr Ron Malek) supported the initial Panel's orders.

The majority were satisfied that their compensation orders will appropriately protect the rights and interests of persons who acquired Finders shares on market above the Eastern Field bid price.

The majority were also satisfied that the remaining orders will appropriately protect the rights and interests of Eastern Field by effectively allowing it to defer payment for the acquisition of Taurus's shares until 30 November 2018.<sup>2</sup> They considered that this would give Eastern Field opportunity to mitigate the effects of any reliance on Taurus's statement.

The majority were not satisfied that the orders would unfairly prejudice any person.

As a result of the review Panel's decision, the stay order made on 30 April 2018 (see [TP18/31](#)) has ended.

The sitting review Panel was Ian Jackman SC, Ron Malek (sitting President) and David Williamson.

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<sup>1</sup> Details of the initial Panel's decision can be found at [TP18/30](#)

<sup>2</sup> This is achieved by cancelling Taurus's acceptance (Order 2) and creating put and call options (Orders 5 and 6). The orders do not affect buy-out offers other shareholders will receive after the takeover bid closes.

The Panel will publish its reasons for the decision in due course on its website  
[www.takeovers.gov.au](http://www.takeovers.gov.au).

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ANNEXURE A

CORPORATIONS ACT  
SECTION 657A  
DECLARATION OF UNACCEPTABLE CIRCUMSTANCES

FINDERS RESOURCES LIMITED 02

CIRCUMSTANCES

1. Finders Resources Limited (**Finders**) is an ASX listed company.
2. On 23 October 2017, Eastern Field Developments Limited (**Eastern Field**) lodged a bidder's statement in relation to an off market takeover bid for all the shares of Finders at \$0.23 cash per share (**Takeover Bid**). The Takeover Bid was subject to a number of conditions including that, before expiration of the bid period, Eastern Field has received valid acceptances so that Eastern Field has a relevant interest in more than 50% of the Finders shares at that time (**Minimum Acceptance Condition**).
3. On 5 December 2017, Finders issued its target's statement (**Target's Statement**), which disclosed that:
  - (a) for the purposes of the Target's Statement, the independent directors were Messrs Gary Comb, Barry Cahill and Gordon Galt (**Independent Directors**)
  - (b) each of the Independent Directors recommended that Finders shareholders reject the Takeover Bid and
  - (c) the Independent Directors (relevantly Messrs Comb and Cahill)<sup>3</sup> intended to reject the Takeover Bid for any Finders shares they own or control.
4. Taurus Funds Management Pty Limited (**Taurus**) is manager of two vehicles who, together, hold a substantial holding in Finders. On 6 December 2017, Finders provided a draft letter and announcement to Taurus. Later that day, a representative of Taurus signed the final form of that letter which stated, among other things, that Taurus consented to Finders releasing an announcement on the ASX containing the following statement:

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<sup>3</sup> Noting that Mr Galt did not own or control any Finders shares

**Finders' second largest shareholder, Taurus Funds Management, does not intend to accept the Offer**

*Taurus Funds Management Pty Ltd ("Taurus") currently manages 87,339,525 Finders shares, being equal to 11.31% of the Finders shares currently on issue, making it the second largest Finders shareholder after the bidder consortium that owns Eastern Field.*

*Taurus has notified Finders that it does not intend to accept the Offer at the Offer Price of \$0.23 per Finders share in respect of the Finders shares that Taurus owns or controls, on the basis that Taurus considers that the Offer Price does not reflect the fair value of Finders shares.*

