



Australian Government

Takeovers Panel

Reasons for Decision

Atlas Arteria 02

[2026] ATP 9

Catchwords:

Decline to conduct proceedings – information deficiencies – communications to shareholders during takeover bid – disclosure standard – target’s statement – continuous disclosure – misleading or deceptive statements – efficient, competitive and informed market – frustrating action

Corporations Act 2001 (Cth), sections 602, 633, 638, 677, 1041H

ASX Listing Rule 3.1

Guidance Note 5: Specific Remedies – Information Deficiencies, Guidance Note 18: Takeover Documents

Alesco Corporation Limited 01 & 02 [2012] ATP 14, Hastings Diversified Utilities Fund 02 [2012] ATP 11, Foster’s Group Limited [2011] ATP 15, Programmed Maintenance Services Limited 02 [2008] ATP 9, Consolidated Minerals Limited 01 [2007] ATP 20, Nexus Energy Limited [2006] ATP 17, Universal Resources Ltd [2005] ATP 6, Taipan Resources NL 01 [2000] ATP 11

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

INTRODUCTION

1. The Panel, Katrina Efthim, John McGlue and Rory Moriarty (sitting President), declined to conduct proceedings on an application from IFM in relation to the affairs of Atlas Arteria. Atlas Arteria is currently the subject of an off-market takeover bid by IFM. The application concerned whether Atlas Arteria had made sufficient disclosure of certain terms under a shareholders’ agreement it had entered into with Ontario Teachers in respect of the Chicago Skyway toll road, including in respect of a right of first offer and a put option in favour of Ontario Teachers. The Panel considered that there was no reasonable prospect that it would declare the circumstances unacceptable because (among other things) IFM had not sufficiently explained why, in the context of its bid, the further disclosures it sought were required prior to the release of Atlas Arteria’s target’s statement, which was due to be released shortly.

2. In these reasons, the following definitions apply.

6 May Announcement Has the meaning given in paragraph 8

Acquisition Announcement Has the meaning given in paragraph 6

Atlas Arteria Atlas Arteria Limited and Atlas Arteria International Limited

Bidder’s Statement The bidder’s statement lodged by IFM with ASIC and ASX in respect of the Offer dated 27 April 2026

Takeovers Panel

Reasons – Atlas Arteria 02
[2026] ATP 9

Chicago Skyway	Has the meaning given in paragraph 5
Chicago Skyway Shareholders Agreement	The shareholders' agreement between Atlas Arteria and Ontario Teachers in respect of Chicago Skyway entered into on or around 13 September 2022
IFM	Diamond Infracore 1 Pty Ltd, a wholly owned subsidiary of IFM Global Infrastructure Fund
Offer	The off-market takeover bid by IFM to acquire all of the stapled securities which it does not already own in Atlas Arteria as set out in the Bidder's Statement
Offer Period	Has the meaning given in the Bidder's Statement
Ontario Teachers	Ontario Teachers' Pension Plan Board
Put Option	Has the meaning given in paragraph 6(b)
ROFO	Has the meaning given in paragraph 6(a)
ROFO notice	Has the meaning given in paragraph 6(a) and more specifically refers to the notice given by Atlas Arteria to Ontario Teacher on 22 April 2026 as described in paragraph 8(a)

FACTS

3. Atlas Arteria is a global owner of toll roads listed on the ASX (ASX code: ALX).¹
4. IFM holds a 34.48% relevant interest² 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 board of Atlas Arteria Limited.
5. Atlas Arteria currently holds a 66.67% majority interest in Skyway Concession Company LLC, the concessionaire of the Chicago Skyway (**Chicago Skyway**), with the remaining 33.33% interest being held by Ontario Teachers.
6. On 14 September 2022, when Atlas Arteria first announced the acquisition of its interest in Chicago Skyway (the **Acquisition Announcement**), Atlas Arteria included a summary of 'Key Governance Terms' under the Chicago Skyway Shareholders Agreement. The summary terms included:
 - (a) a right of first offer (the **ROFO**) which requires a shareholder intending to transfer any of its shares to a third party to first provide written notice (a **ROFO notice**) to the other shareholder setting out the desired purchase price, which constitutes an offer to sell the interest to that other shareholder at that price. If the other shareholder does not accept the ROFO notice, then the offering

