



**In the matter of Novus Petroleum Limited
[2004] ATP 2**

Catchwords:

Expert's reports - defeating condition - penalties payable on change of control - disclosure - further disclosure - undertaking to Panel

Corporations Act 2001 (Cth), sections 629, 630, 647, 605F

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

TP Guidance Note 4, Remedies & Enforcement

AMP Shopping Centre Trust 01 [2003] ATP 21

AMP Shopping Centre Trust 02 [2003] ATP 24

BreakFree Limited 04 [2004] ATP 39

BreakFree Limited 04R [2004] 42

SA Liquor Distributors [2002] ATP 22

Goodman Fielder 01 [2003] ATP 1

Anaconda Nickel Limited 06 - 07 [2003] ATP 6

Great Mines Limited [2003] ATP 43

Ridley MI Pty Limited v Joe White Maltings Ltd (1996) 22 ACSR 319

Gerrard Company of Australasia Limited v Johns Perry Limited (1982) 1 ACLC 646

These are our reasons for concluding proceedings in relation to the affairs of Novus Petroleum Limited following acceptance by us of undertakings by Medco Energi (Australia) Pty Ltd.

THE APPLICATION & PROCEEDING

1. These reasons relate to an application (the **Application**) under section 657C of the *Corporations Act 2001 (Cth)* (**Act**)¹ to us from Novus Petroleum Limited (**NVS**) received on 6 January 2004 in relation to the off-market cash takeover bid (**Bid**) by Medco Energi (Australia) Pty Ltd (**Medco**) for all of the issued ordinary shares in NVS.
2. NVS alleged that unacceptable circumstances arose from, essentially:
 - (a) Deficiencies in Medco's bidder's statement issued by Medco on 24 December 2003 (**Bidder's Statement**), specifically that it contained no information as to whether Medco intended to, or has the ability to, refinance notes issued by NVS in 1997 in the United States (**NVS Notes**).

¹ In these reasons, statutory references are to the Act, unless it is otherwise obvious.

Takeovers Panel

Reasons for Decision – Novus Petroleum

- (b) Deficiencies in the summary of the valuation report prepared by Madani Securities included in the Bidder's Statement.
 - (c) Medco not stating whether it would waive² the condition of the Bid (set out in section 10.6(g) of the Bidder's Statement) (the **Fees Condition**) with respect to confirmation of fees payable by NVS under the terms of the NVS Notes if the Bid leads to a change in control of NVS.
3. NVS sought interim orders:
- (a) preventing dispatch of the Bidder's Statement and any supplement to it to shareholders for a period of 7 business days or until the Panel makes a final decision in relation to the Application; and
 - (b) that Medco provide to NVS, by 9am on Friday, 9 January 2004, a complete copy of the full valuation report prepared by Madani Securities (**Madani Report**) together with an English translation of the complete report.³
4. We declined to make the interim orders requested, refer to [23] – [24].
5. NVS also sought final orders that Medco:
- (a) confirm in writing to NVS within 2 business days of the Panel's final decision, the waiver of the Fees Condition; and
 - (b) prepare a replacement bidder's statement to include detailed additional disclosures to rectify the issues raised by NVS in the Application.
6. We concluded the proceeding (the **Proceeding**) arising from the Application following the issue by Medco of a supplementary bidder's statement described in [19] and acceptance by us under section 201A of the *Australian Securities and Investments Commission Act 2001 (ASIC Act)* of undertakings (**Undertakings**) offered by Medco and set out in Annexure A to these reasons.

THE PANEL & PROCESS

- 7. Nerolie Withnall (sitting President), Scott Reid (sitting Deputy President) and Carol Buys were the sitting Panel for the Proceeding.
- 8. We adopted the Panel's published procedural rules for the purposes of the Proceeding.

² Strictly, to declare the Bid free from the relevant condition under section 650F, we will adopt the common description of this as "waiver", although this may not be strictly accurate (see *Gerard Company of Australasia Limited v Johns Perry Limited* (1982) 1 ACLC 646 at 649 to 651.

