



**Australian Government**

**Takeovers Panel**

**Reasons for Decision**

**Atlas Arteria**

**[2026] ATP 8**

**Catchwords:**

*Decline to make a declaration – conditional price increase – bidder’s statement disclosure – acceptance facility – undertaking Corporations Act 2001 (Cth), sections 609A(3), 624(2), 650D*

*ASIC Regulatory Guide 9: Takeover Bids*

*Guidance Note 4: Remedies General, Guidance Note 5: Specific Remedies – Information Deficiencies*

*Primelife Corporation Ltd v Aevum Ltd [2005] NSWSC 269, Pinnacle VRB Ltd v Reliable Power Inc [2001] VSC 262*

*Ambassador Oil and Gas Limited 02 [2014] ATP 17, Gondwana Resources Limited 02 [2014] ATP 15, Premium Income Fund [2011] ATP 10, Allegiance Mining NL [2008] ATP 3, Qantas Airways Limited 02 [2007] ATP 6, Australian Leisure & Hospitality Group Ltd 03 [2004] ATP 25, Village Roadshow Limited [2004] ATP 4*

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

**INTRODUCTION**

1. The Panel, Katrina Efthim, John McGlue and Rory Moriarty (sitting President), declined to make a declaration of unacceptable circumstances in relation to the affairs of Atlas Arteria. The application concerned alleged structural and disclosure deficiencies in relation to an off-market takeover bid by a wholly owned subsidiary of IFM Global Infrastructure Fund to acquire all of the stapled securities in Atlas Arteria that it did not already own at a price of \$4.75 per Atlas Arteria security to be increased to \$5.10 per Atlas Arteria security if the bidder’s relevant interest was 45% or more prior to the close of the offer. During the course of proceedings, the bidder was granted ASIC relief which substantially addressed the Panel’s concerns in relation to the bid. In addition, the Panel accepted an undertaking from the bidder which sufficiently addressed its residual concerns. Accordingly, the Panel was not satisfied that the circumstances were unacceptable.

2. In these reasons, the following definitions apply.

- 45% Threshold**            the conditional price increase threshold referred to in paragraph 6
- ASIC Relief**                has the meaning given in paragraph 39
- Atlas Arteria**                Atlas Arteria Limited and Atlas Arteria International Limited
- Bidder or DICO**            Diamond Infracore 1 Pty Ltd
- Bidder’s Statement**        has the meaning given in paragraph 5

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<b>IAF Triggering Condition</b>	has the meaning given in paragraph 11
<b>Institutional Acceptance Facility</b>	has the meaning given in paragraph 11
<b>Offer</b>	has the meaning given in paragraph 5
<b>Offer Period</b>	has the meaning given in paragraph 9
<b>Undertaking</b>	the undertaking described in paragraph 47

### FACTS

3. Atlas Arteria is a global owner of toll roads listed on the ASX (ASX code: ALX).<sup>1</sup>
4. DICO holds a 34.48% relevant interest<sup>2</sup> in Atlas Arteria securities (excluding the interests held by IFM on behalf of certain listed equities clients) and currently has two nominee directors on the Atlas Arteria Limited board.
5. On 27 April 2026, DICO sent to Atlas Arteria, and released to ASX, a bidder's statement (**Bidder's Statement**) in relation to an all cash off-market takeover bid for all of the fully paid stapled securities that it does not already own in Atlas Arteria (**Offer**).
6. The Offer features a two-tier price structure. Section 7.1(c) of the Bidder's Statement states as follows in relation to the offer price:

*"...the consideration offered for each of your Securities is A\$4.75 in cash. The Offer Price will be increased to the Maximum Consideration of A\$5.10 per Security if Bidder's Relevant Interest in Atlas Arteria Securities is 45% or more prior to the close of the Offer."*<sup>3</sup>
7. The Bidder's Statement also states that the increased offer price of \$5.10 per security is 'best and final'.
8. The Offer is subject to various conditions, including a number of regulatory conditions and a no material adverse change condition. The Offer is not subject to a minimum acceptance condition.
9. The initial offer period for the Offer (**Offer Period**) was not specified in the 27 April 2026 version of the Bidder's Statement but was subsequently set at 1 month (subject to extension).<sup>4</sup>

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<sup>1</sup> Atlas Arteria is a stapled group comprising Atlas Arteria Limited (an Australian registered company) and Atlas Arteria International Limited (a Bermuda registered company)

