



Australian Government

Takeovers Panel

Reasons for Decision Sedgman Limited [2016] ATP 2

Catchwords:

Decline to make a declaration – disclosure – bidder’s statement – franking credits – bidder’s intentions – dividend policy – board composition – removal from ASX Official List – supplementary bidder’s statement – replacement bidder’s statement – dispatch of documents – efficient, competitive and informed market – Eggleston principles Corporations Act 2001 (Cth), sections 602, 611, 619, 621, 633, 636, 657A(3), 670A

Guidance Note 5 Specific Remedies Information Deficiencies – ASIC Regulatory Guide 9 Takeover bids – ASIC Regulatory Guide 25 Takeovers: False and misleading statements, ASIC Class Order [CO 13/528]

Warrnambool Cheese and Butter Factory Company Holdings Ltd [2013] ATP 16 – Alesco Corporation Limited 01 and 02 [2012] ATP 14 – Hastings Diversified Utilities Fund [2012] ATP 1 – Sydney Gas Limited 01 [2006] ATP 9 – Australian Leisure & Hospitality Group Limited 01 [2004] ATP 19

Interim order	IO undertaking	Conduct	Declaration	Final order	Undertaking
NO	NO	YES	NO	NO	NO

INTRODUCTION

1. The Panel, James Dickson, Robert McKenzie and Sophie Mitchell (sitting President), declined to make a declaration of unacceptable circumstances in relation to the affairs of Sedgman Limited on the basis of further disclosure made. The application concerned a takeover offer for Sedgman by CGI and the deduction of the value of franking credits from the bid consideration and disclosure issues. CGI confirmed it would not deduct the value of franking credits and made further disclosure in a second supplementary bidder’s statement.
2. In these reasons, the following definitions apply.

CGI	CIMIC Group Investments Pty Limited, a wholly owned subsidiary of CIMIC ¹
CIMIC	CIMIC Group Limited
CIMIC Parties	CGI, CIMIC and other parties disclosed in CGI and CIMIC’s substantial holder notice dated 13 January 2016 as holding a relevant interest in Sedgman shares
Sedgman	Sedgman Limited

¹ CGI and CIMIC made joint submissions.

FACTS

3. Sedgman is an ASX listed company (ASX code: SDM). CIMIC is an ASX listed company (ASX code: CIM).
4. On 13 January 2016, CGI announced an unconditional off-market takeover offer at \$1.07 per share for all the shares in Sedgman it did not own and released its bidder's statement. The offer price was said to be final. Prior to the announcement of the bid, CGI held 36.99% of the shares in Sedgman.
5. The bidder's statement:
 - (a) stated that CGI intended to stand in the market on ASX from 13 January 2016 to purchase shares at or below \$1.07 per share, as per item 2 of s611²
 - (b) in section 9.7(c) stated that:

If any non-cash Rights are issued or made or arise or accrue after the Announcement Date in respect of the Accepted Shares to the holders of the Accepted Shares, CGI will (provided the same has not been issued to CGI) be entitled to reduce the consideration specified in Section 9.2 and payable by it to holders of the Accepted Shares by an amount equal to the value (as reasonably assessed by CGI) of such non-cash Rights.

and
 - (c) defined 'Rights' as being "*all accretions, rights or benefits of whatever kind attaching to or arising from or in respect of the Sedgman Shares, whether directly or indirectly, including without limitation all rights to receive dividends (and any attaching franking credit), to receive or subscribe for shares, units, notes, options or other securities and to receive all other distributions, capital returns or entitlements declared, paid, made or issued by Sedgman or any subsidiary of Sedgman after the Announcement Date.*" (Emphasis added.)
6. On 19 January 2016:
 - (a) at 10:18am, Sedgman released a Chairman's letter to shareholders on ASX which provided, among other things, that Sedgman's present intention was:

...to maintain our practice of announcing an interim fully franked dividend at the same time as the half yearly result, together with a fully franked special dividend notwithstanding the CIMIC Offer.
 - (b) at 2:00pm, Sedgman applied to the Panel and
 - (c) at 6:16pm, CGI released its first supplementary bidder's statement on ASX. The supplementary bidder's statement provided additional disclosure in relation to some of the concerns in the Panel application and stated:

CGI considers that if Sedgman was to declare a fully-franked interim dividend of up to 3.5 cents per share and a fully-franked special dividend of up to 2.2 cents per share at the same time as its half year results in February (and that are payable in March), and given that this is consistent with Sedgman's historic dividend practice and policy, it is

²References are to the *Corporations Act 2001* (Cth) unless otherwise indicated

likely that CGI would, based on the information currently available to CGI, assess the value to it of such franking credits as nil.

