



Australian Government

Takeovers Panel

**Reasons for Decision
Explaurum Limited
[2018] ATP 21**

Catchwords:

Decline to conduct proceedings – target’s statement – undervalue statements – disclosure – placement – supplementary target’s statement

Corporations Act 2001 (Cth), sections 638, 657A, 670A

Takeovers Panel Guidance Note 22: Recommendations and Undervalue Statements; ASIC Information Sheet 214 – Mining and Resources – Forward-looking statements

Interim order	IO undertaking	Conduct	Declaration	Final order	Undertaking
NO	NO	NO	N/A	N/A	NO

INTRODUCTION

1. The Panel, Alex Cartel (sitting President), Shirley In’t Veld and Jeremy Leibler, declined to conduct proceedings on an application by Ramelius Resources Limited in relation to the affairs of Explaurum Limited. Ramelius made an off-market takeover bid for all Explaurum shares on issue. The application concerned statements in the Target’s Statement, including relating to the value of Ramelius’s offer, which Ramelius submitted were misleading. Explaurum subsequently announced a placement to a third party subject to shareholder approval and, following discussions with the Panel, released supplementary disclosure. In light of the above the Panel considered that there was no reasonable prospect that it would declare the circumstances unacceptable.

2. In these reasons, the following definitions apply.

Alkane	Alkane Resources Limited (ASX code: ALK)
Alkane Transaction	has the meaning in paragraph 11 below
Contribution Statements	has the meaning in paragraph 5(b) below
Explaurum	Explaurum Limited (ASX code: EXU)
Fifth Supplementary Target’s Statement	Explaurum’s fifth supplementary target’s statement dated 8 November 2018
First Supplementary Target’s Statement	Explaurum’s first supplementary target’s statement dated 24 October 2018
Offer	the off-market takeover bid made by Ramelius offering consideration of 4 Ramelius shares for every 1 Explaurum share
Ramelius	Ramelius Resources Limited (ASX code: RMS)

Tampia Gold Project	the project located in the wheat belt region of Western Australia, in connection with which Explaurum owns a 90% interest in two mining leases and a surrounding exploration licence through a joint venture
Target’s Statement	Explaurum’s target’s statement dated 12 October 2018
Undervalue Statements	has the meaning in paragraph 5(a) below

FACTS

3. Explaurum is an ASX listed mineral exploration and development company.
4. On 10 September 2018, Ramelius announced its intention to make the Offer and lodged its Bidder’s Statement. Shortly after the announcement of the Offer, Explaurum released an announcement which noted that the *“all scrip Ramelius Offer implies a price of Explaurum shares of approximately 12.3 cents per share (based on a 30 day VWAP of Ramelius shares as at 7 September 2018) and is subject to a number of conditions”*. The announcement also outlined the Explaurum Board’s concerns with the Offer, including that *“the proposed consideration is inadequate and undervalues Explaurum’s underlying assets and future prospects”*.
5. On 12 October 2018, Explaurum released its Target’s Statement which included the following statements:
 - (a) *“The Offer Consideration is inadequate and does not reflect the underlying value of Explaurum’s Tampia Gold Project and the potential exploration upside”*¹ and *“the Offer is below Explaurum’s share of the ungeared, post-tax valuation for the base case Tampia Gold Project set out in the Tampia Feasibility Study released in May 2018”*²
(the Undervalue Statements) and
 - (b) *“your Directors believe the Offer Consideration is inadequate given:*
 - *“Disproportionate contribution to merged group – Explaurum would contribute 41% of the merged group’s attributable reserves yet only receive a shareholding of 19% of the merged group under the Offer”*³**(together with other similar statements made in the Target’s Statement and First Supplementary Target’s Statement, the Contribution Statements).**
6. On 24 October 2018, Explaurum released its First Supplementary Target’s Statement which among other things provided additional information about the valuation methodology adopted by the Explaurum board in assessing Explaurum’s value and the Offer.

¹ At page 4

² At page 8

³ At page 8

APPLICATION

Declaration sought

7. By application dated 24 October 2018, Ramelius sought a declaration of unacceptable circumstances. Ramelius submitted (among other things) that:
- (a) the Undervalue Statements were not soundly-based or reasonable for purposes of *Guidance Note 22: Recommendations and Undervalue Statements*
 - (b) valuations provided by Explaurum in relation to the Tampia Gold Project were made without an objectively reasonable basis contrary to the principles in ASIC's *Information Sheet 214 – Mining and Resources – Forward-looking statements*, particularly given development of the Tampia Gold Project remained subject to funding, private landowners and land access agreements, and regulatory approvals
 - (c) statements in the Target's Statement that a key reason to reject the Offer is that Explaurum shareholders may accept the Offer without having "*all potentially material information*" implied that Explaurum directors were aware of information that they were not permitted to disclose but which, if known, would cause an Explaurum shareholder not to accept the Offer. Ramelius submitted that "*it is misleading to pre-empt such information unless and until it is in a form capable of disclosure to Explaurum shareholders in accordance with the requirements of the Act*"
 - (d) the Contribution Statements were misleading because they failed to take into account other material factors such as cash and cash equivalents, total assets, revenue and gold production "*to which Explaurum will contribute minimal (and in some cases zero) to the merged group*" and
 - (e) Explaurum failed to explain why it had not commissioned an independent expert's report to be included in the Target's Statement (particularly in the context of the Undervalue Statements) and instead chose to wait to provide shareholders with the report once the results of a study relating to the Tampia Gold Project became available.

