



Takeovers Panel

MEDIA RELEASE

No: 28/2007
Friday, 18 May 2007

Summit Resources Limited – Final decision

The Takeovers Panel advises that it has made a declaration of unacceptable circumstances in relation to an application by Areva NC Australia Pty Ltd concerning the affairs of Summit Resources Limited and statements by Paladin Resources Limited (see [TP07/21](#)) but has decided not to make orders.

The Panel's declaration is attached as Annexure A.

The Panel considers that truth in takeovers is a fundamental tenet of the takeovers regime. However, although the circumstances (as set out in the attached Declaration) are unacceptable, in this case the Panel considers that there are no orders which are reasonably available which would appropriately remedy the effects of the unacceptable circumstances.

The Panel is disappointed with the quality and timeliness of the disclosure by Paladin and Summit and does not consider it to be an example of good market practice. The Panel does not consider that Summit shareholders have been well served in terms of the information both Paladin and Summit have provided about their intentions in relation to the Areva Transaction.

The Panel's decision not to make orders should be viewed in light of the particular circumstances (below) and should not be taken as the Panel considering that Paladin and Summit have acted satisfactorily. If the Panel had considered that there were orders that would have been effective in remedying the effects of the unacceptable circumstances, and were in the interests of current and former Summit shareholders, the Panel would not have hesitated to make those orders.

The sitting Panel for these proceedings is Alison Lansley, Simon McKeon (sitting President) and Robert Sultan.

Background

Summit was the subject of an off-market scrip takeover bid by Paladin Resources Ltd. Paladin's bid had initially been rejected by the board of Summit. It was subsequently declared unconditional.

On 11 April 2007, Summit and Areva entered into, and announced, an agreement under which Summit was to convene a general meeting to consider the issue of shares and options in two tranches to Areva. If approved, upon the second

subscription by Areva (allowing Areva to increase its shareholding in Summit to 18%), Areva would be appointed to market two-thirds of Summit's share of uranium production from its Australian projects (Areva Transaction).

The day after the announcement of the Areva Transaction Paladin announced an increase in the consideration under its bid which was then recommended by the board of Summit. In the announcement to the market concerning the increase in the consideration under its takeover bid, Paladin made a number of unqualified statements which indicated it supported the Areva Transaction and would vote its Summit shares in favour of the Areva Transaction (Intention Statement). Paladin's officers made similar statements to the media in the days following.

On 22 April 2007, Paladin informed Summit that it would not vote in favour of the Areva Transaction. Summit advised its shareholders on 23 April 2007 that it had decided not to convene the general meeting, at least in part as a consequence of Paladin's advice that it would not vote in favour of the Areva Transaction.

Areva's application related to:

- (a) Paladin's Intention Statement
- (b) Paladin's subsequent departure from its Intention Statement,
- (c) statements by Paladin that Areva claimed implied that the Areva Transaction would not proceed, and
- (d) statements by Summit that the Areva Transaction would not proceed.

Areva sought a declaration of unacceptable circumstances and final orders requiring:

- (a) Summit to convene a general meeting to consider the Areva Transaction and
- (b) Paladin to vote in favour of the Areva Transaction in accordance with its previously stated intention.

Decision

Importance of truth in takeovers

The Panel considers truth in takeovers to be a fundamental tenet of the Australian takeovers regime and unwarranted departures by takeovers participants from statements they make to the market are taken very seriously. The Panel's decision to declare unacceptable circumstances clearly indicates this. The Panel's decision not to make orders given the particular facts of this case is not in any way an endorsement of the conduct of Paladin and Summit.

Neither Paladin nor Summit should indicate publicly that their position and conduct has been vindicated – this is not the case. The Panel considers the circumstances which arise as a consequence of the conduct of Paladin and Summit are unacceptable.

The Panel considers that Paladin's departure from its Intention Statement is not consistent with the truth in takeovers policy. The Panel does not accept Paladin's submission that it was justified in departing from its Intention Statement because a recommendation from the Summit board was "unforeseeable".

It is clear that once Paladin increased its offer, the Summit board would need to consider the revised offer. The only options available to the Summit board were to reject the revised offer or recommend the revised offer. Paladin itself was responsible for an increase of approximately 24% in the bid consideration. The Panel is not persuaded that the change of recommendation was unforeseeable. On this basis, the Panel does not accept that Summit's recommendation was an unforeseeable change in circumstance such that it was acceptable for Paladin to depart from its Intention Statement.

