

Federal Court of Australia
 District Registry: New South Wales
 Division: General

Australian Securities and Investments Commission

Plaintiff

Hochtief Aktiengesellschaft ARBN 101 525 651

Defendant

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1. This Statement of Agreed Facts is made jointly by the Plaintiff, the Australian Securities and Investments Commission (**ASIC**), and the Defendant, Hochtief Aktiengesellschaft (ABN 30 101 525 651) (**Hochtief AG**), in support of proposed orders to be provided to the Federal Court by the parties in relation to an admitted contravention of section 1043A(1)(d) of the *Corporations Act 2001* (Cth) by Hochtief AG.

PROCEEDINGS IN THE FEDERAL COURT OF AUSTRALIA

2. Hochtief AG admits it contravened section 1043A(1)(d) of the *Corporations Act* in that:
 - (a) on 29 January 2014, Hochtief AG sent an email attaching a document entitled "Variation of Instruction" and dated 27 January 2014 to officers of Hochtief Australia Holdings Limited ABN 17 103 181 675 (**Hochtief Australia**);
 - (b) Hochtief AG thereby procured Hochtief Australia to acquire shares in Leighton Holdings Limited ACN 004 482 982, now known as Cimic Group Limited (**Leighton**);
 - (c) at the time it sent the email, Hochtief AG was in possession of inside information (as defined in section 1042A);

- (d) Hochtief AG knew or ought reasonably to have known that the information was not generally available and that if it had been, a reasonable person would have expected it to have a material effect on the price or value of ordinary shares in Leighton; and
 - (e) Hochtief AG admits that the contravention is “serious” within the meaning of section 1317G(1A)(c)(iii) of the *Corporations Act*.
3. For the purpose of Part 10.42 of the Federal Court Rules 2011, the proceeding in the Federal Court of Australia in respect of the contravention is a proceeding:
- (a) based on a contravention of the *Corporations Act* that was committed in Australia;
 - (b) in relation to the enforcement of the *Corporations Act*; and
 - (c) in which Hochtief AG has submitted to the jurisdiction of the Court.
4. References in this Statement of Agreed Facts to dates and times are in Australian Eastern Daylight Time.

ASIC

5. ASIC is a body corporate:
- (a) established by section 7 of the Australian Securities and Commission Act 1989 (Cth);
 - (b) continued by section 261 of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**); and
 - (c) is able to sue in its corporate name, pursuant to section 8 of the ASIC Act.

HOCHTIEF AG

6. At all relevant times, Hochtief AG:
- (a) is a corporation incorporated in Essen, in the Federal Republic of Germany with company number HRB 279;
 - (b) is a company based at Opernplatz 2, 45128, Essen, North Rhine-Westphalia, Germany;
 - (c) was the holding company of a worldwide group of companies that comprised the construction group, Hochtief Group, based in Germany but with over 90% of sales outside of Germany including in the Americas, Asia Pacific, Europe, the Middle East and Africa;

- (d) had as its majority shareholder ACS Actividades de Construccion y Servicios S.A., a corporation whose shares are listed for quotation on the Madrid Stock Exchange; and
 - (e) was one of the top 50 ranked listed companies in Germany and its securities are listed on the Frankfurt Stock Exchange and trade within the German stock indices called DAX and MDAX, which are blue chip stock market indices, the MDAX consisting of the top 50 ranked listed companies;
 - (f) is registered as a foreign company in Australia with Australian Registered Body Number 101 525 651;
 - (g) is able to sue and be sued in its own name.
7. As at 31 December 2013, Hochtief AG had a market capitalisation of approximately EUR 4,778 million.
8. At all relevant times, Hochtief AG's senior management included, relevantly:
- (a) Mr Peter Sassenfeld, the company's Chief Financial Officer and Labour Director, as well as one of four directors comprising the Executive Board and authorised to act on behalf of Hochtief AG, when acting together with another member of the Executive Board or one of 12 named officers with power of attorney;
 - (b) Mr Carl Hoestermann, Head of Corporate Finance and an officer with power of attorney to act on behalf of the company when acting together with a member of the Executive Board or another officer with power of attorney; and
 - (c) Mr Thomas Sonnenberg, Chief Compliance Officer.

HOCHTIEF AUSTRALIA

9. At all relevant times, Hochtief Australia was:
- (a) an Australian company registered under ACN 103 181 675;
 - (b) part of Hochtief AG's Asia Pacific division;
 - (c) ultimately owned and controlled by Hochtief AG;
 - (d) operated by Hochtief AG as a vehicle to hold, acquire and dispose of securities and other financial products, including shares in Leighton, for Hochtief AG.
10. At all relevant times the board of directors of Hochtief Australia relevantly comprised :
- (a) Mr Sassenfeld, director;
 - (b) Mr David Paul Robinson, Chairman of the board, director and secretary; and
 - (c) Mr Kenneth Del Rosario Lancero, secretary.