<sup>2</sup> As at the date of the application

<sup>3</sup> This was repeated elsewhere in the document including in the Letter to Atlas Arteria Securityholders and Summary of the Offer and Other Important information

<sup>4</sup> Upon opening, the Offer was scheduled to close at 7.00pm (Sydney time) on 11 June 2026

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10. Section 7.3(a) of the Bidder's Statement states that acceptance forms must be received before the end of the Offer Period. In addition, section 7.5(c) of the Bidder's Statement provides:

*"Notwithstanding sections 7.3(a) ..., Bidder may ... treat the receipt by it of ... a signed Physical Acceptance Form ... (ii) after the end of the Offer Period but where the Physical Acceptance Form is sent by post and the envelope in which it is posted is post-marked before the end of the Offer Period, as valid even though it does not receive the other documents required by the instructions on the relevant Acceptance Form ..."*
11. DICO established an institutional acceptance facility (**Institutional Acceptance Facility**) to facilitate receipt of acceptances from Atlas Arteria securityholders whose holdings have an approximate value of at least A\$500,000 (based on the Offer price). Section 6.12 of the Bidder's Statement states (among other things) that: "*[t]he Institutional Acceptance Facility is subject to Bidder declaring the Offer unconditional or otherwise stating that it will declare the Offer unconditional (subject to the processing of Acceptance Instructions) (IAF Triggering Condition)*".
12. Also on 27 April 2026, Atlas Arteria released an ASX announcement stating (among other things) that the Offer was unsolicited and that there was no communication from the Bidder to Atlas Arteria prior to receipt of the Bidder's Statement. The announcement also advised shareholders to take no action and noted that an independent board committee would be established to consider the Offer and will update shareholders in due course.
13. On 1 May 2026, Atlas Arteria released a letter to securityholders on ASX stating (among other things) that A\$4.75 per stapled security represents a premium of less than 10% to the last closing price prior to the announcement of the Offer.

## APPLICATION

14. By application dated 6 May 2026, Atlas Arteria sought a declaration of unacceptable circumstances, submitting (among other things) that:
  - (a) the two-tiered pricing structure of the Offer is inherently flawed and cannot deliver the increased consideration of \$5.10 per security with certainty because (among other things) the disclosure in the Bidder's Statement "*is not self-executing and does not explain how the two-tier Offer price structure is implemented in accordance with section 650D of the Corporations Act, nor does it warn Securityholders about the risks of the structure, including that the Offer may close at \$4.75*"
  - (b) there is a real risk that prior to the close of the Offer Period, the Bidder is unable to process acceptances for its Offer to determine whether the 45% Threshold has been met and cannot concurrently comply with the requirements of section 650D<sup>5</sup>
  - (c) if DICO had instead chosen to set the two-tier trigger at 50%, the automatic extension would apply under section 624 and give DICO sufficient time to

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<sup>5</sup> Unless otherwise indicated, all statutory references are to the *Corporations Act 2001* (Cth) and all terms used in Chapter 6, 6A or 6C have the meaning given in the relevant Chapter (as modified by ASIC)

effect the price variation and give other securityholders a reasonable opportunity to consider whether to accept the Offer before it closes and

- (d) in the context of the two-tiered pricing structure, the operation of the Institutional Acceptance Facility and the disclosure in relation to it jeopardises the operation of an efficient, competitive and informed market.
15. Atlas Arteria sought an interim order that, pending the final determination of the Panel proceedings, the Bidder be restrained from despatching the Bidder's Statement in its current form.
  16. Atlas Arteria sought a final order that the Bidder be restrained from despatching the Bidder's Statement unless and until it has made amendments to the Offer or Bidder's Statement and/or obtained ASIC relief, or such further orders as the Panel considers appropriate.

### DISCUSSION

17. We have considered all the material before us but address specifically only the material we consider necessary to explain our reasoning.

