



Australian Government

Takeovers Panel

MEDIA RELEASE

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Leighton Holdings Limited - Panel Receives Applications

The Panel has received three applications in relation to the affairs of Leighton Holdings Limited. The applications concern the proposal by Actividades des Construcción y Servicios SA (ACS) to acquire control of HOCHTIEF Aktiengesellschaft (Hochtief). If that acquisition succeeds, ACS will also acquire control of Hochtief's 54.5% holding in Leighton.

Background

ACS is a Spanish company listed on the Madrid Stock Exchange and holds approximately 29.98% of Hochtief. Hochtief is a German company listed on the Frankfurt Stock Exchange and holds approximately 54.5% of Leighton.

ACS has announced a proposal to acquire 50% or more of the shares in Hochtief. The proposal offers scrip under a German voluntary public tender offer. It was announced on 16 September 2010. ACS also announced that, depending on the acceptances under the offer, subsequent on-market purchases of Hochtief shares "with no time or price restrictions" may follow.

On 6 October 2010, Hochtief applied to ASIC for a modification of the Corporations Act which would have required ACS to make a follow-on cash takeover bid for Leighton. On 20 October 2010, ASIC informed Hochtief that it would not grant the modification.

Details of the Applications

Leighton Holdings 01: on 25 October 2010, Leighton sought a declaration of unacceptable circumstances. Leighton submits (among other things) that, while the ACS proposal will not technically breach the takeovers prohibition,¹ ACS's acquisition of shares in Hochtief is contrary to the equal opportunity principle

¹ Leighton submits that this is because (a) ACS already has a relevant interest in over 20% of Hochtief and therefore has a deemed relevant interest in Hochtief's interest in Leighton and (b) the acquisition of Hochtief shares by ACS will fall within the downstream acquisition exception to the takeovers prohibition.

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(s602(c)). It also submits that the failure by ACS to commit to the protection of Leighton's minority shareholders constitutes unacceptable circumstances.

Leighton seeks interim orders including until final determination of the application that, if ACS obtains control of Hochtief, ACS be restrained from causing or allowing Hochtief to revoke or cease to comply with the existing governance arrangements for Leighton without the consent of the independent directors on the Leighton board.

Leighton seeks final orders including that ACS and Hochtief commit to maintaining Leighton's independence from Hochtief and ACS in the event that ACS obtains control of Hochtief. They should do this by (a) binding governance undertakings comparable to the arrangements currently operating with Hochtief or (b) restrictions limiting the number of Leighton shares that can be voted by ACS to 20% of the total number of Leighton shares, but allowing an increase gradually over time in a manner consistent with the 3% "creep" exception in s611 item 9 of the Corporations Act.

Alternatively, Leighton submits that ACS must make an unconditional off-market cash takeover bid to Leighton's non-Hochtief shareholders at a price that is determined by an independent expert to be fair and reasonable and which includes a control premium.

Leighton Holdings 02: by application received today, Hochtief seeks a declaration of unacceptable circumstances. Hochtief submits that, if successful, the ACS proposal will result in ACS acquiring control of Leighton and the ability to change Leighton's direction in future and is contrary to "*the philosophy of s602 principles*". It further submits that the effect of these circumstances is that control of Leighton may pass without Leighton shareholders having:

- an opportunity to consider a change of control of Leighton or to receive an offer of the kind otherwise required to acquire control
- an equal opportunity to participate in the benefits being offered by ACS to acquire control of Leighton or
- a reasonable time or enough information to assess the possible implications of the ACS proposal on them.

Hochtief seeks final orders including an order requiring ACS to make a follow-on takeover bid if ACS's bid for Hochtief becomes unconditional.

Leighton Holdings 03: by application received today, Hochtief seeks a review of the following decisions of ASIC.

- The decision declining to grant a modification under s655A to apply Chapter 6 to the ACS proposal in accordance with ASIC's downstream exemption policy. The modification would have had the effect that ACS would need to make a cash takeover bid for Leighton.

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- The decision approving ASIC Class Order 02/259.² That class order approves certain foreign bodies conducting a financial market (including Deutsche Börse AG) for the purposes of the exception for downstream acquisitions in item 14 of s611 of the Corporations Act.³ Hochtief submits that the class order should not have been approved without a condition that the exception in item 14 would not apply where a downstream bid would be required if the Australian downstream company was itself listed on the approved foreign exchange.

No decision has been made whether to conduct proceedings in relation to the applications. The Panel makes no comment on the merits of the applications.

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² CO 02/259 (Downstream acquisitions: Foreign stock markets)

³ The s606 prohibition does not apply to an acquisition that results from another acquisition of a relevant interest in voting shares in another body corporate if the other body corporate is listed on a prescribed financial market or an ASIC approved financial exchange: s611 item 14