³ The Madani Report was in English, the translation issues ceased to exist.

Takeovers Panel

Reasons for Decision – Novus Petroleum

APPLICATION

Factual background – chronology of events leading up to the Application

9. The following is a brief description of the facts underlying the Application which has largely been taken from the Application and the submissions from the parties.
10. NVS is listed on the stock market of Australian Stock Exchange Limited (ASX).
11. Medco is an Australian proprietary company and a wholly owned subsidiary of PT Medco Energi Internasional Tbk (MEI), a company incorporated in Indonesia and listed on the Jakarta Stock Exchange.
12. On 22 December 2003, MEI announced that Medco would make the Bid, offering \$1.74 per NVS share for all of the issued ordinary shares in NVS.
13. On 24 December 2003, NVS sent a letter (**24 December Letter**) to MEI which was released by NVS to ASX on the same day. The 24 December Letter sets out information in relation to the NVS Notes and asserts that it is likely that the Make Whole Fees would be between US\$14 million and US\$15 million.
14. On 24 December 2003, MEI also issued an announcement to ASX attaching a copy of the Bidder's Statement setting out the terms of the Bid.
15. The Bid was expressed to be subject to certain conditions being fulfilled. The conditions are set out in section 10.6 of the Bidder's Statement. These conditions included:
 - **Minimum acceptance** - Medco acquiring at least 90% of NVS' ordinary issued shares and at least 75% (by number) of the ordinary shares of NVS (condition 10.6(a)); and
 - **Break Fee Confirmation not exceeding US\$5 million under NVS Notes** - receipt of confirmation by NVS in an announcement or in its target's statement as to the nature and extent of any prepayment or compensation rights (**Make Whole Fees**) arising under the terms of the NVS Notes, if such rights were to be triggered as a result of the making of the Bid, the acquisition of NVS shares by Medco, or Medco acquiring control of NVS, and that the Make Whole Fees in aggregate would not exceed a maximum potential liability of US\$5 million (condition 10.6(g)).
 - **Foreign Investment Review Board approval** – a letter of no objection to the Bid by the Treasurer of the Commonwealth of Australia, or no order made in relation to the Bid under section 22 of the *Foreign Acquisitions and Takeovers Act 1975* (Cth), or where such an order is made, a period of 90 days has expired after the order comes into operation and no notice has been given by the Treasurer to Medco during that period to the effect that there are any objections to the Bid.

Takeovers Panel

Reasons for Decision – Novus Petroleum

- **MEI shareholder approval** – the shareholders of MEI pass in general meeting all such resolutions as may be required to approve the Bid and the acquisition of the NVS shares under the Bid.
16. On 24 December 2003, MEI issued a further ASX announcement relating to the lodgement of the Bidder's Statement with ASIC. The announcement included reference to MEI having commissioned PT Madani Securities (**Madani**) to conduct an independent assessment and valuation of NVS. The announcement stated that Madani estimates:

"...the 'fair value' of [NVS] shares to be \$1.65 per share, with downside potential down to A\$1.40 per share and upside potential up to A\$1.90 per share, [so that the Medco]... offer of \$1.74 for [NVS] is towards the top of [Madani's] valuation range..."
 17. By ASX announcement dated 29 December 1997, NVS disclosed details of the NVS Notes, but not the existence or terms of any repayment rights on a change of control of NVS. In later Annual Reports, NVS referred to the right of holders of the NVS Notes to "request early repayment" under a "review clause" in the event of NVS being taken over. However, no mention was made of any Make Whole Fees being payable in that or any other circumstance.
 18. On 31 December 2003, MEI provided NVS with a copy of a MEI shareholder circular, including a resolution to be voted on at a general meeting of MEI relating to the approval of the Bid which was required for the purposes of compliance with Indonesian regulations. Attached to the notice was a shortened version of the Madani Report concerning NVS, prepared by Madani specifically for the purpose of circulation with the notice of MEI's meeting in accordance with Indonesian regulations (the **Summary Madani Report**). This information was provided in Indonesian and NVS subsequently had the Summary Madani Report translated unofficially into English.
 19. On 2 January 2004, MEI made a further ASX announcement, attaching a copy of a Supplementary Bidder's Statement by Medco in relation to the Bid (**Supplementary Bidder's Statement**).
 20. The Supplementary Bidder's Statement:
 - noted in relation to the Fees Condition that "the information in the [24 December Letter] was not stated to be provided with the approval of the NVS Board, after the making of due enquiries";
 - stated that the 24 December Letter did not fully address the requirements of the Fees Condition;
 - observed that if the information in the 24 December Letter were correct, it appears that the Fees Condition would not be capable of satisfaction, since the NVS board will not be able to provide the confirmation sought in section 10.6(g)(ii) of the Bidder's Statement.
 21. On 2 January 2004, NVS informed Medco of concerns in relation to the adequacy and accuracy of certain disclosures made by Medco in the Bidder's