#### Interim order request

18. The earliest date for dispatch of the Bidder's Statement was 11 May 2026. Accordingly, we considered the request for an interim order restraining dispatch on an urgent basis and sought submissions on whether the interim order should be made.
19. In support of its interim order request, Atlas Arteria submitted (among other things) that:
  - (a) *"[g]iven the significant issues cited in this application, some of which are of critical importance to the Offer structure being put to ALX Securityholders, their misleading effect could not be countered by supplementary disclosure"* and
  - (b) the interim order will not prejudice DICO given that the matters raised in the application should be capable of being remedied promptly.
20. ASIC opposed the requested interim order, submitting that the alleged unacceptable circumstances appear capable of being addressed, if established, by final orders including corrective or supplementary disclosure, and that delaying commencement of the Offer would deny Atlas Arteria securityholders the opportunity to receive, consider and, if they choose, accept the Offer.
21. DICO made a similar submission opposing the interim order and also submitted that the alleged structural issue relates to a *"hypothetical and incredibly remote scenario"* and could be dealt with at the time if there ever looked like being an issue, and therefore would not justify restraining the dispatch of the Bidder's Statement now.
22. Guidance Note 4: Remedies General states (at [13]) that *"[i]n general, the Panel will not hold up a transaction by interim orders, unless mischief will occur that cannot, or cannot*

*conveniently, be reversed by final orders”<sup>6</sup>. It provides as an example that “[u]nless the information deficiencies are significant, it will usually be preferable to allow a bidder’s statement to be dispatched pending a final decision on the alleged deficiencies.”<sup>7</sup>*

23. We did not consider that it was appropriate to restrain dispatch here. While Atlas Arteria had asserted that there were structural as well as disclosure deficiencies concerning the Offer, its application raised the prospect of a possible future scenario<sup>8</sup> which was not imminent (and may never eventuate) and we were not persuaded that the complaint could not be addressed by the making of final orders in due course if warranted (such as supplementary disclosure), noting ASIC was of a similar view. We were also mindful, having regard to the apparent dynamics at play between the parties, that there was a potential tactical advantage to be gained in delaying dispatch of the Bidder’s Statement.<sup>9</sup>
24. We communicated to the parties that we had declined to make the interim order on Friday 8 May 2026 and decided it was appropriate to inform the market of this decision, which we did prior to the commencement of trading on Monday 11 May 2026.<sup>10</sup>

### Decision to conduct proceedings

25. DICO made a preliminary submission asserting that we should decline to conduct proceedings. It included as follows:

*“The Applicant’s argument relies entirely on a single hypothetical and incredibly remote scenario under which the Bidder could reach the 45% threshold through an acceptance in the late afternoon on the last day of the Offer Period, and not have sufficient time to formally vary the Offer to increase the consideration under section 650D, prior to the Offer closing at 7pm on that day. Obviously, if the Offer Price is increased by lodging the variation notice under section 650D, then the Offer Period is automatically extended for 14 days under section 624(2)(a), and there is no issue. However, the Applicant’s argument is that the Bidder may not have enough time before the end of the Offer Period to give the notice of variation under section 650D*

...

*If it were to arise, this scenario is entirely manageable by the Bidder, as the Bidder would know days in advance whether it was a risk, and could have a notice of variation already prepared in case it was needed. If necessary, the Bidder can then vary the Offer by sending the notice to ASIC and the target, and then depositing the notices with Australia Post at the last minute.*

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<sup>6</sup> Citing *Village Roadshow Limited* [2004] ATP 4 at [94]; *Gondwana Resources Limited* 02 [2014] ATP 15 at [16] and [18]; *Ambassador Oil and Gas Limited* 02 [2014] ATP 17 at [12]

<sup>7</sup> See also Guidance Note 5: *Specific Remedies – Information Deficiencies* at [5]-[12]

<sup>8</sup> See paragraph 14(b)

<sup>9</sup> See also Guidance Note 5: *Specific Remedies – Information Deficiencies* at [10(a)]

<sup>10</sup> See Panel media release TP26/027 ‘Atlas Arteria – Panel Declines to Make Interim Order’

*Even if the Bidder did reach the 45% threshold through acceptances in the late afternoon on the last day of the Offer Period, and did not manage to formally vary its Offer in time prior to the Offer closing at 7pm on that day, it would obviously be open to the Panel to make orders increasing the Offer Price to \$5.10 per security. There is no practical issue, but even if there was, the Panel could very easily address that issue at the time.”*

