



Tuesday, 1 April 2008

Mount Gibson Iron Limited - Panel Decision

The Panel has made a declaration of unacceptable circumstances and final orders in relation to an application dated 18 February 2008 by Mount Gibson Iron Limited (**Mount Gibson**) in relation to the affairs of Mount Gibson (TP08/13).

The application referred to a proposed transaction involving approximately 156.8 million shares (constituting approximately 19.72% of Mount Gibson's share capital). The proposed transaction was to be in two parts - the conditional sale of 77,436,215 shares in Mount Gibson by Gazmetall Holding (Cyprus) Ltd (**Gazmetall**) to Shougang Concord International Enterprises Company Limited (**Shougang**); and the granting of an option by Gazmetall to Shougang to acquire a further 79,333,682 shares in Mount Gibson (**proposed transaction**).

Mount Gibson submitted that there is an association between Shougang and APAC Resources Limited (**APAC**), the owner of 160.8 million shares in Mount Gibson (constituting approximately 20.19% of Mount Gibson's share capital). Mount Gibson sought a declaration of unacceptable circumstances because of:

- (a) a contravention of section 606 of the Corporations Act;
- (b) the effect of the proposed transaction on the efficient, competitive and informed market for voting shares in Mount Gibson;
- (c) holders of Mount Gibson shares not knowing the identity of the person proposing to acquire a substantial interest in Mount Gibson; and
- (d) holders of Mount Gibson shares not having an equal opportunity to participate in any benefits.

The Panel made a declaration of unacceptable circumstances on alternative bases. The first basis is that Shougang is associated with APAC and therefore the circumstances are unacceptable because they constitute or give rise to a contravention of Chapter 6. The second basis is that the relationship between Shougang and APAC is such that there will be an unacceptable effect on the control or potential control of, or on the acquisition or proposed acquisition of a substantial interest in, Mount Gibson if Shougang acquired Gazmetall's shares in Mount Gibson pursuant to the proposed transaction.

The material submitted in this matter was voluminous. Association cases in particular involve a consideration of all the factors, as well as the inferences that can reasonably be drawn in support of a conclusion. The Panel's reasons in this matter

will set these out in due course. However, in summary, these factors included (but were not limited to) the following:

- The role of directors, executives and advisers of Shougang entities and APAC and relationships between these individuals;
- The various incidences of investments in the same entities by Shougang entities, APAC and entities with links to APAC and Ms Chong;
- Transactions and other circumstances relating to Mount Gibson before the proposed transaction, including a proxy given by a Shougang entity and an APAC entity in relation to the 2006 Mount Gibson annual general meeting which considered a change in the composition of the board of Mount Gibson;
- Transactions in Shougang shares and APAC shares before the proposed transaction;
- The circumstances surrounding the sale by Gazmetall the subject of the application, including the objectives of each of Shougang and APAC in relation to offtake from Mount Gibson and various meetings that were held; and
- The investment decision by Shougang in the Mount Gibson shares the subject of the proposed transaction and its bases.

On 29 February 2008 the Panel made interim orders (to maintain the status quo) prohibiting completion of the proposed transaction.

On 31 March 2008 the Panel made final orders cancelling the contracts effecting the proposed transaction. A copy of the declaration of unacceptable circumstances and the final orders is attached.

The sitting Panel for the proceedings was John Fast, Byron Koster and Jennifer Seabrook.

The Panel will publish its reasons for its decision on its website at www.takeovers.gov.au in due course.

Allan Bulman
Director, Takeovers Panel
Level 47, 80 Collins Street
Melbourne, VIC 3000
Ph: +61 3 9655 3597
allan.bulman@takeovers.gov.au



Corporations Act
Section 657A
Declaration of Unacceptable Circumstances

In the matter of MOUNT GIBSON IRON LIMITED

WHEREAS

1. Mount Gibson Iron Limited is a listed public company (**Mount Gibson**).
2. Gazmetall Holding (Cyprus) Ltd (**Gazmetall**) entered a proposed transaction with Shougang Concord International Enterprises Company Limited (**Shougang**) under which it agreed:
 - (a) to sell approximately 9.74% of Mount Gibson shares to Shougang and
 - (b) to grant Shougang an option to acquire its remaining holding of approximately 9.98% of Mount Gibson shares(together the Proposed Transaction).
3. APAC Resources Limited (**APAC**) at the time of the application held approximately 20.19% of Mount Gibson shares.
4. The Panel considers that Shougang is associated with APAC:
 - (a) under section 12(2)(b) of the Corporations Act for the purpose of controlling or influencing the conduct of Mount Gibson's affairs, or alternatively
 - (b) under section 12(2)(c) of the Corporations Act in relation to the affairs of Mount Gibson.
5. By reason of the Proposed Transaction, Shougang's and APAC's voting power in Mount Gibson is increased to approximately 39.91% other than through one of the exceptions in section 611 of the Corporations Act.
6. The Panel considers that the circumstances surrounding the Proposed Transaction are unacceptable because they constitute or give rise to a contravention of section 606 of the Corporations Act.
7. In the alternative, it appears to the Panel that the circumstances surrounding the Proposed Transaction:
 - (a) are unacceptable having regard to the effect that the Panel is satisfied that the circumstances have had, are having, or are likely to have, on:

- (i) the control or potential control of Mount Gibson; or
 - (ii) the acquisition or proposed acquisition of a substantial interest in Mount Gibson; or
- (b) are otherwise unacceptable having regard to the purposes of Chapter 6 set out in section 602 of the Act.
8. The Panel considers that it is not against the public interest to make a declaration of unacceptable circumstances in relation to the circumstances and the affairs of Mount Gibson.
9. The Panel has had regard to the matters in subsection 657A(3) of the Act.

DECLARATION

Under section 657A of the Act, the Takeovers Panel declares that the circumstances set out above constitute unacceptable circumstances in relation to the affairs of Mount Gibson.

Alan Shaw
Counsel
With authority of John Fast
President of the Sitting Panel
Dated 31 March 2008



**Corporations Act
Section 657D
Orders**

In the matter of MOUNT GIBSON IRON LIMITED

PURSUANT TO:

1. A declaration of unacceptable circumstances in relation to the affairs of Mount Gibson Iron Limited (**Mount Gibson**) made by the Takeovers Panel (**Panel**) on 31 March 2008 under section 657A of the Corporations Act 2001 (Cth) (**Act**); and
2. Section 657D of the Act,

THE PANEL ORDERS THAT

3. The share sale agreement between Gazmetall Holding (Cyprus) Ltd (**Gazmetall**) and Shougang Concord International Enterprises Company Limited (**Shougang**) dated 31 January 2008 for the sale of 77,436,215 shares in Mount Gibson by Gazmetall to Shougang (**Share Sale Agreement**) is cancelled; and
4. The option agreement between Gazmetall and Shougang dated 31 January 2008 granting an option by Gazmetall to Shougang to acquire 79,333,682 shares in Mount Gibson, conditional on completion under the Share Sale Agreement, is cancelled.

**Alan Shaw
Counsel
with authority of John Fast
President of the Sitting Panel
Dated 31 March 2008**