Takeovers Panel

Reasons for Decision – Novus Petroleum

Statement that had not been remedied by the Supplementary Bidder's Statement. NVS' concerns were outlined in a letter dated 2 January 2004 sent to Medco by NVS' solicitors, Mallesons Stephen Jaques. NVS also sought the full Madani Report, (as distinct from the Summary Madani Report provided to MEI shareholders).

22. NVS received a response from Medco's solicitors, Allens Arthur Robinson (AAR), on Tuesday, 6 January 2004 to the concerns raised by NVS that are referred to in [21].

Declarations and orders sought in the Application

Interim orders sought

23. NVS sought interim orders:
 - (a) preventing dispatch of the Bidder's Statement and any supplement to it to shareholders for a period of 7 business days or until the Panel makes a final decision in relation to the Application; and
 - (b) that Medco provide to NVS, by 9am on Friday, 9 January 2004, a complete copy of the full Madani Report.
24. We declined to make the interim orders requested preventing dispatch of the Bidder's Statement on the basis that, pursuant to Panel Guidance Note 4 on Remedies and Enforcement, any deficiency alleged could, if later determined to exist, be adequately dealt with by subsequent disclosure and that NVS could ensure, by suitable disclosures to the market and its shareholders, that shareholders were aware of the existence of its concerns relating to the Bidder's Statement.
25. As noted by us in Panel media release TP 01/04, the Supplementary Bidder's Statement in which Medco discusses its position with respect to the Fees Condition indicated that it would be premature for it to make a decision whether to waive the Fees Condition until it had received further information, but that its aim was to decide at the appropriate time whether it would waive the condition, and to inform NVS shareholders of that decision.

Final orders sought

26. In addition to the interim order, NVS sought final orders that Medco:
 - (a) confirm in writing to NVS within 2 business days of the Panel's final decision the waiver of the Fees Condition; and
 - (b) prepare a replacement bidder's statement to include detailed additional disclosures to rectify the issues raised by NVS in the Application.

Takeovers Panel

Reasons for Decision – Novus Petroleum

DISCUSSION

Make Whole Fees disclosure

27. After receiving submissions from the parties, we concluded that before it announced its bid Medco knew of the existence of the repayment obligation from NVS' financial statements (to the extent outlined in [17] above). Until 24 December 2003, however, Medco had no evidence that there would in addition be a make whole fee, let alone its amount and incidence. As far as we were aware at the date of our decision, Medco still did not have detailed information about the Make Whole Fees.
28. We indicated to NVS that its target's statement should disclose sufficient details of all its debt which may become payable on a change of control and the timing and other terms of payment. We considered this information to be material to shareholders in deciding whether to accept the Bid and that it would be unreasonable to require Medco to arrange the funding of repayment of such debt on the basis of assumptions about their terms where those terms were not completely disclosed or standardised.
29. NVS submitted that make whole fees were usual in relation to the terms of debt issues such as the NVS Notes and that its disclosures concerning the issue of the NVS Notes in 1997 and in its subsequent annual reports by implication included a disclosure of the quantum and incidents of the Make Whole Fees. We reject this submission: the evidence before us was that, although some kind of "change of control" provision may be a subject for negotiation in debt issues like the NVS Notes, there is no "industry standard" for such a provision which would have meant that the terms of such a provision could have been inferred simply from an announcement of either the issue of the NVS Notes or that the NVS Notes would be repayable on a change of control of NVS.
30. We consider that the Make Whole Fees were the kind of matter that should have been disclosed to shareholders and the market generally for the reasons explained in *AMP Shopping Centre Trust 01* [2003] ATP 21 at [62] to [65] and *AMP Shopping Centre Trust 02* [2003] ATP 24. We were disappointed to learn that NVS had not disclosed the full terms of the NVS Notes that would take effect on a change of control of NVS after those decisions, which had been discussed widely and publicly at the time.

