



Australian Government

Takeovers Panel

MEDIA RELEASE

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Ludowici Limited – Panel Receives Application

The Panel has received an application from The Weir Group PLC in relation to the affairs of Ludowici Limited. Ludowici is currently the subject of two competing merger proposals, one from FLSmidth & Co. A/S (FLS) dated 23 January 2012 and the other from Weir dated 10 February 2012.

Details of the application, as submitted by the applicant, are below.

A sitting Panel has not been appointed at this stage and no decision has been made whether to conduct proceedings. The Panel makes no comment on the merits of the application.

Details

On 23 January 2012, Ludowici announced it had entered into a Process Agreement with FLS in relation to an indicative non-binding proposal by FLS to acquire all the shares in Ludowici at \$7.20 per share. The Process Agreement contains a matching right in favour of FLS.¹

On 23 January 2012, *Reuters* published an article titled “*FLSmidth says A\$7.20 per share Ludowici bid final*”. The article said that FLS’s “*chief executive said the Danish engineering group’s A\$7.20 per share bid to acquire Australia-listed company Ludowici ... was final and would not be raised*”. In the body of the article it said “*He answered with a ‘no’ when asked if he would consider raising the bid.*”

On 31 January 2012, *The Australian* published an article noting the 23 January *Reuters* article. Also on 31 January, *Reuters* published an article titled “*UPDATE 1-FLSmidth won’t rule out higher Ludowici bid*” and quoted the CEO as saying “*We have not announced that our bid was final or cut off our options to change it at a later stage*”.

¹ clause 5.5 of the Process Agreement, attached to the 23 January 2012 announcement

On 3 February 2012, Ludowici released to ASX a press release from FLS dated 31 January 2012. FLS's press release said "*Certain Australian media today comment on [FLS's] ability to raise the indicated offer price of AUD 7.20 per share, if it should wish to do so, under Australian takeover regulation. ... If [FLS] decides to make a binding offer, it does not currently intend to make or increase any such offer at a price above AUD 7.20 per share, but reserves the right to do so.*"

Weir submits that FLS has made a last and final statement which it has attempted to resile from and that this gives rise to unacceptable circumstances.

Weir also submits that the matching right in the Process Agreement:

- unacceptably hinders an efficient, competitive and informed market for control of Ludowici and
- "*is unusual in that it allows FLS to match with an indicative non-binding proposal*".

Weir seeks both an interim and final order to the effect that FLS not announce, make, propose or participate in any transaction which may result in FLS acquiring control of Ludowici at a price higher than \$7.20 per share. If the Panel is unwilling to make the final order sought, Weir seeks an alternative order that the Process Agreement be cancelled, void and of no force or effect.

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