



Australian Government

Takeovers Panel

Reasons for Decision
Queensland Ores Limited
[2009] ATP 8

Catchwords:

Misleading announcement – competing bids – scrip consideration – premium announcements – good practice – variation of offer – bid condition

Corporations Act 2001 (Cth), sections 602, 657A

Australian Securities and Investments Commission Regulations 2001 (Cth), regulation 20

INTRODUCTION

1. The Panel, Kathleen Farrell (sitting president), Robert Sultan and Anthony Sweetman declined to conduct proceedings on an application by Metallica dated 17 April 2009. While the announcements made by Outback on 9 April 2009 may not be good practice, there was no material effect on control of Queensland Ores shares identified.

2. In these reasons, the following definitions apply.

Term	Meaning
Metallica	Metallica Metals Limited
Outback	Outback Metals Limited
Queensland Ores	Queensland Ores Limited

FACTS

3. Queensland Ores, Metallica and Outback are ASX listed companies (ASX codes QOL, MLM and OUM respectively).

4. On 18 February 2009 Outback announced a takeover bid for all the shares in Queensland Ores, offering 1 Outback share for every 4.79 Queensland Ores shares.

5. On 1 April 2009 Metallica announced a competing takeover bid for Queensland Ores, offering 1 Metallica share for every 22 Queensland Ores shares. The bid is conditional on, among other things, 90% minimum acceptance.

6. On 9 April 2009 Outback made two announcements:

(a) Premium Announcement

“Based on Outback Metals Limited (ASX:OUM) and Metallica Metals Limited’s (ASX:MLM) closing prices of 8th April, 2009 OUM’s bid is now at a premium to MLM’s bid.” (original emphasis)

Outback’s share price had risen from a closing price of \$0.04 on 7 April to a closing price of \$0.059 on 8 April following 4 trades totaling 25,000 Outback

shares on that day. Between 28 January 2009 and 8 April 2009, trades in Outback shares occurred only on 27 February (10,000 shares traded) and 27 and 30 March (25,000 shares traded each day).

(b) 10% Announcement

“Outback Metals Limited (ASX:OUM) confirms it has received acceptances and relevant interest of [sic] 22,870,165 shares in Queensland Ores Limited (ASX:QOL) and now has a relevant interest in QOL of 10.36%.

*Metallica Metals Limited’s (ASX:MLM) bid for Queensland Ores, which was announced on the 1st April, 2009 and which opens today contains a 90% acceptance condition. **The Metallica Metals bid will fail, unless varied, without the support of Outback Metals and its associates. Outback Metals and its associates have no intention of accepting the current Metallica Metals offer for Queensland Ores.**” (original emphasis)*

7. On 14 April 2009 Outback released a “clarifying statement” that:

“On 8 April, 2009 OUM’s share price increased from \$0.040 to \$0.059 following four trades in respect of a total of 25,000 OUM shares. The volume of trade was not in the opinion of OUM unusual given its trading history.

OUM’s statement that its bid, based on the closing share prices of OUM’s and MLM’s shares as at 8 April, 2009 was correct...

OUM notes that as the share prices of OUM and MLM move on a daily basis the apparent premium of the bid by either OUM or MLM for QOL over the other based on daily share prices of OUM and QOL will change such that on any given day either bid may be at an apparent premium to the other.”

8. Outback dispatched the clarifying statement to Queensland Ores shareholders on 21 April 2009.

9. On 23 April Outback revised its bid by:

- (a) increasing the consideration to 1 Outback share for every 4 (increased from 4.79) Queensland Ores shares
- (b) waiving the 90% minimum acceptance condition and
- (c) extending the bid period.

10. On the same date Outback separately announced that major Queensland Ores shareholders had accepted its bid, taking its relevant interest in Queensland Ores shares to 18.53%.

APPLICATION

- 11. By application dated 17 April 2009, Metallica sought a declaration of unacceptable circumstances in relation to the affairs of Queensland Ores. Metallica submitted that the two 9 April announcements were misleading and caused the market for Queensland Ores shares to be misinformed.
- 12. Metallica submitted that the Premium Announcement was misleading because it was not qualified by reference to the 8 April trades or the fact that share prices change

regularly, thus also changing the premium. This was compounded by its repetition in the 10% Announcement and not remedied by the clarifying statement because that statement was not sent to Queensland Ores shareholders (as the Premium Announcement had been).

13. Metallica submitted that the 10% Announcement was misleading because there were circumstances in which the Metallica bid could remain unvaried but still succeed, including by it waiving its minimum acceptance condition, or the Outback bid lapsing because other conditions remained unsatisfied.
14. Metallica sought final orders to the effect that:
 - (a) Outback prepare and dispatch to Queensland Ores shareholders corrective disclosure remedying the misleading announcements and
 - (b) withdrawal rights be granted to those Queensland Ores shareholders who have accepted the Outback Bid in reliance on the misleading announcements.

DISCUSSION

Premium Announcement

15. We do not consider the Premium Announcement to be good practice for an illiquid stock. It is unqualified and claims a premium over the Metallica bid based solely on the closing prices of the stocks on the day immediately preceding the announcement. As noted above there were very few trades in the stock in the previous 2 months.
16. However we were presented with no evidence that the Premium Announcement had any material effect on the market for control over Queensland Ores shares. Between 9 and 23 April, Outback did not lodge any notice that it had received further acceptances such that its relevant interest in Queensland Ores shares increased by more than 1%. Outback indicated that there had only been one accepting shareholder in this period. We were told that this shareholder did not rely on the announcement. It did not appear to us that the Premium Announcement had a material effect on the control of Queensland Ores shares. It was also open to Metallica to clarify the Premium Announcement itself in an appropriate way.
17. Further, the clarifying statement included qualifications similar to those suggested in Metallica's submissions and disclosed the details of the trades on 8 April. We are told that it has been dispatched to Queensland Ores shareholders.
18. For these reasons, while there were elements of the Premium Announcement that we consider to be inconsistent with good practice, given in this case there was no material effect on control of Queensland Ores shares, we did not consider that there was any likely prospect of making a declaration of unacceptable circumstances in relation to the Premium Announcement. We therefore declined to conduct proceedings in relation to this issue.
19. We also think that it is not good practice, given Outback's trading history, for Outback in its clarifying statement to say "*the volume of trade was not on the opinion of OUM unusual given its trading history*". It is a thinly traded stock. Given the correction of the other substantive issues with the Premium Announcement, the fact that there

was no material effect in any event and that this was not complained of by Metallica, we did not consider that this matter alone was sufficient for us to commence proceedings.

10% Announcement

20. Metallica pointed to circumstances under which Outback's 10% Announcement could be incorrect. For example:
 - (a) if the Outback bid is allowed to lapse the Metallica bid could succeed without Outback's support. In this respect, we agree that the 10% Announcement is incorrect. However this does not require Panel intervention to be resolved. Metallica can defend its bid by making this point to the market.
 - (b) Metallica could waive its 90% minimum acceptance condition without varying its bid. However even if this is correct we do not think that the average Queensland Ores shareholder would draw a distinction between the two concepts. As above, if Metallica wishes to make this point to the market, it can do so without Panel intervention.
21. In any event, as above in relation to the Premium Announcement, there was no evidence that the 10% Announcement had any material effect on the market for control over Queensland Ores shares. We therefore declined to conduct proceedings in relation to this issue.

DECISION

22. 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 on the application.

ORDERS

23. Given that we made no declaration of unacceptable circumstances, we make no final orders, including as to costs.

**Kathleen Farrell
President of the Sitting Panel
Decision dated 28 April 2009
Reasons published 29 April 2009**