Funding disclosure

31. We considered that Medco was required to disclose whether it will need, and has made, arrangements to replace any of NVS' funding which may become repayable as a result of the Bid. We decided that, in principle, the information is material to a decision whether to remain as a minority shareholder in NVS under Medco's control. However, we considered that the level of disclosure may be of a lower standard than that required for the financing of the cash consideration offered under the Bid because the effect on shareholders is less direct, as the new funding would replace a similar amount of borrowings under

Takeovers Panel

Reasons for Decision – Novus Petroleum

the NVS Notes and the interest rate on new borrowings is unlikely to be significantly higher than the rate on the NVS Notes.

32. In the circumstances of the Bid we thought that Medco's statement in the Supplementary Bidder's Statement that it and MEI are confident that any necessary funding arrangement could be put in place by MEI in a relatively short timeframe was satisfactory, given the limited information it had received at that time with respect to the timing and conditions affecting repayment of the NVS Notes (including the Make Whole Fees).
33. However, we consider that when Medco is provided with sufficient details of all of NVS' debt which may become payable on a change of control and the timing and other terms of payment, Medco should settle and disclose arrangements to fund the repayment of the NVS Notes and Make Whole Fees.

Waiver of Fees Condition

34. During the Proceeding, NVS submitted that because Medco had not declared the Bid free from the Fees Condition, the Bid could not be regarded as "live" and this would affect decisions by shareholders whether to accept the Bid and market actions, ie: whether to buy and sell NVS shares. NVS further submitted that Medco had all the information it needed to make up its mind whether to rely on or waive the Fees Condition.
35. We considered that Medco had responded appropriately to the information provided to the market by NVS. Even though it did not indicate what it proposed to do, Medco informed the market of the process by which, and the time in which, it proposed to make a decision and that the market will be informed, at appropriate times.
36. We agreed with ASIC's submissions that any uncertainty caused as a result of the Fees Condition is not currently material to a decision whether to accept the Bid because, in the face of the information released to the market, it would be reasonable for shareholders to wait for the NVS target's statement before deciding whether to accept the offer. Indeed, we would expect many shareholders to await satisfaction or waiver of any or all of the other significant conditions before deciding to accept.
37. In light of the information available to us and the market at the date of our decision and the Undertakings, we considered that the fact that Medco had not announced a decision whether it would declare the Bid free from the Fees Condition had not yet given rise to unacceptable circumstances and was unlikely to do so.

Discretion on waiver and delay in announcing

38. NVS submitted that for Medco not to declare its position concerning whether it will rely on or waive the Fees Condition would allow it to maintain an option whether or not to proceed with the Bid, when as mentioned above, NVS asserted that since 24 December 2003, Medco had all the information it needs to make a decision. It relied on the policy underlying section 629.