Interim orders sought

8. Ramelius sought interim orders that Explaurum be prohibited from reiterating any undervalue statement or other statement the subject of the application pending determination of the application.

Final orders sought

9. Ramelius sought final orders that Explaurum lodge a supplementary target's statement that among other things corrects the information deficiencies and misleading statements identified in the application.

DISCUSSION

10. Explaurum made preliminary submissions that the Undervalue Statements were soundly based and reasonable because they were supported by internal analysis and external advice. Explaurum submitted that the Panel should decline to conduct

proceedings because any deficiencies in the disclosure (which was not admitted) had been remedied by supplementary disclosure in the First Supplementary Target's Statement, including of the methodologies used to value both Explaurum and Ramelius. Explaurum submitted that *"the remaining issues are in substance a commercial disagreement as to value rather than a 'reasonable basis' issue"*.

11. On 29 October 2018, Explaurum announced that it had entered into an agreement with Alkane under which Alkane would make a strategic investment in Explaurum, subject to shareholder approval. Under the terms of the proposal:
 - (a) Alkane will invest approximately \$8 million in Explaurum by subscribing for Explaurum ordinary shares at an issue price of 12 cents per share
 - (b) Alkane will also be granted two tranches of options exercisable on or before 1 November 2019 at 13 cents per share and 14 cents per share respectively and
 - (c) Alkane will be entitled to appoint one director to the board of Explaurum provided its shareholding does not fall below 12%,
(the **Alkane Transaction**).
12. Explaurum announced that an extraordinary general meeting to consider the Alkane Transaction will be held on 6 December 2018.
13. We invited parties to make further submissions in light of the Alkane Transaction. Ramelius chose not to make any further submissions but reserved its right to make a further Panel application in relation to the Alkane Transaction.
14. Explaurum submitted that the reasonableness of the grounds on which Explaurum made its recommendations and the Undervalue Statements *"has been objectively confirmed by the Alkane Strategic Investment which is a considered investment into a project which had been under examination for some months well before the Ramelius Offer was announced, by an independent sophisticated market participant whose key strategy is to invest in projects that have passed its due diligence review and investment criteria, namely investments that have high exploration potential and/or require near term development funding"*.
15. We considered that to the extent the Undervalue Statements had the capacity to mislead Explaurum shareholders this was substantially remedied in the First Supplementary Target's Statement.
16. We also considered the announcement of the Alkane Transaction materially changed the circumstances such that it was unlikely Explaurum shareholders would make a decision on the Offer at least until they had received detailed information from Explaurum in relation to the Alkane Transaction.
17. Explaurum confirmed to us that it would facilitate the release of an independent expert's report no later than 5 business days before the earlier of (i) the close of the Offer and (ii) the general meeting to consider the Alkane Transaction. Explaurum confirmed the expert's report will include:
 - (a) a valuation of Explaurum, including based on a technical valuation of Explaurum's specific assets (such as reserves and resources)

- (b) an assessment of the Alkane Transaction, noting that Explaurum expects this would take into account any potential impact on any future control premium and
 - (c) an assessment of the value of the Offer consideration and a comparison against the value of Explaurum to form an opinion as to whether the Offer consideration is fair and reasonable to Explaurum shareholders.
18. On this basis we were comfortable that Explaurum shareholders would be provided with sufficient information to enable them to assess the value of Explaurum and whether they agree with the Undervalue Statements.
19. We agreed with Ramelius’s submission (summarised in paragraph 7(d)) regarding the Contribution Statements and notified Explaurum of our concerns. Explaurum subsequently released its Fifth Supplementary Target’s Statement retracting the Contribution Statements which alleviated our concerns.

DECISION

20. For the reasons above, we do not consider that there is any reasonable prospect that we would make a declaration of unacceptable circumstances. Accordingly, we have decided not to conduct proceedings in relation to the application under regulation 20 of the *Australian Securities and Investments Commission Regulations 2001* (Cth).

Orders

21. Given that we have decided not to conduct proceedings, we do not (and do not need to) consider whether to make any interim or final orders.

Alex Cartel

President of the sitting Panel

Decision dated 8 November 2018

Reasons given to parties 23 November 2018

Reasons published 26 November 2018

Legal Advisers

Party	Legal Advisers
Explaurum Limited	Thomson Geer
Ramelius Resources Limited	Allion Partners