



**In the matter of QR Sciences Limited
[2003] ATP 37**

Catchwords:

Efficient market - Eggleston principles - material omission - other material information - prospectus disclosure -rights issue - shareholder approval

Corporations Act 2001 (Cth), sections 602, 606, 611, 655A, 657A, 710-15, 719 and 728

Anaconda Nickel Limited 02-05 [2003] ATP 4, approved

Taipan No 9 [2001] ATP 4, 38 ACSR 111, approved

These are our reasons for our decision not to make a declaration of unacceptable circumstances in relation to the affairs of QR Sciences Limited following an application by SecQR Limited, a shareholder in QR Sciences Limited. Our decision was made after we received an undertaking from QR Sciences Limited.

THE PROCEEDINGS

1. These reasons relate to an Application by SecQR Limited (the **Application**) (**SecQR**) under section 657C of the *Corporations Act 2001 (Cth)* (the **Act**)¹ dated 13 October 2003 in relation to the affairs of QR Sciences Limited (**QR Sciences**). The Application concerned a non-renounceable rights issue by QR Sciences.

THE PANEL & PROCESS

2. The President of the Panel appointed Braddon Jolley (sitting President), Marian Micalizzi (sitting Deputy President) and Tro Kortian as the sitting Panel (the **Panel**) for the proceedings (the **Proceedings**) arising from the Application.
3. We adopted the Panel's published procedural rules for the purposes of the Proceedings.

SUMMARY

4. The Application broadly concerned a non-renounceable rights issue (**Rights Issue**) in QR Sciences to raise approximately \$4,500,000. This purpose of the Rights Issue was to raise working capital and to repay the majority of a debt owed to QRSciences Holdings Limited (**Holdings**), a 51% shareholder in QR Sciences, which was due to be repaid on 31 December 2003.
5. The Rights Issue was described in an offer information statement dated 18 September 2003 (**OIS**).

¹ All statutory references are to the Act, unless otherwise indicated.

Takeovers Panel

Reasons for Decision – QR Sciences Limited

6. SecQR submitted that the Rights Issue created unacceptable circumstances for the following reasons:
 - (a) the Rights Issue did not comply with the exemptions to section 606 (*the 20% threshold*) in section 611, in particular section 611 item 10 relating to rights issues, because it allowed Holdings to disproportionately increase its shareholding in QR Sciences; and
 - (b) the OIS was misleading, amongst other reasons, because it failed to disclose the potential effect that the Rights Issue could have on Holdings' voting power in QR Sciences.
7. We considered that the Rights Issue did not comply with section 611 item 10 because it did not necessarily offer shareholders the same percentage of shares as they held before the Rights Issue and so did not comply with paragraph (b) of that item.
8. An additional problem with the Rights Issue was that shareholders were unable to determine the number of shares for which they needed to apply to preserve their proportionate interest in QR Sciences.
9. In the particular circumstances of this matter the OIS should have contained a clear statement of the intention and ability of Holdings to subscribe for shares under the Rights Issue. The combination of the particular features of the control relationship between the two companies, the commonality of their senior management, the structure of the Rights Issue to include what was, effectively, an underwriting element dependent on the levels of acceptances, and the proposed use of a majority of the capital to be raised to repay a debt to Holdings, meant that other shareholders would require this information to ensure that any acquisition of a substantial interest by reason of the Rights Issue would occur in a properly informed market.
10. Additionally, the OIS should have contained a clear explanation of the current position applying to a debt facility between QR Sciences and Holdings which permitted Holdings from 31 December 2003 to convert a \$5,000,000 debt owed to it by QR Sciences into ordinary shares. The OIS should also have explained the effect of the Rights Issue on the terms of the facility. In particular, the OIS should have set out the current conversion price and amount outstanding under the facility and explained the effect on that conversion price of the issue of shares pursuant to the Rights Issue.
11. We consider that, in those cases where a capital raising may involve the acquisition of a substantial interest under Chapter 6, the issuer should concurrently satisfy both the disclosure obligations of Chapter 6D or Part 7.9 (as applicable) and the information principles set out in sections 602(a) and (b)(iii).

Takeovers Panel

Reasons for Decision – QR Sciences Limited

12. After we informed the parties of our views, QR Sciences undertook not to issue any shares under the Rights Issue. Therefore, it was not necessary for us to make a declaration of unacceptable circumstances.

