Australian Government

Takeovers Panel

Reasons for Decision
Southern Cross Media Group Limited 02R & 03R
[2023] ATP 15

Catchwords:

Review – declaration – orders - deemed relevant interests – contravention of s606 – acquisition of shares – creep exception - inadvertence – effect on control

Corporations Act 2001 (Cth), sections 602, 606, 608, 611 item 9, 657EA

Australian Securities and Investments Commission Act 2001 (Cth), section 201A(2)

Eastern Field Developments Limited v Takeovers Panel [2019] FCA 311, Attorney-General (Cth) v Alinta Limited (2008) 242 ALR 1

Guidance Note 1: Unacceptable Circumstances

ASIC Regulatory Guide 9: Takeover bids

Southern Cross Media Group Limited [2023] ATP 13, Yowie Group Ltd 01 & 02 [2019] ATP 10, Finders Resources Limited 03R [2018] ATP 11, ISIS Communications Ltd [2002] ATP 10, Taipan Resources NL 09 [2001] ATP 4

Interim order	IO undertaking	Conduct	Declaration	Final order	Undertaking
YES	**NO**	**YES**	**YES**	**YES**	**NO**

INTRODUCTION

1. The Panel, Bruce Cowley, Richard Hunt (sitting President) and John McGlue affirmed the initial Panel's decision to make a declaration of unacceptable circumstances[1] in relation to the acquisition of 6.83% of the shares of Southern Cross Media Group Limited (**Southern Cross**) in contravention of section 606.[2] The Panel set aside the orders made by the initial Panel, which included vesting Southern Cross shares held by ARN Media Limited (**ARN**) in ASIC for sale, and made its own orders - which imposed certain restrictions on the Relevant Shares and included requiring (in certain circumstances) ARN to vote the relevant shares in favour of a competing scheme of arrangement or to accept the relevant shares into a competing takeover.

2. In these reasons, the following definitions apply.

ACM Proposal	has the meaning given in paragraph 15
Allan Gray	Allan Gray Australia Pty Limited
Allan Gray Acquisitions	has the meaning given in paragraph 11

[1] *Southern Cross Media Group Limited* [2023] ATP 13. All references to the initial Panel are to the Panel in *Southern Cross Media Group Limited*

[2] Unless otherwise indicated, all statutory references are to the *Corporations Act 2001* (Cth), and all terms used in Chapters 6 to 6C have the meaning given in the relevant Chapter (as modified by ASIC)

Anchorage	Anchorage Capital Partners Pty Limited
ARN	ARN Media Limited
ARN/Anchorage Offer	has the meaning given in paragraph 12
ARN Acquisition	has the meaning given in paragraph 8
ARN Contravention Shares	has the meaning given in paragraph 9
ARN Draft Undertaking	has the meaning given in paragraph 23
Keybridge	Keybridge Capital Limited
Relevant Shares	has the meaning given in paragraph 9
Review Panel Draft Undertaking	has the meaning given in paragraph 71(b)
Sale Shares	has the meaning given in paragraph 9
Southern Cross	Southern Cross Media Group Limited
St Barbara	St Barbara Mines Limited
Strata Mining	Strata Mining Corporation NL
Taipan	Taipan Resources NL
Taipan 09	has the meaning given in paragraph 46
Yowie	has the meaning given in paragraph 24(a)(ii)

FACTS

3. The facts are set out in detail in the initial Panel's reasons in *Southern Cross Media Group Limited* [2023] ATP 13. The following is a summary of those facts (along with subsequent developments).

4. Southern Cross (ASX: SXL) and ARN (ASX: A1N) are ASX listed companies in the Australian media and entertainment industry. ARN is a shareholder of Southern Cross.

5. Allan Gray is an unlisted fund manager and a shareholder of both Southern Cross and ARN.

6. Keybridge (ASX: KBC) is an ASX listed investment and financial services company and a shareholder of Southern Cross. Mr Anthony Catalano is a director of Keybridge.

7. As at market close on 19 June 2023, Allan Gray had a relevant interest and voting power in 21.71% of Southern Cross. At that time, Allan Gray also had a relevant interest and voting power in 20.04% of ARN.

8. After market close on 19 June 2023, ARN acquired a total of 35,505,074 Southern Cross shares (**ARN Acquisition**) from various Southern Cross shareholders including Allan Gray, consequently obtaining a relevant interest and voting power in 14.8% of Southern Cross.

9. As a result of the ARN Acquisition, Allan Gray's relevant interest and voting power in Southern Cross increased from 21.71% to 31.24%, comprising:

   (a) 16.44% by operation of section 608(1) through Allan Gray's direct holding of Southern Cross shares and

   (b) 14.8% by operation of section 608(3)(a) through Allan Gray's relevant interest in ARN,

   other than as permitted by one of the exceptions in section 611, resulting in 6.83% of Southern Cross shares having been acquired by ARN in contravention of section 606 (referred to in these reasons as the **ARN Contravention Shares**, **Sale Shares** or **Relevant Shares**).

10. Allan Gray did not give details of the increase in its relevant interest of Southern Cross as required by section 671B.

11. On 7 July 2023 and 24 October 2023, Allan Gray acquired 130,422 Southern Cross shares and 62,317 Southern Cross shares respectively (**Allan Gray Acquisitions**) other than as permitted by one of the exceptions in section 611, resulting in contraventions of section 606 by Allan Gray.

12. On 18 October 2023, ARN announced that a consortium comprising ARN and Anchorage had submitted a non-binding indicative offer to acquire 100% of Southern Cross via a scheme of arrangement (**ARN/Anchorage Offer**).

13. On 24 October 2023, Keybridge, which at the time was the registered holder of 1 share in Southern Cross,[3] made its application to the initial Panel.

14. On 31 October 2023, Allan Gray's shareholding and voting power in ARN decreased to 19.98% as a result of sales to meet a client redemption request.

15. On 10 November 2023, Southern Cross announced that it had received a non-binding indicative conditional proposal from Australian Community Media (**ACM Proposal**) involving the merger of Southern Cross and the regional publications and digital assets of Australian Community Media, which contemplated Southern Cross acquiring assets from Australian Community Media in return for the issue of new shares in Southern Cross. Mr Catalano is a director of Australian Community Media.

16. On 15 November 2023, Southern Cross announced that it had determined that it would not be in the best interests of Southern Cross and its shareholders to further progress the ACM Proposal.

