



Friday, 19 December 2008

Perilya Limited – Panel Decision

The Panel accepted an undertaking (see annexure) and decided not to make a declaration of unacceptable circumstances in response to an application dated 25 November 2008 from Perilya Limited. The application concerned the scrip takeover offer for Perilya by CBH Resources Limited (See [TP08/107](#)).

CBH has undertaken to prepare a supplementary bidder's statement, which it will send to all Perilya shareholders as soon as possible after the release of the 31 December 2008 financial statements for both companies. This is expected to be early in March 2009. At that time, any Perilya shareholder who has already accepted CBH's offer will have the right to withdraw their acceptance. Details of how to exercise the withdrawal rights will be available.

The supplementary bidder's statement will provide updated financial information for the period to 31 December 2008. The supplementary bidder's statement will also provide further information (which, among other things, will correct and qualify synergies statements) in relation to the potential synergies that may result if the proposed transaction goes ahead. The Panel considers that this, together with the right of withdrawal, will address the circumstances complained of in the application.

Given the undertaking, the Panel considered that it is not against the public interest to decline to make a declaration of unacceptable circumstances.

The sitting Panel for the proceedings was Elizabeth Alexander (sitting president), Stephen Creese and Jennifer Seabrook. The Panel will publish its reasons for the decision in due course on its website www.takeovers.gov.au.

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Annexure

Section 201A of the Australian Securities & Investments Commission Act (Cth)

Undertakings

In the matter of Perilya Limited

Pursuant to section 201A of the *Australian Securities and Investments Commission Act 2001* (Cth) (the *ASIC Act*), Broken Hill Operations Pty Ltd (*BHO*) undertakes to the Panel that it will do each of the following.

1. If the Australian Securities and Investments Commission (*ASIC*) does not, under section 655A(1) of the *Corporations Act 2001* (Cth) (the *Corporations Act*) on terms acceptable to BHO, grant all necessary modifications and exemptions to the Corporations Act to give each Perilya shareholder who accepts BHO's offer prior to the dispatch of the supplementary bidder's statement contemplated in paragraph 2 a right to withdraw substantially in accordance with section 650E of the Corporations Act (provided that section 650E(1) does not apply and the reference in section 650E(2)(a) to "1 month" is replaced with "14 days" for this purpose), BHO will do all things necessary to trigger the operation of section 650E of the Corporations Act with effect on or about the date on which the supplementary bidder's statement contemplated in paragraph 2 is dispatched.
2. As soon as practicable after CBH Resources Limited (*CBH*) and Perilya Limited (*Perilya*) release their audit reviewed financial statements for the half year ending 31 December 2008 and, in any event, no later than 7 days prior to the date on which the offer period under its bid is due to end, BHO will complete the dispatch to Perilya shareholders of a supplementary bidder's statement which, in a form approved by the Panel:
 - 2.1. updates the financial information and pro-forma financial information presented in its replacement bidder's statement lodged with ASX on 26 November 2008
 - 2.2. corrects and qualifies statements in relation to synergies in its replacement bidder's statement and
 - 2.3. sets out a variation of BHO's offer to include the withdrawal right permitted as a consequence of paragraph 1.
3. To the extent necessary to comply with paragraph 2, BHO will extend the offer period under its bid.
4. BHO will not declare its offer unconditional until it has satisfied its obligations under paragraph 2.

Pursuant to section 201A of the *ASIC Act*, CBH undertakes to the Panel that it will do each of the following.

5. CBH will release its audit reviewed financial statements for the half year ending 31 December 2008 by no later than 27 February 2009.

6. **CBH will do all things necessary to ensure that BHO complies with all of its obligations under this undertaking.**
7. **CBH will confirm in writing to the Panel when it and BHO have satisfied all of their obligations under this undertaking.**

**Signed by John Elliott of Clayton Utz,
with the authority, and on behalf, of
CBH Resources Limited and Broken Hill Operations Pty Ltd**

Dated 18 December 2008