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

² As at the date of the application

shareholder may sell the interest to a third party within 180 days at a value which is not less than the price specified in the ROFO notice, and

- (b) a put option (the **Put Option**) in favour of Ontario Teachers under which, upon a change of control in Atlas Arteria, Ontario Teachers has the option, at its discretion, to either retain its 33.33% interest, or to sell its interest in Chicago Skyway to Atlas Arteria at a price equal to the fair market value of that interest plus 7.5%. If Ontario Teachers elects to retain its interest on a change of control, it will receive certain (unspecified) additional governance rights in relation to refinancing.
7. On 27 April 2026, IFM announced the Offer and lodged its Bidder’s Statement with ASIC and ASX. The Offer is subject to various conditions, including a number of regulatory conditions and a no material adverse change condition. Relevantly for these proceedings (in summary):
- (a) Condition 7(a) of the Offer prohibits any person from having (or, before the end of the Offer Period, acquiring) any right to acquire, or require any Atlas Arteria group entity to dispose of, any asset or any equity interest, of any Atlas Arteria group entity.
 - (b) Condition 11(b) of the Offer prohibits material acquisitions or disposals during the period from the date of the Bidder’s Statement to the end of the Offer Period.
8. On 6 May 2026, Atlas Arteria made an announcement on ASX titled “Reject IFM’s Hostile Takeover Offer” (the **6 May Announcement**) in which the Atlas Arteria Independent Directors³ had decided to recommend that securityholders reject the Offer. The 6 May Announcement also stated (among other things) that:
- (a) Atlas Arteria had, on 22 April 2026, issued a ROFO notice to Ontario Teachers in respect of Atlas Arteria’s 66.67% interest in Chicago Skyway at a price “*in line with Atlas Arteria’s acquisition price for the asset in 2022*”
 - (b) if Ontario Teachers accepts that ROFO notice, Atlas Arteria must sell its interest in Chicago Skyway to Ontario Teachers at the price specified in the ROFO notice
 - (c) if Ontario Teachers does not accept the ROFO notice, Atlas Arteria “*intends to explore strategic alternatives for its interest in Chicago Skyway including a possible sale to third parties*”
 - (d) “[t]he existence of the ROFO notice constitutes a breach of a condition of IFM’s Offer as it gives [Ontario Teachers] the right to acquire Atlas Arteria’s interest in Chicago Skyway – even though the ROFO notice was issued before the Offer was made”

³ The Atlas Arteria Independent Directors comprise (i) all of the directors on the Atlas Arteria Limited board, except for IFM’s two nominees on that board and (ii) all of the directors on the Atlas Arteria International Limited board

- (e) “[t]he put option is only triggered if a third party acquires beneficial ownership in more than 50% of Atlas Arteria and would only complete after a process set out in the Chicago Skyway Shareholders Agreement has occurred” and
- (f) “[a]s IFM has increased its shareholding through its creeping on-market acquisitions over time, the Independent Directors and management have considered, and continue to actively explore, a range of potential initiatives to deal with the put option, including in the context of the current engagement with [Ontario Teachers] in relation to the ROFO. The Boards have been focusing on initiatives that would not require an equity raising.”

9. IFM submitted that it had no knowledge prior to the 6 May Announcement that Atlas Arteria had given the ROFO notice in respect of its interest in Chicago Skyway.⁴

APPLICATION

Declaration sought

10. By application dated 12 May 2026, IFM sought a declaration of unacceptable circumstances. IFM submitted (among other things) that:

