



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP20/76

Tuesday, 17 November 2020

Cardinal Resources Limited 03 & 04 – Panel Declines to Conduct Proceedings

The Panel has declined to conduct proceedings in relation to applications dated 30 October 2020 by Samson Rock Capital LLP and Cardinal Resources Limited (ASX/TSX: CDV) in relation to the affairs of Cardinal (see [TP20/69](#) and [TP20/71](#) respectively).¹

Cardinal is the subject of competing takeover bids from Nord Gold S.E. (**Nordgold**) and Shandong Gold Mining (HongKong) Co., Limited (**Shandong**). On 19 October 2020, Shandong made an announcement that its \$1.00 per share offer price under its unconditional off-market takeover bid for Cardinal was best and final in the absence of a higher competing offer.

On 21 October 2020, Nordgold increased the price under its unconditional on-market takeover bid for Cardinal from \$0.90 to \$1.00 per share.

On 26 October 2020, Nordgold made an announcement that its \$1.00 per share offer price was best and final in the absence of a higher competing offer.

The applications concerned whether the effect of the above-mentioned circumstances (among others) is that the auction for control of Cardinal has hit an impasse, *“with neither bidder able to increase its offer, and the very real prospect that neither will be able to be successful, so that control of the company will not be resolved through the bids”*. The applicants submitted that there has ceased to be an efficient, competitive and informed market for control of Cardinal shares.

Each of the applicants sought final orders, including that both Nordgold and Shandong be permitted to increase their offer price under their respective takeover bids above \$1.00 per Cardinal share.

Among other matters, the Panel considered the following circumstances important to its decision:

¹ The Panel decided to hear both applications together under Regulation 16 of the *Australian Securities and Investments Commission Regulations 2001* (Cth)

- ASIC's "truth in takeovers" policy contained in RG 25 has been endorsed by the Panel as a "fundamental tenet" of Australia's takeover regime and requiring *"persons to act in accordance with statements that they have made to the market concerning their intentions in the context of a takeover bid under Chapter 6 promotes the principle set out in section 602(a)"* (see *Breakfree Limited 03 and 04* [2003] ATP 38 & 39 at [110]-[111])
- the Panel has had regard to that policy in considering the question of whether the circumstances here are unacceptable
- it considered there was no reasonable prospect that it would find the current situation between Shandong and Nordgold in respect of their bids for Cardinal unacceptable, including because:
 - Shandong's qualification in its last and final statement made on 19 October 2020 (i.e. "in the absence of a higher competing offer") was not ambiguous
 - Nordgold matching the Shandong offer and seeking to hold Shandong to its last and final statement was not a misuse of the "truth in takeovers" policy
 - notwithstanding that the auction between Shandong and Nordgold has been stalled, there is no material to suggest that the market is inefficient or uninformed.

The Panel concluded there was no reasonable prospect that it would make a declaration of unacceptable circumstances. Accordingly, the Panel declined to conduct proceedings.

The sitting Panel was Jeremy Leibler, Karen Phin (sitting President) and Sarah Rennie.

The Panel will publish its reasons for the decision in due course on its website www.takeovers.gov.au.

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