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[3] In its application, Keybridge said that it has "*been an active trader of cash settled swaps over SXL shares, having executed trades during the periods*" relevant to the declaration of unacceptable circumstances made by the initial Panel

17. On 17 November 2023, Allan Gray sold 10,510,587 Southern Cross shares, representing 4.55% of Southern Cross, resulting in its voting power in Southern Cross being reduced to 11.97%.

18. On 22 November 2023, the initial Panel made a declaration of unacceptable circumstances (but did not make orders at that time). The initial Panel considered that the circumstances were unacceptable:

    (a) because they constituted or gave rise to contraventions of section 606 and section 671B and/or

    (b) in relation to the contravention of section 606 arising from the ARN Acquisition only, having regard to the effect that the initial Panel was satisfied they have had, are having, will have or are likely to have on:

        (i) the control, or potential control, of Southern Cross or

        (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in Southern Cross.

19. On 4 December 2023, the initial Panel made orders, including those summarised below:

    (a) The Sale Shares are vested in the Commonwealth on trust for ARN (order 1).

    (b) ASIC must retain an investment bank or stockbroker and instruct them to use the most appropriate sale method to secure the best available sale price for the Sale Shares that is reasonably available at that time to dispose of all of the Sale Shares within 3 months from the date of its engagement (orders 2 – 4).

    (c) None of ARN or its associates may, directly or indirectly, acquire any of the Sale Shares other than on market (order 5).

20. Also on 4 December 2023, the initial Panel accepted undertakings from Allan Gray to the following effect:

    (a) Allan Gray will provide a corrective substantial holder notice in relation to its holding in Southern Cross in a form approved by the Panel.

    (b) Allan Gray will sell within 3 months 0.08% of Southern Cross (being equal to the volume of shares it acquired in contravention of section 606 under the Allan Gray Acquisitions).

21. On 6 December 2023, in accordance with its undertaking to the initial Panel, Allan Gray disclosed via ASX a corrective substantial holder notice in relation to its holding in Southern Cross in a form approved by the initial Panel, which included details of its historical deemed relevant interest in 14.8% of Southern Cross shares held by ARN.

APPLICATIONS

22. On 24 November 2023, ARN sought a review of the initial Panel's declaration. ARN requested that the Panel exercise its discretion to not require the parties to take any steps in respect of the application at that time,[4] given that:

    (a) if the initial Panel declines to make orders, no review of the initial Panel's declaration may be necessary

    (b) if the initial Panel does make orders, then ARN may wish to initiate a review of those orders, and the most efficient course would be to have those reviews proceed together.[5]

23. On 6 December 2023, ARN sought a review of the initial Panel's orders. In the review application, ARN included submissions in relation to both the initial Panel's declaration and orders. ARN also included a draft undertaking (**ARN Draft Undertaking**) in the same form as the revised undertaking provided by ARN to the initial Panel.[6] In summary, the ARN Draft Undertaking provided that ARN will, for a period of 12 months:

    (a) not use the ARN Contravention Shares to vote on a scheme of arrangement proposed by a third party or by ARN's associates and

    (b) accept any takeover bid in respect of the ARN Contravention Shares proposed by a third party provided the "Takeover Bid Conditions" are met (which conditions included that the third party would proceed to compulsory acquisition if ARN accepted the bid in respect of the ARN Contravention Shares).

24. In relation to the initial Panel's declaration, ARN submitted (among other things) that:

    (a) Although the ARN Acquisition resulted in a contravention of section 606, "*it does not follow that a contravention of the Act should lead to a declaration of unacceptable circumstances*" because:

        (i) footnote 28 of Guidance Note 1 states that "*an honest and accidental contravention of s606 may not be unacceptable if it has not had any relevant adverse effect*" (ARN contended that "*[t]here has been no relevant adverse effect in this case*") and

        (ii) in *Yowie Group Limited 01 & 02* [2019] ATP 10 (**Yowie**), the Panel said (at [46]) that "*[w]e do not consider that s657A(2)(c) operates as to provide automatically that any contravention or a likely contravention of Chapter 6, 6A, 6B or 6C is per se unacceptable*".

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[4] Noting that at that stage, the initial Panel was still considering orders

[5] ARN also noted that it had not yet provided any submissions in relation to the review application and submitted that submissions should not be required until such time that the initial Panel concludes the matter

[6] See initial Panel's reasons at [93]

(b) ARN *"honestly and mistakenly understood"* that Allan Gray's voting power in ARN was at 18.7% at the time of the ARN Acquisition. The breach of section 606 arose as a result of Allan Gray's holding being just 0.04% above a 20% level of voting power in ARN.

(c) Allan Gray, whose relevant interest and voting power temporarily increased beyond the threshold in section 606, "*received no benefit from the breach"* (and ARN also had not benefited from the breach).

(d) Allan Gray's voting power in ARN fell below 20% by 31 October 2023 as a result of the selling of ARN shares. Therefore, no breach of section 606 subsists.

(e) There has been no control transaction for Southern Cross since the ARN Acquisition so there has been no detriment to Southern Cross shareholders and no impact to the market for control of Southern Cross.

(f) No person has been prevented from making an actual or potential control transaction, noting that as recently as 22 November 2023, a potential rival purchaser acquired a stake of just under 5% in Southern Cross.

25. In relation to the initial Panel's orders, ARN submitted that orders requiring divestiture of the Sale Shares are:

(a) "*disproportionate, punitive and unfairly prejudicial*" in this case where the breach of section 606 was not blatant or deliberate and arose from a margin of just 0.04% of ARN shares and

(b) not required to protect any third-party rights or interests, as the ARN Draft Undertaking would achieve this without negative consequences.

26. ARN submitted that the ARN Draft Undertaking would level the playing field and would strike a better balance without unfairly prejudicing the interests of ARN, Southern Cross and their respective shareholders, without negatively impacting the market for both ARN and Southern Cross shares, and by ensuring that no rival bidder is disadvantaged from the breach of section 606, since giving the ARN Draft Undertaking would mean (among other things) that:

(a) ARN could not use the ARN Contravention Shares to vote on its own consortium proposal should it proceed by way of scheme of arrangement

(b) if a competing takeover bid arises, ARN and its associates would be required to sell the ARN Contravention Shares into that takeover bid (subject to certain conditions) so that ARN could not block compulsory acquisition using the ARN Contravention Shares and

(c) if the ARN Contravention Shares held by ARN became influential in any vote on the consortium proposal, a court could consider this as part of its approval of the scheme of arrangement.

Interim orders sought

27. ARN sought an immediate stay of orders 2 to 5 of the initial Panel's orders (i.e. the sale of the Sale Shares) until the outcome of the review proceedings.