- (a) *“During the 9 day period between the announcement of the Applicant’s Takeover Offer on 27 April 2026 and the 6 May Announcement, the Atlas Arteria Independent Board Committee failed to announce that Atlas Arteria had already given the ROFO notice to Ontario Teachers in relation to its interest in Chicago Skyway, one of its major assets, despite the fact that, as the 6 May Announcement admits, the giving of the ROFO notice constituted a breach of a defeating condition of the Applicant’s Takeover Offer. This would appear to be a clear breach by the Atlas Arteria Independent Board Committee of its continuous disclosure obligations.”*
- (b) Despite the 6 May Announcement (and taking into account the information previously disclosed in the Acquisition Announcement⁵ which, in IFM’s view, *“failed to provide certain material information about how the ROFO and the Put Option are proposed to operate”*), Atlas Arteria’s disclosure remained materially deficient. Specifically:
 - (i) in relation to the ROFO notice and the potential sale of Chicago Skyway, IFM submitted that:

“[f]or example, the market remains unaware of:

 - *the actual price at which the ROFO was issued. While the 6 May Announcement states that the ROFO notice was given “at a price in line with Atlas Arteria’s acquisition price for the asset in 2022”, it is wholly unclear what is meant by “in line with”, and why the actual price was not disclosed*

⁴ IFM submitted that the two nominees on the Atlas Arteria Limited board are prohibited from disclosing any information they acquire in their capacities as Atlas Arteria directors to IFM by virtue of certain contractual restrictions and the two nominees had no knowledge of the Offer until after it was made

⁵ See paragraph 6 above

Takeovers Panel

Reasons – Atlas Arteria 02
[2026] ATP 9

- *the period within which Ontario Teachers is required to respond to the ROFO notice, and whether the period to accept the notice expires within the offer period under the Applicant's Takeover Offer;*
 - *the mechanics for acceptance of the ROFO notice (for example, whether Ontario Teachers can accept the ROFO notice subject to obtaining regulatory approvals, which could materially delay the completion of any sale);*
 - *any discussions which Atlas Arteria has had with Ontario Teachers regarding Ontario Teachers' intentions with respect to the ROFO notice;*
 - *whether Atlas Arteria is currently in receipt of any offers or proposals from third parties to acquire its interest in Chicago Skyway;*
 - *the proposed use by Atlas Arteria of the proceeds from a sale of its interest in Chicago Skyway, if Ontario Teachers does accept the ROFO notice; and*
 - *the interrelationship between the Put Option and the ROFO provisions/notice (for example, the effect of the ROFO notice, or the effect of the acceptance of the ROFO notice, on the Put Option - noting that the 6 May Announcement suggests that part of the reason at least for Atlas Arteria giving the ROFO notice to Ontario Teachers in respect of Atlas Arteria's 66.67% interest in Chicago Skyway may have been to "deal with" the Put Option)."*
- (ii) in relation to the Put Option, IFM submitted that:
- "[f]or example, the market remains unaware of how the Put Option operates [with respect to the following information]:*
- *what constitutes a "change of control" of Atlas Arteria for the purposes of triggering the Put Option;*
 - *how the "fair market value" of Ontario Teachers' 33.33% interest would be determined following a change of control; the process for making that determination; and the timeframe for this;*
 - *the period following a change of control within which Ontario Teachers can exercise the Put Option;*
 - *if the Put Option is exercised, when Atlas Arteria must complete the acquisition; and*
 - *if Ontario Teachers decides not to exercise the Put Option what are the additional governance rights they receive in relation to refinancing, and what is the value of those rights."*
- (iii) further in relation to the Put Option, that the market remained unaware of *"any discussions which Atlas Arteria has had with Ontario Teachers regarding Ontario Teachers' intention with respect to the Put Option; and the "potential initiatives to deal with the put option" which have been identified by the Atlas Arteria Independent Directors and management, as referred to in the 6 May Announcement".⁶*

⁶ See paragraph 8(f) above

11. IFM submitted that the disclosure deficiencies mean that the acquisition of Atlas Arteria securities is not taking place in an efficient, competitive and informed market, contrary to section 602(a).⁷

Orders sought

12. IFM did not seek any interim orders.
13. IFM sought final orders to the effect that:
 - (a) Atlas Arteria immediately discloses to ASX all of the information identified in its application in relation to the ROFO, the potential sale of its interest in Chicago Skyway and the Put Option,⁸ and
 - (b) Atlas Arteria not dispose of (other than to Ontario Teachers pursuant to Atlas Arteria's pre-existing contractual obligations to Ontario Teachers under the Chicago Skyway Shareholders Agreement, if Ontario Teachers accepts the ROFO notice) any part of its 66.67% interest in Chicago Skyway during the Offer Period, without having first provided IFM with at least 14 days' written notice of that proposed disposal, so that IFM is able to apply to the Panel for orders prohibiting such a disposal.