5. The draft letter and final form of the letter referred to in paragraph 4 also stated that *"Taurus confirms that it will notify Finders as soon as reasonably practicable if Taurus' intentions with respect to accepting the Offer change"*. This statement was not a part of the disclosure which Taurus consented to being in a Finders' announcement.
6. On 7 December 2017, Finders made an ASX announcement that contained the statement referred to in paragraph 4 but not the statement referred to in paragraph 5. Taurus was provided an opportunity to comment on the draft letter and the announcement before its release. Taurus made a change to the draft letter and commented on the announcement. However it did not comment on the omission of the statement referred to in paragraph 5 in the announcement.
7. Between 11 and 13 December 2017, Euroz Securities Limited (**Euroz**) obtained letters from other Finders shareholders who were not substantial holders (on Finders' behalf) consenting to Finders making an announcement which disclosed the relevant shareholder's name, the number of Finders shares that the shareholder owned or controlled and the fact that the shareholder has notified Finders that the shareholder does not intend to accept the Takeover Bid at the bid price in respect of those shares. The letters did not include the statement referred to in paragraph 5. Euroz subsequently advised Finders (in response to Finders' query to Euroz following receipt of correspondence from ASIC) that Euroz did not inform these shareholders that ASIC Regulatory Guide 25 – *Takeovers: false and misleading statements* (**ASIC RG 25**) may apply to these statements.
8. On 12 December 2017, Finders made an ASX announcement that stated that shareholders who in aggregate own or control 20.15% of the Finders shares on issue had notified Finders that they do not intend to accept the Takeover Bid and, when aggregated with Taurus and Messrs Comb and Cahill, statements by shareholders that they do not intend to accept the Takeover Bid amounted to 33.19% of the Finders shares on issue.
9. On 12 December 2017, Eastern Field declared the Takeover Bid free from the Minimum Acceptance Condition.

10. On 13 December 2017, Finders made an ASX announcement stating that additional shareholders who in aggregate own or control 4.39% of Finders shares had informed Finders that they do not intend to accept the Takeover Bid. On 15 December 2017, Finders made an ASX announcement stating that additional shareholders who in aggregate own or control 0.63% of Finders shares had informed Finders that they do not intend to accept the Takeover Bid. Both announcements aggregated these intention statements with previous statements made by Finders shareholders, including Taurus and Messrs Comb and Cahill. The 15 December 2017 ASX announcement noted that Finders shareholders representing 38.21% of Finders shares in aggregate had notified Finders that they do not intend to accept the Takeover Bid at the bid price of \$0.23 per Finders share in respect of the Finders shares which each of them own or control.
11. On 14 February 2018, Eastern Field declared the Takeover Bid unconditional. Eastern Field solicited acceptances from Finders shareholders, including shareholders who had given intention statements to Finders via Euroz. On 8 March 2018, Eastern Field had voting power of 33.76% in Finders. On 12 March 2018, Eastern Field gave notice that it would not increase the consideration offered under the Takeover Bid. On 16 March 2018, Eastern Field had voting power of 48.40% in Finders.
12. On 19 March 2018, Taurus accepted the Takeover Bid for all its shares. As a result of Taurus's acceptance, Eastern Field's voting power in Finders increased over 50% to 60.22%.
13. Also on 19 March 2018, Finders made an ASX announcement advising that:
  - (a) The Independent Directors continued to believe that the Takeover Bid does not reflect fair value for Finders shares.
  - (b) However, Eastern Field had now acquired a relevant interest in more than 60% of Finders shares and therefore had a controlling interest in Finders.
  - (c) *"In light of these developments, the Independent Directors now urge shareholders to quickly consider ACCEPTING the Offer, to avoid the risks of being left as a minority shareholder in Finders when it is controlled by Eastern Field".*
  - (d) The Independent Directors intended to accept the Takeover Bid for any Finders shares they owned or controlled.
14. Later on 19 March 2018, Finders issued its second supplementary target's statement. None of the second supplementary target's statement, the Target's Statement or first supplementary target's statement dated 22 December 2017 discussed the intention statements by shareholders other than Messrs Comb and Cahill.

15. On 20 March 2018, Mr Comb accepted the Takeover Bid in relation to 1,566,667 shares and Mr Cahill accepted the Takeover Bid in relation to 450,000 shares.
16. On 21 March 2018, Eastern Field issued its second supplementary bidder's statement, noting Taurus's acceptance of the Takeover Bid and stating that:

*Eastern Field considers that the effect of Taurus' statement (that it would not accept the offer at the Offer Price of \$0.23) may be that Taurus is prevented from accepting the Offer for the reasons set out in ASIC's Regulatory Guide 25 (Takeovers: false and misleading statements). Eastern Field has raised this matter with ASIC. This issue may also apply to other acceptances received.*