DISCUSSION

28. Upon deciding to conduct proceedings in relation to both the review of the initial Panel's declaration and the review of the initial Panel's orders, we made a direction that the matters be heard together.[7]

29. The powers of a review Panel are set out in section 657EA. Our role is to conduct a *de novo* review.[8] Subsection (4) provides that a review Panel has the same powers to make a declaration or orders as the initial Panel and may vary or set aside the decision reviewed or substitute a new decision. It may also affirm the decision reviewed after conducting proceedings or decline to conduct proceedings and allow the initial Panel's decision to stand.

30. Along with the material received in the review proceedings, we received all of the material before the initial Panel, as well as the initial Panel's reasons for decision. We have considered all of the material, but address specifically only that part of the material we consider necessary to explain our reasoning.

Interim orders request

31. The President of the Panel considered the interim orders request on an urgent basis and made interim orders (Annexure A) staying orders 2-5 of the initial Panel's orders to maintain the status quo.

32. Following the making of the interim orders, ASIC raised administrative concerns with order 1 of the initial Panel's orders remaining on foot, and requested that we stay order 1 of the initial Panel's orders (which provided that the Sale Shares were vested in ASIC) by way of a variation or a new interim order. We decided to make new interim orders (Annexure B) revoking the interim orders made by the President and staying orders 1-5 of the initial Panel's orders. The new interim orders also included a restriction on ARN and its associates disposing of or voting any Sale Shares in order to maintain the status quo.

The initial Panel's declaration

33. It is not in dispute that ARN breached section 606 when it made the ARN Acquisition on 19 June 2023. The submissions from the parties to the initial Panel and to us focussed mostly on the effect of that contravention and the circumstances where a contravention of section 606 may not result in unacceptable circumstances.

34. In relation to the effect of the contravention of section 606, the initial Panel stated:

> *"60. We disagree with ARN's submissions that the ARN Acquisition has had no effect on the control or potential control of Southern Cross. ARN acquired an additional 6.83% of Southern Cross shares beyond what it was entitled lawfully to acquire on 19 June 2023. This quantum of shares took ARN's holding over 10% which is sufficient to block compulsory acquisition. In our view this had, is having, will have or is likely to*

[7] Under regulation 16(1)(a) of the *Australian Securities and Investments Commission Regulations 2001* (Cth)
[8] *Eastern Field Developments Limited v Takeovers Panel* [2019] FCA 311 at [181]

have an effect on the control or potential control of Southern Cross, particularly in light of the subsequently announced ARN/Anchorage Offer."

35. Keybridge agreed with the initial Panel, stating that "*the impact on control is as a consequence of ARN acquiring an impermissible blocking stake in circumstances where a follow-on control transaction was later announced*".

36. ARN submitted that the initial Panel erred in finding that its acquisition of the ARN Contravention Shares *"had, is having, will have or is likely to have an effect on the control or potential control of Southern Cross"*. ARN submitted that its holding of over 10% *"has not **had** any effect on the control or potential control of Southern Cross, because SXL has not been subject to a takeover bid and ARN has not blocked compulsory acquisition"* (emphasis in the original).

37. The initial Panel went on to state:

> *"61. In addition, the quantum of the ARN Contravention Shares is substantial and represents a block of shares that was taken out of the market at a time when, in our view, Southern Cross was 'in play'. It may not be possible to know definitively the effect of this. For example, it is unknown whether, if ARN had not acquired the ARN Contravention Shares, other parties may have emerged to make a proposal for Southern Cross or acquire their own substantial interest in Southern Cross for the purposes of making a proposal, holding a blocking stake or for some other purpose. However, we are satisfied that ARN's acquisition of the ARN Contravention Shares likely gave or was likely to give ARN a competitive advantage."*

38. ARN submitted that the initial Panel's reasoning above was speculation that was "*also insufficient to a finding that the contravention had, is having, or will have or is likely to have an effect on the control or potential control"* because:

    (a) Southern Cross *"has squarely remained 'in play' at all material times, unaffected by the relevant breach, given"*:

        (i) the ACM Proposal was "*made after the breach occurred"*

        (ii) Southern Cross "*received confidential, non-binding, indicative proposals on 12 and 26 October 2023 in relation to acquiring some or all of Southern Cross's regional TV business (see paragraph 38 of the Initial Panel's reasons)"* and

        (iii) "*as recently as 22 November 2023, a potential rival purchaser acquired a stake of just under 5% of*" Southern Cross and

    (b) "*the only potential competitive advantage that ARN could have received from holding the 6.83% shares (by using that shareholding to block a rival transaction) would be rendered nugatory by the ARN Undertaking*".

39. We agree with ARN that Southern Cross was 'in play' at all material times. However, we do not agree with the remainder of ARN's submissions outlined in the paragraph above. We consider that the ARN Acquisition assisted ARN in its plans to undertake a control transaction with Southern Cross by giving an ability to:

(a) block compulsory acquisition by any competing bidder[9] and

(b) potentially vote against, and materially assist in defeating, a competing scheme.

40. In addition to these benefits, the ARN Acquisition would make it more difficult for potential acquirers to acquire a strategic stake and gain momentum during a time when Southern Cross was 'in play'. We also agree with the initial Panel (at [61]) that the ARN Acquisition may have allowed ARN to gain a competitive advantage.

41. Accordingly, we agree with the initial Panel's conclusion (at [60]) that the ARN Acquisition had, is having, will have or is likely to have an effect on the control or potential control of Southern Cross.

42. The initial Panel discussed (at [44] to [50]) the similarities of this matter to Yowie and the consideration of the circumstances when a contravention of section 606 may be unacceptable.

43. ARN submitted that the circumstances in the present case are different to those in Yowie, noting in particular:

(a) Allan Gray's holding of 20.04% in ARN compared to WAMI's holding of 30.98% in HHY Fund

(b) ARN's breach was inadvertent, the Panel in Yowie did not make a similar finding and

(c) *"In Yowie, the breach occurred on the same day that an intention to make a takeover bid was announced. The amount of shares bought in breach was above 10% and was clearly acquired to block compulsory acquisition of an announced deal. This is entirely different to the present case where the 6.83% of shares acquired by ARN were not intentionally bought to block compulsory acquisition (at a time when the deemed relevant interest was well known) and there is no control transaction currently on foot in respect of"* Southern Cross.