The Panel considers that where parties make unqualified statements in the context of a takeover, shareholders should be able to rely on those statements when considering whether or not to accept an offer. The Panel considers that parties involved in takeovers should be aware that making statements without qualification carries risk and that departing from publicly stated positions (without qualification) will generally have consequences.

In relation to Summit's conduct, the Panel considered whether Summit's qualification on recommending the Areva Transaction (in the absence of a higher offer) impliedly put a similar qualification on the statement about calling the meeting. The Panel considers that Summit's statement concerning putting the proposal to Summit shareholders is not an unqualified statement, because there is the reference to a higher offer in the later statement concerning the recommendation and some linkage may in this case be inferred. However, such an inferred qualification is a far from satisfactory approach. Shareholders may reasonably expect a difference between the convening of a meeting and the recommendation of the directors in respect of that meeting. The Panel does not think that Summit's reasons for deciding not to convene the meeting were properly explained to Summit shareholders.

The result is that the Panel considers that disclosure of information by both Paladin and Summit was unsatisfactory.

For these reasons, the Panel is disappointed with the conduct of Paladin and Summit and does not consider it to be an example of good market practice. The Panel does not consider that Summit shareholders have been well served in terms of the information both Paladin and Summit have provided about their intentions in relation to the Areva Transaction.

The Panel's decision not to grant orders should be viewed in light of the above, given the particular circumstances of this case (explained in more detail below). If the Panel had considered that granting orders would have been effective in remedying the unacceptable circumstances, the Panel would not have hesitated to make orders.

Orders in these circumstances

In reaching its decision not to grant orders the Panel considered:

- (a) the likely effect the unacceptable circumstances had on Summit shareholders; and
- (b) whether orders would remedy the unacceptable circumstances in a manner that protected the rights and interests of Summit shareholders, and ensured that the Paladin Offer proceeded in a way that it would have proceeded if the unacceptable circumstances had not occurred.

The Panel considered what orders might be appropriate to remedy the effect of the unacceptable circumstances on shareholders who had accepted into the Paladin Offer (accepting shareholders).

No evidence was produced to establish a reasonable basis for concluding that many, if any, accepting shareholders were influenced by Summit's announcement of the Areva Transaction or Paladin's Intention Statement, or by the unsatisfactory way in which information about the changed positions came into the market. The Panel considered the steady flow of acceptances into the Paladin Offer following Summit's decision not to convene a meeting (which became known through Summit's 23 April announcement) and Paladin's departure from its Intention Statement (which became known through Summit's 5th supplementary target's statement of 30 April).

The Panel also considered that it had no evidence that any Summit shareholders would avail themselves of withdrawal rights if they were ordered.

While the Panel is entitled to make an evaluation based on its own experience and expertise as to the effect of the circumstances, in the absence of any evidence to the contrary, the Panel considered in this instance that, although the circumstances were unacceptable and do not represent good market practice, any effect on accepting shareholders was not such that it warranted the granting of orders.

In this case, the Panel was reluctant to order withdrawal rights where it appeared the unacceptable circumstances had not had an effect that withdrawal rights were likely to address.

Areva sought final orders requiring Summit to convene a general meeting to consider the Areva Transaction and requiring Paladin to vote in favour of the Areva Transaction in accordance with its previously stated intention. The Panel did not consider these orders were appropriate to address the effect of the circumstances. The Panel considered that in any event it is in the power of Areva to requisition a meeting if it chooses. The Panel considered ordering that Paladin vote some or all of the shares it had acquired under the Paladin Offer, should there be a meeting, but considered that such an order was not practical because:

- (a) the Panel would not be able to determine which shares were accepted on the basis of the Paladin statement that it would support the Areva

Transaction and which were accepted on the basis that the Areva Transaction would not be put to Areva shareholders; and

- (b) requiring all Summit shares held by Paladin to be voted for the Areva Transaction would force Paladin into a commercial alliance with Areva that Paladin now did not wish to be in and that would potentially cause harm to the new and existing shareholders of Paladin.

The Panel considered that the effect the circumstances had on Areva's proposed acquisition of a substantial interest in Summit was unacceptable. However, it did not consider withdrawal rights were an order that would address this effect.

Accordingly, the Panel concluded that no orders were appropriate to remedy the effect of the unacceptable circumstances on Areva.

The Panel would not regard the fact that it decided in this situation not to make orders as any precedent for future cases involving truth in takeovers policy.

The Panel will publish its reasons for the decision on its website when they are finalised.

Nigel Morris
Director, Takeovers Panel
Level 47, 80 Collins Street
Melbourne, VIC 3000
Ph: +61 3 9655 3501
nigel.morris@takeovers.gov.au