IN THE APPEAL BEFORE THE APPEAL COMMITTEE OF THE SECURITIES REGULATION PANEL

In the matter between:

FREEWORLD COATINGS LIMITED **Appellant**

And

KANSAI PAINT CO LTD **Respondent**

REASONS FOR THE RULING OF THE APPEAL COMMITTEE

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1. INTRODUCTION

On the 13th December 2010 the Acting Executive Director (the Director) of the Securities Regulation Panel (SRP) approved an offer circular of the appellant to the shareholders of the respondent to acquire all or a portion of their shares (other than those held by respondent or its nominees) for a consideration of R12.00 for each share, payable in cash.

The offer circular was issued on the 15th December 2010 being its opening date. The appellant learnt of the approval of the offer circular on the opening date. The confirmation of the approval of the offer circular was, however, conveyed telephonically to the attorneys of the appellant on the 21st December 2010 by the Acting Executive Director.

The appellant lodged its appeal against the approval of the offer circular on the 23rd December 2010.

The circular was, according to the respondent, triggered by the appellant's reluctance to engage constructively with the respondent. The respondent has set out the history of the engagement with the appellant as follows[1]:

"Engagement with the Freeworld board

2.3.1 Prior to 13 December 2010, Kansai has on a number of occasions sought to engage constructively with the Freeworld board directly in respect of making an offer recommended by the Freeworld board to acquire all the offer shares, and its implications for Freeworld.

2.3.2 Kansai initially submitted an expression of interest to make an offer for Freeworld on 6 May 2010. Following the failure of the Brait offer on 14 June 2010, Kansai again approached the Freeworld board with a view to the making of a recommended offer, and sought to engage on a variety of topics, particularly in relation to Freeworld's preliminary concerns around competition related aspects of a combination with

[1] See page14 of the offer circular(Bundle 1 page 40)

Kansai. Preliminary discussions did not result in any significant engagement between Freeworld and Kansai.

2.3.3 On 24 August 2010, having sought to address Freeworld's concerns, Kansai submitted a further conditional indicative proposal to make a recommended offer for all offer shares, which it hoped would elicit a more constructive approach to engagement from the Freeworld board. However, the Freeworld board consistently declined to engage on the basis that its competition-related concerns first needed to be definitely assessed in order to determine whether the proposed merger would be capable of execution.

2.3.4 Between 24 August 2010 and the last practicable date[2] prior to the making of this offer, Kansai approached the Freeworld board on multiple occasions in order to understand the Freeworld board's views on competition- related concerns. Other than what was disclosed by the Freeworld board in its 24 November 2010 statement regarding the approach by Kansai and the renewal of its cautionary, Kansai has to date, been unable to obtain details from the Freeworld board on its views relating to Kansai's desire to make an offer to acquire all offer shares, which would ultimately have been required in order to enable a recommended offer to be presented to Freeworld shareholders.

2.3.5 <u>As a consequence of the reluctance of the Freeworld board to engage, Kansai believes that Freeworld's shareholders should be given the opportunity to consider, as set out herein, the offer, and has therefore decided to proceed with the offer without the co-operation of the Freeworld board[3]</u>."

The offer circular contains inter alia the following important times and dates[4]:

"***The offer opens at 09:00 on***	***Wednesday, 15 December 2010***
Date by which the offer is expected to be declared unconditional as to acceptances	***Thursday, 3 February 2011***
Announcement of the offer declared unconditional as to acceptances	***Friday, 4 February 2011***
Last day to trade in Freeworld shares in order to participate in the offer	***Friday, 11 February 2011***
Freeworld shares trade "ex" the offer	***Monday, 14 February 2011***
Record date in order to participate in the offer	***Friday, 18 February 2011***
Anticipated date by which Competition Commission	

[2] 10 December 2010 referred to in the definition clause as a "date prior to the finalisation" of the offer circular.
[3] My underlining.
[4] Page 8 (Bundle 1 page 34)

approval is expected to be granted	***Tuesday, 12 April 2011***
Anticipated fulfilment date	***Tuesday, 26 April 2011[5]"***

The appellant's appeal attacks the time table but in fact it only confines itself to the approval by the Director of the 18 February 2011 as the date of the closing of the offer.

2. THE GROUNDS OF APPEAL

The appellant appeals against the approval of the offer circular on the basis that the appellant shareholders are directly and materially prejudiced on two grounds; namely that:

(a) the time table as contained in the offer circular is in breach of Rule 28.7 of the Securities Regulation Panel because the closing date of the offer (18 February 2011) will result in the lapsing of the offer on 11 March 2011 which is thirty two days[6] before the unconditional approval of the merger by the Competition Commission[7] and forty six days[8] before the fulfilment date[9]. The effect of this deviation will sterilise the appellant's shareholders.

