



Australian Government

Takeovers Panel

MEDIA RELEASE

No: 94/2009

Wednesday, 23 December 2009

Tully Sugar Limited – Panel Declines to Make Declaration

The Panel has declined to make a declaration of unacceptable circumstances in response to an application dated 25 November 2009 from The Maryborough Sugar Factory Limited in relation to the affairs of Tully Sugar Limited following the provision of a supplementary target's statement. Tully (an unlisted, non-disclosing public company) is the subject of an off-market scrip takeover bid by Maryborough, which is currently scheduled to close on 26 February 2010.

Maryborough submitted that there were material deficiencies in Tully's target's statement, including issues relating to the value of Tully shares. It submitted that an independent expert's report was required. Maryborough further submitted that because the Tully directors did not determine whether the offer price represented a premium or a discount to the value of Tully shares, the Tully directors did not have a proper basis for the making of their recommendation, and accordingly, their recommendation should be withdrawn.

The Panel was concerned that Tully shareholders had insufficient information to assess whether they wished to remain as shareholders in Tully as a stand-alone entity or become shareholders in the post-acquisition Maryborough. The Panel did not agree that an independent expert's report was required. The Panel requested that further disclosure be made, including:

- an update on Tully's financial performance since its last set of financial reports. Tully provided a forecast of its financial performance to 30 April 2010
- information comparing Tully's business with Maryborough should the bid succeed, including a comparison of historical and forecast earnings per share
- information on the historical trading volumes and prices of Tully shares
- an update on the review of Tully (referred to in Tully's 2009 annual report) which included its board structure and its negotiations with Bundaberg Sugar Limited and
- a retraction of comments made by the Tully Chairman on ABC Radio on 13 November 2009 in relation to the value of Tully shares.

Given the further disclosure, the Panel did not agree that the recommendation should be withdrawn.

On the basis of the above, the Panel decided not to make a declaration of unacceptable circumstances. The Panel considered that it is not against the public interest to decline to make a declaration of unacceptable circumstances.

The sitting Panel was Geoff Brunson, Kathleen Farrell and Kevin McCann (sitting President). The Panel will publish its reasons for the decision in due course on its website www.takeovers.gov.au.

**Allan Bulman
Director, Takeovers Panel
Level 10, 63 Exhibition Street
Melbourne, VIC 3000
Ph: +61 3 9655 3597
allan.bulman@takeovers.gov.au**