



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP22/29

Thursday, 21 April 2022

Wollongong Coal Limited 03 – Panel Declines to Conduct Proceedings

The Panel has declined to conduct proceedings on an application from Mr Gordon Elkington in relation to the affairs of Wollongong Coal Limited (see [TP22/26](#)). The application concerned the content of a revised independent expert's report (**Revised IER**) required for a compulsory acquisition under Chapter 6A¹ commenced by Wollongong's major shareholder, Jindal Steel & Power (Mauritius) Limited.

The Revised IER was prepared by BDO Corporate Finance (WA) Pty Ltd pursuant to undertakings to the Panel in *Wollongong Coal Limited 02*² (see [TP22/09](#)). BDO's undertaking required the Revised IER to include:

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

The application submitted, in effect, that the Revised IER did not comply with the undertakings that BDO gave to 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.

¹ All references are to the *Corporations Act 2001 (Cth)* unless otherwise indicated

² [2022] ATP 2

The Panel considered, among other things, that the information concerns that the Panel had in *Wollongong Coal Limited 02* are sufficiently addressed in the Revised IER and that, in the Panel's view, shareholders have now been provided with enough information to form a view about the proposed compulsory acquisition by Jindal. If there is a further concern about the compulsory acquisition, and in particular value, there is a process which minority shareholders can follow to address that.

The Panel concluded there was no reasonable prospect that it would make a declaration of unacceptable circumstances. Accordingly, the Panel declined to conduct proceedings.

The sitting Panel was Teresa Dyson, Michelle Jablko (sitting President) and Michael Lishman.

The Panel will publish its reasons for the decision in due course on its [website](#).

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