



Australian Government

Takeovers Panel

MEDIA RELEASE

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Leighton Holdings Limited 02R - Decision

The review Panel has conducted proceedings and, having considered the evidence presented by all parties, has decided not to make a declaration of unacceptable circumstances in respect of the application dated 9 November 2010 from HOCHTIEF Aktiengesellschaft seeking a review of the Panel's decision in Leighton Holdings Limited 02 (see [TP 10/66](#)).

Background Facts

Actividades de Construcción y Servicios, SA (ACS) is a Spanish company listed on the Madrid Stock Exchange. It holds approximately 29.98% of Hochtief. Hochtief is a German company listed on the Frankfurt Stock Exchange. It holds approximately 54.5% of Leighton.

On or about 16 September 2010 ACS announced a proposal to acquire 50% or more of the shares in Hochtief. The proposal offers ACS scrip under a German voluntary public tender offer. ACS may also make subsequent on market acquisitions of shares in Hochtief to achieve its shareholding objective. Item 14 of s611 of the Corporations Act provides for an exception from the takeovers prohibition, allowing ACS to make the indirect downstream acquisition of Leighton.

In Leighton 02, Hochtief submitted, among other things, that the ACS proposal would result in ACS acquiring control of Leighton contrary to the s602 principles and accordingly give rise to unacceptable circumstances. The initial Panel declined to conduct proceedings (see [TP 10/65](#)).

The following factors (among other things) were significant to the review Panel in coming to its decision not to make a declaration of unacceptable circumstances:

- The review Panel was not satisfied on the evidence before it that ACS's proposal to acquire Hochtief was an artifice to obtain control of Leighton.
- While the market capitalisation of Hochtief is often less than the market value of its shareholding in Leighton, Hochtief has a substantial portfolio of other

businesses in Western Europe and North America which are material to its business portfolio.

- If successful, ACS's proposal will expose it to the risks associated with all of Hochtief's assets including Leighton.
- The material establishes that ACS decided to proceed with the proposal principally in order to obtain financial consolidation of Hochtief and to obtain international business diversification into Germany, North America and the Asia/Pacific region.
- ACS has had a relevant interest in Leighton since 2007 (due to its shareholding in Hochtief) and Hochtief has had its substantial shareholding in Leighton for a considerable time.
- ACS has provided a written commitment that it is prepared to make similar governance arrangements with respect to Leighton as Hochtief has in the past.

The Panel did not consider it against the public interest not to make the declaration, and has had regard to the matters in s657A(3).

The sitting Panel was Geoff Brunson, Norman O'Bryan (President) and Karen Wood.

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

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