



Australian Government

Takeovers Panel

**Reasons for Decision
Sierra Rutile Holdings Limited
[2024] ATP 11**

Catchwords:

Decline to conduct proceedings – association – evidence – collective actions

Corporations Act 2001 (Cth), sections 12, 249D, 602, 606, 657(3), 671B

Takeovers Panel Procedural Rules 2020 (Cth), rule 20.2

ASIC Regulatory Guide 128: Collective action by investors

Mount Isa Minerals Limited [2024] ATP 7, Benjamin Hornigold Limited 12 [2023] ATP 10, Firetail Resources Limited [2022] ATP 21, Aguia Resources Limited [2019] ATP 13, Molopo Energy Limited 03R, 04R & 05R [2017] ATP 12, Molopo Energy Limited 01 & 02 [2017] ATP 10, Resource Generation Limited [2015] ATP 12, Dragon Mining Limited [2014] ATP 5, Mount Gibson Iron Limited [2008] ATP 4

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

INTRODUCTION

1. The Panel, Louise Higgins, Ruth Higgins SC and Timothy Longstaff (sitting President) declined to conduct proceedings on an application by PRM Services LLC in relation to the affairs of Sierra Rutile Holdings Limited. The application concerned allegations that certain shareholders of Sierra were associated and were acting together to influence its affairs, in particular in relation to the recommencement of certain mining operations and voting for the appointment of directors at an AGM. The Panel considered that there was no reasonable prospect that it would declare the circumstances unacceptable.

2. In these reasons, the following definitions apply.

AGM	The annual general meeting of Sierra held on 16 May 2024
Bid	On-market takeover bid announced on 20 March 2024 by PRM to acquire all of Sierra’s fully paid ordinary shares (not already owned or controlled by PRM) for 9.5 cents per share
Concert Parties	Has the meaning given in paragraph 21
GCAH	Gemcorp Commodities Assets Holdings Limited
GCM	Gemcorp Capital Management Limited
Gem Group	Has the meaning given in paragraph 26(b)
Leonoil	Leonoil Company Limited
Mano	Mano Mining and Logistics Limited

Takeovers Panel

Reasons – Sierra Rutile Holdings Limited [2024] ATP 11

Milele	Milele Energy Limited
NP	National Petroleum (SL) Limited, a subsidiary of Leonoil
PRM	PRM Services LLC, the Applicant
ROL	Rockbridge Overseas Limited
Sierra	Sierra Rutile Holdings Limited

FACTS

3. Sierra is a public company listed on ASX (ASX code: SRX). It operates (among other things) a natural rutile mining operation in Sierra Leone known as Area 1.
4. On 29 January 2024, Sierra announced on ASX that, because the Government of Sierra Leone had informed Sierra's operating subsidiary that it was seeking to renegotiate its agreement with the subsidiary, Sierra's existing operations at the Area 1 mining site would be suspended with effect from 11 March 2024.
5. On 29 February 2024, Mano and ROL and their related interests lodged a substantial holder notice (signed by Assad Yazbeck) disclosing a relevant interest in 6.56% of Sierra.¹
6. On the same day, PRM lodged a substantial holder notice disclosing a relevant interest in 8.19% of Sierra.²
7. On 20 March 2024, PRM announced an on-market bid in which it offered to acquire all the fully paid ordinary shares in Sierra not owned or controlled by it for 9.5 cents per share and issued its bidder's statement. The announcement stated (among other things) that PRM's bid was due to open on 4 April 2024 and scheduled to close on 5 May 2024 (unless extended).
8. On 21 March 2024, Sierra announced that it had received a section 249D³ notice from PRM seeking to put 4 resolutions forward for the removal of 4 directors of Sierra and their replacement with 4 candidates nominated by PRM.
9. On 26 March 2024, PRM issued a replacement bidder's statement.
10. On 27 March 2024, Sierra announced that it had been informed that PRM had revoked the proposal to remove one of the directors. In addition, Sierra announced that Mano and ROL had nominated a director.
11. On 8 April 2024, Sierra issued its target's statement recommending that shareholders reject PRM's offer.
12. On the same day, Sierra issued a notice of AGM for Thursday, 16 May 2024.