26. DICO also submitted that there are “numerous examples of conditional price increases which are not tied to the bidder reaching 50%” with reference to a list of 10 transactions that occurred during the period from 2011 to 2025.
27. While on first view the likelihood of last-minute acceptances tipping DICO’s relevant interest above the 45% Threshold such that it was ‘timed out’ on its ability to give effect to the conditional price increase appeared low, the consequences are potentially significant and could include (as submitted by the applicant) that Atlas Arteria securityholders who had been promised \$5.10 would instead be bound to sell their securities for \$4.75 and securityholders who would have accepted \$5.10 knowing that DICO had reached the 45% Threshold may be denied the opportunity to do so.
28. The Panel has previously (albeit quite some time ago) observed that conditional price increase structures are an accepted part of the Australian takeovers market and that it “did not have any cause to consider that the market had operated inefficiently” by reason of bids featuring a multi-tiered pricing structure.<sup>11</sup> Indeed, in our experience such structures are not novel, can exist in a variety of forms and work effectively. However, issues relating to a bidder being potentially timed out on its ability to give effect to a conditional price increase have not to our knowledge previously been considered by the Panel, noting that a number of the examples of conditional price increases cited by DICO stipulated that the threshold be satisfied by a date prior to the close of the offer period<sup>12</sup> and consequently the issue does not appear to arise.
29. Noting our decision not to make interim orders, by the time of our next meeting to consider the application the Offer had launched. Having regard to the final orders sought and to the Offer being live, we considered that it was appropriate to commence proceedings and make focused further enquiries here, including to explore whether DICO was willing to provide additional disclosure and whether ASIC was willing to consider an application for relief.

### Two-tier price structure

30. Atlas Arteria submitted that there are two key structural “flaws” with the Offer; first: “information latency and circularity”, and second: “practicability”. In relation to the former, it queried how DICO can know with certainty whether or not its relevant interest is 45% in order to lawfully vary the Offer, noting that securityholders are

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<sup>11</sup> *Australian Leisure & Hospitality Group Ltd* 03 [2004] ATP 25 at [78]

<sup>12</sup> For example, in *FMG Pilbara Pty Ltd’s bid for Red Hawk Mining Limited* (in summary) the offer price of \$1.05 per share increased to \$1.20 if the bidder acquired a 75% relevant interest in the target by 4 February 2025 with the offer period being from 28 January 2025 to 3 March 2025

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entitled to lodge their acceptance immediately before the Offer closes. In relation to the latter, it submitted (among other things) that even if DICO knows that the 45% Threshold has been triggered, it may not be able to comply with the section 650D requirements necessary to deliver the \$5.10 increased consideration.

31. Section 650D sets out the procedural steps to be followed in order to vary offers under an off-market takeover bid, including a variation to improve the consideration offered. In summary, the bidder needs to lodge a notice containing certain required information with ASIC and give a copy of that notice to the target company and to all securityholders to whom the offers were made.
32. Atlas Arteria submitted that these steps will necessarily take time to implement following DICO becoming aware of its interest reaching the 45% Threshold and that if the steps are not followed before the Offer closes, the variation of the Offer will not be effective and accordingly no 14-day extension of the Offer Period will be triggered under section 624(2)(a).<sup>13</sup>
33. Atlas Arteria observed in its submissions that compliance with section 650D is mandatory and that it is the “*sole method by which offers made under off-market bids may be varied.*”<sup>14</sup>
34. Atlas Arteria cited *Australian Leisure and Hospitality Group Limited 03*<sup>15</sup>, which also involved a two-tier offer structure, in support of its application. However, in that matter the conditional price increase was announced very close to the end of the offer period and the primary issue was whether sufficient time had been provided for shareholders to consider it. The Panel in that matter made interim orders extending the closing date of the bid and accepted an undertaking from the bidder in lieu of making a declaration of unacceptable circumstances. As mentioned above, the Panel noted that it did not take issue with the use of multi-tiered consideration structures in general and acknowledged their use in the market.<sup>16</sup> The Panel also observed that “*there may be need for guidance in the market about the terms and timing of conditional increases in the future.*”<sup>17</sup> As pointed out by DICO, no such guidance has since been made.
35. Atlas Arteria also referred to a number of other matters involving defective variation notices or other similar issues in the context of takeover bids in support of its

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<sup>13</sup> Under section 624(2), if, within the last 7 days of the offer period of an off market bid, the offers under the bid are varied to improved the consideration offered or the bidder’s voting power in the target increases to more than 50%, the offer period is automatically extended so that it ends 14 days after that event