Takeovers Panel

Reasons for Decision – Novus Petroleum

39. Medco submitted that the policy underlying section 629 is that the bidder should not be entitled to have a free option whether or not to proceed with its bid by prohibiting the use of defeating conditions which are within the control or the subjective judgement of the bidder. Medco further submitted that the Fees Condition is not a virtual certainty to be triggered and it has kept the market informed of what it proposes to do in relation to the Fees Condition by setting up the process set out in the Supplementary Bidder's Statement.
40. We consider that if a condition depends on the opinion, belief or state of mind of the bidder (or the happening of an event within the sole control of the bidder), the policy and intent of section 630 and 650F would be subverted because the condition would allow the bidder to retain a condition in its bid after the date specified under section 630 and then satisfy it at the last moment in the bid period, thereby retaining the discretion whether to proceed with the bid after a notice under section 630 had been given.
41. The National Companies and Securities Commission's concern in the early 1980's when maximum acceptance conditions still existed and bidders were entitled to withdraw bids was that subjective conditions attached to offers could create situations where the shareholder by accepting gives up rights attaching to shares but retains the risk because the bidder could later decide whether the deal will proceed. The bidder thus had a "free ride" at the expense of the offerees.⁴
42. However, this must be put in its historical context. In 1982 to 1984, the use of maximum acceptance conditions and the entitlement in bidders to withdraw offers after the first 14 days meant that shareholders, in order to ensure that they participated in some of the benefits of the takeover, would accept early. The NCSC's views are understandable against that background. Under the current takeover practice which has been affected by the legislation first introduced in 1984, however, the timing imperative is reversed and shareholders typically wait, certain in the knowledge that seven days before the end of the offer, they will know what the relevant position will be. In this situation, there is no "free ride" where the bidder waits until it is required by the Act to inform the market to make up its mind concerning its reliance on its conditions.
43. In *SA Liquor Distributors* [2002] ATP 22 and *Goodman Fielder 01* [2003] ATP 1, the Panel observed that conditions that were vaguely drafted and uncertain in their operation might offend the policy of section 629 by, in effect, giving the bidder a discretion in relation to the interpretation of the condition. This would mean that whether or not the condition was triggered or fulfilled would depend on the bidder's construction of the condition. In addition, in *Goodman Fielder 01 at*

⁴ As set out in NCSC Commentary 407: Conditions attached to Takeover Offers; see also the relevant papers in *Takeovers, Trading, Trusts and More*, papers from a seminar sponsored by Faculty of Law Monash University, Faculty of Law University of Sydney in August 1984, especially the comments of A. B. Greenwood at 107 to 115.

Takeovers Panel

Reasons for Decision – Novus Petroleum

[69], the Panel noted that when an information condition was included specifying a proposed means by which the information would be conveyed (through the target's statement):

'If [a bidder] did acquire such sufficient and reliable information, and did not then proceed to waive the [Fees Condition] the Panel considers that [the target] would be entitled to make an application to the Panel.'

44. The Panel notes that this statement says nothing about the time at which the bidder would be required to waive the condition, simply that if it did not do so there was a real risk of unacceptability arising. In our view, the words "and did not then proceed" do not convey the concept of "immediately". Rather, they tend to convey the impression of timing "in the ordinary course of events".
45. In *Anaconda Nickel Limited 06 - 07* [2003] ATP 6, the Panel dealt with a condition which had clearly been triggered. The time pressures imposed by the commercial transaction⁵ were such that the Panel considered that there was a close policy analogy in that case between a "proper" condition triggered and a discretionary condition prohibited by section 629. The Review Panel noted that the analogy did not apply equally to all bidders and all conditions, giving as an example the condition which might be triggered on more than one occasion. It also specifically stated that it was not adopting a policy position that a bidder must declare its position on a one-off condition on the first day on which the condition can be determined. We do not consider that the Anaconda decision requires us to consider that unacceptable circumstances have arisen here.
46. We consider that so long as the market knows that there is uncertainty, the nature of that uncertainty and the timetable for resolving it, there is no vice in the bidder waiting until the date set under section 630 for its decision whether to waive defeating conditions, before making an announcement as to its attitude to the conditions in its bid. The market is able to trade on the basis of a known uncertainty. The market deals with prices and trades efficiently where a known uncertainty exists, for example with respect to mining exploration companies and their future results of exploration. This does not make a market false or inefficient, provided that it is informed of developments in a timely way.