APPLICATION

Declaration sought

7. By application dated 19 January 2016, Sedgman sought a declaration of unacceptable circumstances. Sedgman submitted that the deduction of the value of franking credits:
 - (a) breached s619 because the offers under the bid were not the same. The franking benefit received by each shareholder will depend on their own personal tax circumstances which could be different and
 - (b) potentially breached s621(3) because, if the value of franking credits was deducted, the potential consideration per share under the offer may be lower than on-market purchases.
8. Sedgman submitted that disclosure in relation to franking credits was inadequate and misleading because:
 - (a) the manner in which the franking credits would be valued by CGI was not explained
 - (b) the fact that the franking credits could be deducted was hidden in the definition of 'Rights' in the glossary and the implication of this definition was not disclosed and
 - (c) one of the consequences of the disclosure was that *"a significant number of Sedgman shareholders are likely to have formed the opinion that the [bidder's statement] states the Offer Price will not be reduced by the franking credits."*
9. Sedgman also submitted that CGI had failed to disclose the identity and material terms of appointment of CGI's proposed candidates to the Sedgman board and whether any such proposed directors would be independent. Sedgman submitted that CIMIC had previously proposed a structure for Sedgman's board, which was contrary to disclosures in the bidder's statement and *"was inconsistent with best practice as detailed by the ASX Corporate Governance Guidelines"*.
10. Sedgman also submitted that disclosure in CGI's bidder's statement was inadequate in relation to:
 - (a) the proposed dividend policy for Sedgman, which it submitted was particularly relevant for its shareholders as Sedgman had a history of paying bi-annual dividends since its June 2006 listing and the market was informed as to its dividend policy and
 - (b) the precise circumstances in which CGI would seek to procure ASX approval to remove Sedgman from the Official List, including the rationale for de-listing

and whether CGI/CIMIC had any intention to facilitate a grey market for share trading in Sedgman if removed from the Official List.³

11. Sedgman submitted that the offer was contrary to the principles of s602 because:
- (a) the acquisition of control over Sedgman shares did not occur in an efficient, competitive and informed market
 - (b) Sedgman shareholders and directors were not given enough information to enable them to assess the merits of the CGI proposal and
 - (c) Sedgman shareholders did not have a reasonable and equal opportunity to participate in any benefits accruing to Sedgman shareholders through CGI's offer to obtain control.

Interim orders sought

12. Sedgman sought interim orders that:
- (a) the bidder's statement not be dispatched to Sedgman shareholders and no acceptances of the offer be processed and
 - (b) CIMIC Parties cease acquiring shares in Sedgman and cease increasing their voting power in Sedgman.
13. The Acting President considered the request for interim orders. Following consideration of submissions from CGI and Sedgman, the Acting President decided not to make any interim orders. In her view:
- (a) the Panel is generally reluctant to restrain the dispatch of a document⁴ and the bidder's statement could not be dispatched until 27 January 2016 in any event⁵ and
 - (b) CGI had already been in the market for 5 days prior to Sedgman making the application and the supplementary bidder's statement put the market on notice regarding (among other things) the issue of franking credits.
14. The Acting President indicated that interim orders could be revisited (by the Acting President or the sitting Panel) if a decision could not be made before 27 January 2016. Following our decision to conduct proceedings, we revisited whether to make interim orders (see paragraph 21).

Final orders sought

15. Sedgman sought final orders that:
- (a) all acquisitions of Sedgman shares by the CIMIC Parties which have been effected on, or reported to, the ASX since 13 January 2016 be unwound and cancelled or alternatively each selling shareholder in such circumstances be given rights to reverse the sale and

³ There were some other disclosure issues raised in the application which were addressed in CGI's first supplementary bidder's statement

⁴ Guidance Note 5 at [6] and [7]

⁵ As per s633

- (b) CGI supplement or replace the bidder's statement in a manner which (among other things):
 - (i) makes corrective disclosure and is acceptable to the Panel and ASIC and
 - (ii) confirms that the offer price will not be reduced by 'Rights' in the nature of the value of dividend franking credits and that Sedgman and Sedgman shareholders won't be obliged to pay those credits to CGI or to otherwise account to CGI for them.