APPLICATION

Declaration and orders sought in the Application

13. SecQR applied to the Panel for a declaration of unacceptable circumstances under section 657A.
14. SecQR sought the following interim orders under section 657E:
 - (a) that QR Sciences be restrained from issuing any shares to Holdings pursuant to the OIS; and
 - (b) that Holdings be restrained from acquiring any further QR Sciences shares.
15. SecQR sought the following final orders under section 657D:
 - (a) that QR Sciences not issue any shares to Holdings in accordance with the OIS if such an issue would result in Holdings' voting power in QR Sciences increasing;
 - (b) an order for SecQR's costs in the Application; and
 - (c) such further orders as the Panel considered appropriate.

DISCUSSION

Factual background leading up to Application

Parties

16. QR Sciences is an unlisted public company with 24,261,207 fully paid ordinary shares on issue. It has more than 50 shareholders.
17. Holdings is listed on the Australian Stock Exchange. At the time of the Application it held approximately 48% of QR Sciences which it acquired as a result of making a takeover bid for QR Sciences which closed on or around 30 December 2002. Holdings had additionally on 14 July 2003 agreed to acquire a further 3% of the share capital in QR Sciences under the '3% creep' exemption set out in section 611 item 9.
18. Holdings' major asset is its interest in QR Sciences (at all relevant times, the book value of QR Holdings' investment in QR Sciences was approximately 97% of its non-current assets and 78% of its total assets (the other relevant current asset being \$4 million in cash at bank)).

Takeovers Panel

Reasons for Decision - QR Sciences Limited

19. QR Sciences and Holdings do not have common directors but share the same chief executive officer and company secretary.
20. SecQR is the second largest shareholder in QR Sciences. It has a relevant interest in QR Sciences of approximately 23%. It acquired the majority of its interest in QR Sciences as a result of a takeover bid for QR Sciences which closed on 7 July 2003.

Holdings Debt

21. At the time of the Application, QR Sciences owed Holdings approximately \$5,000,000 (**Holdings Debt**), the terms and conditions of which were set out in a secured lending facility agreement (**Facility**) dated June 2002. The Holdings Debt is secured over the assets of QR Sciences.
22. The Holdings Debt was originally due to be repaid by 31 July 2003, however, on or about 19 August 2003, Holdings agreed to extend the date for repayment until 31 December 2003.
23. The Facility between Holdings and QR Sciences provides that from 31 December 2003 Holdings will be entitled (but not required) to convert the debt owed to it by QR Sciences into ordinary shares.
24. The Facility provides that the conversion price per share is the issue price under the most recent capital raising conducted by QR Sciences that raised in excess of \$500,000 at the time Holdings seeks to convert the debt. The Facility provided that the conversion price could not exceed 'the value offered by Holdings under its ...bidder statement dated 29 October 2002 (**Bidder's Statement**), as varied in accordance with the Act'.
25. The parties informed us that:
 - (a) the most recent capital raising conducted by QR Sciences where it raised over \$500,000 at the time of the Application was in April 2002 when Holdings subscribed for 350,000 shares in QR Sciences at a price of \$2.00 per share;
 - (b) the value of consideration per share offered by Holdings in its Bidder's Statement was five Holdings shares and one Holdings option for each QR Sciences share; and
 - (c) based on a weighted average price of Holdings shares on ASX from the date on which Holdings announced its intention to make the takeover offer to the date of the Bidder's Statement, the implied value of the offer was in the vicinity of \$1.30 for each QR Sciences share (this did not take into account any value attributable to the Holdings Option offered).

Takeovers Panel

Reasons for Decision – QR Sciences Limited

26. The Facility has not been approved by shareholders under section 611 item 7.² Therefore, exercise by Holdings of its entitlement to convert the Holdings Debt into ordinary shares would need to comply with another exemption from section 606 contained in section 611.

Rights Issue

27. On 18 September 2003, QR Sciences released the OIS. Pursuant to the OIS, QR Sciences proposed a non-renounceable offer of shares (**New Shares**) to its shareholders on the basis of two New Shares for every three shares held at an issue price of 60¢ per New Share.³ If all the New Shares “offered” had been issued, the Rights Issue would have raised approximately \$9,704, 400.
28. The OIS stated that the maximum amount to be raised under the Rights Issue was approximately \$4,999,800.⁴ To achieve this while still offering on a 2-for-3 basis, the maximum number of New Shares to be issued under the Rights Issue was limited to 8,333,000,⁵ about one third of the number of shares already on issue.
29. The OIS stated that between 1 September 2002 and 18 September 2003 transactions occurred in QR Sciences shares at an average price of \$1.04.⁶
30. The OIS stated that the purposes of the Rights Issue were to provide additional working capital of approximately \$1,000,000 and to enable QR Sciences to repay \$4,000,000 of the Holdings Debt.⁷