¹ At the date of the application, Mano and ROL together had a relevant interest in 11.90% of the voting shares in Sierra

² Subsequently amended to 6.15%

³ 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)

Takeovers Panel

Reasons – Sierra Rutile Holdings Limited [2024] ATP 11

13. On 29 April 2024, Sierra announced that PRM had revoked proposed resolutions for the appointment of 3 candidates nominated by it. It also had received another section 249D notice from PRM calling for an extraordinary general meeting to consider the removal of another director of Sierra.⁴
14. On the same day, Leonoil lodged a substantial holder notice disclosing a relevant interest in 5.39% of Sierra.⁵
15. Also on the same day, GCAH lodged a substantial holder notice disclosing a relevant interest in 19.9% of Sierra, having purchased the shares under a share sale agreement from another substantial holder.
16. On 3 May 2024, PRM extended the offer period under the Bid to 31 July 2024.⁶
17. On 6 May 2024, Sierra announced that it had been issued with a notice by the Government of Sierra Leone that it was in breach of the Mines and Mineral Developments Act 2023 and had been directed to recommence mining operations in Area 1 by 31 May 2024.
18. On 8 May 2024, Sierra announced its intention to restart mining operations at Area 1.
19. On 16 May 2024, Sierra held its AGM. The appointment of the candidate nominated by Mano and ROL was passed. Resolutions to remove directors and appoint the candidate nominated by PRM were not passed.

APPLICATION

20. By application dated 23 May 2024, PRM sought a declaration of unacceptable circumstances. It submitted that:
 - (a) *“The Concert Parties had a relevant agreement or have acted in concert for the purpose of controlling or influencing the affairs of [Sierra], namely the recommencement of the operations at the Area 1 mining site, and they have all directly or indirectly benefitted from the recommencement of the operations at the Area 1 mining site”* and
 - (b) *referencing Molopo 03R,⁷ alternatively “the actions of the Concert Parties, combined with the material financial interests each had in having the operations at the Area 1 mining site restarted, and the influence that they have subsequently exerted over [Sierra], gives rise to a control effect in [Sierra] that constitutes unacceptable circumstances.”*
21. The application identified the Concert Parties as Mano and ROL, Leonoil and GCAH *“together, with their respective associates”* (each a **Concert Party**, and together the **Concert Parties**). While not clearly identified in the application,⁸ it appears from the

⁴ On 14 May 2024, Sierra issued a notice of extraordinary general meeting to be held on 25 June 2024 in response to PRM’s section 249D notice

⁵ At the date of the application, Leonoil had a relevant interest in 12.49% of the voting shares in Sierra

⁶ With relief under ASIC Instrument 24-0345

⁷ *Molopo Energy Limited 03R, 04R & 05R* [2017] ATP 12 at [250]-[263]

⁸ For example, the application identifies persons in each company but describes them simply as ‘key persons’

Takeovers Panel

Reasons – Sierra Rutile Holdings Limited [2024] ATP 11

substantial holder notices that the alleged respective associates were, or at least included:

- (a) in respect of Mano and ROL – Ecsson Investments Limited, Assaad Yazbeck and Joseph Yazbeck
 - (b) in respect of Leonoil – Vincent L Kanu Jr and Mohamed B Cole
 - (c) in respect of GCAH – Raymond Busuttill (sole director of GCAH), Gemcorp Holdings Limited, Gemcorp Midco Limited, Gemcorp Group Limited and Atanas Bostandjiev.
22. PRM submitted that the acquisition of shares in Sierra by Mano and ROL, Leonoil and GCAH contravened sections 606 and 671B and resulted in:
- (a) The above acquisitions not taking place in an efficient, competitive and informed market
 - (b) Sierra’s shareholders (other than the Concert Parties) and the market in general not being aware of the association and the ultimate control of Sierra
 - (c) Sierra’s board abandoning its commercial position regarding the Area 1 suspension
 - (d) Sierra’s shareholders not having sufficient time and information to consider the above acquisitions
 - (e) Sierra’s shareholders not having an equal and reasonable opportunity to participate in the premium paid by the Concert Parties to acquire control and
 - (f) Sierra’s shareholders not being informed that the Concert Parties were seeking to obtain control of Sierra and not being given the time and information that would have been required under a takeover bid.

