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**Friday, 14 December 2007**

**Midwest Corporation Limited - Panel Decision**

The Panel advises that it has decided not to make a declaration of unacceptable circumstances in response to an application dated 8 November 2007 from Midwest Corporation Limited. The application concerned the unconditional scrip takeover offer for all of the Applicant's shares by MMX Investments Pty Ltd, a wholly owned subsidiary of Murchison Metals Limited (together **Murchison**). (See [TP07-91](#))

Midwest had sought a declaration of unacceptable circumstances in relation to deficiencies which it submitted existed in Murchison's bidder's statement and first supplementary bidder's statement (collectively, the **Bidder's Statement**).

Midwest submitted that the Bidder's Statement should contain evidence that Murchison had a reasonable basis for a number of statements in relation to targeted iron ore production at the Jack Hills project (in which Murchison has a 50% interest through an incorporated joint venture with a subsidiary of Mitsubishi Development Pty Ltd).

Amongst other things, the Panel considered that:

1. Murchison's statements were forward looking statements for the purposes of s670A(2) of the Corporations Act as they related to future matters. Accordingly, Murchison was required to have a reasonable basis for making them. Murchison was required to disclose sufficient of the bases and assumptions underlying the statements to allow target shareholders to understand and assess the weight they should give to the statements.
2. "Targeted production" is not a term contemplated by the JORC Code. To the extent that:
  - (a) Midwest shareholders may have understood from the context of the statements in the bidder's statement that the production target of 375Mt had significance under the JORC Code, or had been signed off by a Competent Person (as that term is used in the JORC Code); and
  - (b) there was no clear statement that the references were not signed off by a competent person,the Project Statements had the potential to mislead and confuse.
3. Given that "production" implies economic viability, Murchison should not refer to production targets in future disclosure to Midwest shareholders unless it also discloses the financial figures and assumptions which underlie the stated target.

4. Given:

- (a) the additional disclosures made by Murchison since the publication of its original bidder's statement including:
  - (i) Murchison's first supplementary bidder's statement dated 1 November 2007;
  - (ii) Murchison's second supplementary bidder's statement dated 27 November 2007;
  - (iii) Murchison's third supplementary bidder's statement dated 11 December 2007;
- (b) the qualifications attached to the production target in the additional disclosures i.e. subsequent to the original bidder's statement; and
- (c) the release of the Midwest target's statement on 19 November 2007, the aspirational nature (and associated risk) of the production target has been highlighted to Midwest shareholders. Accordingly, Midwest shareholders are now in a position where they can evaluate for themselves the relative merits of the respective arguments put forward by bidder and target.

On that basis, the Panel decided not to make a declaration of unacceptable circumstances.

The Panel notes the efforts by parties to resolve the dispute between them in the period since the application, and appreciates the time and efforts they have taken.

The sitting Panel for the proceedings was Robyn Ahern, Teresa Handicott (sitting President) and Anthony Sweetman.

The Panel will publish its reasons for its decision on its website at [www.takeovers.gov.au](http://www.takeovers.gov.au) in due course.

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