



**Australian Government**

**Takeovers Panel**

# MEDIA RELEASE

---

**No: TP13/10**

**Friday, 19 April 2013**

## **Firestone Energy Limited – Panel Receives Application**

The Panel has received an application from Firestone Energy Limited in relation to its affairs. Firestone is currently the subject of an off-market takeover bid by The Waterberg Coal Company Limited.<sup>1</sup>

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 July 2012, Firestone entered into an investment agreement with Ariona Company SA, BBY Nominees Pty Ltd and Jaguar Funds Management Pty Ltd. Under this agreement, three nominee directors of Ariona were appointed to Firestone's board.<sup>2</sup>

On 5 October 2012, Firestone shareholders approved an acquisition by Ariona of 800 million shares (22.54%) in Firestone under a sale and purchase agreement with Sekoko Resources (Pty) Ltd and Sekoko Coal (Pty) Ltd (together **Sekoko**).<sup>3</sup>

On 12 December 2012, Waterberg announced that it had entered into an agreement to acquire 100% of Ariona, subject to a condition (among others) that it obtains Firestone shareholder approval for the downstream acquisition of a 22.54% relevant interest in Firestone. As a result of this transaction, Haworth Finance Limited, Ariona's previous controlling shareholder, obtained an approximately 70% relevant interest in Waterberg.

On 17 December 2012, Waterberg announced a proposed off-market scrip takeover bid to acquire all of the shares in Firestone. The bid consideration was 1 Waterberg share for every

---

<sup>1</sup> Formerly known as Range River Gold Limited

<sup>2</sup> One of these directors subsequently resigned

<sup>3</sup> Firestone also acquired a 10% direct interest in the Waterberg Coal Project from Sekoko

2 Firestone shares (varied subsequently on 27 March 2013 to 1.25 Waterberg shares for every 20 Firestone shares<sup>4</sup>).

On 4 April 2013, the agreement between Ariona and Sekoko was amended to reduce the number of Firestone shares to be acquired by Ariona from Sekoko from 800 million to 480 million. The agreement was also amended to allow for additional cash payments to Sekoko. Also on 4 April 2013, Sekoko accepted Waterberg's takeover offer in relation to 520 million shares.

Firestone submits, among other things, that:

- Waterberg and Haworth contravened the takeovers prohibition as a result of Waterberg's voting power increasing from zero to 22.54% without Firestone shareholder approval or as otherwise permitted.
- The 4 April 2013 amendments to the agreement between Ariona and Sekoko constituted a collateral benefit, which had the purpose, and effect, of inducing Sekoko to accept Waterberg's bid.
- There are material omissions in Waterberg's bidder's statement, including in relation to information regarding Haworth and the identity of members of a consortium that funded Waterberg's acquisition of Ariona.
- The consideration of Waterberg's bid and any competing proposal by Firestone's board and management has "not been undertaken free from the actual influence, or the appearance of influence, from participating insiders".

Firestone seeks interim orders, including an order temporarily restraining Waterberg and Ariona from exercising any voting rights attaching to their shares in Firestone.

Firestone seeks final orders including an order that Waterberg varies its bid to include an alternative cash consideration equivalent to the value of the consideration received by Sekoko in respect the shares acquired from it by Ariona and Waterberg, which must not be less than 1.8c per share.

Allan Bulman  
Director, Takeovers Panel  
Level 10, 63 Exhibition Street  
Melbourne VIC 3000  
Ph: +61 3 9655 3597  
[allan.bulman@takeovers.gov.au](mailto:allan.bulman@takeovers.gov.au)

---

<sup>4</sup> There was a 1 for 10 consolidation of Waterberg shares, approved by Waterberg shareholders on 27 March 2013