17. On 28 March 2018, Messrs Comb and Cahill accepted the Takeover Bid for their remaining shares.

## **EFFECT**

18. For the period between 7 December 2017 and 19 March 2018, as a result of Finders making (with the consent of Taurus) the statement by Taurus referred to in paragraph 4 which was not expressly qualified and made no reference to the statement referred to in paragraph 5:
  - (a) Finders' shareholders and market participants could reasonably assume that Taurus would not accept the Takeover Bid in the circumstances that existed on 19 March 2018
  - (b) Taurus's acceptance of the Takeover Bid was inconsistent with those assumptions and those assumptions had the potential to affect assessment of whether to accept the Takeover Bid and decisions whether to acquire or dispose of Finders shares and
  - (c) the acquisition of control over Finders shares did not take place in an efficient, competitive and informed market.
19. As a result of Finders authorising the solicitation of statements from shareholders other than Taurus that they will not accept the Takeover Bid and aggregating those intention statements with statements made by Taurus and Messrs Comb and Cahill, and noting these shareholders were not informed of the possible application of ASIC RG 25; Finders shareholders (including shareholders who made intention statements) and the market did not have sufficient information to assess whether and in what circumstances persons making the statements may change their intentions or act inconsistently with their statements. Accordingly, the market and Finders shareholders were not in a position to properly assess the likelihood that, or circumstances in which, 38.21% of Finders shares could be accepted into the Takeover Bid.

## **CONCLUSION**

20. It appears to the Panel that the circumstances are unacceptable circumstances:

- (a) having regard to the effect that the Panel is satisfied they have had, are having, will have or are likely to have on:
    - (i) the control, or potential control, of Finders or
    - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in Finders
  - (b) in the alternative, having regard to the purposes of Chapter 6 set out in section 602 of the *Corporations Act 2001* (Cth).
21. The Panel considers that it is not against the public interest to make a declaration of unacceptable circumstances. It has had regard to the matters in section 657A(3).

## **DECLARATION**

The Panel declares that the circumstances constitute unacceptable circumstances in relation to the affairs of Finders.

**Bruce Dyer**  
**Counsel**  
**with authority of Karen Evans-Cullen**  
**President of the sitting Panel**  
**Dated 26 April 2018**



**Australian Government**

**Takeovers Panel**

## **ANNEXURE B**

# **CORPORATIONS ACT SECTIONS 657EA AND 657D ORDERS**

### **FINDERS RESOURCES LIMITED 03R**

The Panel in Finders Resources Limited 02 made a declaration of unacceptable circumstances on 26 April 2018.

### **THE PANEL ORDERS**

#### **Deferral of Payment of Consideration to Taurus**

- 1 Eastern Field is not obliged to take any action to process an acceptance of the Takeover Bid or pay consideration in respect of the Taurus Shares except as contemplated by these Orders.
- 2 Immediately after the Offer Close, all acceptances in respect of the Taurus Shares and all takeover contracts resulting from those acceptances are cancelled.
- 3 Taurus must not exercise any rights under s662C of the *Corporations Act 2001* (Cth) in respect of the Taurus Shares.
- 4 Without the consent of Eastern Field, Taurus must not sell or offer to sell any of the Taurus Shares prior to 30 November 2018 except as contemplated by these Orders.
- 5 If Eastern Field gives written notice to Taurus under this Order 5 after the Offer Close, Taurus must sell and Eastern Field must acquire (or must procure that its nominee acquires) all Taurus Shares held by Taurus at the time Taurus receives the notice for 23 cents per Finders share on the same terms as the terms of the Takeover Bid immediately before the Offer Close (except that interest is payable on the consideration after 30 November 2018 at the rate applied by the Federal Court of Australia for pre-judgment interest).
- 6 If Taurus gives written notice to Eastern Field under this Order 6 after the later of the Offer Close and 30 November 2018, Eastern Field must acquire and Taurus must sell all Taurus Shares held by Taurus at the time Taurus gives the notice for 23 cents per Finders share on the same terms as the terms of the



Takeover Bid immediately before the Offer Close (except that interest is payable on the consideration after 30 November 2018 at the rate applied by the Federal Court of Australia for pre-judgment interest).