Timing

47. We note that, with offers having been dispatched by Medco, there were no special circumstances (like those considered by the Panel in *BreakFree 04* [2003] ATP 39 and *BreakFree 04(R)* [2003] ATP 42) which would suggest a reason to disturb the statutory timetable for announcement of decisions concerning conditions set out in sections 630 and 650F (which requires that to be done at least seven days before the end of the bid period).

⁵ Especially that the commercially important bid was that for the rights offered under a rights issue, which was not regulated by Chapter 6 and whose timetable was set by reference to the rights issue rather than Chapter 6 (especially section 633).

Takeovers Panel

Reasons for Decision – Novus Petroleum

Disclosure of expert's report

48. MEI commissioned the full Madani Report for the benefit of its directors and provided its shareholders with only the Summary Madani Report to assist their decision whether to approve the Bid for the purposes of MEI's compliance with Indonesian regulatory requirements. In the light of this, the Panel considered whether it was appropriate to provide the Madani Report or the Summary Madani Report to NVS shareholders to assist them in deciding whether to accept the Bid.
49. In this respect we considered the Panel's decision in *Great Mines Limited* [2003] ATP 43 where the Panel noted at [52]:
- '...this matter demonstrates that people involved in takeovers should be careful when using in takeover documents other reports or documents which were prepared for some other purpose. In some circumstances, it may be appropriate to disclose in takeover documents the existence of those other reports or documents and to summarise their content or reproduce them. Where this is done, however, the issuer of the takeover document should make abundantly and unambiguously clear the purpose for which the other report or document was prepared and any consequential limitations on the use of the other report or document, or the summary of it, by the addressees of the takeover document.'*
50. We agree with this approach and with the principle in *Ridley MI Pty Limited v Joe White Maltings Ltd* (1996) 22 ACSR 319 and considered that there was information in the full Madani Report that should be disclosed to NVS shareholders. However, in light of the fact that the report had not been prepared to conform with Australian standards, that it had not been publicly disclosed in Indonesia or Australia and that the Bidder's Statement (as supplemented by the Supplementary Bidder's Statement issued on 2 January 2004) included a summary of the Madani Report which included all information relevant to NVS shareholders, we decided that this was sufficient and that the full Madani Report did not need to be disclosed.
51. NVS submitted that the Madani Report should be disclosed to NVS shareholders. Since the Summary Madani Report had been published in Indonesia, there was no reason why it could not be provided to shareholders in Australia with suitable caveats as to the purpose for which it had been prepared. We considered that the principle for which *Great Mines* and *Joe White* stand did not require Medco to publish the Madani Report, just because it had that report. That principle requires only that adequate information be provided and Medco had already fulfilled that requirement substantially or entirely. There was no need to post the report to all shareholders as the most important parts had been provided to shareholders in the summary in the Bidder's Statement and Supplementary Bidder's Statement.
52. We were more concerned by the mention in Medco's announcement of 24 December (refer to [16]) of the conclusions of the Madani Report. We considered that providing the conclusions from the Madani Report in an announcement on 24 December without a fair description of how they were

Takeovers Panel

Reasons for Decision - Novus Petroleum

arrived at was not appropriate. Accordingly, we required Medco to substantiate those conclusions by publishing Madani's reasoning to the extent of offering to provide hard copy of the Summary Madani Report to shareholders who asked.

53. This offer was made in the Second Supplementary Bidder's Statement which Medco issued on 23 January 2004 pursuant to its undertaking. Both the Second Supplementary Bidder's Statement and the copies contained a description of the circumstances in which the Madani Report was written and a statement that it was prepared for the use of shareholders in MEI. On this basis, no additional disclosure appeared to be required or desirable in relation to the Madani Report.

DECISION

Undertakings and conclusion of Proceeding

54. In light of the provision of the Undertakings accepted by us from Medco we concluded the Proceeding on the basis that it appeared to us that no declaration of unacceptable circumstances was appropriate and no final orders were required.