HARVEYS

11. At all relevant times, Harveys Accounting Services Pty ACN 002 073 627 (**Harveys**) was an Australian company which:
- (a) was a chartered accounting firm that provided accounting services to Hochtief Australia and received fees from Hochtief Australia;
 - (b) was controlled by Mr Robinson, who was its sole director and member, and one of two secretaries appointed to the company; and
 - (c) employed Mr Lancero and Mr William Somerville.

LEIGHTON

12. Leighton is an Australian company formed in 1949 and its shares were granted official quotation on the Melbourne Stock Exchange (which now forms part of the ASX) on 11 December 1962. At all relevant times it was one of the most well-known construction companies in Australia and operated in around 20 countries including Australia, Asia and the Middle East and Southern Africa, delivering construction, operations and maintenance services across six industries: mining and metals; oil and gas; transport infrastructure; power and utilities; social infrastructure; and urban property projects.
13. At all relevant times, the ordinary shares in Leighton (**Leighton Shares**):
- (a) were listed for quotation and traded on the financial market known as ASX operated by ASX Limited ACN 008 624 691 under the ASX code "LEI";
 - (b) were also traded on the financial market known as Chi-X Australia operated by Chi-X Australia Pty Ltd ACN 129 584 667; and
 - (c) were a Division 3 financial product within the meaning of section 1042A of the *Corporations Act*.
14. From at least 1 January 2012 to 28 February 2014 Leighton Shares were traded within the Australian Standard & Poor's Index called "S&P/ASX100", being the top 100 listed companies in Australia by market capitalisation.
15. Since 1 January 2012, Leighton has had a financial year commencing on 1 January and ending on 31 December for financial reporting purposes.
16. At all relevant times, Hochtief Australia was a substantial shareholder in Leighton and held more than 50% of its issued shares and more than 50% of its voting shares.
17. At all relevant times, each of the directors of Hochtief Australia was also a director of Leighton, having been nominated for that position by Hochtief AG as Leighton's majority shareholder and in this regard:

- (a) Mr Sassenfeld has been a non-executive director since 29 November 2011; and
- (b) Mr Robinson has been a non-executive director since 17 December 1990.
18. At all relevant times, each of Mr Sassenfeld and Mr Robinson was a member of the audit committee of the board of directors of Leighton (**Leighton Audit Committee**).
19. At all relevant times, Leighton, as an ASX listed company, made periodic disclosures to the market, released via the ASX Market Announcement Platform. This platform facilitates the speedy release of announcements to the market, including through the ASX website and by external data providers commonly used by stockbrokers (such as IRESS, Thomson Reuters, Bloomberg and Morningstar) which display alerts and give access to announcements. Leighton's disclosures to the market via ASX included:
- (a) quarterly disclosure of its unaudited quarterly financial results that included its net profit after tax or profit attributable to members (**NPAT**) for the particular quarter within a given financial year (**Quarterly Results**);
 - (b) half yearly disclosure of its half yearly financial results that included Leighton's half yearly report that contained its NPAT and its underlying net profit after tax (**UNPAT**) for the half year in the given financial year (**Half Yearly Results**);
 - (c) annual disclosure of its preliminary final results outlining its financial position as at the last day in a given financial year contained in a preliminary final report (**Preliminary Final Results**). The Preliminary Final Results were prepared in accordance with Australian Accounting Standards and verified by the Leighton's external auditor prior to disclosure and included its NPAT and UNPAT; and
 - (d) earnings guidance or earnings forecasts or profit guidance which was an indication or estimate made by Leighton of its future earnings or expected financial results within a particular range for a given financial year (**Earnings Guidance**). Earnings Guidance included its NPAT or UNPAT, or both.

Financial Year 2013 First Quarter Results

20. Between 6 May 2013 and 13 November 2013, on three occasions Leighton disclosed in Earnings Guidance for the 2013 financial year that its forecast UNPAT was likely to be within the range of \$520 million to \$600 million. These disclosures were made at the time Leighton released its Quarterly Results or its Half Yearly Results during the 2013 financial year.
21. On 6 May 2013, Leighton released its Quarterly Results for the 3 months to 31 March 2013 through the ASX via a media release titled "Leighton reports Q1 2013 net profit of \$123 million, reaffirms guidance". The media release stated:

“Leighton Holdings Limited today announced Net Profit after Tax (NPAT) of \$123 million for the first quarter of financial year 2013, compared to a loss of \$80 million in the prior comparable period. Revenue was \$5.4 billion, compared to \$5.1 billion in the prior comparable period. ...

Mr Tyrwhitt said ...‘Notwithstanding current market conditions, we remain on track to deliver a full year underlying NPAT within our previous guidance range of \$520 to \$600 million and a gearing level within the target band of 25 to 35 per cent by year-end.’”

Financial Year 2013 Half Yearly Results

22. On 14 August 2013, Leighton released its Half Yearly Results for the 2013 Financial Year through the ASX, as well as a document titled "Half Year Report (Appendix 4D) and Management Commentary for the six months ended 30 June 2013", a media release dated 14 August 2013 and a presentation entitled "Half Year Results ".

23. The Management Commentary stated:

“The Leighton Group (the Group) recorded a sound result for the six months to 30 June 2013 (HY13) with Net Profit after Tax (NPAT) of \$366 million and Underlying Net Profit after Tax (UNPAT) of \$255 million.