DISCUSSION

14. We have considered all the material, but address only specifically that part of the material we consider necessary to explain our reasoning.

Preliminary submissions

15. Atlas Arteria made preliminary submissions that the Panel should decline to conduct proceedings on the basis that the application was premature.
16. Atlas Arteria submitted that IFM's proposed final orders seeking immediate disclosure of information in relation to the ROFO and Put Option⁹ was premature given (among other things) that:
 - (a) Atlas Arteria was required to prepare and dispatch its target's statement by 26 May 2026 and Atlas Arteria submitted that this would "*contain relevant information as required by law including information in relation to the ROFO notice and the Put Option*".
 - (b) "*There is no requirement in Chapter 6 of the Corporations Act for early disclosure of matters that a bidder thinks are of particular interest to it.*"
 - (c) "*If, following the dispatch of the target's statement, the Applicant (or any other person with standing) has an issue with disclosure in the target's statement, then it can apply to the Panel at that time.*"

⁷ 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)

⁸ See paragraph 10(b) above

⁹ See paragraph 13(a) above

17. Atlas Arteria also submitted that it *“is complying with its continuous disclosure obligations”* and noted that *“when the ROFO notice and other matters were disclosed on ASX on Wednesday 6 May, there was no material movement in the price of ALX securities.”*
18. Atlas Arteria further submitted that IFM’s requested final order that Atlas Arteria provide 14 days’ written notice of its intention to dispose of its interest in Chicago Skyway to a party other than Ontario Teachers¹⁰ was *“also premature and inappropriate”* given that there was *“no actual or immediate possibility”* of a sale of Atlas Arteria’s interest in Chicago Skyway to a person other than Ontario Teachers at this time, and that *“[t]he Applicant’s apparent assertion that there may be an imminent and “clear” frustrating action is a suggestion, not an actuality”*.

Initial matters and preliminary questions

Jurisdiction in relation to continuous disclosure

19. IFM’s application contained a list of information in respect of the ROFO notice and Put Option that IFM submitted needed to be disclosed immediately, in advance of the statutory timing requirements for Atlas Arteria to produce its target’s statement under section 633. Given the application suggested a continuous disclosure issue, we considered the Panel’s jurisdiction.
20. The Panel has previously stated that (footnotes omitted) *“[m]oreover, it is incorrect to state that the Panel has no jurisdiction to determine matters to which disclosure requirements in the Law and the ASX Listing Rules relate. If a lack of disclosure would lead to control of a company changing under unacceptable circumstances, then the Panel generally has power to intervene. Accordingly these issues are within the ambit of the Panel’s jurisdiction.”*¹¹
21. It is not the role of the Panel to police Chapter 6CA (continuous disclosure) and the ASX Listing Rules. However, there is some overlap with the continuous disclosure requirements and an efficient, competitive and informed market.
22. Here, we are satisfied that the disclosure issues raised in the application had a sufficient connection with matters within our jurisdiction to justify further enquiry, given that the alleged disclosure deficiencies, if established, would mean that:
 - (a) the acquisition of control of Atlas Arteria securities is not taking place in an efficient, competitive and informed market (contrary to section 602(a)) and
 - (b) Atlas Arteria shareholders have not been given enough information to enable them to assess the merits of the Offer (contrary to section 602(b)(iii)).