44. The initial Panel provided a useful summary of Yowie (at [44], footnote omitted)

> *"In that matter, two applications (heard together) concerned contraventions of section 606 and the substantial holder provisions by Wilson Asset Management (International) Pty Limited (WAMI) and contraventions of section 606 by Keybridge. WAMI's acquisitions occurred shortly after Keybridge had announced its intention to make an off-market takeover bid for all of the shares in Yowie Group Limited (Yowie) and resulted in WAMI's voting power in Yowie increasing from 19.73% to 32.17% in contravention of section 606. WAMI had voting power above 20% in both Keybridge and HHY Fund at the time and hence the section 608(3) deeming provision was engaged. Keybridge's acquisitions occurred during the course of proceedings on Keybridge's application and resulted in WAMI's voting power increasing from 32.17% to 32.65% in contravention of section 606. The Panel declared the circumstances*

[9] The initial Panel noted (at [60]) that *"ARN acquired an additional 6.83% of Southern Cross shares beyond what it was entitled lawfully to acquire on 19 June 2023. This quantum of shares took ARN's holding over 10% which is sufficient to block compulsory acquisition."*

> *unacceptable as they constituted or gave rise to contraventions of section 606 and, in the case of WAMI, section 671B."*

45. We consider that the acquisition made by Keybridge in Yowie is more analogous to the ARN Acquisition in the present case as the section 606 breach occurred as a result of an increase in WAMI's voting power (as opposed to WAMI's contravention which increased its own voting power and which we consider to be less analogous to the ARN Acquisition). However, it was clear that Keybridge's contravention was not inadvertent as it was made after it had brought WAMI's contravention to the Panel.

46. We consider that *Taipan Resources NL 09* [2001] ATP 4 (**Taipan 09**) is also analogous to the present case. In Taipan 09, Strata Mining had voting power of 22.51% of St Barbara and had voting power of 19.42% in Taipan. St Barbara made acquisitions in Taipan which resulted in Strata Mining's voting power increasing to 21.28%. Accordingly, St Barbara contravened section 606.

47. The Panel in Taipan 09 stated (at [38]) that:

> *"Section 606 is one of the cornerstone provisions of Chapter 6 of the Law. It provides that, except in certain circumstances, a person must not acquire interests in a listed company if that person's interests, aggregated with those interests of associated persons, would exceed 20% of the listed company. It is critical that this prohibition is complied with in order for the acquisition of control over a listed company to take place in an efficient, competitive and informed market in accordance with the other provisions of Chapter 6. A contravention of section 606 will therefore, by its very nature, generally be contrary to the principles set out in section 602."*

The Panel also stated (at [40(d)]) that:

> *"[T]he fact that a contravention may be of a technical nature does not mean that it ought to be excused - section 606 is a technical provision and parties will often be deemed to have interests in shares that are held by other parties."*

48. Similar to the present case where Allan Gray's interest in ARN fell below 20%, by the time the matter in Taipan 09 came to the Panel, Strata Mining's voting power in Taipan was diluted to less than 20%. The Panel considered (at [43]) that:

> *"It will often be appropriate for the Panel to make a declaration in cases such as this even if the voting power of the relevant party has subsequently decreased to less than 20%. This is because the contravention by itself constitutes unacceptable circumstances having regard to the policy objectives set out in section 602. However, it may be relevant in these circumstances for the Panel to take any subsequent decrease in voting power into account in determining appropriate orders to make under section 657D."*

49. ARN submitted that in comparing Taipan 09 to the present case, the "*circumstances giving rise to the relevant breaches and the steps taken following the breach are not similar and are entirely distinguishable from each other*", submitting (among other things) that the breach in Taipan 09 was clearly not inadvertent.

50. In relation to inadvertence, we agree with the initial Panel's view (at [54]) that ARN should have exercised greater care in ascertaining Allan Gray's voting power in ARN, noting that the increase in Allan Gray's voting power in ARN to above 20%

occurred as a consequence of the reduction in the number of ARN shares on issue as a result of on market buy-backs.

51. In submissions before the initial Panel, ARN said that "*ARN's existing lawyers were not asked to provide an opinion on compliance with s 606 of the Act.*" This, in our view, evidences a lack of sufficient diligence on the part of ARN.[10] In addition, a lack of diligence was also evident to us in the fact that ARN had in its possession the sharetrak report which indicated that as at 19 May 2023 Allan Gray held 20.04% in ARN, and yet the report was "*erroneously not relied on for the ARN Acquisition.*"[11]

52. Like the initial Panel (at [56]), we have taken into account ARN's submission that its breach of section 606 was inadvertent. However, we consider for the reasons discussed below, that inadvertence is not a sufficient basis to justify not making a declaration of unacceptable circumstances in this particular case.

53. Guidance Note 1: Unacceptable Circumstances states (at [24]) that:

> "*The existence of unacceptable circumstances does not depend on* ***conduct or intention****. Typically the Panel considers the effect of the circumstances on persons and the market in the light of the principles in s602*" (emphasis added).

54. Paragraph 25 of Guidance Note 1 goes on to say that unacceptable circumstances may arise whether or not there is also a breach, and lists a contravention of section 606 as an example involving possible unacceptable circumstances.

55. As the initial Panel noted (at [47]), the High Court in *Attorney General (Cth) v Alinta Limited* made the following observation in relation to contraventions of Chapter 6 and unacceptable circumstances:

> "*…In every case it remains for the Panel to conclude whether or not the circumstances are 'unacceptable'. For that conclusion to be reached, more is required than proof of a contravention of the Act, although in particular cases such proof may, in practice, be sufficient to result, without much more, in a conclusion of unacceptability.*"[12]

56. Footnote 28 of Guidance Note 1 cites various decisions where the Panel has made a declaration in relation to a breach of section 606. It also states that:

> "*An* ***honest and accidental*** *contravention of s606 may not be unacceptable if it has not had any* ***relevant adverse effect****: ISIS Communications Ltd [2002] ATP 10*" (emphasis added).

57. In the present case, we consider, as noted above, that, regardless of ARN's inadvertence, an acquisition occurred that resulted in a breach of section 606 as well as having an effect on the competitive landscape of a company that was 'in play'. We also agree with the initial Panel which noted at [51] that the circumstances in *ISIS Communications Ltd* do not "*bear much similarity to the present case*", as the

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[10] See the initial Panel's reasons at [28(h)]
[11] See the initial Panel's reasons at [28(b)]
[12] *Attorney-General (Cth) v Alinta Limited* (2008) 242 ALR 1, per Kirby J at [43]; see also Crennan and Kiefel JJ at [162]

contravention of section 606 was the result of certain provisions in an agreement, which were quickly and voluntarily deleted.

