



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP24/06

Wednesday, 17 January 2024

Southern Cross Media Group Limited 02R and 03R – Decision on Orders

The review Panel has set aside the initial Panel's orders and made new orders (Annexure A). The review Panel previously affirmed the initial Panel's decision to make a declaration of unacceptable circumstances (see [TP23/46](#)) in relation to the acquisition of 6.83% of Southern Cross Media Group Limited shares in contravention of s606 (the **Relevant Shares**). However, the review Panel considered its own orders sufficiently protect the rights and interests of persons affected by the unacceptable circumstances.

The review Panel has made orders ameliorating the effect of the Relevant Shares on any competing proposals for Southern Cross by requiring ARN to (in effect, among other things):

- Vote the Relevant Shares in favour of a competing scheme of arrangement that is recommended by the majority of Southern Cross directors.
- Accept the Relevant Shares into a competing takeover if the acceptance would allow the competing bidder to obtain more than 50% of the shares in Southern Cross and ARN (or its associates) have not made a competing proposal that is recommended by the majority of Southern Cross directors.
- Not transfer (or otherwise dispose of, including by way of sale) the Relevant Shares or voting rights to the Relevant Shares, except in the circumstances referred to in the orders.
- Not vote the Relevant Shares, except in the circumstances referred to in the orders.

Given the technical nature of the orders in dealing with the effect of the unacceptable circumstances on potential competing proposals, the orders also provide parties and ASIC with the liberty to apply for further orders to deal with (among other things) unforeseen circumstances.

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The sitting Panel was Bruce Cowley, Richard Hunt (sitting President) and John McGlue. The Panel will publish its reasons for the decision in due course on its website www.takeovers.gov.au.

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ANNEXURE A

**CORPORATIONS ACT
SECTIONS 657EA AND 657D
ORDERS**

SOUTHERN CROSS MEDIA GROUP LIMITED 02R AND 03R

The Panel in *Southern Cross Media Group Limited* made a declaration of unacceptable circumstances on 22 November 2023.

THE PANEL ORDERS

1. ARN must:
 - (a) Not transfer or otherwise dispose of any of the Relevant Shares or transfer or otherwise dispose of any voting rights or do anything resulting in a person acquiring a Relevant Interest in respect of any of the Relevant Shares to any person, other than pursuant to these orders.
 - (b) Not vote any of the Relevant Shares, other than pursuant to these orders.
 - (c) Not accept a Takeover Bid by any of ARN's Associates in respect of any of the Relevant Shares.
 - (d) Vote all of the Relevant Shares in favour of a Non-Associated Resolution that is recommended by the majority of the non-conflicted directors of Southern Cross, including in relation to approving a Non-Associated Scheme of Arrangement.
 - (e) Accept a Takeover Bid by a person other than one of ARN's Associates in respect of all of the Relevant Shares provided that:
 - (i) the Takeover Bid Requirements are met and
 - (ii) at the time the Takeover Bid Requirements are met, the Recommended Bid Requirements do not apply.
2. ARN must confirm in writing to the Panel when it has satisfied its obligations under these orders.
3. ARN must procure that each of its Associates comply with orders 1 and 2.

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4. The parties to these proceedings and ASIC have the liberty to apply for further orders in relation to these orders.
5. These orders apply until the earlier of:
- (a) ARN or any of its Associates obtaining voting power of 100% in Southern Cross or
 - (b) further order of the Panel.

Interpretation

6. In these orders the following terms apply.

Act means the *Corporations Act 2001 (Cth)*.

ARN means ARN Media Limited.

ARN Bidder means:

- (a) ARN or
- (b) ARN and one or more of its Associates or
- (c) One or more of ARN's Associates

Associates has the meaning given in section 12 of the Act, and includes Anchorage Capital Partners Pty Limited and its Associates. For the avoidance of doubt, the Associates of ARN include persons who are associated with ARN at the time that these orders operate.

Non-Associated Resolution means a resolution that does not relate to any transaction to which ARN or any of its Associates is a party.

Non-Associated Scheme of Arrangement means a scheme of arrangement in respect of Southern Cross that does not involve ARN or any of its Associates as a bidder.

Recommended Bid Requirements means:

- (a) ARN Bidder has made a takeover bid for Southern Cross that is unconditional or has been declared unconditional and is open for acceptance that has been recommended for acceptance by the majority of the non-conflicted directors of Southern Cross or
- (b) ARN Bidder has entered into a binding scheme implementation agreement with Southern Cross relating to a scheme of arrangement in respect of Southern Cross and the majority of the non-conflicted directors of Southern Cross have recommended that shareholders vote in favour of the scheme of arrangement.

Relevant Interest for the purposes of order 1(a) only has the meaning given to that term in the Act, but modified as if:

- (a) sections 609(6) and 609(7) of the Act did not apply and
- (b) the term specifically includes entering into, obtaining or exercising any rights or interests under, any cash-settled derivative contracts, contracts for differences, other derivative contracts or any other agreement or arrangements which confer rights the economic effect of which is equivalent or substantially equivalent to holding, acquiring or disposing of any issued shares,

and otherwise has the meaning given to that term in the Act.

Relevant Shares means 16,376,774 ordinary shares in the issued capital of Southern Cross held by ARN.

Southern Cross means Southern Cross Media Group Limited.

Takeover Bid means an off market bid or market bid under Chapter 6 of the Act for Southern Cross.

Takeover Bid Requirements means:

- (a) if the Takeover Bid is subject to conditions, each of those conditions have been satisfied or waived such that the Takeover Bid is unconditional (or would be satisfied if ARN or its Associates accept the Takeover Bid in respect of the Relevant Shares) and
- (b) the bidder and its associates has, or would obtain if ARN or its Associates accept the Takeover Bid in respect of the Relevant Shares, a Relevant Interest in more than 50% of the voting shares in Southern Cross.

Allan Bulman
Acting General Counsel
with authority of Richard Hunt
President of the sitting Panel
Dated 17 January 2024