Preliminary questions

23. At the outset, we had questions in relation to Atlas Arteria’s decision to wait 9 days until after the Offer was announced to disclose (in its 6 May Announcement) that a ROFO notice had been issued to Ontario Teachers in respect of its 66.67% interest in Chicago Skyway and whether this delay was a breach of its disclosure obligations and potentially unacceptable.

¹⁰ See paragraph 13(b) above

¹¹ *Taipan Resources NL 01* [2000] ATP 11 at [26]

Takeovers Panel

Reasons – Atlas Arteria 02
[2026] ATP 9

24. We also wanted to understand Atlas Arteria's rationale for determining that it did not need to disclose further information in respect of the ROFO notice and Put Option ahead of release of its target's statement.
25. Accordingly, we decided to ask some preliminary questions of the parties.
26. In response to our query regarding Atlas Arteria's decision to wait 9 days before disclosing it had issued the ROFO notice to Ontario Teachers, Atlas Arteria submitted that it rejected *"what the Application appears to assert as a freestanding disclosure obligation, or an enhanced disclosure obligation, to make premature disclosure of matters which will be addressed (to the extent necessary and relevant) in the target's statement"*.
27. Atlas Arteria submitted that:
- (a) the issuance of the ROFO notice itself on 22 April 2026 did not enliven continuous disclosure requirements
 - (b) *"[t]he announcement of the Takeover Offer on 27 April 2026 did not change Atlas Arteria's assessment of the information regarding the ROFO notice for the purposes of continuous disclosure rules"*
 - (c) *"Atlas Arteria notes that, when the ROFO notice was subsequently disclosed on 6 May, there was no material movement in the price of Atlas Arteria securities"*
 - (d) *"Atlas Arteria's Chair and Managing Director and Chief Executive Officer have met with securityholders to receive feedback on the Takeover Offer. In none of those meetings has any securityholder expressed concerns about the lack of disclosure from Atlas Arteria, whether before or after the Takeover Offer"*
 - (e) The disclosure of the issuance of the ROFO notice in the 6 May Announcement *"...was incidental to the announcement of the Independent Directors' recommendation in relation to the Takeover Offer."* Atlas Arteria elaborated that:

"The 6 May ASX release was issued promptly following the decision of the Independent Directors of Atlas Arteria to recommend that securityholders reject the Takeover Offer. Atlas Arteria considered that the decision of the Independent Directors to make such a recommendation was price sensitive in the relevant circumstances and, accordingly, Atlas Arteria made prompt disclosure.

Atlas Arteria carefully considered what additional disclosure was required in the 6 May ASX release including whether it was necessary and appropriate to disclose key matters underpinning the decision of the Independent Directors to make the rejection recommendation. Atlas Arteria was cognisant of the guidance from the Takeovers Panel that:

 - *Targets should, if they make a recommendation, state the reasons for the recommendation clearly.*
 - *Targets should take great care to ensure that ASX releases regarding a bid are not misleading and that properly reasoned views will best assist offeree shareholders and promote an efficient, competitive and informed market.*

One of the reasons for the Independent Directors reaching the rejection recommendation was that Atlas Arteria was already focused on its stated strategy of optimising value creation for the benefit of its securityholders as a whole and this focus was demonstrated by the issuance of the ROFO notice.

Atlas Arteria therefore disclosed certain key facts about the issuance of the ROFO notice on page 4 of the 6 May ASX release...