<sup>14</sup> Citing *Pinnacle VRB Ltd v Reliable Power Inc* [2001] VSC 262 at [9], *Primelife Corporation Ltd v Aeovum Ltd* [2005] NSWSC 269 at [8], *Premium Income Fund* [2011] ATP 10 at [29], *Allegiance Mining NL* [2008] ATP 3 at [21]-[22] and ASIC Regulatory Guide 9 at RG 9.594

<sup>15</sup> [2004] ATP 25

<sup>16</sup> See paragraph 28

<sup>17</sup> *Australian Leisure and Hospitality Group Limited 03* [2004] ATP 25 at [79]

contention that the risks here are not merely theoretical and reflect the commercial reality that acceptances are often received very late in the endgame of an offer.<sup>18</sup>

36. Having regard to these matters and to our own experience, we considered that there was a risk that the 45% Threshold could be met towards the end of the Offer Period. We also formed the preliminary view that the disclosure concerning the conditional price increase in the Bidder’s Statement was lacking because it did not explain how DICO intended to manage this risk.

*ASIC Relief and further disclosure*

37. We asked DICO whether it was prepared to make supplementary disclosure. In response DICO submitted that it does not consider supplementary disclosure to be necessary, but nevertheless set out proposed disclosure it would be prepared to make, including to the effect that if it does not have time to give the notice under section 650D prior to the close of the Offer (for example, if the 45% Threshold is met on the last day of the Offer Period), then it would apply to the Panel for orders that the Offer be varied to increase the Offer price to \$5.10 per security and to extend the Offer Period by 14 days.
38. We had some concerns with DICO’s proposed approach of waiting until any issues in purporting to vary the Offer arise and then applying to the Panel for corrective orders at that time.<sup>19</sup>
39. Subsequently, in its rebuttal submissions, DICO advised that it had applied for ASIC relief (**ASIC Relief**) to modify section 624(2) such that the Offer Period is automatically extended by 14 days in the event that the 45% Threshold is met (and the Offer has not already been increased to \$5.10 per Atlas Arteria security).
40. ASIC informed us that it had made a decision to grant the relief sought and, following engagement with the parties, and subject to any comments the Panel may wish to make, was proposing to execute a relief instrument which it provided to us in draft form.
41. The ASIC Relief instrument also provided for disclosure of the ASIC Relief to Atlas Arteria securityholders via a supplementary bidder’s statement.<sup>20</sup>
42. We considered that the ASIC Relief substantially addressed our concerns in relation to the Offer, including because it ensured that DICO would have sufficient time to lodge a section 650D notice even if the 45% Threshold was met late on the last day of the then-current Offer Period.
43. We were also of the view that the ASIC Relief obviated the need for DICO’s proposed supplementary disclosure.

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<sup>18</sup> Decisions Atlas Arteria referred to included *Qantas Airways Limited 02*, *Primelife Corporation Ltd v Aevum Ltd* [2005] NSWSC 269, *Allegiance Mining NL* [2008] ATP 3 and *Premium Income Fund* [2011] ATP 1

<sup>19</sup> Atlas Arteria submitted that the power of a future Panel to make *ex post* orders addressing all relevant matters is untested and complicated where the Offer Period has closed and the interests of a range of persons may be prejudiced. DICO disagreed with this submission

<sup>20</sup> The supplementary bidder’s statement was released on ASX on 20 May 2026

44. Atlas Arteria confirmed it had no comments on the ASIC Relief instrument. However, it further submitted that we may wish to give consideration to whether prompt notification to the market of the 45% Threshold being met is appropriate in the circumstances (e.g. akin to the notice that would be given to ASX under subsections 630(4) and (5)(b) had the 45% Threshold been a condition of the Offer), and to require withdrawal rights so that securityholders can consider the implications of the ASIC Relief and disclosure in the supplementary bidder's statement. We did not consider that it was appropriate to pursue either of these options in the circumstances.
45. Another aspect of Atlas Arteria's complaint was that the Bidder's Statement should include "*sufficient and prominent disclosure of the key risks associated with the structure and the fact that Securityholders may only receive A\$4.75 if they accept the Offer.*" DICO submitted that this was also unnecessary and is self-evident from the statements already included prominently in the Bidder's Statement. However, DICO again submitted it would be prepared to provide further disclosure if required, including an additional sentence to the effect that there is a risk that if the 45% Threshold is not reached, securityholders will receive \$4.75. Atlas Arteria submitted that a further sentence (beyond that proposed by DICO) ought be included to the effect that the risk is because the Offer is not conditional on the Bidder's relevant interest reaching 45% or more prior to the close of the Offer and that the Offer may be declared unconditional where the Bidder's relevant interest is under 45%. On balance, we did not consider that either form of these additional disclosures was necessary and were of the view that the existing disclosure in the Bidder's Statement was sufficient in this respect, noting that it is open to Atlas Arteria to include further disclosure in this regard in its target's statement.