### **Administration Expenses**

- 7 Taurus must pay the fees and expenses of any person engaged by the Panel to assist with the administration of these Orders.

### **Compensation**

- 8 Subject to Order 22, Taurus must pay to each Affected Shareholder who signs and returns a claim form (within the applicable period specified in Order 17) the Compensation Amount.

### **Affected Shareholders**

- 9 An Affected Shareholder means a person who acquired legal title to Finders shares through an on-market acquisition at more than 23 cents per Finders share during the Relevant Period, but excluding any Excluded Shareholder.
- 10 An Excluded Shareholder means:
- a. any Rejecting Shareholder;
  - b. the registered holder of Finders shares in which a Rejecting Shareholder acquired only a beneficial interest during the Relevant Period (but such a person is only an Excluded Shareholder in respect of Finders shares held on behalf of a Rejecting Shareholder); and
  - c. Eastern Field.

### **Dispute Referred by Affected Shareholder**

- 11 Any Affected Shareholder may, within 7 months after the Effective Date, refer to the Panel a dispute with Taurus as to any matter regarding their entitlement under these Orders (including whether that person is an Affected Shareholder). Before referring a matter to the Panel under this Order 11, the Affected Shareholder must give 14 days written notice to Taurus.

### **Claim Forms**

- 12 Within 10 business days after the Effective Date, Taurus must send to each person who it has identified from the Finders share register acquired Finders Shares during the Relevant Period:
- a. a claim form and a notice as set out in these Orders; and
  - b. a prepaid self-addressed envelope.
- 13 A notice sent under these Orders must set out the following information:

- a. the effect of, and a summary of the reasons for, the Orders;
  - b. who is an Affected Shareholder and what is meant by acquiring legal title to Finders shares through an on-market acquisition;
  - c. what an Affected Shareholder must do to receive payment (and the process that will be followed for the making of the payment);
  - d. how an Affected Shareholder can obtain a blank claim form;
  - e. the applicable time period in which Affected Shareholders must act to receive payment under the Orders;
  - f. the Affected Shareholder Warranties; and
  - g. a telephone number and email address at which Taurus can be contacted for further information.
- 14 A claim form sent under these Orders must set out the following information:
- a. the name, address and HIN or SRN or other holder identification number appropriate for the Affected Shareholder;
  - b. space for details of the Finders shares the Affected Shareholder acquired on-market at more than 23 cents per Finders share during the Relevant Period;
  - c. space for the Affected Shareholder to correct the information in a. and b. above (if necessary);
  - d. space for the Affected Shareholder to specify each person that has a beneficial interest in the Finders shares the Affected Shareholder acquired on-market at more than 23 cents per Finders share during the Relevant Period;
  - e. space for the Affected Shareholder to, if they wish, include details of an Australian bank account to which payment can be made;
  - f. space for the Affected Shareholder to sign and date the claim form; and
  - g. prominent notice of the Affected Shareholder Warranties that the Affected Shareholder will be giving to Taurus by submitting the claim form to Taurus.
- 15 If a person requests a blank claim form, notice or both from Taurus within 6 months after the Distribution Date, Taurus must within 5 business days of that request send the person a blank claim form and notice.
- 16 The Panel must approve the form of the notice and claim form.

## **Payment to Affected Shareholders**

- 17 For the purposes of Order 8, to be entitled to payment an Affected Shareholder must sign and return a claim form within 6 months after the Distribution Date.
- 18 If Taurus does not refer a claim form to the Panel under Order 22, Taurus must pay the Affected Shareholder under Order 17 within 21 days of the receipt by Taurus of the claim form.
- 19 If Taurus refers a claim form to the Panel under Order 22, and the Panel determines that Taurus must pay an amount to the Affected Shareholder, Taurus must pay that amount to the Affected Shareholder within 21 days of the Panel notifying Taurus of that determination.
- 20 Taurus must pay the Affected Shareholders entitled to payment under Order 17 by:
  - a. sending a cheque to the address notified in the claim form (payments are taken to be made on the day that Taurus sends the cheque); or
  - b. if the Affected Shareholder provided details of an Australian bank account in the claim form, making an electronic funds transfer to that account (payments are taken to be made on the day that Taurus makes the transfer).
- 21 In the case of a holding where there is more than one registered holder, Taurus's obligations under these Orders are satisfied by:
  - a. Taurus sending the cheque to the person and the address provided on the claim form for the person first named on the claim form; or
  - b. if the Affected Shareholder provided details of an Australian bank account in the claim form, making an electronic funds transfer to that account.

