



Rinker Group Limited 02R- Panel Decision

The Takeovers Panel advises that it has made a declaration of unacceptable circumstances and proposes to make orders in relation to an application it received on 16 July 2007 from CEMEX Australia Pty Ltd (**CEMEX**). The application (**Review Application**) was made under section 657EA of the Corporations Act. The Review Application sought review of the decision of the Panel in the Rinker 02 proceedings to make a declaration of unacceptable circumstances and final orders in relation to an application it received on 13 June 2007 from the Australian Securities and Investments Commission (**ASIC**), concerning an off-market takeover bid (**CEMEX Offer**) by CEMEX for Rinker Group Limited (**Rinker**) and the affairs of Rinker.

The review Panel considered that the circumstances of:

- (a) on 10 April 2007, CEMEX announcing that the "offer is CEMEX's best and final offer, in the absence of a superior proposal" (**10 April announcement**); and
- (b) on 7 May CEMEX announcing that it would allow Rinker shareholders to retain the A\$0.25 dividend declared by Rinker on 27 April and that it was taking steps that were necessary to facilitate that outcome (**7 May announcement**),

gave rise to unacceptable circumstances.

The Panel considered that CEMEX's 10 April announcement did not clearly, unambiguously and proximately reserve the right to improve the Offer other than in the event of a superior proposal. The Panel considered that in making the 7 May announcement CEMEX failed to follow the best and final statement in the 10 April announcement. The Panel considered the departure from the best and final statement was inconsistent with the "truth in takeovers" policy, which the Panel considers to be a fundamental principle of an efficient competitive and informed securities market.

DECISION

The Panel considers that Rinker shareholders and the market were entitled to assume that there would be no further improvements to the Offer after 10 April (in the absence of a superior offer). The Panel considers that in making the 7 May announcement CEMEX failed to follow the best and final statement in the 10 April

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announcement. In so doing, in the period between the 10 April and 7 May announcements:

- (a) the acquisition of control over Rinker shares did not take place in an efficient, competitive and informed market;
- (b) Rinker shareholders and the directors of Rinker were not given enough information to enable them to assess the merits of the Offer; and
- (c) Rinker shareholders who sold shares (other than by accepting the Offer) after the 10 April announcement and before the 7 May announcement did not have an equal opportunity to share in the benefits flowing from the Offer.

For these and other reasons (which will be set out in the Panel's reasons for decision), the Panel made the declaration in Annexure A.

Orders

The Panel has considered what orders would be appropriate to protect the interests of persons affected by the unacceptable circumstances. The Panel has provided the orders that it proposes to make to the parties for comment under section 657D of the Corporations Act. The Panel expects to finalise the orders shortly and will publish them when finalised.

The Panel has indicated that if judicial review of the review Panel's decision in the Rinker 02R proceedings is sought it will stay its orders pending completion of the review or further order.

Process

The President of the Panel appointed Elizabeth Alexander AM, Simon McKeon (President) and John O'Sullivan as the sitting Panel to consider the application.

The Panel will publish its reasons for its decision on its website in due course. This Media Release does not constitute the Panel's reasons for its decision.

The Panel's declaration is attached at Annexure A to this Media Release.

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Annexure A



**Corporations Act
Section 657A
Declaration of Unacceptable Circumstances**

In the matter of RINKER GROUP LIMITED 02R

The Takeovers Panel revokes the declaration made by it on 12 July 2007 in relation to the affairs of Rinker Group Ltd (Rinker) and substitutes this declaration.

WHEREAS*Background*

1. Rinker is a listed public company. It was the subject of an off market takeover bid (**Offer**) by CEMEX Australia Pty Ltd (**CEMEX**), an indirect wholly owned subsidiary of CEMEX, S.A.B. de C.V.
2. CEMEX lodged its bidder's statement on 30 October 2006 in respect of the Offer (**Bidder's Statement**). The Offer closed on 16 July 2007.
3. Clause 8.1(c) of the Bidder's Statement stated:

"If Bidder acquires your Rinker Securities under this Offer, it will also be entitled to all Rights in respect of your Rinker Securities."
4. Section 9 of the Bidder's Statement defined "Rights" as including all rights attaching to or arising from the Rinker shares directly or indirectly at or after 30 October 2006, including all dividends.
5. Clause 8.8(e) of the Bidder's Statement set out a mechanism for dealing with adjustments to the bid consideration for "Rights". Clause 8.8(e) stated:

"If Bidder becomes entitled to any Rights as a result of your acceptance of this Offer, it may require you to give to Bidder all documents necessary to vest title to those Rights in Bidder, or otherwise give Bidder the benefit or value of those Rights. If you do not do so, or if you have received or are entitled to receive ... the benefit of those Rights, Bidder will be entitled to deduct the amount ... of those Rights from any consideration otherwise payable to you under this Offer. If Bidder, does not, or cannot, make such a deduction, you must pay that amount to Bidder."
6. At 10.22 a.m. AEST, on 10 April 2007, CEMEX made an announcement to ASX Limited (ASX) (**10 April Announcement**) stating that:

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- (a) the offer price under the Offer would be increased to US\$15.85 per Rinker share;
 - (b) the consideration payable under the Offer would not be reduced by the amount of an interim dividend paid by Rinker in December 2006¹; and
 - (c) the offer was CEMEX's "best and final offer, in the absence of a superior proposal" (**Best and Final Statement**).
7. The 10 April Announcement included a summary of an agreement between CEMEX and Rinker (**Bid Agreement**). The last page (page 6) of the 10 April Announcement stated:
- "... during the Restriction Period, Rinker must not pay a dividend, other than annual and half yearly dividends consistent with past practice, (provided that this does not prejudice the Bidder's rights under clause 8.8(e) of the Bidder's Statement to adjust the revised offer price in respect of any such dividend) or undertake a buy-back, capital return or other payment to shareholders without the consent of the Bidder and without prejudice to the Bidder's rights under clause 8.8(e) to make adjustments to the revised offer price as appropriate."* (**Dividend Adjustment Statement**).
8. Between making the Best and Final Statement on 10 April 2007 and 7 May 2007, CEMEX filed a number of documents with ASX which included statements relating to clause 8.8(e) and CEMEX's rights in respect of any subsequent dividend declared by Rinker (**Subsequent Statements**), including:
- (a) 10 April 2007, a copy of the Bid Agreement;
 - (b) 10 April 2007, a notice of variation regarding the increased offer;
 - (c) 17 April 2007, a fourth supplementary bidder's statement; and
 - (d) 18 April 2007, a fifth supplementary bidder's statement.
9. On 27 April 2007, Rinker released its preliminary final report to ASX, which included a statement to the effect that Rinker had declared a fully franked final dividend for 2006-07 of A\$0.25 per Rinker share (**Final Dividend**) with a record date of 8 June 2007.
10. On 7 May 2007, CEMEX made an announcement to ASX (**7 May Announcement**) stating that, inter alia:
- (a) the Offer had been "declared final as to price, in the absence of a superior offer";
 - (b) CEMEX would extend the Offer until 7.00 p.m. AEST on 8 June 2007;

¹ The interim dividend was A\$0.16 per Rinker share.

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- (c) CEMEX would not transfer Rinker shares to its name, pursuant to acceptances of its Offer, until after the record date for the Final Dividend;
 - (d) Rinker shareholders who were entitled to the Final Dividend would retain that dividend, irrespective of when they accepted the Offer;
 - (e) CEMEX would not exercise its right to deduct the Final Dividend from its offer price of \$US15.85 per share; and
 - (f) Perpetual Investments Limited, Rinker's largest shareholder, would accept the Offer as soon as practicable.
11. On 7 May 2007 the closing price of Rinker shares on ASX was A\$0.34 above the closing price on the previous trading day. The closing price fell back over the next few days but remained above the price prior to the 7 May Announcement.

Best and final statement

12. There was no clear, unambiguous and proximate qualification to the Best and Final Statement in the 10 April Announcement to the effect that CEMEX reserved the right to allow Rinker shareholders to retain some or any future "Rights".
13. None of the Subsequent Statements adequately remedied the lack of a clear, unambiguous and proximate qualification to the Best and Final Statement concerning Rights.
14. Rinker shareholders and the market were entitled to assume that there would be no other improvements to the Offer after 10 April (in the absence of a superior proposal).
15. By making the 7 May Announcement, CEMEX departed from its Best and Final Statement such that in the period between the 10 April and 7 May Announcements:
- (a) the acquisition of control over Rinker shares did not take place in an efficient, competitive and informed market;
 - (b) Rinker shareholders and the directors of Rinker were not given enough information to enable them to assess the merits of the Offer; and
 - (c) Rinker shareholders who sold shares otherwise than into the Offer between the 10 April and 7 May Announcements did not have an equal opportunity to share in the benefits flowing from the Offer (i.e. the increase in the Offer resulting from the amount of the Final Dividend not being deducted from the Offer price).
16. Following the 7 May Announcement the acceptances of CEMEX's Offer increased from approximately 2.55% to over 90% of Rinker shares.

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Circumstances unacceptable

17. It appears to the Panel that the circumstances referred to above (**Circumstances**) are unacceptable having regard to:
- (a) the effect that the Panel is satisfied that the Circumstances have had, are having, or are likely to have, on :
 - (i) the control or potential control of Rinker; or
 - (ii) the acquisition or proposed acquisition by CEMEX of a substantial interest in Rinker; or
 - (b) the purposes of Chapter 6 of the Corporations Act 2001 (*Cth*) (**Act**) as set out in section 602 of the Act.
18. The Panel considers that it is not against the public interest to make a declaration of unacceptable circumstances in relation to the Circumstances and the affairs of Rinker.
19. The Panel has had regard to the matters in section 657A(3) of the Act, but has not had regard to whether the Circumstances constitute, will constitute or are likely to constitute or give rise to a contravention of Chapters 6, 6A, 6B or 6C of the Act.

Under section 657A of the Act, the Takeovers Panel declares that the Circumstances constitute unacceptable circumstances in relation to the affairs of Rinker.

Simon McKeon

President of the Sitting Panel

Dated 12 August 2007