Interim orders

23. PRM sought interim orders that, pending the determination of the Panel application:
- (a) *each of [the] Concert Parties and their respective associates, are restrained from acquiring any further shares or increasing their relevant interest in voting power in [Sierra] and*
 - (b) *each of the Concert Parties are restrained from exercising any voting or other rights attached to their shares in [Sierra].*
24. We considered that interim orders were not needed. Any acquisitions could be dealt with as part of final orders if the claims were established. Nor was a voting restriction required at an interim stage. The extraordinary general meeting was scheduled for 25 June 2024 and this aspect of the interim order could be revisited nearer to that date if necessary.

Final orders

25. PRM sought final orders to the effect that:

Takeovers Panel

Reasons – Sierra Rutile Holdings Limited [2024] ATP 11

- (a) shares acquired by the Concert Parties in excess of a combined voting power of 20% be vested in ASIC for sale to unassociated persons
- (b) the Concert Parties be restrained from acquiring any further shares in Sierra for 12 months
- (c) the Concert Parties provide corrected substantial holder disclosure and be restrained from exercising any voting or other rights attached to shares in Sierra until one month after such disclosure has been made and
- (d) Sierra make an ASX announcement describing the circumstances around, and the existence and nature of, the alleged association between the Concert Parties, its effect on voting power and the effect of any Panel orders.

Preliminary submissions

- 26. Preliminary submissions were provided by the following alleged Concert Parties:
 - (a) Leonoil, dated 27 May 2024
 - (b) GCAH, GCM and Milele (for convenience, **Gem Group**), dated 27 May 2024 and
 - (c) Mano and ROL, dated 27 May 2024.
- 27. Preliminary submissions were also provided by Sierra dated 27 May 2024.
- 28. Leonoil submitted that the inferences on which PRM relied were not supported by the facts and that some alleged facts were untrue. It submitted that the Panel should not conduct proceedings.
- 29. Relying on *Mount Gibson*,⁹ Leonoil submitted that an “*applicant must persuade the Panel by the evidence adduced that it should conduct proceedings... The Application falls short of that standard.*”
- 30. The Gem Group submitted that the application was based on circumstantial evidence, which (it submitted) aspects of the application itself had conceded. The Gem Group also pointed to factual errors in the application.
- 31. Moreover, the Gem Group submitted that, rather than an association whose purpose was to restart mining operations in Area 1, “*The far more obvious explanation for [Sierra] deciding to restart operations is that.... [it] was issued a demand by the government of Sierra Leone to recommence operations at Area 1 by 31 May 2024 (as the government alleged the Company was in breach of legislation by suspending operations), and the failure to comply with such demand may have resulted in the concessions issued by the Sierra Leone government being revoked, which are clearly of commercial significance to [Sierra] and all of its shareholders generally.*”
- 32. The Gem Group further submitted, among other things, that they had had no discussions with any other Concert Party regarding the acquisition of shares, or any

⁹ *Mount Gibson Iron Limited* [2008] ATP 4 at [15]

Takeovers Panel

Reasons – Sierra Rutile Holdings Limited [2024] ATP 11

understanding with any other Concert Party regarding how they would vote their shares at the AGM.