28. In respect of Atlas Arteria's preliminary submission that its target's statement would include information in relation to the ROFO notice and the Put Option,¹² we asked Atlas Arteria to explain why such information is not required to be disclosed earlier than its target's statement.
29. In response, Atlas Arteria reiterated that it would comply with its obligations to produce a target's statement on 26 May 2026 and that the document *"will include information regarding Chicago Skyway, the ROFO notice and the Put Option to the extent Atlas Arteria securityholders and their professional advisers would reasonably require the information to make an informed assessment of whether to accept the Takeover Offer as required by section 638 of the Corporations Act. Other than continuous disclosure obligations described above, there is no obligation on Atlas Arteria to issue any information prematurely ahead of a target's statement."*
30. We also asked all parties whether, during the 9-day period between the announcement of the Offer and the 6 May Announcement, Atlas Arteria had breached its disclosure obligations by failing to announce that it had already given a ROFO notice to Ontario Teachers (or was this otherwise unacceptable).
31. Atlas Arteria's response reflected its submissions in paragraph 29 above and submitted it had complied, and was complying with, its continuous disclosure obligations.
32. IFM submitted (among other things) that:
 - (a) *"Atlas Arteria did breach its disclosure obligations during that 9 day period by failing to announce that it had already given a ROFO notice to Ontario Teachers in relation to Chicago Skyway... Chicago Skyway is one of Atlas Arteria's major assets with an acquisition cost of over US\$2 billion, and the fact that Atlas Arteria had already commenced a sale process for that asset, and that the ROFO notice had already given Ontario Teachers a legally binding right to acquire the asset at the price specified in the notice, was obviously critical information for target shareholders in the context of the takeover bid."*
 - (b) *"Under ASX Listing Rule 3.1, Atlas Arteria has an obligation to immediately announce any information which a reasonable person would expect to have a material effect on the price or value of Atlas Arteria securities. Under section 677 of the Corporations Act, information is deemed to have that effect if the information would, or would be likely to, influence persons who commonly invest in securities in deciding whether to acquire or dispose of the company's securities."* IFM submitted that the commencement of the sale process for Chicago Skyway through the issuance of

¹² See paragraph 16(a) above

the ROFO notice would “clearly have influenced investors in deciding whether to buy or sell Atlas Arteria securities had they known of that information.”

- (c) “Atlas Arteria’s failure to disclose the ROFO notice was compounded by the fact that, during the relevant 9-day period, Atlas Arteria released an ASX announcement on 27 April 2026 responding to the takeover offer (the 27 April Announcement), and then sent a letter to Atlas Arteria securityholders on 1 May 2026 (the 1 May Letter), without, in either of those documents, thinking fit to mention the fact that Atlas Arteria had commenced a sale process for Chicago Skyway and had given the ROFO notice... This material omission resulted in Atlas Arteria breaching the misleading and deceptive conduct provisions in section 1041H of the Corporations Act.”

33. Our views on the responses to the preliminary questions are discussed below.

Disclosure in relation to the ROFO notice and Put Option

34. Any document published to shareholders must be capable of being relied upon.¹³ The Panel has expressed the sentiment, in both Guidance Note 5: *Specific Remedies – Information Deficiencies*¹⁴ and Guidance Note 18: *Takeover Documents*,¹⁵ that the same standard of care, and the same standard of disclosure, should be applied to any takeover document sent to offeree shareholders as is applied to the formal bidder’s statement or target’s statement.
35. The Panel has also reiterated on a number of occasions the importance of communications in a takeover made prior to the release of a bidder’s or target’s statement maintaining the same standard of disclosure as is required in those documents.¹⁶
36. For example, in *Nexus Energy Limited*, the Panel said that “once a company is subject to a takeover bid, it is required to take even greater care in ensuring that all of its communications to shareholders or the market are not misleading in any way.”¹⁷
37. Also, in *Programmed Maintenance Services Limited 02* the Panel stated:
“The making of a takeover bid for a company is a critical time for its shareholders. Probably more than at any other time in the company’s history, shareholders will look to their directors to provide advice. Accordingly, the directors must ensure that their advice is reasonably based, clear, concise, objective and not misleading. All information presented must be prepared with the highest degree of care, as it would be if the directors were issuing a prospectus. The directors should consider carefully each statement and be satisfied that it meets this test.”¹⁸

¹³ *Alesco Corporation Limited 01 & 02* [2012] ATP 14 at [31], citing *Consolidated Minerals Limited 01* [2007] ATP 20 at [75]

¹⁴ at [17]

¹⁵ at [41]-[42]

¹⁶ *Foster’s Group Limited* [2011] ATP 15 at 24, citing *Consolidated Minerals Ltd 01* [2007] ATP 20 at [75], *Universal Resources Ltd* [2005] ATP 6 at [16] and *Programmed Maintenance Services Ltd 02* [2008] ATP 9 at [20] and [21]