(b) the shareholders of the appellant are compelled to accept and/or to decide whether to accept or reject the offer without knowing the outcome of the Competition Commission on the approval or disapproval of the merger. This it is contended, is prejudicial to the business of the appellant and is in breach of general principle 4.

The appeal was argued before us on the 3 February 2011 and the appellant and respondent were represented by Advocate Harris SC and Advocate Blou SC both assisted by junior counsel and respectively briefed by Read Hope Phillips Attorneys and Bowman Gilfillan Attorneys. In this ruling I am using the terms appellant and respondent without reference to the specific names of counsel.

3. THE FACTS

The facts of this appeal are not complicated and also not in dispute. The contents of the respondent's offer circular (the offer circular) as contained in bundle 1 of the record are not disputed. It is also common cause that the Director was not called upon to make a ruling in terms of rule 28.7 of the Code on whether the offer circular is in breach of general principle 4 read with rule 28.4. The appeal committee is therefore only tasked to make a legal finding on the uncontested facts.

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[5] These dates are subject to change. See note 2 on page 8 of the offer circular.
[6] 12 April 2011.
[7] Or approval that is subject to conditions that will not result in a material adverse change-clause 3.3.2 of the offer circular.
[8] 26 April 2011.
[9] That is the date by which all conditions are fulfilled.

4. IS THE OFFER CIRCULAR IN BREACH OF GENERAL PRINCIPLE 4 OF THE CODE?

The offer circular consists of 45 pages and contains inter alia the following headings:

Kansai Corporate Information, Salient Features Of The Offer, Important Information, Important Dates And Times, Definitions And Interpretations, The Offer, Background To And Reasons For The Offer, Terms Of The Offer, Procedure For The Acceptance Of The Offer, Exchange Control Regulations, Tax Implications For Offerees, Benefits For The South African Economy And South Africa, Kansai's Intentions Regarding Freeworld, The Freeworld Management And The Board Of Directors Of Freeworld, Competition Aspects Of The Offer And Public Interest Gains And Pro-Competitive Gains, Kansai's Intention With Regard To BEE, Material Changes, Irrevocable Undertakings To Accept The Offer ,Arrangements Undertakings Or Agreements In Relation To Offer Shares, Documents Available For Inspection, Financial Information Relating To Kansai and Section 440K Of The Companies Act.

The Director approved the offer circular containing information covered by these headings. The Appeal relates to information covered by: ***"Important Dates And Times and Competition Aspects Of The Offer And Public Interest Gains And Pro-Competitive Gains".***

The appellant contends that the Important Dates And Times (the timetable) and Competition Aspects Of The Offer And Public Interest Gains And Pro-Competitive Gains (the completion condition) contained in the circular fall foul of general principle 4.

General principle 4 reads as follows:

> ***"4.1 Holders of relevant securities shall be given <u>sufficient information</u> and advice to enable them to reach a properly informed decision and shall have <u>sufficient time</u> to do so. No <u>relevant</u> information shall be withheld from them[10]".***

Advocate Harris SC argued that the offer circular does not comply with general principle 4 in that the offer circular does not disclose that in accepting the respondent's offer the shareholders will be locked into until the Competition Commission has approved the merger. The shareholders should be advised of this risk to enable them to make a fully[11] informed decision on whether to accept or reject the respondent's offer. Failure on the part of the respondent to disclose full information to the holders of relevant securities is unfair to the shareholders. Such information, as I understood Advocate Harris SC's submission, should include the uncertainty with regard to the approval of the merger by the Competition Commission. The failure to furnish the shareholders of the appellant with this information is unfair to them as they are forced to accept the respondent's offer without full information. I did not understand Advocate Harris SC to be submitting that the time period given to the appellant's shareholders is not sufficient. If my understanding is misplaced I would not agree

[10] My underlining. Rule 20.2 is a mirror of general principle 4:***"Holders of relevant securities shall be given sufficient information and advice to enable them to reach a properly informed decision as to the merits and demerits of an offer. Such information shall be available to holders of relevant securities early enough to enable them to make a decision in good time."***

[11] Advocate Harris SC uses the words "fully" and "full."

with that submission for the simple reason that the circular to the shareholders gives shareholders no less than six weeks to make a decision on the offer.