DISCUSSION

Decision to conduct proceedings

16. CGI made preliminary submissions to the effect that the bidder's statement was in compliance with the law and policy and the first supplementary bidder's statement addressed the issues raised in the application. CGI submitted that s619(2) permitted a bidder to differentiate offer terms on the basis of dividend entitlements including the value of franking credits. They submitted that this position was supported by the Panel in its Consultation Paper on Dividends.⁶ It also submitted that it did not have any control over the timing of any announcement or the timing, quantum or franking of any dividend.
17. CGI also submitted that:
 - (a) it had not formed intentions regarding the size and composition of the Sedgman Board, which would depend on the size of CGI's shareholding at the time of any such decision. The previous corporate action regarding the Sedgman Board (see paragraph 9) was no longer relevant
 - (b) it did not have sufficient knowledge about Sedgman to make definitive statements about Sedgman's dividend policy as it had not conducted any due diligence
 - (c) there was no need to repeat the relevant ASX guidance, which sets out the specific circumstances for delisting and
 - (d) CGI and CIMIC's intentions as disclosed in the bidder's statement were to apply irrespective of the outcome of the offer (i.e. whatever holding CGI ended up with).
18. CGI separately confirmed that it would not dispatch the bidder's statement before 1 February 2016 (or earlier if the Panel so determined).
19. ASIC made preliminary submissions to the effect that:
 - (a) the Panel should conduct proceedings if CGI did not agree to remove the term of its offers allowing it to deduct the value of franking credits

⁶ <http://www.takeovers.gov.au/content/DisplayDoc.aspx?doc=consultation/042.htm&pageID=&Year=>

- (b) it had concerns that, consistent with its previous policy position,⁷ the value of franking credits should not be deducted from the bid consideration. Such deduction may, among other things, disadvantage:
 - (i) shareholders who are unable to take advantage of franking credits by denying them the totality of the bid consideration where a franked dividend is paid and
 - (ii) shareholders who can take advantage of franking credits, as payment of this portion of the bid consideration which is deducted by the bidder is delayed (until the benefit can be realised in connection the shareholder's tax affairs)
- (c) the new disclosure did not provide the basis on which CGI considered the value to be nil and
- (d) the uncertainty associated with the potential for shareholders to receive less consideration by accepting the bid than if they sold to the bidder on market *"is potentially coercive and, amongst other things, contrary to the principles and purposes underpinning item 2 of s611, s621, s623(3)(b) and s651A of the Act, as well as the general purposes of Chapter 6 set out in s602(a) and (c)."*

20. As outlined in paragraph 6, following the lodgement of the Panel application, CGI released its first supplementary bidder's statement. In considering whether to conduct proceedings, we considered this as well as the application materials and preliminary submissions. We decided to conduct proceedings and issued a brief.

Interim orders and the second supplementary bidder's statement

21. As the issues regarding franking credits required a detailed examination, we considered that it would take us longer than until 27 January 2016 to complete our consideration. We therefore reconsidered the question of the interim orders that had been requested by Sedgman (to prohibit dispatch of CGI's bidder's statement and the CIMIC Parties acquiring Sedgman shares on market). The parties were given the opportunity to provide further submissions.
22. Each of ASIC and Sedgman submitted that the Panel should make these interim orders. ASIC submitted that *"unless CGI advises immediately that it will remove from the current terms of its off-market offers the relevant provision purporting to enable it to deduct the value of franking credits arising or accruing in connection with any announced dividend, the Panel should order that CGI cease on-market purchases in reliance on item 2 of s611 until the conclusion of the Panel proceedings"*.
23. CGI submitted that interim orders should not be made because (among other things):
- (a) there was no evidence of any misinformed trading having taken place and
 - (b) following the issue of CGI's first supplementary bidder's statement, which stated that CGI would likely assess as nil the value of any franking credits

⁷ See ASIC submissions to Panel Consultation Paper GN on Dividends:
<http://www.takeovers.gov.au/content/DisplayDoc.aspx?doc=consultation/046.htm&pageID=&Year=>

attached to a dividend based on Sedgman’s stated dividend policy, the market had been trading on a fully informed basis.

