

11 May 2015

Kevin Lewis
Chief Compliance Officer
c/o Customer Service
ASX Limited
PO Box H224
Australia Square
NSW 1215

Dear Mr Lewis

Complaint regarding Downer ASX announcement

We act for Market Forces, a non-government organisation that works to provide information on, and hold accountable, institutions that make financial decisions that damage the environment.

Our client is concerned that an announcement made to the ASX by Downer regarding its agreement with Adani Mining Pty Ltd to enter into contracts to provide services for the Carmichael mine and associated infrastructure misled the market on material matters and needs to be corrected.

Please see attached complaint form. This letter provides additional details of the complaint.

Downer ASX Announcement

On 19 December 2014, Downer announced to the Australian Stock Exchange that it had received two Letters of Award from Adani Mining Pty Ltd, advising of its intention to enter into contracts for the provision of mining services and the construction of mine infrastructure, at the Carmichael Coal Mine in Queensland (the Downer ASX Announcement).

The Downer ASX Announcement quoted the CEO of Adani Mining Pty Ltd, Jeyakmar Janakaraj as saying:

“The Carmichael mine lies at the heart of these vital projects which will deliver vital export opportunities for Queensland, 10,000 jobs, \$22 billion in taxes and royalties to be invested right back into frontline services across our state...”

The “vital projects” to which Mr Janakaraj is referring are the port and rail line being constructed to transport coal from the Carmichael mine for export, as well as the mine itself.

Misleading statements

The following two claims within the above announcement are misleading:

- (i) that the project will deliver 10,000 jobs;
- (ii) that the Carmichael mine will generate \$22 billion in royalties and taxes to be invested back into Queensland.

Both these figures are significantly exaggerated, as described in detail below.

The accuracy of the claims by Adani Mining Pty Ltd that the port, rail line and Carmichael coal mine will create ten thousand jobs has been contested for some time. Over the last five weeks, at a hearing in the Land Court of Queensland challenging the approval of the Carmichael mine and rail projects, definitive proof that these claims are grossly and deliberately exaggerated was provided. Adani Mining Pty Ltd's own expert witness on the economics of the mine and rail project, Dr Jerome Fahrer of ACIL Allen Consulting, gave evidence that:

- 1464 full time equivalent jobs will be created over the life of the Carmichael Coal Mine and Railway Project, including indirect jobs created by the mine and rail project; and
- the project will lead to a loss of jobs in Queensland (and Australia) in the agriculture and manufacturing sectors, relative to the number of jobs that would have been created in Australia if the mine does not go ahead, because the Carmichael coal mine project will attract employees at the expense of these industries and drive up the Australian dollar, making this industries less profitable.

Both Dr Fahrer, and another expert who gave evidence, Roderick Campbell, were critical of the methodology used by the consultants engaged by Adani Mining Pty Ltd to arrive at the ten thousand job figure, known as the input-output method. Both experts agreed that the input-output method is out of date, discredited and unrealistically assumes economic conditions of a recession for a 30 year period.¹

It should be noted that Dr Fahrer's analysis did not include predicted jobs arising from the proposed port expansion. The 'Draft Environmental Impact Statement for the Abbot Point Port – Terminal O' claims that "The Project (ie the port expansion) is estimated to employ approximately 500 workers during construction and 200-250 full-time and contract workers during the operational phase".² The report also states that up to 743 direct and indirect jobs will be created in stage 1 of the project, increasing by 219 jobs to a total of 962 during stage 2 and 3 of port construction.³ Note that these figures were arrived at using the discredited input-output model. Therefore, the statement of Mr Janakaraj quoted in the Downer Announcement uses figures that are about least triple that of realistic assessments of jobs that will be created as a result of the mine, port and rail projects.⁴

¹ Joint Expert Report to the Land Court of Queensland, Fahrer and Campbell, 27 February 2015

² Abbot Point Coal Terminal O Draft EIS. Section 3.20 Economic Matters. - 3.20.4.8 Labour Costs, p 3-599, http://www.adaniports.com/Common/Uploads/EISDocuments/57_EISDoc_3.20%20Economic%20Matters.pdf

³ Abbot Point Coal Terminal O Draft EIS. Section 3.20 Economic Matters. - 3.20.3.4 Employment, p. 3-596, http://www.adaniports.com/Common/Uploads/EISDocuments/57_EISDoc_3.20%20Economic%20Matters.pdf

⁴ There is an alternative rail proposal, proposed by Adani Mining Pty Ltd, that is 1/3 greater in length than the one considered by the Land Court. Only one of the 2 rail proposals will proceed, so we consider that the jobs estimates discussed in the Land Court proceedings provide the most expert and detailed consideration of jobs that will be created, whichever rail option is selected. The EIS for the alternative rail proposal is here at the link below. Jobs

The accuracy of the claims that the projects will deliver \$22 billion in revenue for government, in the form of taxes and royalties, has also been undermined through evidence given in the Land Court case. Dr Fahrler's report indicated that, based on figures supplied to him by Adani Mining Pty Ltd, it is expected that the Queensland Government would receive between \$7 and 8 billion in royalties in total over the life of the mine (non-depreciated). This evidence concurs with the lay witness evidence provided to the Land Court by Adani employee Mr Llewellyn Lezar, Head of Mining Operations at Adani Mining Pty Ltd.