Scale back

31. In order to reconcile the 2-for-3 “offer” of New Shares with the limitation of the New Shares to 8,333,000, the Rights issue contained a ‘scale back’ mechanism described in the OIS as follows:⁸

If the total number of New Shares applied for by applicants is greater than 8,333,000, then the number of New Shares each applicant will receive will be scaled back on a pro-rata basis according to the formula:

² Item 7 of section 611 enables the disinterested shareholders of a company to approve an acquisition of shares or interests which would otherwise be prohibited by section 606.

³ OIS paragraph 1.1(c).

⁴ OIS paragraph 1.1(a). In submissions, QR Sciences explained that it sought to raise a maximum of \$4,999,800 so that it could bring itself within section 709(4) of the Act. A lower level of financial disclosure applies where a company is seeking to raise \$5 million or less. In those cases an offer information statement under s 709 can be issued instead of a prospectus under sections 710, 711, 713 and 717 of the Act.

⁵ OIS paragraph 1.1(c).

⁶ OIS paragraph 1.1(f).

⁷ OIS paragraph 3.

⁸ OIS paragraph 1.1(c).

Takeovers Panel

Reasons for Decision – QR Sciences Limited

*If $A > 8,333,000$ then $B = (8,333,000/A) * C$*

Where:

A means the aggregate number of New Shares applied for by applicants;

B means the number of New Shares to be issued to the applicant; and

C means the number of New Shares applied for by the applicant.

32. The OIS stated that QR Sciences could not provide any certainty on the number of New Shares which an applicant would ultimately be issued.⁹ A shareholder who applied for his or her full entitlement of 2 in 3 would receive between 1 in 3 and 2 in 3, depending on the level of applications from other shareholders. There was no minimum subscription for the issue.

Holdings position under the Rights Issue

33. The OIS stated:¹⁰

If [Holdings] accepts its full entitlement in respect of the 11,635,58 Shares in relation to which it is the registered proprietor and in respect of the 727,000 Shares in relation to which it has agreements to acquire it would make an Application for, in aggregate, 8,241,724 Shares.

34. Although the OIS did not state this explicitly, this figure meant that, depending on other applications, Holdings could subscribe for nearly all the New Shares and hold up to 63% of the expanded capital of QR Sciences after the Rights Issue.

35. The OIS also stated:¹¹

[Holdings] has notified the Company that it is fully supportive of the Issue and it encourages all Shareholders of QR Sciences to participate. At the time of this Offer Information Statement [Holdings] was unable to advise on the level of its participation however it will, to the extent that it is legally entitled, participate.

36. The OIS did not indicate what legal issues might restrict Holdings' participation in the Rights Issue.

Relevant provisions of the Act

37. Section 602 of the Act states that the purposes of Chapter 6 include that:

⁹ OIS paragraph 1.1(c).

¹⁰ OIS paragraph 1.6.

¹¹ OIS paragraph 1.6.

Takeovers Panel

Reasons for Decision – QR Sciences Limited

- (a) the acquisition of control over the voting shares in an unlisted public company with more than 50 members takes place in an efficient, competitive and informed market;¹²
 - (b) shareholders should be given enough information to enable them to assess the merits of any proposal by a person to acquire a substantial interest in a company;¹³and
 - (c) shareholders should have reasonable and equal opportunities to participate in benefits accruing to shareholders under that proposal.¹⁴
38. Section 606(1) provides that a person must not acquire a relevant interest in issued voting shares of an unlisted public company with more than 50 members (such as QR Sciences) if because of that acquisition, that person's or someone else's voting power in the entity increases:
- (a) from 20% or below to more than 20%; or
 - (b) from a starting point that is above 20% and below 90%.
39. Section 611 item 10 provides that an acquisition that results from an issue of securities is exempt from section 606 if it satisfies the following conditions:
- (a) a company offers to issue securities in a particular class;
 - (b) offers are made to every person who holds securities in that class to issue them with the percentage of the securities to be issued that is the same as the percentage of the securities in that class that they hold before the issue;
 - (c) all of those persons have a reasonable opportunity to accept the offers made to them;
 - (d) agreements to issue are not entered into until a specified time for acceptances of offers has closed; and
 - (e) the terms of all the offers are the same.