24. After receiving the parties’ submissions on interim orders, CGI provided a draft second supplementary bidder’s statement which sought to address the disclosure issues the subject of the brief. The draft included disclosure that if “*Sedgman were to declare a fully-franked interim dividend or a fully-franked special dividend during the Offer Period, CGI would assess the value to it of such franking credits as nil. This means that no deduction would be made to the Offer Price in respect of such franking credits.*”
25. Sedgman and ASIC each submitted that the draft second supplementary bidder’s statement did not adequately deal with the issue of franking credits because (among other things) it did not amend the definition of ‘Rights’ which under the terms of the offer could be deducted from the bid consideration. In response, CGI provided a revised draft second supplementary bidder’s statement which amended the terms of the offer and the definition of ‘Rights’ to exclude franking credits.⁸ We make no comment on whether the truth in takeovers statement of like effect in the first draft of the second supplementary bidder’s statement would have achieved the same end. We consider that the revised draft second supplementary bidder’s statement addressed the concerns in the proceedings. CGI subsequently lodged its revised second supplementary bidder’s statement on 28 January 2016.
26. We accepted an offer from CGI not to dispatch CGI’s bidder’s statement before 8 February 2016. Given that the lodged second supplementary bidder’s statement made it clear by amendment of the bid terms that CGI would not deduct the value of franking credits from its offer consideration under any circumstances, we decided not to make an interim order restricting on-market purchases.
27. We also considered that the questions in our brief were no longer relevant and issued replacement questions seeking submissions from the parties regarding:
 - (a) whether there were any issues remaining for us to consider and
 - (b) the most appropriate method for the dispatch of further disclosure to Sedgman shareholders.
28. We also asked ASIC and Sedgman whether either party would consent to shorten the 14-day period before dispatch of a replacement bidder’s statement.

Franking credits

29. The policy question of how franking credits should be treated in a bid was recently considered by the Panel. In 2014, following *Alesco 01 and 02*⁹ and *Warrnambool*,¹⁰ the

⁸ As a result of varying the terms of the offer, CGI applied for ASIC relief to modify s633 as amended by ASIC Class Order [CO 13/528] so that it was able to dispatch a replacement bidder’s statement with terms different to the original bidder’s statement that had been lodged with ASIC. Relief was granted on 1 February 2016 (ASIC Instrument 16-0047) and details of the relief were provided in the lodged version of the second supplementary bidder’s statement. As a consequence, consent to dispatch a replacement bidder’s statement was said to be required.

⁹ *Alesco Corporation Limited 01 and 02* [2012] ATP 14

¹⁰ *Warrnambool Cheese and Butter Factory Co Hold Ltd* [2013] ATP 16

Panel released a consultation paper and draft guidance note on dividends. The Panel's draft guidance provided that, among other things:

- (a) a bidder reserving the right to deduct dividends (and the value of the associated franking credits) from the offer consideration may create uncertainty and potentially disadvantage some shareholders and
- (b) a deduction which is to be assessed by reference to the franking of a dividend is likely to give rise to unacceptable circumstances, unless the bidder's statement makes it clear how the deduction would be calculated and sets out the basis for adopting that calculation.

30. Following the consultation process, the Panel decided not to issue a guidance note. The Panel noted that, in particular, there were competing views on whether the value of franking credits should be deducted from bid consideration at all, and competing views as to the assessment of that value if it was to be deducted. The Panel considered that, in view of the limited experience in the Australian market with these issues, the Panel would keep the area under review and revisit the possibility of publishing guidance if warranted.
31. CGI submitted that the Panel's draft guidance note suggested that the value of franking credits could be deducted as a matter of law. However, the Panel received submissions querying whether the guidance note should allow a deduction for the value of franking credits, including in respect of the legal issue, and the Panel concluded that it would not issue any guidance at that time. In our view, the question of the legality of deducting the value of franking credits therefore remains an open question. In any event, we note that CGI did not satisfy the terms of the draft guidance note in that the bidder's statement did not make it clear how the deduction would be calculated and did not set out a basis for that calculation.
32. CGI amended the terms of its bid such that it will not be deducting the value of franking credits from the offer consideration. While our brief had sought submissions on various issues that deduction of the value of franking credits gives rise to, we do not need to consider these issues further. All we can say, then, is that if a bidder seeks to retain the right to deduct the value of franking credits from its offer consideration it is likely to have to face similar inquiries.

Remaining disclosure issues

33. Sedgman submitted it did not have any further comments to make in relation to the remaining disclosure issues following the first draft of the second supplementary bidder's statement. However, ASIC submitted that the disclosure in the second supplementary bidder's statement (which had been lodged by this time) remained inadequate concerning CGI's intentions in relation to the composition of the Sedgman's board, dividend policy and ASX listing. ASIC submitted that Regulatory Guide 9 *Takeover bids* at paragraphs 264-265, stated that the use of vague or indeterminate expressions to describe a bidder's intentions undermined the purpose of the requirement in s636(1)(c), and non-committal or undecided statements of intention were insufficient to satisfy the disclosure requirements of s636.

