



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP22/26

Tuesday, 5 April 2022

Wollongong Coal Limited 03 – Panel Receives Application

The Panel has received an application from Mr Gordon Elkington (**Applicant**) in relation to the affairs of Wollongong Coal Limited. The application concerns the content of the independent expert's report required for compulsory acquisition under Chapter 6A¹ that was the subject of undertakings to the Panel in the *Wollongong Coal Limited 02*² matter (see [TP22/09](#)).

Details of the application, as submitted by the Applicant, are below.

A sitting Panel has not been appointed at this stage and no decision has been made whether to conduct proceedings. The Panel makes no comment on the merits of the application.

Details

Wollongong is an unlisted public company. Jindal Steel & Power (Mauritius) Limited holds over 90% of the shares in Wollongong.

On 17 December 2021, Jindal commenced a compulsory acquisition process for all the outstanding shares in Wollongong. BDO Corporate Finance (WA) Pty Ltd prepared an independent expert's report under section 667A. The Applicant commenced the *Wollongong Coal Limited 02* proceedings in relation to that report.

On 21 January 2022, the sitting Panel in *Wollongong Coal Limited 02* declined to conduct proceedings after accepting undertakings, including one provided by BDO that it would prepare a supplementary or replacement independent expert's report which included:

- (a) *“an explanation as to how BDO took the matters referred to in section 667C(2) of the Corporations Act 2001 (Cth) into account when determining the valuation of WCL's securities”* and

¹ References are to the *Corporations Act 2001* (Cth) unless otherwise specified

² [\[2022\] ATP 2](#)

(b) *“a report from an independent technical specialist on the mineral assets of WCL prepared in accordance with the JORC Code 2012”.*

On 21 March 2022, Jindal served on minority shareholders a new compulsory acquisition notice accompanied by a revised independent expert report prepared by BDO.

The Applicant submits, among other things, that the revised report does not comply with the undertakings that BDO gave the Panel in that (in summary):

- BDO took the matters in section 667C(2) into account in determining *“fair market value”* instead of determining *“fair value for securities”* as defined in section 667C(1)
- The technical specialist did not prepare a report on the mineral assets of Wollongong in accordance with the JORC Code, but a valuation report and
- It is unclear that the technical specialist is a ‘Competent Person’ under the JORC Code.

The Applicant seeks an order that another independent expert’s report be prepared and that the timetable for the compulsory acquisition be adjusted accordingly.

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