The Application

40. The Application submitted that unacceptable circumstances existed for several reasons.

¹² Paragraph 602(a)

¹³ Subparagraph 602(b)(i)

¹⁴ Subparagraph 602(b)(iii)

Takeovers Panel

Reasons for Decision – QR Sciences Limited

Contravention of section 606

41. The Application alleged that the Rights Issue was likely to lead to Holdings contravening section 606.
42. The Application submitted that if Holdings participated in the Rights Issue, it was likely that its voting power in QR Sciences would increase from a starting point above 20% and below 90%. In the absence of an exemption, an increase in Holdings' voting power would contravene section 606(1).
43. The only relevant exemption that was available to Holdings was set out in section 611 item 10 (*Rights Issues*). SecQR submitted that the Rights Issue did not comply with section 611 Item 10 because:
 - (a) the Rights Issue was structured so that participating shareholders could disproportionately increase their shareholding in QR Sciences over non-participating shareholders. In particular, the 'scale back' mechanism effectively allowed shareholders to take up New Shares in that would have otherwise formed part of a 'shortfall'. The exemption in section 611 item 10 did not extend to subscribing for shares that formed part of a 'shortfall' from a rights issue;
 - (b) the Rights Issue was an artifice to increase Holdings' control over QR Sciences. For example, if the Rights Issue had simply been on terms that provided for QR Sciences shareholders to participate on a one for three basis, the total number of shares being offered by QR Sciences would be 8,087,069. Holdings' maximum entitlement under a rights issue on those terms would have been 4,120,862 shares. This was significantly less than Holdings' maximum entitlement to 8,241,724 shares under the Rights Issue; and
 - (c) the purpose of the Rights Issue was an attempt by Holdings and QR Sciences to convert the Holdings Debt into equity, without complying with the requirements in section 611 item 7 (*Approval by resolution of target*).
44. The Application alleged that the Rights Issue's failure to comply with section 611 item 7 meant that shareholders had been denied their right to make an informed decision on the proposed conversion of the Holdings Debt into equity at a general meeting.

Misleading information

45. The Application submitted that the OIS contained misleading information and contained material omissions for the following reasons:

Takeovers Panel

Reasons for Decision – QR Sciences Limited

- (a) QR Sciences' statements set out in paragraphs 33 and 35 of these reasons¹⁵ in relation to Holdings' support of, and potential participation in, the Rights Issue were misleading if Holdings was unable to rely on the exemption set out in section 611 item 10; and
 - (b) the OIS failed to disclose the potential effect that the Rights Issue could have on Holdings' voting power in QR Sciences.
46. The Application submitted that shareholders of QR Sciences had not been provided with all the necessary information to make an informed decision about their participation in the Rights Issue and may have failed to fully understand the potential effect that the Rights Issue could have on Holdings' voting power in QR Sciences.

Interim orders

47. We did not make an interim order as on 17 October 2003 the following undertakings were voluntarily provided under section 201A of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**):
- (c) QR Sciences undertook that it would not allot or issue any securities (whether or not under the Rights Issue) in QR Sciences; and
 - (d) Holdings undertook not to acquire any relevant interest in QR Sciences by subscribing for shares,
- until we made a decision in relation to these Proceedings.

Panel considerations

48. We considered that the Rights Issue was likely to create unacceptable circumstances on the ground that it frustrated the operation of an efficient, competitive and informed market in relation to the acquisition of control over shares in QR Sciences.

Technical compliance with item 10 of section 611

49. We considered that the Rights Issue did not comply with the terms of the exception to section 606 contained in section 611 item 10. Paragraph (b) of section 611 item 10 requires the making of an offer to all shareholders of a number of shares that is the same percentage of the shares the subject of the new issue as each of those shareholders held before the issue.
50. The Rights Issue did not comply with the exception because the offer to shareholders was not of the *same* percentage of the securities to be issued as the

¹⁵ OIS paragraph 1.6.

Takeovers Panel

Reasons for Decision – QR Sciences Limited

percentage that they held before the Rights Issue; it was that percentage *as affected by the 'scale back' mechanism*. This is demonstrated by the numerical example below in the case of a shareholder who holds 1% of QR Sciences before the Rights Issue. It assumes that the Rights Issue is fully subscribed and thus that the expanded capital of QR Sciences after the Rights Issue is 32, 594, 207 shares.