33. Mano and ROL submitted that *“The Applicant’s allegations of an association between the Concert Parties rest on tenuous inferences based on conjecture and lacking a legitimate factual basis or evidence.”*
34. They submitted that they had no understanding with the other Concert Parties and acted independently with respect to their share purchases and voting at the AGM, noting that their rejection of the bidder’s nominees for the board in favour of the incumbent directors maintained the status quo *“prior to [PRM] obtaining a relevant interest in at least 50% of [Sierra’s] shares via its Takeover Bid.”*
35. They too submitted that the most plausible reason for restarting the Area 1 mining operation was the demand issued by the government of Sierra Leone. Similarly to the other Concert Parties, Mano and ROL submitted that PRM had *“attempted to draw inferences of an association by relying on tenuous links...”*.
36. Sierra submitted that its decision to restart mining operations at Area 1 was driven by the intention that it would be temporary and receipt of the notice from the Government of Sierra Leone, *“notwithstanding it did not agree that it had committed the breach of the [Act]”*.
37. The Panel’s Procedural Rule¹⁰ 20.2 states *“An applicant must not make preliminary submissions. Despite the prohibition, PRM lodged a preliminary submission. We decided to receive it. We did so because we wanted to ensure that we gave full weight to the closely argued and densely detailed application.¹¹ We also considered that there were some gaps in some of the preliminary submissions. For example, Leonoil submitted that “Leonoil does not have a fuel supply contract with the Company”. However, the application referred to Sierra having a fuel supply contract with NP (Leonoil’s subsidiary) until January 2023.*
38. PRM noted that *“it has faced challenges with sourcing information on foreign-incorporated entities”* and submitted that *“a reasonable inference of an association between the Concert Parties can be drawn from the evidence presented to the Panel in the Application and in this letter, which considered as a whole, is sufficiently compelling for the Panel to determine that proceedings be conducted in respect of the subject matter.”*
39. PRM then detailed its responses to each of the preliminary submissions, alleging some further gaps in the material. We need not expand.

DISCUSSION

40. While we were not persuaded to conduct proceedings on the basis of the application and preliminary submissions, and while out of process submissions in breach of the

¹⁰ Takeovers Panel Procedural Rules 2020

¹¹ We considered requiring the application to be restated to ensure that we were directed to the apposite points

Takeovers Panel

Reasons – Sierra Rutile Holdings Limited [2024] ATP 11

Rules are not to be encouraged, we felt we should ask additional questions before deciding whether to conduct proceedings given:

- (a) the state of the information before us (some of which was plainly contradictory)
- (b) the fact that some of the circumstances appeared obviously commercial
- (c) the difficulties that the applicant faced in obtaining information and
- (d) the efforts that had been made in preparing the intricate application.

41. In short, we wanted to test some of the propositions that had been put forward and ensure that gaps were explored.
42. Accordingly, we prepared a short, focused set of ‘preliminary questions’ for the parties. In our request for additional information, we specifically stated that the parties were not invited to provide rebuttal submissions. Despite this PRM made a further out of process submission. Given our decision not to conduct, we decided to receive it in case something in it caused us to reconsider this decision.
43. Among other things, we invited the parties (other than PRM) to address whether there was anything in, or arising from, PRM’s out of process submission to draw to the Panel’s attention, and asked about any discussions between the alleged Concert Parties and/or with Sierra including in relation to the restarting of Area 1 mining operations.

Association

44. PRM submitted that each of the Concert Parties stood to benefit from the restarting of mining operations at Area 1, either directly or indirectly through contracts (for example to supply fuel or power). It submitted that they acted in concert by each acquiring a substantial holding and reaching an understanding to leverage their combined voting power at the AGM to pressure Sierra (with the addition of Mano’s nominee director) to restart.
45. While it may be true that some of the Concert Parties might benefit from the restart, we consider that the most probable reason for Sierra recommencing mining operations is the breach notice from the Government of Sierra Leone and not pressure from the alleged associates. Moreover, it is not apparent that all of the Concert Parties might benefit from the restart. For example, Leonoil does not currently have a fuel supply contract and, in any event, as a major fuel supplier (through its subsidiary NP), Leonoil may benefit from any arrangements whether with Sierra or other companies. Nor did we find any commercial supply link to a Gem Group company.
46. PRM submitted that its Bid created a floor price of 9.5 cents per share which was above the trading price of 6.3 cents per share after Sierra announced the suspension of mining operations in Area 1. We note that the trading price prior to the announcement was 10 cents per share and above. PRM submitted that Leonoil purchased its shares at an average price of 12.6 cents per share and GCAH acquired its shares at 15 cents per share.

