Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP24/049

Thursday, 5 September 2024

Energy Resources of Australia Limited 04 – Panel Receives Application

The Panel has received an application from Zentree Investments Limited and Packer & Co Ltd (**Applicants**) in relation to the affairs of Energy Resources of Australia Limited (**ERA**). The application concerns ERA's $880 million 19.87 for 1 renounceable entitlement offer announced on 29 August 2024.

Details of the application, as submitted by the Applicants, are below.

A sitting Panel has not been appointed at this stage and no decision has been made whether to conduct proceedings. The Panel makes no comment on the merits of the application.

Details

ERA is an ASX-listed company which operated the former Ranger uranium mine in the Northern Territory and held the title to the adjacent Jabiluka mineral lease until it was cancelled by the Commonwealth government on 26 July 2024. ERA has commenced proceedings in the Federal Court of Australia seeking judicial review of that decision. The Court has made an interim order to stay the decision and the Court hearing is scheduled to commence on 28 October 2024.

The Applicants are shareholders in ERA. Zentree Investments Limited has voting power of 3.04% of ERA. Packer & Co Ltd has voting power of 8.82% of ERA. Rio Tinto Limited (**Rio**) has voting power of 86.3% of ERA.

The current business operation of ERA is the rehabilitation of the Ranger mining area (the **Rehab**).

On 3 April 2024, ERA announced that it had appointed Rio to manage the Rehab pursuant to a new management services agreement (the **MSA**).

On 29 August 2024, ERA announced an $880 million 19.87 for 1 non-underwritten pro rata renounceable entitlement offer at an offer price of $0.002 per share[1] (the **2024 Offer**) to fund Rehab expenditure up until approximately the third quarter of 2027.

ERA also announced that it had received binding pre-commitments from Rio to subscribe for approximately $760 million of the 2024 Offer. Assuming no other shareholders participate and any shortfall is not taken up, Rio's voting power in ERA could increase to up to 99.2468% of ERA following completion of the 2024 Offer.

Rio Tinto has provided an intention statement to ERA that if *"Rio Tinto acquires Shares under the Offer which, when aggregated with its existing holdings, result in Rio Tinto holding 90% or more of the shares in ERA, then Rio Tinto intends to proceed with compulsory acquisition of all remaining ERA shares under Part 6A.2 of the Corporations Act and to offer a price of $0.002 per ERA share"*.[2]

The Applicants submit that the 2024 Offer will result in Rio's voting power increasing above the compulsory acquisition threshold of 90% and that this increase will occur without an applicable exemption under Chapter 6.[3] The Applicants submit that the 2024 Offer is only designed to increase the voting power of Rio to 99.2% and allow it to compulsorily acquire the remaining shares in ERA in circumstances that contravene the purposes set out in section 602.

The Applicants submit that ERA has not adequately disclosed to the market the basis for its Rehab cost forecasts and their impact on the price of ERA's shares.

The Applicants also submit that (among other things):

- ERA and Rio are "*taking advantage*" of the ongoing litigation regarding the Jabiluka mineral lease and are making the 2024 Offer whilst ERA's future prospects are entirely uncertain
- ERA does not need to raise capital immediately and has not established a need presently to raise the additional funds under the 2024 Offer
- minority shareholders do not have a reasonable and equal opportunity to participate in the substantial benefits that will accrue to Rio
- no appropriate procedure is being followed preliminary to compulsory acquisition by Rio
- the 2024 Offer documents are misleading and deceptive and ERA's public disclosure in respect of the 2024 Offer is defective and

[1] The 2024 Offer price represents an 87.8% discount to the 5-day volume weighted average price of $0.0164 prior to the announcement of the 2024 Offer.
[2] See ERA's Capital Raising Presentation (for Entitlement Offer) dated 29 August 2024 at page 20
[3] All references are to the *Corporations Act 2001* (Cth)

- the 2024 Offer has not been made under a prospectus complying with Chapter 6D, and it is not a "rights" offer for the purposes of section 611 item 10, as "*the terms of each offer are the same*" test is not, in substance, met.

The Applicants seek interim orders that ERA delay the 2024 Offer and be prevented from issuing any new shares to any person until no earlier than 7 days after the date on which the application is determined.

The Applicants seek a number of final orders to protect the rights and interests of minority shareholders by preventing Rio and its associates from passing the compulsory acquisition threshold in respect of ordinary shares in ERA in certain circumstances. These orders include:

- restraining ERA for a period of 12 months from undertaking certain actions without first obtaining approval under item 7 of section 611
- requiring ERA to release certain information to the market including feasibility reports and the MSA
- terminating each transaction or agreement between Rio and ERA entered into on or after ERA commenced to have negative "equity interest" (as defined in the ASX Listing Rules)
- whilst ERA has a negative "equity interest", requiring that any new transaction or agreement pursuant to which ERA will pay Rio any money, or give Rio any asset of ERA, must not be entered or performed unless approved pursuant to the requirements of ASX Listing Rule 10.1
- restricting Rio and ERA entering into any agreements or arrangements whereby Rio can fetter any decisions of the ERA board
- restricting Rio from casting any votes at general meetings for the appointment or reappointment of any "independent" directors of ERA whilst Rio controls ERA and
- requiring that ERA bear the costs of the Applicants in respect of the proceedings.

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