



Australian Government

Takeovers Panel

MEDIA RELEASE

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Friday, 20 March 2009

Gloucester Coal Limited - Final Orders

The Panel has made final orders (Annexure A) following its declaration of unacceptable circumstances (Annexure B) in response to an application dated 27 February 2009 from Noble Group Limited (see [TP09/17](#) and [TP09/22](#)). The final orders include an order that Gloucester Coal Limited seek shareholder approval for its bid for Whitehaven Coal Limited. Because the Panel has finalised the application¹, the Panel's interim order (see [TP09/18](#)) has been lifted.

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.

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¹ The Panel notes that Gloucester and Whitehaven have sought a review (see [TP 09/23](#))



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Takeovers Panel

Annexure A

**CORPORATIONS ACT
SECTION 657D
ORDERS**

GLOUCESTER COAL LIMITED

PURSUANT TO

1. A declaration of unacceptable circumstances in relation to the affairs of Gloucester Coal Limited (**Gloucester**) on 17 March 2009 and
2. Section 657D of the Corporations Act 2001 (Cth)

THE PANEL ORDERS

1. Gloucester seek shareholder approval for its bid for Whitehaven Coal Limited (**Whitehaven**) announced on 20 February 2009 in accordance with these orders.
2. Gloucester dispatch a notice of meeting and explanatory memorandum for the shareholder meeting referred to in paragraph 1 that includes the following:
 - (a) a statement that Gloucester will disregard any votes cast on any resolution contemplated by paragraph 1 by any of the following persons:
 - (i) Whitehaven directors
 - (ii) associates of Whitehaven directors and
 - (iii) any party to a Pre-Bid Acceptance Deed referred to in Gloucester's market release dated 19 February 2009 and their associates
 - (b) all material information required for shareholders to consider the bid for Whitehaven, including:
 - (i) information known to Whitehaven, its directors and their associates and any party to a Pre-Bid Acceptance Deed
 - (ii) information known to Gloucester in relation to the proposed bid for Gloucester announced by Noble Group Ltd (**Noble**) on 27 February 2009 and
 - (iii) information about the effect on the shareholdings of Gloucester shareholders if the bid for Whitehaven is successful and the identities of those persons who will have a substantial holding in Gloucester after the bid.

3. Gloucester:
 - (a) include a condition in its bid for Whitehaven that the bid is subject to approval of Gloucester shareholders (excluding those referred to in 2a above) by ordinary resolution and
 - (b) not waive this condition of its bid.
4. The notice for the meeting referred to in paragraph 1 be dispatched on the same date on which the target's statement for Gloucester's bid for Whitehaven is dispatched and the notice period for the meeting be the minimum required under s249HA.
5. Until Gloucester shareholders vote on the bid for Whitehaven, Noble not rely on any condition (other than a prescribed occurrence condition):
 - (a) not to make a bid for Gloucester as announced or
 - (b) to end its bid for Gloucester.
6. If Gloucester shareholders do not approve the bid for Whitehaven, Noble not rely on any condition (other than a prescribed occurrence condition):
 - (a) not to make a bid for Gloucester as announced or
 - (b) to end its bid for Gloucester.
7. Whitehaven not withdraw or otherwise seek to end its Merger Implementation Agreement with Gloucester by reason of the requirement of a vote by Gloucester shareholders.

Alan Shaw
Counsel
with authority of Simon Mordant
President of the Panel
Dated 20 March 2009



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Takeovers Panel

Corporations Act

Section 657A

Declaration of Unacceptable Circumstances

Gloucester Coal Limited

CIRCUMSTANCES

1. Gloucester Coal Limited (**Gloucester**) announced a bid for Whitehaven Coal Limited (**Whitehaven**) on 20 February 2009 (**Merger**). Gloucester will offer 1 share for every 2.45 Whitehaven shares. If Gloucester acquires all the shares in Whitehaven, Whitehaven shareholders will hold approximately 67% of the shares in the post-merger Gloucester.
2. Gloucester and Whitehaven entered into a Merger Implementation Agreement.
3. Noble Group Limited (**Noble**) owns or controls approximately 21.7% of the shares in Gloucester. On 27 February, Noble announced a bid for Gloucester of \$4.85 cash per share, subject only to the Merger not proceeding and prescribed occurrences.
4. Whitehaven directors and their associates collectively hold approximately 74% of the shares in Whitehaven. They have indicated that they will accept the Merger in the absence of a superior proposal for Whitehaven.
5. Four of the Whitehaven directors have entered into pre-bid acceptance agreements in respect of 19.9% of the shares in Whitehaven under which Gloucester can require the relevant shareholders to accept its offer.
6. Approximately 51% of the shares in the post-merger Gloucester will be owned or controlled collectively by Whitehaven directors or their associates. At least one of the directors will acquire voting power in excess of 20% in the post-merger Gloucester.
7. The Merger is not subject to shareholder approval by Gloucester shareholders.
8. By reason of the Merger, Gloucester shareholders are denied:
 - (a) the ability to consider very significant changes in control of their company and
 - (b) the opportunity to consider an alternative proposal by Noble.
9. It appears to the Panel that the circumstances are unacceptable having regard to:
 - (a) the effect that the Panel is satisfied that the circumstances are having or will have on:
 - (i) the control, or potential control, of Gloucester

(ii) the acquisition, or proposed acquisition, of a substantial interest in Gloucester and

(b) the purposes of Chapter 6 of the Act as set out in s602.

10. The Panel considers that it is not against the public interest to make a declaration of unacceptable circumstances. It has had regard to the matters in section 657A(3) of the Act.

DECLARATION

Under section 657A of the Act, the Panel declares that the circumstances constitute unacceptable circumstances in relation to the affairs of Gloucester.

Alan Shaw
Counsel
with authority of Simon Mordant
President of the Sitting Panel
Dated 17 March 2009