58. For the reasons above, we affirmed the initial Panel's declaration. In doing so, we had regard to the matters in section 657A(3).

59. We note that ARN's review applications did not refer to the Allan Gray Acquisitions, which were included as part of the Initial Panel's declaration and in relation to which Allan Gray provided an undertaking to the initial Panel regarding disposal of Southern Cross shares, and Allan Gray did not become a party to these proceedings.

60. We agree with the initial Panel that the Allan Gray Acquisitions contributed to the unacceptability and that the undertaking provided by Allan Gray adequately addressed the circumstances in so far as they related to the Allan Gray Acquisitions.[13]

Orders

61. We have set aside the initial Panel's orders and substituted the final orders set out in Annexure C. The initial Panel's orders vested the ARN Contravention Shares with ASIC for sale. Our final orders do not vest the ARN Contravention Shares but ameliorate the effect of the ARN Contravention Shares (referred to in our orders as the Relevant Shares) on any competing proposals for Southern Cross by requiring ARN to (in effect, among other things):

    (a) Vote the Relevant Shares in favour of a competing scheme of arrangement that is recommended by the majority of (non-conflicted) Southern Cross directors.

    (b) Accept the Relevant Shares into a competing takeover if the acceptance would allow the competing bidder to obtain more than 50% of the shares in Southern Cross and ARN (or its associates) have not made a competing proposal that is recommended by the majority of (non-conflicted) Southern Cross directors.

    (c) Not transfer (or otherwise dispose of) the Relevant Shares or voting rights to the Relevant Shares, except in the circumstances referred to in the orders.

    (d) Not vote the Relevant Shares, except in the circumstances referred to in the orders.

62. Under section 657EA(4) and section 657D, the Panel is empowered to make 'any order'[14] if 4 tests are met:

    (a) It has made a declaration under section 657A. The initial Panel's declaration was made on 22 November 2023 and we affirmed the initial Panel's declaration on 21 December 2023.

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[13] See the initial Panel's reasons at [56] and [106]. We understand that Allan Gray has confirmed to the initial Panel that in accordance with the undertaking it has disposed of the number of Southern Cross shares equal to those it acquired under the Allan Gray Acquisitions and that none of Allan Gray or its associates directly or indirectly acquired any of those shares

[14] Including a remedial order but other than an order requiring a person to comply with a provision of Chapters 6, 6A, 6B or 6C

(b) It must not make an order if it is satisfied that the order would unfairly prejudice any person. For the reasons below, we are satisfied that our final orders do not unfairly prejudice any person.

(c) It gives any person to whom the proposed order would be directed, the parties and ASIC an opportunity to make submissions. This was done on 3 January 2024 in a supplementary brief on orders to parties and on 10 January 2024, by way of email attaching draft orders to the parties, Anchorage and Mr Antony Catalano (on behalf of Australian Community Media).

(d) It considers the orders are appropriate under one or more of the paragraphs in section 657D(2). For the reasons below, we are satisfied that our final orders are appropriate to protect rights or interests of persons who have been, are being or will be or are likely to be affected by the unacceptable circumstances.

63. This is a *de novo* review on its merits, and we must form our own view as to what is the correct or preferable decision on this issue.[15] In considering whether to make orders under section 657D, we must weigh the object of protecting rights or interests of any person affected by the relevant circumstances against the prejudice to any person that would flow from the making of an order, in order to determine whether that prejudice would be unfair.[16]

64. We acknowledge that orders vesting shares in ASIC for sale are common orders made following a declaration of unacceptable circumstances related to a contravention of section 606. Typically, the Panel's vesting orders have the effect of prohibiting the person who has breached section 606 from acquiring the shares of the relevant company on market during the period of divestment. In contrast, the initial Panel decided to allow ARN to acquire Southern Cross shares on market during the divestment period after balancing various factors including the practical difficulty for ARN of distinguishing the Relevant Shares from other shares (noting that here it was possible for ARN to acquire shares in Southern Cross without further contravening section 606 because Allan Gray had reduced its voting power in ARN to less than 20%).[17]

65. We had some reservations about the impact of ARN's participation on market during the divestment period. In our view, allowing ARN to participate on market (but not otherwise) introduced further complexity to the divestment process. We also note that ARN would have the capacity to top any market price given it receives the proceeds from the sale of its shares which it re-purchases[18] and we were concerned about the impact of this on the sale process and the market generally.

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[15] See *Finders Resources Limited 03R* [2018] ATP 11 at [25]; Also as noted in *Eastern Field Developments Limited v Takeovers Panel* [2019] FCA 311 at [187]: *"It was for the Review Panel to exercise its wide discretion, as experts in the field, to make an appropriate order under s 657D(2) of the Corporations Act; an order that it was satisfied was appropriate and would not be unduly prejudicial."*

[16] *Glencore International AG & Anor v Takeover Panel & Ors* [2005] FCA 1290 at [52]

[17] See the initial Panel's reasons at [96] and [100]

[18] Keybridge submitted (among other things) that if ARN were to buy back the Sale Shares at a price higher than its current price (under the ARN/Anchorage Offer), it would need to raise its bid/scheme price for

66. We also considered the length of the divestment process in the circumstances. While 3 months is the typical period for a divestment process, in many cases where the Panel makes divestment orders, the company concerned is not 'in play'. We recognise that any divestment process in the context of a company 'in play' may have an effect on the market for control of that company. Here, however, given ARN's ability to acquire Southern Cross shares on market during the divestment period, we were particularly concerned about the uncertainty surrounding ownership of the Relevant Shares during that period.[19] We note that in different circumstances, we may not give the same weight to this concern.

67. We next turned our attention to the ARN Draft Undertaking that ARN submitted would protect any third-party rights or interests without the negative consequences of the initial Panel's orders (see paragraphs 25 and 26). We shared the concerns of the initial Panel at [94] of their reasons that the ARN Draft Undertaking would effectively:

    (a) remove 6.83% of Southern Cross shares from participating in voting on a rival scheme and

    (b) allow ARN to accept a takeover bid from an associate of ARN.

68. Keybridge submitted (among other things) that the ARN Draft Undertaking did not remedy the unacceptable circumstances and that it was "*very difficult to conclude that the complicated and restrictive undertaking provides a superior outcome to the usual, clean and definitive resolution of the Initial Panel's Orders*". We agree that the ARN Draft Undertaking did not entirely negate the competitive advantage that ARN obtained as a result of the ARN Acquisition.