Takeovers Panel

Reasons – Sierra Rutile Holdings Limited [2024] ATP 11

47. PRM submitted that the Concert Parties reached an understanding prior to the AGM whereby, *“provided that [Sierra] recommenced operations at the Area 1 mining site, the Concert Parties would vote in a manner that would result in:*
- (a) *the incumbent directors continuing in their roles;*
 - (b) *[Mano’s] nominee director ...being appointed...; and*
 - (c) *[PRM’s] resolutions not succeeding.”*
48. Sierra emphatically denied any such conversations in these terms:
- “None of [Sierra’s] officers, related companies or senior employees and, as far as [Sierra] is aware, none of [Sierra’s] other employees nor any person acting on [Sierra’s] behalf, had any conversation with any of the Gemcorp parties, Mano/ROL or Leonoil that in any way involved any connection between AGM voting intentions and the restart of Area 1 mining operations and/or a supplier’s status on site.”*
49. A problem with PRM’s submission, recognised by PRM, was that GCAH abstained from voting on resolutions concerning the appointment of Directors.¹² PRM sought to dismiss the problem by submitting that it was apparent that GCAH did not need to cast its vote. It submitted *“It is not unfathomable that the Concert Parties were aware that if they all voted in the same fashion it would be patently obvious that their association would be apparent...,”*
50. We do not accept PRM’s conjectural submissions. Based on PRM’s logic, GCAH would be *“damned if they did or damned if they didn’t”* in relation to voting.
51. In the responses to our preliminary questions, we were informed that the following discussions took place during the relevant time period between Sierra and a Concert Party or between Concert Parties:
- (a) Sierra disclosed having briefed GCAH *“based on publicly available information”* at introductory meetings on 3 and 7 May 2024 after GCAH became a substantial holder. We note the announcement of the restart was on 8 May 2024. Sierra also disclosed informing Mano and NP (Leonoil’s subsidiary) of the restart on 7 May 2024.
 - (b) GCAH disclosed an earlier research call with Sierra on 8 April 2024 on *“topics of a technical nature in relation to SRX’s operations”* based on publicly available information that did not touch on the AGM. GCAH also disclosed the introductory discussions on 3 and 7 May 2024 with Sierra’s management after making its investment.
 - (c) In addition, GCAH disclosed discussions between it and other Concert Parties:
 - (i) a ‘background’ call with Leonoil on 10 May 2024, and GCAH submitted that Leonoil initiated the contact. GCAH submitted that *“No discussions were held with respect to AGM voting intentions generally, or specifically in*

¹² GCAH voted against the remuneration report

Takeovers Panel

Reasons – Sierra Rutile Holdings Limited [2024] ATP 11

respect of the restarting of Area 1 mining operations and/or a supplier's status on that site" and

(ii) two short 'introductory calls' on 8 and 10 May 2024 with Mano, and GCAH submitted that Mano initiated the contact. Regarding AGM voting intentions. GCAH stated "*[GCAH] briefly explained it was new to the company and did not have a firm view on the items to be voted on the AGM, and expressed a general view that stability was its preference but had not decided how to vote. Mano's representatives naturally mentioned that Mano had a nominee up for election at the AGM, and discussed his qualifications. No discussions were held with respect to any supplier status.*"

(d) Mano/ROL disclosed that after Sierra had announced its intention to restart mining operations at Area 1, its representatives had two calls with representatives of the Gem Group on 8 May and 10 May 2024. Mano/ROL described the conversations as "*of an introductory nature, with the parties discussing the general state of business for SRX, inclusive of the notice of intention to restart mining operations at Area 1.*"

52. In respect of these interactions, we do not find it unusual that a company would seek to engage on a public information basis with new shareholders, especially its largest shareholder and other substantial shareholders, generally and especially in the run-up to an AGM.