In addition, an expert called by Objector group Land Services of Coast and Country, Tim Buckley, stated that, because it is likely that the Carmichael mine will fail to turn a profit, there will be no corporate tax paid by Adani Mining Pty Ltd to the Federal Government. Evidence was also given, including by Mr Gupta, Group Financial Controller of Adani Mining Pty Ltd, that parent company of Adani Mining Pty Ltd is based in Singapore, which has a corporate tax rate of 5 percent, as opposed to 30 percent in Australia, raising the prospect that Adani will use Singaporean entities to engage in tax minimisation. Dr Fahrler gave evidence that \$8.96 billion would be generated in corporate tax over 30 years. If this figure is combined with expected royalties, as per Fahrler's estimate, the total is \$5 billion short of the \$22 billion referred to in the ASX announcement. In light of the evidence given by Mr Buckley, we are of the view that \$17 billion in revenue for governments should be viewed as an absolute best case scenario. Furthermore, we note that corporate taxes are paid to the Federal Government, not the Queensland Government, so whether corporate tax is included in the \$22 billion figure is unclear.

The relevant evidence is attached to this complaint, as per the index at the end of this letter.

Implications for investors

The Downer ASX Announcement was made early in the trading day on 19 December 2014. It appears that the announcement influenced trading of Downer shares. At the end of trading on 18 December 2014, Downer stock was trading at \$4.24. By the end of trading on 19 December 2014, Downer stock was trading at \$4.54, an increase of seven percent. We note that this is the largest price increase in the Downer share price in the last six months. Therefore, announcement of Downer's deal with Adani Mining Pty Ltd appears to have significantly influenced the market.

We think the jobs and royalty information is material to the announcement for two primary reasons:

- (i) The inaccurate and exaggerated jobs and royalty payments creates an impression that the likely size, scale and profitability of the mine, port and rail projects are significantly greater than what it is realistically likely to be;
- (ii) Government support, both in terms of obtaining required regulatory approvals, as well as getting subsidies and other investment assistance from the Australian and Queensland governments, is crucial

figures in this EIS have been calculated using the discredited input-output model: <http://www.adanimining.com/ngbr-eis-pdfdocs-listing>

to the success of the coal mine project and associated infrastructure.⁵ By inaccurately exaggerating the jobs that will be created and the royalties and taxes that will be paid, Adani Mining Pty Ltd create a misleading impression as to how likely ongoing government support of the project will be, and therefore, how likely it is that the mine and infrastructure projects will be realised.

We are of the view that reasonable investors would consider the above information important, when considering the potential value of the deal with Adani Mining Pty Ltd to Downer.

Corporations Act, Listing Rules and the misleading statements

As you would be aware, it is contrary to the Corporations Act to make misleading statements.

Rule 3.1 of the Listing Rules also requires that listed companies disclose to the ASX any information that may have a material effect on the price of their securities. As discussed above, we are of the view that a reasonable person would expect the inaccurate information quoted in the Downer announcement would have had an impact on Downer's share price. The new information about the actual jobs and royalties likely to be generated by the project is also likely to have a material effect on the value of Downer shares and, consequently, should be announced to the ASX.

We do not know if Downer is yet aware of the information given by Adani Mining Pty Ltd in evidence. As a result, we have copied Downer to this complaint.

Suggested action

We understand that Downer did not make the statements themselves, and presume they relied on analysis done by Adani Mining Pty Ltd. However, Downer are responsible for ensuring that their statements to the ASX are not misleading.

Therefore, we suggest that Downer be requested to do one of the following:

- make a corrective announcement to the stock exchange correcting the inaccurate information made by Adani Mining Pty Ltd, so that prospective and existing investors are availed of accurate information; or
- make an update announcement, informing the market of the jobs figures and expected royalty payments arising from the Carmichael mine project and rail and port projects, as per the evidence given by Adani Mining Pty Ltd in the Land Court proceedings, or as per Downer's own analysis.

Attachments

Please find attached the following documents, provided in support of the matters raised above:

⁵ For example, the former Queensland Government offered to enter into an 'Infrastructure Enabling Agreement' with Adani, and also offered the Carmichael Mine a 'royalty holiday'. According to evidence given in the Land Court, the status of these offers by the Queensland Government is unclear and will affect the viability of the Carmichael mine.

1. ASX announcement made by Downer on 19 December 2014;
2. Affidavit of Dr Jerome Fahrer, dated 30 January 2015, attaching the report entitled 'Carmichael Coal and Rail Project: Economic Assessment';
3. Report entitled 'Individual Expert Witness Report Financial and Market Analysis', by Tim Buckley, dated 9 February 2015.
4. 'Joint Expert Report to the Land Court of Queensland', by Dr Jerome Fahrer and Roderick Campbell dated 19 December 2014.

Thank you for considering this matter. We would be grateful if you could advise how this matter will be followed up on, within 21 days of the date of this letter.

Please contact the writer if you have any questions in relation to this complaint.

Yours sincerely

Felicity Millner
Director of Litigation

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