	Shares	% of New Shares	% of expanded capital ¹⁶
1% shareholder who does not participate in Rights Issue	242,612	0%	0.74%
1% shareholder's basic entitlement if it fully participates in the Rights Issue	404,353 (242,612 plus 161,741)	1.94%	1.24%
1% shareholder's entitlement if it fully participates in the Rights Issue and Rights Issue is 50% over subscribed	350,439 (242,612 plus 107,827)	1.29%	1.08%

51. We consider that the exceptions to section 606 in section 611 can only properly be relied on where conduct clearly falls within their terms. The market for the control of acquisition of shares in companies to which Chapter 6 applies operates on the basis that the exceptions in sections 611 and 655A are a definitive statement of the gateways through which transactions may pass without contravening section 606. To allow parties to expand the range of transactions by which acquisitions may occur without contravening section 606 would undermine the efficiency of that market. If a party believes that proposed conduct complies with the policy of Chapter 6 set out in section 602 but would not satisfy the technical requirements of an exception in section 611, the proper course is for that party to seek relevant modifications from the Australian Securities and Investments Commission.
52. Consistent with previous Panel decisions,¹⁷ we regard conduct which contravenes section 606 very seriously and as being likely to create

¹⁶ The expanded capital in QR Sciences after the Rights Issue is equal to 32,594,207 (ie 24,261,207 plus 8,333,000)

¹⁷ See, for example, Taipan No 9 [2001] ATP 4, 38 ACSR 111 at [35]-[46]).

Takeovers Panel

Reasons for Decision – QR Sciences Limited

unacceptable circumstances by reason of the central position of that section in the regulation of acquisitions of relevant interests in Australian companies.

53. Accordingly, an acquisition of a relevant interest in shares by taking up shares pursuant to the Rights Issue would create unacceptable circumstances if the consequence were that any person's voting power would change in any of the ways set out in paragraph 606(1)(c), unless another exception to section 606 applied.

Other considerations

54. An important element of the exception in section 611 item 10 is that offerees should be able easily to determine what conduct they need to undertake in order to acquire the number of shares required to maintain exactly their proportionate interest in the issuer.
55. The Rights Issue did not provide all shareholders with an equal opportunity to participate in the offer because the 'scale back' mechanism and the absence of underwriting and a minimum subscription level prevented shareholders being able to accurately calculate their exposure under the Rights Issue. Specifically, the fact that shareholders were unable to predict the number of shares likely to be subscribed for by Holdings and SecQR meant that they could not estimate either:
- (a) the number of shares that would be allotted to them for a given level of acceptances; or
 - (b) the number of shares for which they needed to apply to preserve their proportionate interest in QR Sciences without increasing it.
56. We were informed that by 5pm (Western Standard Time) Friday 17 October 2003, the date the Rights Issue was originally due to close,¹⁸ acceptances had been received in respect of 2.41% of the New Shares.
57. This relatively low level of acceptances may have indicated that shareholders were confused about the nature of the Rights Issue. Other possible inferences supported by these facts could have been that shareholders were:
- (a) informed of the board's decision to extend the Rights Issue;¹⁹

¹⁸ By resolution dated 17 October 2003 the directors of QR Sciences extended the closing date for the offer to 5:00 pm Western Australian Standard Time on the day five clear Business Days after the date upon which the Panel delivered its final ruling on the Application.

¹⁹ We were not informed of what time the board made the decision referred to in the previous footnote, or of what steps it took to inform shareholders of this decision.

Takeovers Panel

Reasons for Decision – QR Sciences Limited

- (b) awaiting the outcome of our decision before deciding whether to take up the offer; or
- (c) not interested in maintaining their current level of shareholding in QR Sciences.

Disclosure issues

58. Although not determinative of our decision, we considered that there were deficiencies in the OIS which may also have justified intervention by us on the basis that the OIS did not fulfil the objectives set out in paragraphs 602 (a) and (b)(iii) of the Act.

59. Generally the issuer of an OIS is not required to comment on the intentions of substantial shareholders unless those intentions are specifically known by the issuer. This view is consistent with paragraph 8.56 of the CLERP Explanatory Memorandum²⁰ which states:

Disclosure obligations under the OIS are limited to the information that proposed subsection 715(1) requires to be included in the OIS. This is expected to be material information known to the corporation. External inquiries are not expected to be undertaken to ascertain the information about matters on which disclosure is required.