53. ASIC RG 128¹³ states:

*"investors recommending that another investor votes in a particular way ... is unlikely to make the investors associates or constitute entering into a relevant agreement giving rise to a relevant interest if no undertaking or agreement to follow the recommendation or act in a particular way is obtained."*¹⁴

54. In *Resource Generation*¹⁵ the Panel said:

"In our view, as ASIC RG 128 seeks to establish, collective action is to be encouraged for proper corporate governance purposes. The Panel does not seek to limit the ability of major security holders to exercise voting power in whatever way they choose. It is only, for example, when collective action binds them to other major holders by virtue of a relevant agreement, or where there are further accumulations of securities, that unacceptable circumstances are likely to occur."

55. Even if the conversations referred to above touched on voting at the AGM, which is denied (other than with Mano's calls with GCAH on 8 and 10 May 2024) and which denials we are inclined to accept, we are not satisfied that any of the conversations went any further than is allowed under RG 128. In any event the conversations between Mano and GCAH took place after the restart had been announced.

¹³ Regulatory Guide 128: Collective action by investors, Table 1

¹⁴ See also *Aguia Resources Limited* [2019] ATP 13 at [24]

¹⁵ *Resource Generation Limited* [2015] ATP 12 at [106]

Takeovers Panel

Reasons – Sierra Rutile Holdings Limited [2024] ATP 11

56. PRM also identified in its application a considerable number of commercial links between various of the alleged associates, many of which were denied, but we find nothing unusual in the existence of such connections in this case and do not consider them sufficient to justify conducting proceedings.
57. Lastly, we take nothing from the prices paid for acquisitions. It is not clear, based on Sierra's trading prices prior to the suspension of mining operations at Area 1, that they reflect uncommercial dealings such as would support an inference of association.
58. The Panel's starting point for an association matter is that it is for the applicant to demonstrate a sufficient body of evidence of association and to convince the Panel as to that association, albeit with proper inferences being drawn: *Mount Gibson Iron Limited* [2008] ATP 4 at [15].¹⁶
59. This test was discussed in *Dragon Mining Limited* [2014] ATP 5 where the Panel said at [59]-[60] (excluding footnotes):¹⁷
- "We are conscious of the risk that some people may read this decision as signalling a raising of the 'association hurdle'. This is not our intention. Our decision in this matter was based purely on the evidence that was submitted to us.*
- Dromana Estate Limited 01R acknowledges the difficulties that an applicant faces in gathering evidence in association matters. In deciding whether to conduct proceedings on an association case, this must be kept in mind. However, the Panel has limited investigatory powers which means, before we decide to conduct proceedings, an applicant must do more than make allegations of association and rely on us to substantiate them. An applicant must persuade us by the evidence it adduces that we should conduct proceedings."*
60. We consider that PRM did not provide a sufficient body of probative material to justify us making further enquiries as to the associations alleged in the application. Accepting the difficulties that PRM faced in gathering probative material, we nevertheless consider that engaging our limited investigatory powers would be unlikely to yield significantly better information on which to decide the matter.
61. In coming to that conclusion, we take into account:
- (a) the significant level of detail in the application
 - (b) the substantive responses provided by the Concert Parties (all of whom were legally represented)
 - (c) the information provided in responses to the preliminary questions we asked
 - (d) the out of process responses from the applicant that we agreed to receive
 - (e) the conjectural nature of some of the allegations and

¹⁶ See also recent examples: *Mount Isa Minerals Limited* [2024] ATP 7 at [23] to [24], *Benjamin Hornigold Limited* 12 [2023] ATP 10 at [20] and *Firetail Resources Limited* [2022] ATP 21 at [15]

¹⁷ Followed recently in *Benjamin Hornigold* at [21] and *Firetail* at [16]

Takeovers Panel

Reasons – Sierra Rutile Holdings Limited [2024] ATP 11

- (f) the clear denials of association, and of some alleged connections, and the explanations in some of the responses.

Sections 606 and 671B

62. PRM submitted that the substantial holder notices lodged by the Concert Parties did not disclose any association between them and the acquisitions by the Concert Parties above a combined voting power of 20% had contravened section 606.
63. In view of our conclusion not to conduct proceedings we do not need to take this any further.