34. CGI submitted in response that the disclosure in the lodged second supplementary bidder's statement was adequate. CGI provided examples of relevant disclosures of all three issues in bidder's statements for bids announced since 1 January 2014 which were unconditional on announcement (**disclosure examples**). They submitted that these were consistent with the disclosure in the lodged second supplementary bidder's statement. We continued proceedings to consider these issues.

Sedgman Board

35. The second supplementary bidder's statement as lodged included additional disclosure that:
- (a) CGI intended to reconstitute the Sedgman Board
 - (b) the composition of the board would "*appropriately reflect*" CGI's shareholding at the time such a decision is made
 - (c) CGI had not formed any intentions regarding the size of the Board or the identity of Board members and
 - (d) its intentions were the same regardless of its final shareholding.
36. ASIC submitted that the draft disclosure did not allow target shareholders to assess CGI's intentions. ASIC submitted that it was appropriate for CGI to state the manner in which the board composition would 'appropriately reflect' its shareholding – for example, by including the proposed composition of Sedgman's Board at various levels of shareholding.
37. CGI submitted that CGI had no intentions regarding the identity of future Board members and that none of the disclosure examples disclosed the anticipated composition of a target board at various shareholding levels. In considering these examples, we note that CGI's proposed phrase 'appropriately reflect' is not as specific as some of the examples which used 'proportional'. However, we take CGI to mean proportional.
38. In *ALH 01*,¹¹ in relation to the constitution of ALH's board, the Panel considered that the bidder (Bruandwo) needed to disclose the identities of the people it proposed to appoint.¹² It appeared that Bruandwo had formed a view as to potential nominees.¹³ In this case, CGI submitted that neither it nor CIMIC had formed intentions about the identity of any proposed directors to Sedgman's board and previous attempts to change the board were not part of their current intentions.
39. Following the additional disclosure in the lodged second supplementary bidder's statement, we are satisfied that the information is no longer deficient.

¹¹ *Australian Leisure & Hospitality Group Limited 01* [2004] ATP 19

¹² At [28(b)]

¹³ At [26]

Intentions regarding dividend policy

40. Additional information regarding CGI's intended dividend policy, including the factors CGI will take into account when determining the dividend policy, was provided in the lodged second supplementary bidder's statement.
41. ASIC submitted that the lodged second supplementary bidder's statement did not provide meaningful disclosure regarding how dividends will be determined post-bid. CGI submitted that its intentions had not developed any further and that the disclosure examples did not contain specific disclosure regarding the dividend, including payout ratios. The only disclosure examples which contained any specificity were those confirming the status quo.
42. In relation to a bidder's intention regarding the target's dividend policy, the Panel in *ALH 01*¹⁴ said that while there is no specific requirement for such disclosure in s636, "a bidder's intentions regarding future dividends may be highly relevant to people considering continuing as shareholders."¹⁵ That Panel also said that if the bidder can provide firm information it should do so.¹⁶
43. We assume 'highly relevant' in *ALH 01* means material. We consider CGI's intentions regarding the dividend policy to be material to Sedgman shareholders as Sedgman has an established history of paying dividends. However, we have no reason not to believe CGI that neither it nor CIMIC had formed intentions in relation to the dividend policy.

Removal from ASX

44. The bidder's statement provided that CGI may also seek to procure the removal of Sedgman from the Official List. The lodged second supplementary bidder's statement provided additional information regarding factors considered by the ASX in approving a company being removed from the Official List, as well as the circumstances in which shareholder approval would be required.
45. ASIC submitted that the disclosure did not provide any meaningful information regarding whether CGI in fact will seek to remove Sedgman from the Official List and how its intentions may change given the possible outcomes as to spread and number of shareholders remaining post-bid.
46. CGI submitted in rebuttal that it did not have any intentions regarding delisting and that, in the disclosure examples, no disclosure regarding specific shareholding or the specific spread or number of shareholders was provided.
47. We consider that a bidder's intention to remove the target from the ASX Official List is material to target shareholders. We were satisfied with the disclosure in the lodged second supplementary bidder's statement.