### *Undertaking*

46. Atlas Arteria also raised a concern around a scenario where the Bidder exercises its discretion under section 7.5(c) of the Bidder's Statement to treat acceptance forms which are received after the end of the Offer Period, but post-marked before the end of the Offer Period, as valid, and by doing so, takes the Bidder's relevant interest above 45%. It submitted that DICO has an option as to whether to count some or all acceptances, and it is therefore possible for the Offer to close with DICO having a relevant interest in Atlas Arteria of (for example) 44.9% and for DICO to then receive Acceptance Forms equivalent to 0.1% (posted before the Offer closed but received after), which it can deem to be valid (should it wish to do so).
47. DICO indicated it was willing to undertake that it will not exercise its discretion under section 7.5(c) of the Bidder's Statement to treat those acceptances as valid, if to do so would cause the Bidder's relevant interest in Atlas Arteria to reach over 45%, in circumstances where the Offer price had not already been increased to \$5.10 per Atlas Arteria security prior to the end of the Offer Period. Atlas Arteria submitted that we should give consideration to accepting such an undertaking. We considered it appropriate in the circumstances to accept this undertaking, with minor

adjustments<sup>21</sup> (see Annexure A), as we were of the view that it addressed a potential uncertainty in the operation of the 45% Threshold.

### Institutional Acceptance Facility

48. Atlas Arteria submitted that the Institutional Acceptance Facility is presented without a minimum acceptance condition and alongside the “complex and problematic” two-tiered Offer pricing structure. It further submitted (in summary) that:
- (a) the Institutional Acceptance Facility is simply subject to DICO declaring the Offer unconditional or otherwise stating that it will declare the Offer unconditional, and that DICO therefore is able to trigger the IAF Triggering Condition and ‘lock in’ all acceptances within the facility whether or not the 45% Threshold to increase the Offer price to \$5.10 has been met
  - (b) securityholders are being attracted into the “honeypot facility” by the lure of a price increase but have no certainty that the price increase will eventuate if the facility is triggered and no clarity on the circumstances in which the Bidder may elect to trigger the Institutional Acceptance Facility
  - (c) to fully understand the risks associated with the Institutional Acceptance Facility and assess whether or not to accept into it, securityholders need to understand in what circumstances DICO may declare the Offer unconditional, particularly if this can occur where the 45% Threshold has not been met and
  - (d) it should not be possible that the IAF Triggering Condition can be met through satisfaction of Offer conditions; were it otherwise, it would be possible for the Institutional Acceptance Facility to be shut within the last 7 days of the Offer based on arbitrary and opaque decisions of the Bidder regarding whether or not any outstanding defeating conditions have been satisfied.
49. Atlas Arteria further submitted (among other things) that it is unclear what the words “*stating that it will declare the Offer unconditional (subject to the processing of Acceptance Instructions)*”<sup>22</sup> mean in practice and how that process may interact with the giving of a formal notice to free the Offer of conditions, and that securityholders may be concerned that the Bidder will “*seek to reach a level of acceptances below the 45% threshold for the Conditional Price Increase and rely on a Condition being satisfied in the final 7 days of the Offer period*”.
50. DICO submitted that the Offer cannot be declared unconditional in the last 7 days of the bid (by operation of section 650F(1)(b) and ASIC Regulatory Guide 9) and accordingly there would be ample time for acceptance instructions held in the Institutional Acceptance Facility to be accepted into the Offer before it closes. It further submitted that Atlas Arteria’s concern that the IAF Triggering Condition could be satisfied by the subsequent satisfaction of outstanding defeating conditions rather than by a declaration of unconditionality is misconceived, and that the IAF

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<sup>21</sup> Including to add a mechanism for the Panel to provide consent

<sup>22</sup> See paragraph 11

Triggering Condition requires the Bidder to declare the Offer unconditional or state that it will do so; the satisfaction of a defeating condition is not that act. It also submitted that the Bidder's Statement is clear on this point.