69. ARN provided a revised version of the ARN Draft Undertaking which included a 'match or accept' condition[20] based on relief provided by ASIC in relation to joint bids. However, the revised undertaking did not prohibit ARN from voting the Sale Shares in favour of control transactions other than a scheme of arrangement.

70. We agree with Keybridge that the ARN Draft Undertaking was complicated in its drafting and including the 'match or accept' condition made the ARN Draft Undertaking even more complex. Given the nature of an undertaking,[21] it may be difficult for the Panel to deal with any issues that arise in interpreting or applying such clauses.

71. Accordingly, in order to address our concerns, we asked the parties (among other things):

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everyone's benefit having regard to the 'minimum bid price rule' under section 621(3). This submission was rebutted by ARN, which submitted (among other things) that the ARN/Anchorage Offer was expected to proceed by way of a scheme of arrangement. Having regard to the orders we made, we did not take this point further

[19] Noting also the length of time since the ARN Acquisition

[20] Being a condition applied by ASIC in connection with the aggregation of a holding under its joint bid policy: see ASIC Regulatory Guide 9: Takeover bids, pages 137-140

[21] Section 201A(2) of the *Australian Securities and Investments Commission Act 2001 (Cth)*

(a) what would be the implications if we reduced the time for the authorised seller to dispose of the Relevant Shares from the date of its engagement from three months to "*one month (or a longer period determined by the Panel)*" and

(b) whether the Panel should accept an undertaking from ARN in lieu of orders in a form that we drafted (which was very similar to our final orders) (**Review Panel Draft Undertaking**).

72. ARN submitted that a forced sale of the Relevant Shares in a one-month timetable would have:

(a) a significant negative impact on the prevailing share price of Southern Cross shares that would be to the detriment of shareholders and

(b) a significant impact on the potential loss that ARN would suffer from a faster sale of Southern Cross shares at a larger discount, which would be to the detriment of ARN shareholders.

73. ARN submitted that the above impacts could be entirely avoided if we accepted the Review Panel Draft Undertaking, which ARN was prepared to offer, subject to an amendment discussed below.

74. Keybridge submitted that the Review Panel Draft Undertaking would be an inferior policy outcome to the initial Panel's orders.[22] Keybridge submitted that the mere act of ARN continuing to hold the Relevant Shares "*may, of itself limit a competitive approach on the company*", submitting (among other things) that:

(a) "*a prospective bidder will want a head start in building voting control (shares they already own won't need to be won over in a bid)*"

(b) "*ordinarily, a prospective bidder will want to buy <20% at a lower price than they may bid, as bids tend to be at a 30%+ premium to market. This means the total price a prospective bidder may pay is reduced by a lower cost stake they may accumulate prior to a bid, thus improving the viability of a prospective bid*"

(c) in "*the event a prospective bidder starts a bidding war (as is very possible, if not likely, here) and loses, they will want to at least take a positive financial return from selling their strategic stake into the successful bid. And, thus the ability to build such a stake is likely critical to the strategy*" and

(d) allowing ARN to keep the shares would, in effect, remove the opportunity for someone to acquire these shares and vote against any scheme of arrangement involving ARN.

75. ARN submitted in response that (among other things):

(a) A pre bid position equivalent to the Relevant Shares could be built on market on ASX quickly based on monthly share trading volumes in ARN in the past six months. There would be time for another party to build a pre-bid stake, given

[22] Or a varied order which required the sell down of the Relevant Shares to occur in a one-month period

the regulatory approvals the Consortium would require before a scheme meeting.

(b) There are a number of other substantial or large shareholders from whom Southern Cross shares could be acquired on market (including Allan Gray, who still held 11.97% of Southern Cross shares at the time of ARN's submission).

76. We accept that allowing ARN to keep the Relevant Shares removes the opportunity for someone to acquire those shares. However, we agree with ARN's submissions at paragraph 75(a) and, as discussed further below at paragraph 89, we believe that it is still open for market participants to acquire a substantial interest in Southern Cross.

77. In addition, as we discuss further below at paragraph 90, we consider that Keybridge's submission (at paragraph 74(d)) regarding the ongoing effect of ARN holding the Relevant Shares was speculative and that the sale of the Relevant Shares to third parties does not necessarily mean that those shares will be voted against a scheme that may emerge from ARN.

78. ASIC submitted (among other things) that *"shortening the timeframe for the sale of the shares may increase the impact on the market for Southern Cross Media shares"* and stated that:

> *"In general, if compliance with a divestment order is likely to have a negative impact on a market for shares, it will hinder ASIC's ability to retain and instruct an Appointed Seller. That is because Appointed Sellers may not wish to be seen to be responsible for negatively impacting a market for shares, even where an Appointed Seller may be acting on orders made by the Panel. Further, an Appointed Seller may not wish to be engaged if it does not consider it feasible to dispose of the Sale Shares in compliance with the order."*

79. ASIC provided some market data and submitted that this data suggested that it was unlikely that an *"Appointed Seller would be able to dispose of the Sale Shares in one month without severe under-pricing, which would be inconsistent with preserving market integrity and an efficient, competitive and informed market: s602(a)"*.

80. Keybridge submitted that the market data provided by ASIC did not appear to include trading on Chi-X and there was *"more than enough demand to clear the Sale Share stake without negatively impacting the market"*.

81. The task of appointing the Appointed Seller is with ASIC and we note ASIC's concerns with a shortened time frame for the sale of the Relevant Shares.

82. Keybridge submitted that it would be *"prepared to offer an underwrite, on commercial terms, to ensure that the Sale Shares are not sold below the recent market price of SXL being a VWAP of 90.4c"*[23], which, in Keybridge's opinion, would completely ameliorate any concern the Review Panel or ARN may have that the sale of the Sale Shares might adversely affect the market in Southern Cross or unduly prejudice ARN.

[23] As at the date of the submission

83. Giving this opportunity to Keybridge alone would potentially give it a windfall gain and potential competitive advantage that we consider would not be appropriate in the circumstances.

84. Keybridge also submitted that under our orders, parties would be "*free in the future to acquire shares in blatant contravention of the Act, willy-nilly, to [their] own advantage and merely launch a follow on bid after the fact as a cure all.*" We disagree with Keybridge's characterisation; rather than merely launch a follow on bid, ARN would need to make an unconditional takeover bid or enter into a binding scheme implementation agreement (as applicable) which is recommended by a majority of non-conflicted directors of Southern Cross in order to avoid the requirement under our orders to accept into a competing takeover bid (provided the Takeover Bid Requirements (as defined in the orders) are met).