¹⁴ *Australian Leisure & Hospitality Group Limited 01* [2004] ATP 19

¹⁵ At [32]

¹⁶ At [33]

Other matters

Order reversing CGI acquisitions on-market

48. Sedgman submitted that the Panel should make final orders to give previous shareholders of Sedgman who have sold their shares to any of the CIMIC Parties on-market since 13 January 2016 the opportunity to unwind those transactions. Sedgman submitted this order should apply to all transactions until the announcement and lodgement of the second supplementary bidder's statement. Sedgman submitted that:
- (a) the on-market trading "*comprises unacceptable circumstances as described in the Application (and subsequent submissions in this matter) as the trading likely breached subsections 602(c), 619(1) and 621(3)*" and
 - (b) occurred while the shareholders were misled and deceived as to the treatment of franking credits under the bid, including because "*those investors sold without the benefit of knowing that, by delaying their sale until after their entitlement to Sedgman's proposed dividends accrues, they would receive higher value in the form of franking credits*" for those able to take advantage of this tax treatment.
49. CGI, in rebuttal, submitted (among other things):
- (a) there had been no actual or likely breach of:
 - (i) s602(c) as any proposed dividend and attached franking credits are not part of CGI's proposal and are not a benefit accrued "*through*" the offer, as stipulated by the section and
 - (ii) ss619(1) and 621(3) as all offers under its bid will be the same and it is unclear how CGI's on-market trading was in breach of these provisions
 - (b) "*There is no basis for any argument that any Sedgman shareholder was misinformed about CGI's proposed treatment of franking credits*" and there was no evidence of misinformed trading having taken place and
 - (c) there was a real practical difficulty in implementing such an order.
50. We do not have any evidence that trading has been affected or that the possible value of the franking credits has had an influence on trading, such as would justify an order giving people the opportunity to unwind on-market sales of Sedgman shares to CGI.

Method of dispatch

51. Following the settlement of the disclosure and lodgement of the second supplementary bidder's statement, and because Sedgman had previously refused to provide consent, we asked ASIC and Sedgman whether either party would consent to shorten the 14-day period before the dispatch of a replacement bidder's statement, as required under ASIC Class Order [CO 13/528].
52. ASIC submitted that it would ordinarily expect consent to be sought from the target in the first instance and for the target not to unreasonably withhold consent where outstanding disclosure concerns have been addressed. However, ASIC said that,

where a dispute remains, ASIC was able to consider and provide consent within a short timeframe.

53. Sedgman submitted that it would not consent as the market needed the full period of time to “*untangle and fully understand the information*” and time would assist Sedgman shareholders to analyse the potential benefits of waiting for the dividends before accepting the offer. CGI submitted in rebuttal that it was open to Sedgman to assist the ‘*untangling*’ through its target statement and that the disclosure would have been in the market for sufficient time already.
54. Guidance Note 5 *Specific Remedies – Information Deficiencies* provides that the Panel’s primary focus regarding matters of disclosure is on the “*quality and accessibility of information for target shareholders and the market.*”¹⁷ Additionally, the Panel prefers information to be provided in “*fewer, comprehensive and comprehensible documents, rather than in correcting, supplementary documents.*”¹⁸
55. In *Sydney Gas*,¹⁹ the Panel applied that policy and considered that, while a simple supplementary statement may be sufficient, where changes are “*numerous, material, presented in a manner that was likely to mislead, and made reconciling the documents difficult*”, a replacement document is preferable.²⁰
56. The Panel’s view in *Sydney Gas* was supported in *Hastings*²¹ even though the Panel in that case did not consider a replacement statement was required.
57. To the extent there was a choice in this case, we agree with the parties that, having regard to the nature of the changes, the best method of distributing the information to target shareholders would be through a replacement bidder’s statement.
58. On 3 February 2016, CGI made an application to ASIC for consent under ASIC Class Order [CO 13/528] to shorten the 14-day period to allow dispatch from 8 February 2016. Following this application, on 4 February 2016, Sedgman consented to the replacement bidder’s statement being dispatched commencing 8 February.

DECISION

59. For the reasons above, we declined to make a declaration of unacceptable circumstances. We consider that it is not against the public interest to decline to make a declaration and we had regard to the matters in s657A(3).

¹⁷ At [2]

¹⁸ At [10]

¹⁹ *Sydney Gas Limited 01* [2006] ATP 9

²⁰ At [29]

²¹ *Hastings Diversified Utilities Fund* [2012] ATP 1 at [50] and [51]

Orders

60. Given that we made no declaration of unacceptable circumstances, we make no final orders, including as to costs.

Sophie Mitchell

President of the sitting Panel

Decision dated 2 February 2016

Reasons published 19 February 2016

Advisers

Party	Advisers
CIMIC Group Investments Pty Limited and CIMIC Group Limited	Minter Ellison
Sedgman Limited	Norton Rose Fulbright