60. However, the combination of the particular features of the control relationship between Holdings and QR Sciences, the commonality of their senior management, the structure of the Rights Issue to include what was, effectively, an underwriting element dependent on the levels of acceptances, and the proposed use of a majority of the capital to be raised to repay the Holdings Debt, meant that the OIS should have contained a clear statement of Holdings' ability and intention to take up its entitlement under the Rights Issue. Other shareholders needed this information to ensure that any acquisition of a substantial interest by reason of the Rights Issue would occur in a properly informed market.

61. Additionally, the OIS should have contained a clear explanation of the current position applying to the Facility and the effect of the Rights Issue on its terms. In particular, the OIS should have set out the current conversion price and amount outstanding under the Facility and explained the effect on that conversion price of the issue of shares pursuant to the Rights Issue.

62. As various of the exceptions in section 611 demonstrate, transactions which are primarily of a capital raising nature can give rise to issues under Chapter 6. In addition to item 10 considered in these reasons, the exceptions in item 11 (*Dividend reinvestment*), item 12 (*IPO fundraising*) and item 13 (*underwriting of*

²⁰ Corporate Law Economic Reform Program Bill 1998.

Takeovers Panel

Reasons for Decision - QR Sciences Limited

fundraising) all indicate that Parliament acknowledges that capital raising transactions can raise issues which intersect with Chapter 6, notwithstanding that their primary regulation may be located elsewhere in the Act. Where this occurs, a transaction to which section 602 applies arises. In such cases, the information principle expressed in the requirement for an "efficient, competitive and informed market" in paragraph 602(a) and for relevant information to be provided under subparagraphs 602(b)(i) and (iii) (see paragraph 37) will apply to the relevant transaction and as well as any other disclosure requirements.²¹

63. Accordingly, we consider that where capital raising transactions also constitute circumstances raising issues under Chapter 6, it may lead to unacceptable circumstances if the offer document does not comply with the information principles in section 602 as well as complying with the disclosure obligations directly applicable to the relevant capital raising transaction (for example under Chapter 6D or Part 7.9.²²)

Communication with parties

64. We informed the parties of our views and requested QR Sciences to offer an undertaking to which section 201A of the ASIC Act would apply, not to issue any shares pursuant to the Rights Issue in its current form. This undertaking was provided by QR Sciences on 24 October 2003.
65. We note that there is no inherent objection to a company which makes a rights issue offering all its shareholders the opportunity to underwrite the offer. We were aware of transactions which have proceeded on the basis that they would comply with the section 611 item 10 exception where:
- (a) the issuer made a traditional rights issue offer to its shareholders. This offer might be made in an offer information statement or other disclosure document (as appropriate). Acquisitions of shares under this part of the offer would be structured clearly to comply with the exception in the first sentence of section 611 item 10 because each offeree would have a definite entitlement to take up a number of shares proportionate to their existing holding; and
 - (b) in the same offer document, the issuer offered to all its shareholders the opportunity to underwrite any shortfall in the rights issue on an appropriate proportional basis. This second offer might involve only the completion of a second part of the same entitlement and acceptance form as the rights issue. Acquisitions of shares under this

²¹ Similar comments were made in *Anaconda Nickel Limited 02-05* [2003] ATP 4 at [68] - [74]. In particular, paragraph 70 of that decision stated that "The principle in section 602(b)(iii) applies to all transactions where there is a potential change of control...".

²² Part 6D deals with the prospectus requirements applicable to companies. Part 7.9 deals with the equivalent product disclosure statements applicable to managed investment schemes.

Takeovers Panel

Reasons for Decision – QR Sciences Limited

part of the offer would comply with the exception in the second sentence of section 611 item 10.²³

66. For instance, to achieve the objectives of the Rights Issue, QR Sciences might have structured a rights issue so as to offer all shareholders one share for every three they already held, with an option to participate in the shortfall proportionately with others wishing to underwrite the shortfall.
67. We do not consider in these reasons whether this proposal might give rise to unacceptability in particular circumstances, other than for non-compliance with the exception in section 611 item 10. In particular we do not consider here whether this proposal would give rise to concerns under any laws other than Chapter 6 as these are matters not within the area of our responsibility.

DECISION

68. After receiving the undertaking referred to in paragraph 65, we declined to make a declaration of unacceptable circumstances.

Orders

69. We made no final orders.

Legal representation

70. We consented to the parties being legally represented by their commercial lawyers in the Proceedings.

Braddon Jolley

President of the Sitting Panel

Decision dated 23 October 2003

Reasons published 10 December 2003

²³ “This (i.e. the exception) extends to an acquisition by a person a underwriter to the issue or sub-underwriter.”