85. Mr Catalano submitted that our orders "*unfairly prejudice me, ACM and any party that may be interested in the control of SXL and the rejection or failure of the proposed scheme of arrangement put forward by ARN and [Anchorage]*", including because:

    (a) the orders allow ARN to withhold from the market a substantial block of Southern Cross shares in circumstances where other parties interested in the control of Southern Cross are trying to acquire a stake in Southern Cross, thereby reducing the ability for a competitor to obtain a foothold

    (b) the orders allow ARN to receive the economic benefit of retaining an illegally obtained stake in circumstances where there might be price appreciation in a competitive control environment and

    (c) the orders will provide an unfair competitive advantage to ARN and Anchorage in relation to any vote on the proposed scheme; by allowing ARN to retain ownership of the Sale Shares, ARN has the significant unfair advantage of ensuring the Sale Shares do not fall into the hands of shareholders who may vote against the proposed scheme,

    and that we should not vary the initial Panel's orders. We were not persuaded by these submissions, which we considered to be similar to those articulated by Keybridge set out at paragraph 74 above, and we re-iterate our remarks set out in paragraphs 76 and 77 above.

86. Mr Catalano also submitted that in order to mitigate our concerns regarding the disruption to the market in Southern Cross shares as a result of the initial Panel's orders, Australian Community Media would be prepared to acquire 100% of the Sale Shares at current market prices. This is similar to Keybridge's offer to underwrite the sale of the Sale Shares (see paragraph 82 above), and for similar reasons we do not consider that it was appropriate to explore this offer further.

87. Anchorage submitted that it did not consider our orders would unfairly prejudice it and did not make any other comments on the orders.

88. In the specific facts of this case, we decided to set aside the vesting orders made by the initial Panel, and we made our orders because (among other things):

(a) of the potential market impact of the sale of the Relevant Shares, including uncertainty of ownership, during a 3-month period while Southern Cross was "in play"

(b) ARN's contravention of section 606 did not give it effective control of over 20% in Southern Cross shares but was the result of an increase in Allan Gray's voting power and

(c) of the submitted inadvertence of, and the circumstances that led to, ARN's contravention of section 606.

89. We acknowledge that ARN continuing to hold the Relevant Shares (subject to the restrictions under our orders) could have an impact on any third parties seeking to acquire a substantial stake in Southern Cross in the future (whether as a precursor to a bid or otherwise). However, having regard to our experience, we believe that, given the amount of the Relevant Shares and the liquidity of the market for Southern Cross shares, it is still open for market participants to purchase shares and seek to acquire a substantial stake in Southern Cross. We note that on 12 January 2024, a notice of initial substantial holder was lodged disclosing that a party had acquired voting power in Southern Cross of 5.01%.

90. We also acknowledge that ARN continuing to hold the Relevant Shares effectively excludes the Relevant Shares from being voted on any acquisition of Southern Cross by way of a scheme involving ARN, and hence reduces the size of the voting pool on such a scheme.[24] If the Relevant Shares were in the hands of a third party, the exclusion likely would not apply, and it would be a matter for that party to decide on how to vote their shares (including for or against any scheme).

91. Having considered this issue and the size of the Relevant Shares, drawing on our experience, we consider that our orders deal with the substantive effects of ARN's contravention on the market for corporate control by preventing the Relevant Shares being used to block a competing proposal. In fact, under our orders, the Relevant Shares must be voted in favour of any recommended transaction (including a scheme) not involving ARN or its associates.

92. To the extent that it can be argued that not including an order to sell down the Relevant Shares means our orders may prejudice persons who wish to acquire them, we consider our orders are not unfairly prejudicial. As noted above, we also consider it is still possible for other parties to acquire a substantial stake in Southern Cross on market.

93. We appreciate that ARN was willing to provide an undertaking to a similar effect as our orders (and we consider that ARN's preparedness to offer potential solutions during these review proceedings assisted us). However, the nature of such an

[24] Noting that the court usually disregards any votes cast by a bidder in considering whether to approve a scheme, and the market practice is for the bidder to refrain from voting

undertaking would be complex, it is difficult to foresee every scenario where there is a battle for control of a company and our ability to modify undertakings is limited.[25]

94. We accepted some changes of a technical nature to the Review Panel Draft Undertaking (which effectively became our orders) from Southern Cross. We did not make some of the proposed changes because we considered (including due to the complexity of the matter) it would be better to deal with the issues that they intended to solve by way of a variation to the orders if the need arose.

95. We also declined to incorporate a request by ARN (in relation to the Review Panel Draft Undertaking) that ARN and its associates not be prohibited from selling the Relevant Shares in a widely dispersed on market sale on the ASX in the ordinary course, as again we considered that any intended sale by ARN of the Relevant Shares could be dealt with by way of a variation to the orders. Accordingly, we included a liberty to apply order.[26]

96. In conclusion, while we consider that the issues in this case involve matters about which reasonable minds may differ[27], we consider, on balance, that our orders best ameliorate the effect of the ARN Acquisition on any competing proposals for Southern Cross and sufficiently protect the rights and interests of persons affected by the unacceptable circumstances (see section 657D(2)(a)) and do not unfairly prejudice any person (see section 657D(1)), whilst avoiding the issues we have discussed in relation to vesting the Relevant Shares in ASIC for sale.

Richard Hunt
President of the sitting Panel
Decision dated 21 December 2023 (declaration) and 17 January 2024 (orders)
Reasons given to parties 22 February 2024
Reasons published 28 February 2024

[25] See paragraph 70 above
[26] Which acknowledges that a variation to the orders may be necessary to deal with changes in circumstances and may remove some of the usual procedural steps
[27] As was noted by the review Panel in *Finders Resources Limited 03R* [2018] ATP 11 at [24] and the Court in *Eastern Field Developments Limited v Takeovers Panel* [2019] FCA 311 at [133]

Advisers

Party	Advisers
Keybridge	-
Southern Cross	Corrs Chambers Westgarth
ARN	Gilbert + Tobin

Australian Government
Takeovers Panel

Annexure A

CORPORATIONS ACT
SECTION 657EA
INTERIM ORDERS

SOUTHERN CROSS MEDIA GROUP LIMITED 03R

On 6 December 2023, ARN Media Limited made an application to the Panel seeking a review of the Panel's decision to make orders[1] in *Southern Cross Media Group Limited* (the **Orders**) and requesting a stay order pending the review.