¹⁷ *Nexus Energy Limited* [2006] ATP 17 at [31], adopted in *Foster’s Group Limited* [2011] ATP 15 at [27] and *Alesco Corporation Limited 01 & 02* [2012] ATP 14 at [32]

¹⁸ *Programmed Maintenance Services Limited 02* [2008] ATP 9 at [17]

38. In its application, IFM submitted that despite the disclosures made in the 6 May Announcement, Atlas Arteria's disclosure remained materially deficient in relation to the ROFO notice, potential sale of Chicago Skyway and the Put Option, including in respect of the litany of matters set out in paragraph 10(b) above, and that final orders should be made requiring Atlas Arteria to immediately disclose such information.
39. Taking into account Atlas Arteria's prior disclosures (including in the 6 May Announcement), we were not persuaded that Atlas Arteria is required to immediately disclose any further information in relation to the ROFO notice, potential sale of Chicago Skyway and the Put Option prior to the release of its target's statement. In reaching our decision, we consider the following relevant:
- (a) We do not consider that IFM sufficiently explained why, in the context of the Offer (where a target's statement is forthcoming), each of the types of information it referred to needed to be disclosed ahead of the statutory deadline for the release of Atlas Arteria's target's statement.
 - (b) Atlas Arteria's target's statement is due to be released shortly (by Tuesday, 26 May 2026) and Atlas Arteria has submitted that this will include information regarding Chicago Skyway, the ROFO notice and the Put Option as required by section 638.
 - (c) If Atlas Arteria's target's statement does not sufficiently address IFM's disclosure concerns, IFM (or anyone else with a proper interest in the matter) can make a fresh application to the Panel.¹⁹
40. While we agree that there is a heightened standard of care with respect to shareholder communications once a takeover bid has been announced,²⁰ here we do not consider that the disclosures made by Atlas Arteria in respect of the ROFO notice, potential sale of Chicago Skyway and Put Option once the Offer was announced fell short of this standard of care or was misleading. This is distinguishable from other matters where the Panel has considered disclosure made in advance of issuing a target's (or bidder's statement) statement to be misleading or made without reasonable basis, and has therefore required corrective disclosure.²¹

Delay in disclosing the issuance of the ROFO notice

41. As mentioned above,²² we were curious as to Atlas Arteria's delay in waiting until 9 days after the announcement of the Offer to disclose that a ROFO notice had been issued to Ontario Teachers, and made enquiries of Atlas Arteria.

¹⁹ A similar approach was taken in *Hastings Diversified Utilities Fund 02* [2012] ATP 11 at [21]

²⁰ See paragraphs 34 to 37 above

²¹ For example, in *Programmed Maintenance Services Limited 02* [2008] ATP 9, the Panel examined a letter sent to shareholders and an investor presentation released before the target's statement which, amongst other things, included analysis of the adequacy of the takeover premium and the value of the scrip consideration offered. The Panel considered that the basis upon which the premium had been presented and the target's decision to use a particular calculation methodology had not been sufficiently disclosed. It made a declaration of unacceptable circumstances and orders requiring corrective disclosure via a clarification letter to shareholders in a form approved by the Panel

