



**Australian Government**

**Takeovers Panel**

# MEDIA RELEASE

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No: 22 /2009

Wednesday, 18 March 2009

## **Gloucester Coal Limited - Panel Decision**

The Panel has made a declaration of unacceptable circumstances in response to an application dated 27 February 2009 from Noble Group Limited (see [TP09/17](#)).

On 20 February 2009, Gloucester and Whitehaven Coal Limited announced that they had agreed to merge by way of Gloucester making takeover offers for all the shares in Whitehaven. The consideration to be paid under the offer would be 1 Gloucester share for every 2.45 Whitehaven shares. Prior to the announcement, the market capitalisation of Gloucester was approximately \$268 million and Whitehaven approximately \$619 million.

If Gloucester's offer is accepted, Whitehaven shareholders would hold approximately 67% of the shares in Gloucester.

The Whitehaven merger is not subject to Gloucester shareholder approval.

On 27 February 2009, Noble announced its intention to make a takeover bid for Gloucester, offering \$4.85 cash per Gloucester share. This proposal is conditional on prescribed occurrences and the Whitehaven merger not proceeding.

The Panel made a declaration of unacceptable circumstances.

It considered that the Whitehaven merger would have an effect on the control or potential control of Gloucester, or on the acquisition, or potential acquisition, of a substantial interest in Gloucester and it denied Gloucester shareholders the ability to consider those significant changes. This was unacceptable and contrary to the principles in s602.

In the alternative, the Panel considered that the merger prevented an auction for control of Gloucester and denied Gloucester shareholders an opportunity to consider or participate in the proposed Noble bid. This too was unacceptable and contrary to the principles in s602.

The Panel considered that it is not against the public interest to make a declaration of unacceptable circumstances.

The Panel has sought submissions from the parties on the proposed order(s) it will make and will make a further media release on this issue.

The sitting Panel for the proceedings was Paula Dwyer, Simon Mordant (sitting president) and Nerolie Withnall. The Panel will publish its reasons for the decision in due course on its website [www.takeovers.gov.au](http://www.takeovers.gov.au).

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