The President ORDERS:

1. That orders 2, 3, 4, and 5 of the Orders be stayed.

2. These interim orders have effect until the earliest of:

    (i) further order of the President or, once appointed, the review Panel

    (ii) the determination of the proceedings and

    (iii) 2 months from the date of these interim orders.

Tania Mattei
General Counsel
with authority of Alex Cartel
President
Dated 6 December 2023

[1] on 24 November 2023, ARN Media Limited also made an application to the Panel seeking a review of the Panel's decision to make a declaration of unacceptable circumstances in relation to the affairs of Southern Cross Media Group Limited (see TP23/39)

Australian Government
Takeovers Panel

Annexure B

CORPORATIONS ACT
SECTION 657EA
INTERIM ORDERS

SOUTHERN CROSS MEDIA GROUP LIMITED 03R

On 6 December 2023, ARN Media Limited (**ARN**) made an application to the Panel seeking a review of the Panel's decision to make orders[1] in *Southern Cross Media Group Limited* (the **Orders**) and requesting a stay order pending the review.

On 6 December 2023, the President made interim orders staying orders 2, 3, 4 and 5 of the Orders (the **Interim Orders**).

On 7 December 2023, ASIC made a request to the Panel for a further stay order pending the review.

The Panel ORDERS:

1. That the Interim Orders are revoked and replaced by these interim orders.
2. That orders 1, 2, 3, 4 and 5 of the Orders be stayed.
3. That ARN and its associates must not dispose of, transfer, charge or vote any Sale Shares.
4. These interim orders have effect until the earliest of:
    (i) further order of the Panel
    (ii) the determination of the proceedings and
    (iii) 2 months from the date of these interim orders.

[1] On 24 November 2023, ARN also made an application to the Panel seeking a review of the Panel's decision to make a declaration of unacceptable circumstances in relation to the affairs of Southern Cross Media Group Limited (see TP23/39)

Interpretation

Capitalised terms used but not defined in this document have the meaning given to them in the Orders.[2]

Tania Mattei
General Counsel
with authority of Richard Hunt
President of the sitting Panel
Dated 11 December 2023

[2] Unless otherwise indicated, all statutory references are to the *Corporations Act 2001* (Cth) and all terms used in Chapter 6 or 6C have the meaning given in the relevant Chapter (as modified by ASIC)

Australian Government
Takeovers Panel

Annexure C

CORPORATIONS ACT
SECTIONS 657EA AND 657D
ORDERS

SOUTHERN CROSS MEDIA GROUP LIMITED 02R AND 03R

The Panel in *Southern Cross Media Group Limited* made a declaration of unacceptable circumstances on 22 November 2023.

THE PANEL ORDERS

1. ARN must:

   (a) Not transfer or otherwise dispose of any of the Relevant Shares or transfer or otherwise dispose of any voting rights or do anything resulting in a person acquiring a Relevant Interest in respect of any of the Relevant Shares to any person, other than pursuant to these orders.

   (b) Not vote any of the Relevant Shares, other than pursuant to these orders.

   (c) Not accept a Takeover Bid by any of ARN's Associates in respect of any of the Relevant Shares.

   (d) Vote all of the Relevant Shares in favour of a Non-Associated Resolution that is recommended by the majority of the non-conflicted directors of Southern Cross, including in relation to approving a Non-Associated Scheme of Arrangement.

   (e) Accept a Takeover Bid by a person other than one of ARN's Associates in respect of all of the Relevant Shares provided that:

      (i) the Takeover Bid Requirements are met and

      (ii) at the time the Takeover Bid Requirements are met, the Recommended Bid Requirements do not apply.

2. ARN must confirm in writing to the Panel when it has satisfied its obligations under these orders.

3. ARN must procure that each of its Associates comply with orders 1 and 2.

4. The parties to these proceedings and ASIC have the liberty to apply for further orders in relation to these orders.

5. These orders apply until the earlier of:

   (a) ARN or any of its Associates obtaining voting power of 100% in Southern Cross or

   (b) further order of the Panel.

Interpretation

6. In these orders the following terms apply.

   Act means the *Corporations Act 2001 (Cth)*.

   ARN means ARN Media Limited.

   ARN Bidder means:

   (a) ARN or

   (b) ARN and one or more of its Associates or

   (c) One or more of ARN's Associates

   Associates has the meaning given in section 12 of the Act, and includes Anchorage Capital Partners Pty Limited and its Associates. For the avoidance of doubt, the Associates of ARN include persons who are associated with ARN at the time that these orders operate.

   Non-Associated Resolution means a resolution that does not relate to any transaction to which ARN or any of its Associates is a party.

   Non-Associated Scheme of Arrangement means a scheme of arrangement in respect of Southern Cross that does not involve ARN or any of its Associates as a bidder.

   Recommended Bid Requirements means:

   (a) ARN Bidder has made a takeover bid for Southern Cross that is unconditional or has been declared unconditional and is open for acceptance that has been recommended for acceptance by the majority of the non-conflicted directors of Southern Cross or

   (b) ARN Bidder has entered into a binding scheme implementation agreement with Southern Cross relating to a scheme of arrangement in respect of Southern Cross and the majority of the non-conflicted directors of Southern Cross have recommended that shareholders vote in favour of the scheme of arrangement.

Relevant Interest for the purposes of order 1(a) only has the meaning given to that term in the Act, but modified as if:

(a) sections 609(6) and 609(7) of the Act did not apply and

(b) the term specifically includes entering into, obtaining or exercising any rights or interests under, any cash-settled derivative contracts, contracts for differences, other derivative contracts or any other agreement or arrangements which confer rights the economic effect of which is equivalent or substantially equivalent to holding, acquiring or disposing of any issued shares,

and otherwise has the meaning given to that term in the Act.

Relevant Shares means 16,376,774 ordinary shares in the issued capital of Southern Cross held by ARN.

Southern Cross means Southern Cross Media Group Limited.

Takeover Bid means an off market bid or market bid under Chapter 6 of the Act for Southern Cross.

Takeover Bid Requirements means:

(a) if the Takeover Bid is subject to conditions, each of those conditions have been satisfied or waived such that the Takeover Bid is unconditional (or would be satisfied if ARN or its Associates accept the Takeover Bid in respect of the Relevant Shares) and

(b) the bidder and its associates has, or would obtain if ARN or its Associates accept the Takeover Bid in respect of the Relevant Shares, a Relevant Interest in more than 50% of the voting shares in Southern Cross.

Allan Bulman
Acting General Counsel
with authority of Richard Hunt
President of the sitting Panel
Dated 17 January 2024