Unacceptability of acquisitions

64. PRM submitted that *“the actions of the Concert Parties, combined with the material financial interests each had in having the operations at the Area 1 mining site restarted, and the influence that they have subsequently exerted over [Sierra], gives rise to a control effect in [Sierra] that constitutes unacceptable circumstances.”*
65. PRM based this submission on *Molopo 03R*.¹⁸ In that case the review Panel said, having found an association, *“the Panel should be concerned with the effect of circumstances and that in this case the circumstances have many of the same characteristics and consequences of an association.”*¹⁹
66. In its out of process submission, PRM submitted that it *“has a stronger case for such a finding than Molopo Energy Limited 03R, 04R & 05R as there is evidence from which the Panel can infer that the Concert Parties will receive benefits not available to other shareholders (whereas in Molopo the aim appeared to be a return of cash to all shareholders).”*
67. In *Molopo 01*²⁰ the initial Panel found on balance that it was *“not satisfied to the requisite level that Keybridge and Aurora are associated. The Panel went on “While we are not satisfied of an association in relation to Molopo between Keybridge and Aurora, we think that the relationship between Keybridge and Aurora nevertheless gives rise to unacceptable circumstances because of the effect on control or potential control of Molopo.”*²¹
68. The review Panel in *Molopo 03R* did find the association made out. It also agreed with the initial Panel regarding finding unacceptable circumstances *“based on a consideration of policy.”*²²
69. Mano stated, in its response to our preliminary questions, that the current situation was vastly different to *Molopo 03R* as the Panel there found an association. While that may be so, the initial Panel did not find an association but still found unacceptable circumstances. More significantly, Mano submitted that PRM had *“failed to produce any evidence to demonstrate an actual association between the parties, or*

¹⁸ *Molopo Energy Limited 03R, 04R & 05R* [2017] ATP 12 at [250]-[263]

¹⁹ *Ibid* at [263]

²⁰ *Molopo Energy Limited 01 & 02* [2017] ATP 10

²¹ *Ibid* at [238]

²² *Molopo Energy Limited 03R, 04R & 05R* [2017] ATP 12 at [252]

Takeovers Panel

Reasons – Sierra Rutile Holdings Limited [2024] ATP 11

otherwise demonstrate any circumstances that share the same characteristics and consequences of an association.”

70. In our view there is insufficient probative material of a control purpose or links that would support the conducting of proceedings on this aspect of the application.

Extension of time

71. For the avoidance of doubt, PRM requested that we extend time for making an application under section 657C(3)(b) “*to include any of the circumstances in this application for which that is, or may be, required.*”
72. We do not need to consider this.

DECISION

73. As noted in *Dragon Mining*,²³ the Panel has limited investigatory powers, and as such, an applicant must do more than make allegations of association and rely on the Panel to substantiate them. Having considered all the material, we do not consider that PRM has provided sufficient probative material to establish a *prima facie* case of association or justify us making further enquiries in relation to the alleged associations.
74. For the reasons set out above, we do not consider that there is any reasonable prospect that we would make a declaration of unacceptable circumstances. Accordingly, we have decided not to conduct proceedings in relation to the application under regulation 20 of the *Australian Securities and Investments Commission Regulations 2001* (Cth).

Orders

75. Given that we have decided not to conduct proceedings, we do not (and do not need to) consider whether to make any interim or final orders.

Timothy Longstaff
President of the sitting Panel
Decision dated 14 June 2024
Reasons given to parties 23 July 2024
Reasons published 26 July 2024

²³ Above, at [59]-[60]. Noted in *Benjamin Hornigold* at [49]

Takeovers Panel

Reasons - Sierra Rutile Holdings Limited
[2024] ATP 11

Advisers

Party	Advisers
GCAH	Hamilton Locke
Leonoil	Gilbert + Tobin
Mano/ROL	Steinepreis Paganin
PRM Services	Gadens
Sierra Rutile	King & Wood Mallesons