



Tuesday, 12 September 2006

Aztec Resources Limited - Decision

The Takeovers Panel advises that it has considered the application (**Application**) by Aztec Resources Limited (**Aztec**) in relation to the off-market scrip takeover bid for Aztec by Mount Gibson Iron Limited (**Mount Gibson**) (see [TP06/75](#)).

The Panel has accepted an undertaking from Mount Gibson to provide additional information in a supplementary bidder's statement. The information relates to Mount Gibson's forecast consolidated net profit after tax for the six month period to 31 December 2006. The Panel had advised Mount Gibson that, in the absence of such disclosure, it was minded to make a declaration of unacceptable circumstances. The Panel intends to dismiss the Application once the Panel is satisfied that Mount Gibson has complied with its undertaking.

Background

Aztec submitted that there were deficiencies in the disclosure made in the Mount Gibson bidder's statement. Aztec submitted that these related to issues including:

- (a) a possible merger of Mount Gibson (after the takeover bid for Aztec) with Gindalbie Metals Limited (**Gindalbie**) (the "**3 Way Merger**"); and
- (b) production and financial information relating to Mount Gibson.

Aztec also submitted that Mount Gibson and Gindalbie were associates in relation to the affairs of Aztec and the 3 Way Merger.

Mount Gibson submitted that there were no disclosure deficiencies in its bidder's statement. Mount Gibson and Gindalbie each submitted that they were not, and had not been, associates in relation to Aztec.

Decision

The Panel does not consider, on the material presented to it, that Mount Gibson and Gindalbie are currently associates. The Panel did not consider it necessary to make a decision regarding whether an association had previously existed between Mount Gibson and Gindalbie at the time of the 3 Way Merger discussions because the evidence provided to the Panel indicated that any such association, if it had existed, had been terminated.

The Panel accepted Mount Gibson's submissions that it had had commercial reasons for its decision not to pursue the 3 Way Merger discussions (in addition to any reasons it may have had relating to the difficulty of implementing a 3 Way Merger).

In relation to Aztec's submissions regarding disclosure, the Panel noted the supplementary bidder's statement released by Mount Gibson on 6 September 2006 (and despatched to Aztec shareholders) which contained disclosure concerning, among other things, the 3 Way Merger discussions. Except in relation to a forecast as to Mount Gibson's financial performance (discussed below) the Panel did not consider that any additional disclosure beyond the 6 September supplementary bidder's statement was required by Mount Gibson.

In relation to forecasts, the Panel considers that it would be reasonable for Aztec shareholders and their professional advisers to expect to find a forecast of Mount Gibson's financial performance to 31 December 2006, in the bidder's statement relating to Mount Gibson's scrip offer. The Panel advised Mount Gibson that it was minded to make a declaration of unacceptable circumstances in relation to the failure of Mount Gibson to provide such a forecast. However, the Panel accepted undertakings offered by Mount Gibson in relation to the provision of forecast financial information in a supplementary bidder's statement which it considers remedies the possible unacceptable circumstances. Accordingly, the Panel has not made a declaration of unacceptable circumstances. The undertakings are described in Annexure A.

Nigel Morris
Director, Takeovers Panel
Level 47, 80 Collins Street
Melbourne, VIC 3000
Ph: +61 3 9655 3501
nigel.morris@takeovers.gov.au



Annexure A - Undertakings

Pursuant to subsection 201A(1) of the *Australian Securities and Investments Commission Act 2001* (Cth), Mount Gibson undertakes to the Takeovers Panel that it will as soon as practicable, prepare a supplementary bidder's statement (**Supplementary Bidder's Statement**) to be lodged with ASIC, released to Australian Stock Exchange Limited and sent to each Aztec shareholder, which will include the following information:

- (a) the directors' forecast consolidated net profit after tax of Mount Gibson and its controlled entities (**Mount Gibson Group**) on a stand alone basis for the six month period ending on 31 December 2006, expressed as a range (**Forecast**);
- (b) the directors' best estimate assumptions, also expressed as a range, for the following operational and financial parameters:
 - (i) waste mined (in bcm);
 - (ii) ore mined (in tonnes);
 - (iii) ore sold (in tonnes);
 - (iv) exchange rate (US\$ to A\$);
 - (v) cost per tonne of ore (in A\$); and
 - (vi) administration and corporate costs (in A\$);
- (c) any other material assumptions, qualifications and risks underlying the Forecast;
- (d) a statement to the effect that:
 - (i) the Forecast is provided under the terms of this undertaking, which resulted from proceedings brought against Mount Gibson in the Takeovers Panel by Aztec;
 - (ii) inclusion of the Forecast should not be taken to amount to a representation that Mount Gibson believes that the Forecast is material to a decision by an Aztec shareholder whether or not to accept the Offer;
 - (iii) the Forecast is for the Mount Gibson Group on a stand alone basis and does not reflect the acquisition of Aztec under the Offer, which may have a material impact on the actual consolidated net profit after tax of the Mount Gibson Group for the six months ended 31 December 2006;
 - (iv) the Forecast has not been externally reviewed or verified; and

- (v) it is not Mount Gibson's normal policy or future intention to provide profit forecasts in the nature of the Forecast, nor to continuously update the market on changes in the operational and financial parameters listed in paragraph (b) of this undertaking, except to the extent required by applicable law; and
- (e) a cautionary statement, in standard form, with respect to reliance on forward-looking information.