



**Australian Government**

**Takeovers Panel**

**Reasons for Decision  
Dampier Gold Limited  
[2014] ATP 10**

**Catchwords:**

*Bidder's statement – funding – disclosure – withdraw – intentions – VWAP – premium – transaction specific prospectus - undertaking*

*Corporations Act 2001 (Cth), sections 710, 713*

Interim order	IO undertaking	Conduct	Declaration	Final order	Undertaking
No	No	Yes	No	No	No

**INTRODUCTION**

- The Panel, Karen Evans-Cullen, Robert Johanson (sitting President) and Francesca Lee, consented to the withdrawal of the application dated 14 May 2014 by Dampier Gold Limited in relation to its affairs. The application concerned funding and disclosure in relation to an off-market bid by Ord River Resources Limited. The bid was withdrawn with ASIC’s consent.
- In these reasons, the following definitions apply.
  - Dampier                      Dampier Gold Limited
  - JV                              Plutonic Dome Project farm-in and joint-venture
  - Ord                              Ord River Resources Limited

**FACTS**

- Dampier is an ASX listed company (ASX code: DAU). Its main asset is the Plutonic Dome Gold Project.
- On 29 April 2014, Ord announced an off-market takeover bid for all of Dampier’s ordinary shares. The consideration offered was 6 Ord shares and 1.5 cents for each Dampier share. The offer was conditional upon, among other things, minimum acceptance of 50.1%.
- Ord’s main focus is its JV with Dampier under which it could earn up to a 75% interest.

**APPLICATION**

**Declaration sought**

- By application dated 14 May 2014, Dampier sought a declaration of unacceptable circumstances. In essence, it submitted that
  - (a) Ord did not have sufficient funding for the bid and
  - (b) Ord’s disclosure in the bidder’s statement was deficient.

7. It submitted that the effect of the circumstances was that Ord's offer was not taking place in an efficient, competitive and informed market.

### Orders sought

8. Dampier sought interim orders to the effect that Ord be restrained from publishing further information, processing acceptances or declaring its bid unconditional pending determination of its application.
9. On 19 May 2014, Ord undertook (Annexure A) that it would not declare its offer free of defeating conditions until the earlier of an order of the Panel or determination of proceedings.
10. Dampier sought final orders to the effect that Ord make further disclosure in a replacement bidder's statement and extend the closing date of its offer. It also sought an order that it have until 2 weeks after the date of the replacement bidder's statement to issue its target's statement.

## DISCUSSION

### Unacceptable circumstances

11. We conducted proceedings<sup>1</sup> and, after considering submissions and rebuttals, were minded to make a declaration of unacceptable circumstances on the bases that Ord's bidder's statement contained material information deficiencies and failed to disclose all the information required by s636.<sup>2</sup>
12. Given the impact of the bid on Ord's structure and operations, its bidder's statement omitted material information in relation to:
  - (a) Ord's future commitments and funding, particularly over the next 6 months within which it must pay \$2 million under the JV and under a \$3 million conditional placement it had proposed
  - (b) the terms of the JV and
  - (c) Ord's intentions, particularly with respect to its rights under, or seeking to amend, the JV (or if none, clear and prominent disclosure to that effect).
13. In addition, there was an absence of appropriate information regarding the bid premium. Ord should have included a 30 or 60 day VWAP as a comparison to the 90 day VWAP given. Ord should also have disclosed the implied bid consideration as at the last practical date prior to dispatch of the bidder's statement.
14. The bid was unusual in that Ord could acquire 75% of the main asset of Dampier under the JV rather than by making the bid. Moreover, if the bid was successful an accepting Dampier shareholder would hold shares in a company which still had the JV as its main asset but with a significantly different risk and investment profile.

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<sup>1</sup> We did not conduct proceedings in relation to bid funding, but did in relation to disclosure of the funding of Ord's future commitments under the JV

<sup>2</sup> References are to the *Corporations Act 2001 (Cth)* unless indicated otherwise

15. Given the impact a successful bid would have on Ord, ASIC submitted that:
- ...taking into account ASIC's policy in RG 66, ASIC submits that the bidder's statement may be required to include some disclosure similar to that which would be found in a disclosure document prepared in accordance with the content requirements of section 710(1).*
16. We agree with ASIC that more information was required in the bidder's statement. We do not agree with Ord's submission that it had complied with s713 and additional disclosure was not required because it had complied with its continuous disclosure obligations.

**Consent to withdraw**

17. After indicating to the parties that we were minded to declare unacceptable circumstances (and while Ord was, we understand, preparing a supplementary bidder's statement in response to the Panel's concerns), Dampier announced on 6 June 2014 that it was in negotiations to acquire a mineral tenement. Dampier noted that the proposed transaction triggered a defeating condition to Ord's bid. On the same day, Ord extended its bid closing date to 11 July 2014.
18. On 10 June 2014, Ord announced that it was seeking ASIC's consent to withdraw its bid in the light of Dampier's announcement. On 11 June 2014, it announced that it would not waive the triggered conditions.
19. On 12 June 2014, ASIC consented to Ord withdrawing its bid, which Ord did on the same day by announcement to ASX and to each person to whom offers had been made.
20. Dampier requested our consent to withdraw the proceedings with no further orders. It submitted that:
- (a) the market was fully informed and nothing would be gained by additional disclosure
  - (b) there were no unacceptable circumstances requiring information of the kind we proposed, and additional disclosure would be met by the parties fulfilling their continuous disclosure obligations and
  - (c) orders would likely result in prejudice in the form of further costs and adverse announcements.
21. In view of the changed circumstances, there is no utility in our pursuing a declaration or orders. We do not think that unacceptable circumstances will continue to occur.<sup>3</sup>

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<sup>3</sup> Procedural rule 3.4.1, note 1

**DECISION**

22. For the reasons above, we consent to the application being withdrawn. We make no final orders, including as to costs.

**Robert Johanson**  
**President of the sitting Panel**  
**Decision dated 16 June 2014**  
**Reasons published 18 June 2014**

**Advisers**

<b>Party</b>	<b>Advisers</b>
Dampier Gold Limited	Kings Park Corporate Lawyers
Ord River Resources Limited	Addisons



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**ANNEXURE A**

**AUSTRALIAN SECURITIES AND  
INVESTMENTS COMMISSION ACT 2001 (CTH) SECTION 201A  
UNDERTAKING**

**DAMPIER GOLD LIMITED**

1. Ord River Resources Limited undertakes to the Panel that it will not declare its off-market takeover offer dated 13 May 2014 for shares in Dampier Gold Limited free of the conditions set out in the bidder's statement until the earlier of:
  - (i) an order of the Panel or
  - (ii) the determination of proceedings.

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**Signed by Michael Ryan of Addisons Lawyers  
with the authority, and on behalf, of  
Ord River Resources Limited  
Dated 19 May 2014**