



Australian Government

Takeovers Panel

Reasons for Decision Molopo Energy Limited 06 [2017] ATP 14

Catchwords:

Request to vary confidentiality directions – confidentiality

Australian Securities and Investments Commission Act 2001 (Cth), sections 127, 184, 190

Acts Interpretation Act 1901 (Cth), section 33(3)

Molopo Energy Limited 03R, 04R & 05R [2017] ATP 12, Molopo Energy Limited 01 & 02 [2017] ATP 10, Multiplex Prime Property Fund 05 [2017] ATP 4

INTRODUCTION

1. The Panel, Peter Day, Ian Jackman SC (sitting President) and Tony Osmond, declined a request by ASIC to vary the confidentiality directions given in the *Molopo Energy Limited 01 & 02* and *Molopo Energy Limited 03R, 04R & 05R* proceedings.
2. In these reasons, the following definitions apply.

Aurora	Aurora Funds Management Limited
Keybridge	Keybridge Capital Limited (ASX: KBC)
Molopo	Molopo Energy Limited (ASX: MPO)
Initial Proceedings	<i>Molopo Energy Limited 01 & 02 [2017] ATP 10</i>
Review Proceedings	<i>Molopo Energy Limited 03R, 04R & 05R [2017] ATP 12</i>
Mr Bolton	Mr Nicholas Bolton

FACTS

3. In the Initial Proceedings and the Review Proceedings, each of the Initial Panel and the Review Panel (respectively) gave a direction (**Direction**) under s190 of the *Australian Securities and Investments Commission Act 2001 (Cth)* (**ASIC Act**) to the effect that the proceedings before the Panel are confidential, and (subject to certain exceptions) no person who has access to any material provided in the proceedings that is not public (other than by a breach of confidentiality) may cause or authorise the publication of any of that material or of any report in which such material forms part.
4. The Directions were made after seeking submissions from the parties and ASIC. ASIC did not make any submissions on this issue before the Directions were given.

APPLICATION

5. On 1 August 2017, after the Review Panel had decided the Review Proceedings, ASIC requested a variation of the Directions in both the Initial Proceedings and the Review Proceedings. ASIC sought to be excluded from the Directions, noting that it is bound by codified confidentiality obligations in s127 of the ASIC Act.

6. The substantive President of the Panel appointed us under ASIC Act s184 to consider ASIC's request on the basis that it was seeking the exercise of powers that the Panel (at least arguably) has under the ASIC Act.¹

DISCUSSION

7. The Panel invited submissions from ASIC and parties as to whether it had power to vary the Directions and, if so, whether it should do so in circumstances where parties may have been relied on the Directions.
8. ASIC submitted, among other things, that the Directions may hinder ASIC:
 - (a) in its role as regulator with oversight of the corporations legislation and
 - (b) beyond what is intended by s127 of the ASIC Act with respect to its ability to use and disclose information received as part of the Initial Proceedings and the Review Proceedings.
9. However, ASIC did not submit that the Directions would necessarily interfere with the proper performance of its role. Rather, ASIC indicated that the variation was sought "out of an abundance of caution".
10. Mr Bolton submitted that, consistent with the approach taken to confidentiality undertakings in *Multiplex Prime Property Fund 05*,² the Panel should only vary the Directions in special or exceptional circumstances. He submitted that ASIC had not established such circumstances. Keybridge and Aurora made similar submissions.
11. Mr Bolton and Aurora each also submitted that the Panel should not vary the Directions as they had relied on the Directions in providing material in the proceedings.

DECISION

12. We agree that variation of confidentiality directions should be subject to similar principles to those described in *Multiplex Prime Property Fund 05*.
13. We are not satisfied that special or exceptional circumstances sufficient to justify a variation have been established.
14. Accordingly, we do not consider that the Directions should be varied and do not need to decide whether we have power to do so. We do not consider it appropriate to express any view on the effect of the Directions.

Ian Jackman SC
President of the sitting Panel
Decision dated 11 August 2017
Reasons given to parties 15 August 2017
Reasons published 22 August 2017

¹ under ASIC Act s190 by necessary implication or as a result of *Acts Interpretation Act 1901* (Cth) s33(3)

² [2017] ATP 4

Takeovers Panel

Reasons - Molopo Energy Limited 06
[2017] ATP 14

Advisers

Party	Advisers
Aurora	Norton Gledhill
Keybridge	Bennett + Co
Molopo	-
Nicholas Bolton	Baker McKenzie