General principle 4 talks about sufficient information and not full information as submitted by Advocate Harris SC. The offer circular gives information about the offer in separate headings as referred to above. The offer circular has devoted one and a quarter page on information relating to competition aspects of the transaction. The information relating to competition matters is fairly comprehensive and also informs shareholders when the offer will not come into effect if the transaction is not approved by the competition authorities in terms of the offer circular. The relevant portion of the circular reads as follows:

"COMPETITION ASPECTS OF THE OFFER AND PRO-COMPETITIVE GAINS AND PUBLIC INTEREST GAINS

The parties meet the asset and turnover thresholds prescribed for an intermediate merger in terms of the Competition Act and the proposed transaction is therefore subject to competition approval

Kansai has been advised that the merger between Kansai and Freeworld may be characterised as having significant pro-competitive and public interest merits, and that any areas of concern to the competition authorities can be dealt with in a manner acceptable to Kansai. From a public interest perspective, the transaction will result in FDI[12]and is intended to provide a base for Kansai to expand into Africa. This is likely to have a positive effect on long term national employment and to promote exports from South Africa[13]…….. Kansai will make an announcement on SENS[14] and in the South African press as soon as possible after competition approval is either granted or refused. If competition approval is not granted by the long-stop date[15],the sale and purchase contemplated by the offer will not come into effect…….the proposed merger is primarily vertical in nature……..Vertical mergers are generally considered to be pro-competitive. As a result, it is not anticipated that the merger will give rise to significant completion concerns."[16]

This information is more than sufficient to enable shareholders to make a decision on whether to accept or reject the offer if they have any doubt as to whether the Competition Commission will approve or not approve the merger. If shareholders have any doubt or are uncertain on what action to take, they have been advised as to what to do as appears on the face of the offer circular which contains the following:

"If you are in any doubt as to what action to take, you should consult your CSDP[17], broker, banker, attorney, accountant, or other professional advisor immediately[18]"

[12]Foreign Direct Investment.
[13] Page 3 of the offer circular (Bundle 1 page 29)
[14]Stock Exchange News Service.
[15] 30 April 2011. This date has moved to May.
[16] Pages 22-23 of the offer circular (Bundle 1 pages 48-49).
[17]Central Securities Depository Participant.
[18] My underlining.(Bundle 1 page 25)

I do not have any doubt that these experts are better placed to advise the shareholders on the respondent's offer and in particular the terms and conditions of the offer, particularly clause 3.3.2 which provides as follows:

"The offer is subject to the fulfilment of the following condition(s):

3.3.2 unconditional approval, or approval subject to conditions that will not result in a material adverse change, in terms of the Competition Act for the implementation of the offer, is obtained (although Kansai reserves the right to accept any condition that does result in a material adverse change"

"Material adverse change" is defined in the offer document as ***"any event , circumstance, occurrence or state of affairs or combination of them which has, or is reasonably likely to have, a reduction in Freeworld's consolidated EBITDA (earnings before interest, taxes, depreciation and amortisation and fair value adjustments, plus income from associates) or total assets, of greater than 5%, when compared to Freeworld's provisional audited financial statements for the year ending 30 September 2010.[19]"***

Advocate Harris SC argued that the respondent is obliged to inform the shareholders that the uncertainty of the decision of the Competition authorities would lead to the sterilisation of their shares if they accept their offer and this may prevent them from accepting alternative offers. This in their view will defeat the purpose of any offer and in particular a hostile offer. It is clear from the circular that the acceptance of the offer will certainly lead to sterilisation or a siege as Advocate Harris has put it during his submissions. If we agree with Advocate Harris's submissions we will be contravening our own code which makes it clear that the Securities Regulation Panel should not concern itself with the commercial advantage of any transaction. It is rather up to the shareholders to decide whether to accept or reject the offer given the information disclosed in the circular.

Appellant further argued that the conditionality of the offer offends against general principle 4 because it is uncertain when the Competition Commission will approve the offer and further that the approval may be dressed with conditions that may exceed the material adverse change (MAC) threshold resulting in the termination of the offer if the offeror decides not to accept the condition should it be above the MAC threshold. As stated above the shareholders will choose whether to accept the offer or not given the full disclosure of the terms and conditions of the transaction. Nothing has been held back by the offeror. There is an inherent risk in all offers for both parties. In this case the appellant is demanding a risk free transaction.