## **Dispute as to Entitlement to Payment**

- 22 Taurus may refer a claim form to the Panel within 14 days of Taurus receiving the claim form. Taurus must provide to the Panel, with the referred claim form, the reasons it considers that the person submitting the claim form may not be entitled to the compensation because Taurus:
  - a. considers that the person submitting the claim form is not an Affected Shareholder; or
  - b. disputes some or all of the details in the claim form.

- 23 If Taurus refers a claim form to the Panel under Order 22, the Panel will within 14 days of receipt of that claim form make a determination, after consultation with Taurus if the Panel considers it desirable, as to whether or not the person submitting the claim form is entitled to be paid in accordance with the Orders and if necessary, for how many Finders shares. Taurus must comply with the Panel's determination.
- 24 Before the Panel decides that Taurus is not required to pay a person in accordance with the claim form the person has submitted, the Panel will:
- a. advise the person of the proposed decision and the reasons for the proposed decision;
  - b. provide copies of any information or documents on which the Panel proposes to base their decision; and
  - c. allow the person a reasonable period to make submissions on the proposed decision.

#### **Taurus May Request Further Information**

- 25 Taurus may request further information from a person submitting a claim form to support the person's entitlement to payment if Taurus has reasonable grounds to believe that the person may not be entitled to compensation because Taurus:
- a. considers that the person submitting the claim form is not an Affected Shareholder; or
  - b. disputes some or all of the details in the claim form.
- 26 If Taurus refers a claim form to the Panel under Order 22, Taurus must provide any information it receives, or has received, under Order 25 (or evidence as to a lack of it having been provided after a request) to the Panel for the purposes of the Panel making a determination under Order 23 and advise the Panel of the details of any outstanding requests for information that Taurus has made to the relevant person.
- 27 The Panel may extend the time it has under Order 23 to make a determination where:
- a. the Panel has advised the person of its proposed decision not to require Taurus to pay the person all or some of the amount claimed by that person, and the Panel is conducting the procedure in Order 24; or
  - b. Taurus has made a request for further information under Order 25 and in the Panel's opinion it would be reasonable for further time to be allowed before a determination is made.

## **Reporting**

- 28 Taurus must provide the following reports to the Panel:
- a. a report within 5 business days of the Distribution Date setting out such information as reasonably required by the Panel;
  - b. a report, within 35 days of the Distribution Date, of all the claim forms submitted to Taurus within 14 days of the Distribution Date which are either paid as claimed in the claim forms or referred to the Panel under Order 22, setting out such information as reasonably required by the Panel; and
  - c. a report, within 7 months of the Distribution Date, of all the claim forms submitted to Taurus within 6 months of the Distribution Date which are either paid as claimed in the claim forms or referred to the Panel under Order 22, setting out such information as reasonably required by the Panel.

## **Affected Shareholder Warranties**

- 29 In submitting a claim form to Taurus, the person(s) submitting the claim form must warrant to Taurus to the effect that, to the best of the person's or persons' knowledge after due enquiry:
- a. the information in the claim form is true and correct; and
  - b. the person(s) is/was a person who became the/a registered holder of the Finders shares acquired during the Relevant Period through the acquisition.

## **Unclaimed Monies**

- 30 Taurus must publish in the ASIC Gazette details of any monies from cheques returned, or unrepresented, for which it cannot reasonably establish a forwarding address for the Affected Shareholder concerned.
- 31 Details published under Order 30 must include the name of the Affected Shareholder, the amount the Affected Shareholder is entitled to and the last known address of the Affected Shareholder.
- 32 Taurus must hold funds represented by any returned or unrepresented cheques for 12 months after publication in an ASIC Gazette under Order 30.