²² See paragraph 23 above

42. Atlas Arteria's response is set out in paragraphs 26 to 27 above. In summary, it submitted that its decision to disclose the issuance of the ROFO notice was tied to the decision of the Independent Directors of Atlas Arteria to recommend that securityholders reject the Offer. One of the reasons for the Independent Directors reaching the rejection recommendation was that *"Atlas Arteria was already focused on its stated strategy of optimising value creation for the benefit of its securityholders as a whole and this focus was demonstrated by the issuance of the ROFO notice"*. Accordingly, Atlas Arteria determined to disclose *"certain key facts about the issuance of the ROFO"*.
43. Atlas Arteria also submitted that:
- (a) there was no movement in the price of Atlas Arteria securities when the ROFO notice was disclosed and
 - (b) that during engagement with securityholders on the Offer, it had not received feedback from securityholders expressing concerns about the lack of disclosure from Atlas Arteria, either before or after the Offer was announced.
44. While these may be factors considered by ASX in considering contraventions of Chapter 6CA which concern the effect of information on the "price or value" of listed securities, price movements may not be helpful to our assessment of whether target shareholders have the information required to assess the merits of a proposal and more generally that the acquisition of control is taking place in an efficient, competitive and informed market.
45. Here the delayed disclosure occurred in circumstances where Atlas Arteria knew (or ought to have known) during that 9-day period that the issue of the ROFO notice breached a condition of the Offer (namely Condition 7(a)²³). Subject to complying with the continuous disclosure obligations, there is no prescribed requirement on a target to provide disclosures on matters in advance of the statutory timing requirements for issuing a target's statement. Nevertheless, that a target is sitting on undisclosed information knowing that it breaches a bid condition and is of a material nature does not sit comfortably with us.
46. We may have ultimately had some concerns in respect of Atlas Arteria's decision to delay disclosure in circumstances where Atlas Arteria knew (or ought to have known) that an Offer condition had been breached. However, the market is now aware of the issuance of the ROFO notice and IFM has not sought final orders remedying the submitted continuous disclosure breach in respect of this. Accordingly, we did not consider it appropriate to make further enquiries into this aspect of the application. We make no comment on whether a breach of Atlas Arteria's continuous disclosure obligations has occurred.

Frustrating action

47. The basis for IFM's frustrating action claim is that, in the event Ontario Teachers does not accept the ROFO notice, the sale of Atlas Arteria's interest in Chicago Skyway to a third party would breach a defeating condition of the Offer, namely

²³ See paragraph 7(a) above

Takeovers Panel

Reasons – Atlas Arteria 02
[2026] ATP 9

Condition 11(b) which prohibits material acquisitions or disposals during the period from the date of the Bidder’s Statement to the end of the Offer Period.

48. IFM made it clear that it was not currently seeking orders restraining Atlas Arteria’s threatened sale of its interest in Chicago Skyway as a frustrating action, as *“it would appear from the 6 May Announcement, and the disclosures in relation to the ROFO in the Acquisition Announcement [from 14 September 2022], that Atlas Arteria cannot dispose of its interest [in Chicago Skyway] to a third party... until Ontario Teachers has declined to accept the ROFO notice, or the period within which Ontario Teachers is required to respond to the ROFO notice has expired”*. However, it submitted that it does *“need to have notice of any impending disposal, so that it can then apply to the Panel for orders restraining the disposal as a frustrating action in respect of its Takeover Offer. That is particularly the case, as Atlas Arteria has not disclosed the period within which Ontario Teachers can accept the ROFO notice, and the fact that Ontario Teachers could decline to exercise the ROFO prior to the end of the ROFO period. [The order sought] which requires Atlas Arteria to give the Applicant 14 days’ notice of any proposed disposal has been designed with this in mind.”*
49. In our view, it was difficult to see how a sale of Atlas Arteria’s interest to a party other than Ontario Teachers could happen in quick succession given that the 6 May Announcement only disclosed an intention *“to explore strategic alternatives for interest in Chicago Skyway including a possible sale to third parties”* (emphasis added) if the ROFO notice is not accepted by Ontario Teachers.
50. Accordingly, we concluded that IFM’s frustrating action claim in respect of Atlas Arteria’s threatened sale of its interest in Chicago Skyway to a third party (in the event Ontario Teachers does not accept the ROFO notice) is premature given there is nothing to suggest that such a sale to a party other than Ontario Teachers is an immediate possibility at this time.

DECISION

51. For the reasons 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).

Rory Moriarty
President of the sitting Panel
Decision dated 22 May 2026
Reasons given to parties 23 June 2026
Reasons published 25 June 2026

Takeovers Panel

Reasons - Atlas Arteria 02
[2026] ATP 9

Advisers

Party	Advisers
Atlas Arteria	Mallesons
IFM	Allens