The offer circular contains expressions that ***"express or imply expectations of future events or results."[20]*** These expressions are referred to in the circular as ***"forward-looking statements"[21].*** It cannot therefore be said that the offer circular is misleading as the reader is left with no doubt what is meant by "forward looking statements". For the convenience of the reader of this ruling we deem it important to reproduce a portion of the paragraph dealing with ***"forward –looking statements":***

[19] See page 10 of the offer circular (Bundle 1 page 36).
[20] See page 5 of the offer circular (Bundle 1 page 31)
[21] Supra.

"FORWARD-LOOKING STATEMENTS

Statements in this communication include "forward-looking statements" that express or imply expectations of future events or results. Forward-looking statements are statements that are not historical facts. These statements include financial projections and estimates and their underlying assumptions,.....Forward-looking statements are generally identified by the words "expect", "anticipates", "believes", "intends", "estimates" and similar expressions. All forward-looking statements involve a number of risks, uncertainties and other factors.....Risks, uncertainties and other factors that could cause actual events or results to differ from those expressed or implied by the forward-looking statements include, without limitation, the satisfaction of the conditions, delays in the regulatory processes....."

We therefore find that the offer circular is not in breach of General Principle 4 read with rule 20.2 of the Code and that the Acting Executive Director could not have found the offer circular wanting for lack of sufficient information.

5. IS THE OFFER CIRCULAR IN BREACH OF RULE 28.7?

Rule 28.7 of the Code reads as follows:

"Except with the consent of the Panel, all other conditions shall be fulfilled or the offer shall lapse within twenty-one days of the first closing date, or the date on which the offer becomes unconditional as to acceptances (whichever is the later)"

Rule 28.7 gives the Securities Regulation Panel as regulator of mergers and takeovers the power to delay the lapsing of the offer when:

(a) all other conditions of the offer have not been fulfilled within twenty-one days of the first closing date[22]; or
(b) the date on which the offer becomes unconditional as to acceptances[23].

The lapsing of the offer is determined by the latest date of either event under (a) or (b). In this case this date is the 11 March 2011.

At the hearing of this appeal the outstanding condition of the offer was Competition Commission approval of the transaction with or without conditions. It was common cause that the approval by the Competition Commission would not be made within 21 days of the first closing date of the offer as anticipated by the offer document. In this event an offeror could, if it so wishes, find refuge in Rule 28.7 by approaching the Panel to give consent for the extension of the offer until the outstanding conditions are fulfilled.

The offer circular anticipates the Competition Commission approval to be made on 12 April 2011. The Competition Commission approval is a condition of the respondent's offer and is

[22] That is from the 18 February 2011.
[23] That is the 3 February 2011.

contained in clause 3.3.2. This condition is anticipated to be fulfilled on the 26 April 2011[24]. At the hearing of this appeal the respondent indicated that the competition approval timing would be extended by 5 days as the filing of the merger notice to the Competition Commission was made late.

Our understanding of the appellant's submission is that the timetable of the offeror is misleading the appellant's shareholders into believing that the Panel has approved a deviation from the Code which obliges shareholders of offerees to consider the offeror's offer and elect whether to accept or not to accept the offer before the fulfilment of regulatory requirements, in this case clause 3.2.2 of the offer circular. The shareholders are therefore, made to believe that the offer will remain valid 11 March 2011 (i.e. 21 days) whereas in fact it will lapse on 11 March 2011. The appellant submitted that the offeror should have provided for the closing of the offer 14 days after Competition Commission approval to remove uncertainty. By providing a closing date of the offer long before the offer closes creates uncertainty and is unfair to the appellant's shareholders as they are being forced to make a decision to accept or reject the offer on the face of uncertainty. If they accept the offer they will be sterilised as the shares cannot be traded. The Director has therefore erred in approving the offer circular timetable since it is in conflict with Rule 28.7 of the Code.

This argument would in our view, hold water if Rule 28.7 of the Code was reading as follows:

"The offer shall lapse within twenty-one days of the first closing date, or the date on which the offer becomes unconditional as to acceptances whichever is the later"

The phrase ***"Except with the consent of the Panel"*** was deliberately included by the Panel to enable the offeror to approach the Securities Regulation Panel to grant consent for the extension of an offer to prevent its lapsing until any outstanding condition is fulfilled. In the present case the condition relating to Competition Commission approval.

To hold an offeror to a timetable that is clearly subject to change, as apparent from the document, is unfair to the extreme. In the present matter the offer circular clearly indicates that the dates are not contain rigid. Even if one argues that the dates were rigid the Codes grant the Panel the power to change such dates by the phrase: ***"Except with the consent of the Panel"***. This phrase has been included in Rule 28.7 for unforeseen circumstances such as the likelihood of punctual compliance with certain conditions, in this appeal the Competition Commission condition within the anticipated period of 21 days as stipulated in the timetable.