## **Publication of Entitlement to Payment**

- 33 Taurus must within 2 business days of the Effective Date cause to be published in one newspaper with a national circulation in Australia and one newspaper in each Australian State and Territory circulating in that State or Territory a notice that is approved by the Panel and is not smaller than 15 cm

by 20 cm and placed in the general news sections of those newspapers which clearly states:

- a. the effect of, and a summary of the reasons for, the Orders;
- b. a description of the group of persons likely to be the Affected Shareholders;
- c. what the Affected Shareholders must do to receive payment (and the process that will be followed for the making of the payment);
- d. what an Affected Shareholder must do to obtain a blank claim form;
- e. the applicable time period in which Affected Shareholders must act to receive payment under the Orders; and
- f. a telephone number and email address at which Taurus can be contacted for further information.

- 34 The information in the notices published under Order 33 must also be set out in an announcement to ASX to be released by Finders. The Panel must approve the form of the announcement.

### **Manner of Sending Documents**

- 35 Any document (including any cheque) required to be sent under these Orders must be sent in accordance with section 648C of the *Corporations Act 2001* (Cth) and also by email if an email address is available, in each case (where applicable) to the current or most recent postal or email address for a shareholder set out in the Finders share register unless Taurus is advised in writing to the contrary by that shareholder.

### **Assistance from Finders**

- 36 Finders must procure that its share registry promptly provides to Taurus any details regarding the Affected Shareholders as may be reasonably requested by Taurus and which the share registry is able to provide for the purpose of implementing these Orders.

### **Definitions**

- 37 In these Orders the following terms apply.

<b>Affected Shareholder</b>	A person described in Order 9
<b>Affected Shareholder Warranties</b>	The warranties set out at Order 29
<b>ASIC</b>	Australian Securities & Investments Commission

<b>Compensation Amount</b>	<p>For an Affected Shareholder, the Australian dollar amount calculated as follows:</p> $Co = ((AC \div AS) - TBC) \times AS$ <p>where:</p> <p>Co = Australian dollar amount payable to each Affected Shareholder</p> <p>AC = the aggregate consideration paid by the Affected Shareholder to acquire AS, as set out in the claim form</p> <p>AS = the aggregate number of Finders shares in which the Affected Shareholders acquired legal title through an on-market transaction during the bid period where the considerations paid for those shares is greater than 23 cents, as set out in the claim form</p> <p>TBC = the consideration offered under the Takeover Bid, being 23 cents</p>
<b>Distribution Date</b>	The date on which the notices and claim forms are first sent to Affected Shareholders in accordance with Order 12
<b>Eastern Field</b>	Eastern Field Developments Limited
<b>Effective Date</b>	20 business days after the parties are provided with the reasons of the review Panel in this matter
<b>Excluded Shareholder</b>	A person described in Order 10
<b>Finders</b>	Finders Resources Limited
<b>Finders share</b>	The security that traded on the Australian Securities exchange during the Relevant Period under the symbol "FND" being an ordinary share in Finders
<b>Intention Statement</b>	An intention statement referred to in the declaration of unacceptable circumstances made by the Panel in Finders Resources Limited 02 on 26 April 2018
<b>Offer Close</b>	The end of the offer period of the

	Takeover Bid
<b>Panel</b>	The Panel in Finders Resources 03R or any member of the Panel Executive, or other person engaged by the Panel to assist, to whom the Panel delegates functions or matters to be determined under these Orders
<b>Rejecting Shareholder</b>	any person that made an Intention Statement
<b>Relevant Period</b>	The period from 7 December 2017 to 19 March 2018 (inclusive)
<b>Taurus</b>	Taurus Funds Management Pty Limited
<b>Takeover Bid</b>	Eastern Field's off-market takeover bid to acquire all the ordinary shares in Finders at 23 cents per share
<b>Taurus Shares</b>	ordinary shares in Finders managed by Taurus in respect of which the Takeover Bid was accepted prior to 26 April 2018

**Bruce Dyer**  
**Counsel**  
**with authority of Ian Jackman SC**  
**Deputy President of the sitting Panel**  
**Dated 6 June 2018**