51. In relation to Atlas Arteria's submission that those shareholders eligible to participate in the Institutional Acceptance Facility do not know when the Offer will be declared unconditional, DICO submitted that this is the same for all shareholders who are accepting into the Offer, or any other takeover bid. In relation to Atlas Arteria's submission that the Offer could be declared unconditional before the 45% Threshold is triggered so that those eligible shareholders would have their shares accepted into the bid at \$4.75, DICO submitted that again this is the same for all shareholders and that this is the very nature of a conditional price increase.
52. Atlas Arteria acknowledged in its submissions that the IAF Triggering Condition appeared to follow section 609A(3)(a).<sup>23</sup>
53. We considered that on the information available, sophisticated Atlas Arteria securityholders eligible to use the Institutional Acceptance Facility are abundantly equipped and able to assess whether they wish to make use of it and it is a matter for them whether they choose to do so.
54. Accordingly, we could not see a pathway to unacceptability on the basis of Atlas Arteria's complaints regarding the structure and disclosure concerning the Institutional Acceptance Facility.

### **Policy considerations**

55. In light of how these proceedings transpired, including the provision of the ASIC Relief, we did not consider we needed to reach a conclusion on whether (absent the ASIC Relief) the structure of the Offer could have led to a finding of unacceptable circumstances. The Panel may well engage with two-tiered price structures further in the future. As a general observation, we see its benefits as a tool that may enable bidders to offer a higher price or otherwise assist in their bid strategy. Adopting a heavy-handed or interventionist regulatory approach in this area could potentially risk unduly limiting bidders in this regard. That said, a consideration structure that does not work in all circumstances may be inconsistent with an efficient, competitive and informed market. We encourage bidders to carefully consider how such structures will operate in practice and how any obstacles will be managed (as well as what disclosure should be made in relation to this).

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<sup>23</sup> Section 609A provides that a bidder does not acquire a relevant interest merely because it has a power to control the disposal of securities as a result of a holder or beneficial owner tendering acceptance or custodial instructions in respect of the securities into an acceptance facility. Subsection (3) sets out specified conditions of acceptance facilities for the purposes of this provision including a condition that, no later than the time that all acceptances in relation to the facility are processed, the bidder has: (i) declared the bid free of all conditions or (ii) stated that the bidder will declare the bid free of all conditions

**DECISION**

56. Given the ASIC Relief and the Undertaking, we declined to make a declaration and are satisfied that it is not against the public interest to do so. We had regard to the matters in s657A(3).

**Rory Moriarty**

**President of the sitting Panel**

**Decision dated 20 May 2026**

**Reasons given to parties 19 June 2026**

**Reasons published 24 June 2026**

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### Advisers

Party	Advisers
Atlas Arteria	Mallesons
Diamond Infracore 1 Pty Ltd	Allens



**Australian Government**

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**Annexure A**

**AUSTRALIAN SECURITIES AND  
INVESTMENTS COMMISSION ACT 2001 (CTH) SECTION 201A  
UNDERTAKING**

**ATLAS ARTERIA**

The Bidder undertakes to the Panel that, without the Panel's consent, it will not exercise its discretion under section 7.5(c) of the Bidder's Statement to treat acceptance forms which are received after the end of the Offer Period, but post-marked before the end of the Offer Period, as valid, if to do so would cause the Bidder's relevant interest to reach 45% or more, in circumstances where the Offer Price had not already been increased to \$5.10 per Atlas Arteria security prior to the end of the Offer Period.

In this undertaking the following terms apply:

<b>Atlas Arteria</b>	Atlas Arteria Limited and Atlas Arteria International Limited
<b>Bidder</b>	Diamond Infraco 1 Pty Ltd, a wholly owned subsidiary of IFM Global Infrastructure Fund
<b>Bidder's Statement</b>	The bidder's statement lodged by the Bidder with ASIC in respect of the Offer dated 27 April 2026
<b>Offer</b>	The off-market takeover bid by the Bidder to acquire all of the stapled securities which it does not already own in Atlas Arteria as set out in the Bidder's Statement
<b>Offer Period</b>	Has the meaning given in the Bidder's Statement
<b>Offer Price</b>	Has the meaning given in the Bidder's Statement

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**Signed by John O'Grady, Director of Diamond Infraco 1 Pty Ltd  
with the authority, and on behalf, of  
Diamond Infraco 1 Pty Ltd  
Dated 20 May 2026**