Legal representation and costs

55. We consented to the parties being legally represented by their commercial lawyers in the Proceeding.

Nerolie Withnall

President of the Sitting Panel

Decision dated 16 January 2004

Reasons published 02 March 2004

Takeovers Panel

Reasons for Decision - Novus Petroleum

Annexure A - Undertakings provided by Medco during the Proceeding

Undertaking

By: Medco Energi (Australia) Pty Ltd (Medco)

To: The Takeovers Panel (Panel)

Date: 12 February 2004

Pursuant to subsection 201A(1) of the *Australian Securities and Investments Commission Act 2001* (Cth), Medco undertakes to:

- (a) prepare a supplementary bidder's statement to be lodged with the Australian Securities and Investments Commission and sent to Australian Stock Exchange Limited and to Novus in accordance with section 647 of the Corporations Act 2001 (Cth) as soon as practicable after the last of the following to occur:
 - (i) MEAPL receiving from Novus (whether by way of any target's statement of Novus or otherwise) full details of the amount of the Relevant Novus Debt and of the terms of repayment or prepayment of the Relevant Novus Debt (including, without limitation, the time for and manner of repayment or prepayment and the amount and terms of any Compensation Payments); and
 - (ii) the Medco Energi Group finalising the terms of the Medco Energi Refinancing Arrangements; and
- (b) include in the supplementary bidder's statement referred to in paragraph (a):
 - (i) details of the material terms of the Medco Energi Refinancing Arrangements (including details of interest rates, term, security and penalty clauses on repayment), to the extent that those details would be material to a holder of Novus Shares that does not accept the Offer in circumstances where MEAPL obtains relevant interests in more than 50% of all of the Novus Shares and waive the condition in section 10.6(a) of the Bidder's Statement; and
 - (ii) if the differences between the terms of:
 - (A) the Proposed Novus Financing Arrangements; and
 - (B) the Current Novus Financing Arrangements,

are such that if the Proposed Novus Financing Arrangements replaced the Current Novus Financing Arrangements, the net financial effect on the Novus Group of that replacement (on a present value basis applying the Novus Share number and A\$:US\$ exchange rate assumptions set out in MEAPL's supplementary bidder's statement dated 2 January 2004 in relation to the Offer, and after taking into account the amount of the Compensation Payments) would be materially less than 11 cents per Novus Share, a statement of that fact.

Takeovers Panel

Reasons for Decision – Novus Petroleum

In this undertaking:

Bidder's Statement means the bidder's statement of MEAPL dated 24 December 2003 (as supplemented) in relation to the Offer.

Compensation Payments means any amounts that are or may be payable by the Novus Group in connection with the repayment or prepayment of the Relevant Novus Debt to compensate (whether in whole or part) the relevant creditors for the early repayment or prepayment.

Current Novus Financing Arrangements means the Novus Group's existing financing arrangements in relation to the Relevant Novus Debt (to the extent they are known to MEAPL).

MEAPL means Medco Energi (Australia) Pty Ltd (ACN 105 457 690).

Medco Energi Group means PT Medco Energi Internasional Tbk and its subsidiaries.

Medco Energi Refinancing Arrangements means any new financing arrangements that the Medco Energi Group may be required to put in place to facilitate the repayment or prepayment of the Relevant Novus Debt, and the payment of the Compensation Payments, by the Novus Group.

Novus means Novus Petroleum Limited (ABN 17 067 777 440).

Novus Group means Novus and its subsidiaries.

Novus Shares means issued ordinary shares in Novus.

Offer means the off-market takeover bid by MEAPL for all of the Novus Shares.

Proposed Novus Financing Arrangements means the Medco Energi Refinancing Arrangements, and, to the extent they are known to MEAPL, any new financing arrangements that the Novus Group proposes to put in place to facilitate its repayment or prepayment of the Relevant Novus Debt and its payment of the Compensation Payments.

Relevant Novus Debt means any existing financial indebtedness of the Novus Group that, as a result of the making of the Offer or of the acquisition of Novus Shares by MEAPL or of MEAPL acquiring control of Novus, is required or liable to be repaid or prepaid by the Novus Group.

Dated 12 February 2004

Greg Bosmans
Attorney for Hilmi Panigoro, Director
For and on behalf of Medco Energi (Australia)
Pty Ltd