Unlike in the United Kingdom, our code does not provide for a rule that requires the offer to lapse where Competition Commission approval is outstanding, nor a provision that empowers the London Panel, on application, to give consent for the closing of the offer only after Competition Commission approval has been granted. We have in the past followed the London Panel where circumstances permit that, but this is not a case that the Panel should do so as both parties have relief under Rule 28.7.

[24] When the period for filing an appeal against an adverse ruling of the Competition Commission would have expired.

The facts in B.A.T Industries p.I.c (BAT) are distinguishable from the facts in this matter. BAT, a company with interests in the US, was a target of a takeover by Hoylake Investments Limited. BATs business in the United States of America was subject to regulatory requirements of nine states. The problem faced by Hoylake was that the timetable prescribed by the London Code conflicted with the regulatory requirements of the laws of these nine states and in turn it proved impossible to comply with the local laws governing BAT because of inherent conflict of both laws. Hoylake approached the Panel for consent to make an offer after the US regulatory requirements have been met. BAT opposed the application by Hoylake on the basis that Hoylake conducted itself in a manner that made compliance with the timetable impossible and causing the intended transaction bid proof. The Panel held that it was not within the powers of Hoylake to ensure that the timetable is complied with given jurisdiction by nine states on regulatory compliance and granted Hoylake consent in terms of Rule 35.1(a) to make new offer with conditions.

The Appeal Committee also stated that given the facts of BAT it would be fair for the offeror to make an offer after regulatory requirements have been complied with an in accordance with the timetable of the Code. The reason of this finding or ruling by the Appeal Committee is obvious. The Panel and the Appeal Committee found that Hoylake had no control on the external requirement and it was not unreasonable to ask for an indulgence as it was not at fault and could not have caused the delay. The Appeal Committee rejected BAT's argument and said the following:

"We have no hesitation in rejecting the arguments which have already outlined in paragraph 8[25] **and 9 above that Hoylake were the authors of their own misfortunes and that for that reason alone should be denied the relevant extensions under Rule 35.1(a). We see no reason to interfere with the Panel's conclusions on this part of the case. We think as did the Panel that Hoylake had a genuine expectation when the offer was announced of being able to comply with the Code timetable and that expectation when the offer was made announced of being able to comply with the Code timetable and that expectation accorded with advice which they had received on the other side of the Atlantic. We are satisfied that the present problems arise because of the protraction of the several regulatory proceedings.**[26]**"**

The Appeal Committee granted Hoylake consent to make a new offer within 21 days of approval of the transaction by each state's regulatory agency. The approval of the transaction had to be made not later than 12 months of the ruling failing which the normal procedure as prescribed by the Code had to be followed.

It is our view that the BAT Ruling does not assist the appellant in its argument because:

(a) the external regulatory requirement in BAT inevitably led to the lapsing of the offer;
(b) the offeror was seeking the Panel's consent to make a new offer after compliance with the external regulatory requirements despite the lapsing of the offer;

[25] Manly that **Hoylake "proclaimed a strategy which in practice precluded compliance with the timetable of the Code (and that) they should not be entitled to have indulgence extended to them under Rule 35.1(a).** See page 4 of the BAT Ruling.
[26] Page 8 BAT Ruling.

(c) in BAT both parties were not in agreement that the offer should not lapse.

The executive Director's Ruling in the Adcock Ingram Holdings Limited (Adcock) is not helpful to the appellant's case. Adcock had made a firm intention to acquire the entire issued share capital of Cipla Medrpro South Africa Limited (CMSA) not owned by it. In order to save on the transaction costs it approached the Executive Director for a dispensation from the provisions of Rule 27.1 which provide that an offeror should post an offer document within 30 days of the announcement of a firm intention to make an offer. The Panel should be consulted in case of a deviation of the 30 days period. Adcock's request was that it be excused from sending the offer document within the stipulated period of 30 days and only do so after the transaction has been approved by the competition authorities. The request by Adcock was well motivated and the Executive Director granted the dispensation. It needs to be mentioned that CMSA did not file representations in opposition to the request or filed an appeal against the granting of the dispensation

In granting Adcock the dispensation in terms of Rule 27.1 read with Rule 34, the Executive Director stated that in arriving at his decision he considered inter alia:

"(In light of) the anticipated delay in obtaining the fulfilment of certain conditions, Adcock does not wish [27] to open the offer until the uncertainty (such as may exist or appear to exist) relating to the obtaining of competition authority approval has been removed. To require CMS shareholders to consider and respond to an offer document before key regulatory approvals for the transaction have been received, and while there is still uncertainty whether such approvals will be forthcoming and whether they will be subject to any conditions , would not be appropriate and fair. Such an outcome would run contrary to General Principle 4 which provides that " holders of relevant securities shall be given sufficient information and advice to enable to reach a properly informed decision and shall have sufficient time to do so" There seems to be [28] no reasonable alternative mechanism whereby an unsolicited offer (such as that in the instant case) could receive approval of the competition authorities prior to the public announcement of the offeror's intention to make an offer."[29]

The quotation above has been taken word for word [30] from Read Hope Phillips' letter that sought a dispensation from the application of Rule 27.1 on behalf of Adcock. It is therefore misleading to say:

"***As has been stated by the SRP in a previous ruling in relation to the firm intentions of by Adcock Ingram Holdings Limited to acquire the entire issued share capital of Cipla Medpro South Africa Limited:***

"(to) require CMSA shareholders to consider and respond to an offer document before the key regulatory approvals to the transaction have been received, and while there is still

[27] My underlining the choice that the offeror has made.
[28] My underlining
[29] Page 1 of the Executive Director's letter addressed to Read Hope Phillips representing Adcock and present attorneys of the appellant.
[30] See pages 846-847 of the record

uncertainty whether such approvals will be forthcoming and whether they will be subject to any conditions, would not be appropriate or fair. Such an outcome would run contrary to General Principle 4 which provides that "holders of relevant securities shall be given sufficient information and advice to enable them to reach a properly informed decision and shall have sufficient time to do so"[31]

It is unfortunate that the Executive Director did not acknowledge that he was quoting Read Hope Philips' letter. We cannot exclude the possibility that the findings of the Executive Director would have been different if the request by Adcock was contested. In arriving at his decision the Executive Director made it clear that no representation were received. This was an ex parte application and cannot constitute precedent. Even if it did this Panel is not bound by precedents as each case depends on its particular circumstances. At any rate as we have stated above the Executive Director was not dealing with similar facts.

We therefore find that the offer circular contains sufficient information to enable shareholders to decide whether to accept or reject the respondent's offer. The timing of the offer as contained in the offer circular is subject to change and the *dies* of the Competition Commission approval or non-approval can be calculated with reasonable certainty. The shareholders are not in darkness as was the case in BAT. We cannot ignore irrevocable undertakings given by major players in the securities industry[32] . The total shareholding of the irrevocable is in excess of 50% of the target shares which is equivalent to 45% of the appellant's entire share capital.

It was for the aforesaid reasons that we ruled on 16 February 2011 that:

"The Securities Regulation Panel Committee, after hearing oral submissions and perusing written submissions presented by Counsel for the Appellant and Respondent, rules as follows:

1. **The Appellant's appeal related to the approval of the Respondent's Offer Circular and such approval constitutes an administrative action and is therefore appealable in terms of the Securities Regulation Panel Code and Rules.**

2. **The appeal is dismissed on the basis that the Offer Circular as approved by the Executive Direct is not of General Principle 4 and Rule 28.7 of the Securities Regulation Panel Code of Rules.**

3. **The timetable is not cast in stone and as such is subject to change. Note 2 on page 8 of the Offer makes this fact patently clear. This nullifies the purported deviation.**

4. **The Officer Circular contains sufficient information to enable any shareholder to make a decision on whether to accept the offer or not accept it.**

[31] Paragraph 51 of the appellant's heads of argument

[32] These industry players are inter alia Public Investment Corporation, Argon Assets Management, Franklin Templeton Investments

5. **The Offer Circular further states that any Shareholder who is "in any doubt as to what action to take" should seek expert advice.**

6. **Any party is at liberty to approach the Executive Director for consent to extent the closing period seeing that both parties are *ad idem* that the offer ought not to be lapse.**

7. **Full reasons of this ruling will be furnished within 14 days of this ruling.**

8. **The Appellant is ordered to pay the costs of the Panel."**

Signed on this 4th day of March 2011

Nano Matlala
Chairperson

I agree: _____

J Damons
Panel Member

I agree: _____

M Brits
Panel Member

I agree: _____

M Ramagaga
Panel Member

I agree: _____

A Khumalo
Panel Member

I agree: _____