UNPAT increased by 122 per cent, when compared to the six months to 30 June 2012 (HY12), notwithstanding the tougher macroeconomic conditions. This improvement demonstrates the progress on successful delivery of our strategy to ‘stabilise, rebase and grow the business.’”

24. The media release issued on 14 August 2013 stated:

- “Net Profit after Tax (NPAT) of \$366 million, up 218% on HY12
- Underlying NPAT of \$255 million, up 122% on HY12
- Underlying NPAT margin of 2.2% of revenue, up from 1% in HY12 ...
- On track to deliver 2013 full year underlying NPAT of \$520 to \$600 million and a gearing level within the target band of 25 to 35% by year-end, subject to market conditions and any unforeseen circumstances.”

Financial Year 2013 Third Quarter Results

25. On 13 November 2013, Leighton released its Quarterly Results for the 9 months to 30 September 2013 through the ASX via a media release titled "Leighton reports Q3 2013 results and reiterates guidance". The media release stated:

- “Revenue of \$17.9 billion, up 6% on 3Q12

- Net Profit after Tax (NPAT) of \$444 million, up 40% on 3Q12
- Underlying NPAT (UNPAT) of \$389 million, up 65% on 3Q12 ...
- Reiterates full year UNPAT of \$520 to \$600 million, subject to market conditions and/or unfavourable developments.”

26. The media release also quoted the Chief Executive Officer Mr Hamish Tyrwhitt as follows:

“We continue to forecast year-end gearing will be within the band of 25-35 per cent however we are currently above where we expected it to be at this stage of the year. The final position will depend on the success of our working capital improvement initiatives.”

A copy of the media release dated 13 November 2013 is at Appendix 1.

HOCHTIEF AG STRATEGIES TO ACQUIRE LEIGHTON SHARES

27. In November 2013, Hochtief AG had a plan to increase its shareholding to 69.9% of the ordinary shares in Leighton by the end of January 2016.
28. A proposal for the implementation of this plan was set out in a draft memorandum prepared by Mr Robinson and emailed by him to Mr Sassenfeld on 20 November 2013. The draft memorandum proposed, as part of the plan, that 4.8 million Leighton Shares be acquired by Hochtief Australia between 6 and 20 January 2014 (**January Acquisition Strategy**).

A copy of the email and attached draft memorandum is at Appendix 2.

IMPLEMENTATION OF THE JANUARY ACQUISITION STRATEGY

28 November 2014 - Instruction to Mr Lancero and Mr Somerville to Acquire 4.8 million Leighton Shares

29. On Thursday 28 November 2013, Mr Sassenfeld and Mr Hoestermann jointly for and on behalf of Hochtief AG signed a written instruction (the **Instruction**) to Mr Lancero and Mr Somerville.

A copy of the Instruction document is at Appendix 3.

30. The Instruction relevantly:
- (a) directed Mr Lancero and Mr Somerville to acquire up to 4.8 million Leighton Shares, specifying the earliest dates at which specified numbers of shares could be acquired;
 - (b) specified the maximum price at which shares could be acquired;

- (c) specified that the maximum number of shares acquired on any given day should not exceed 25% of daily turnover of Leighton Shares traded on the ASX;
- (d) directed Mr Lancero and Mr Somerville to ensure that Hochtief Australia would not breach the “creep provisions” (section 611, item 9 of the *Corporations Act*);
- (e) specified that subject to funds being made available by Hochtief AG, the earliest dates on which the acquisition of Leighton Shares could be acquired were as follows:

Earliest Date to Acquire	No. of Shares
06/01/2014	303,209
06/01/2014	305,879
09/01/2014	442,630
10/01/2014	495,885
13/01/2014	655,140
13/01/2014	676,731
13/01/2014	252,088
16/01/2014	435,733
17/01/2014	409,544
20/01/2014	223,125
20/01/2014	600,036
Total	4,800,000

- (f) directed that the acquisition of the 4.8 million Leighton Shares must be completed by 31 January 2014;
- (g) stated that Hochtief AG and Hochtief Australia had established a Chinese wall arrangement to ensure that price sensitive information regarding Leighton, which may become known to Hochtief AG, Hochtief Australia and their respective officers, did not become known to Mr Lancero and Mr Somerville;
- (h) instructed Mr Lancero and Mr Somerville strictly to comply with the Chinese wall arrangement, and in particular:
- (i) to refrain from discussing the affairs of Leighton with any officer or employee of Hochtief AG or Hochtief Australia except as permitted by the Instruction;
 - (ii) to ensure that JP Morgan, Hochtief Australia's stockbroker, was instructed to communicate in relation to the acquisitions with Mr Lancero and Mr Somerville only and with no other officer, employee or representative of Hochtief AG or Hochtief Australia unless otherwise authorised by Mr Lancero and Mr Somerville;
 - (iii) to submit daily reports on the progress of the acquisitions to nominated officers of Hochtief AG or Hochtief Australia, including Mr Sassenfeld, Mr Hoestermann and Mr Robinson;

- (iv) to refrain from seeking revised instructions or input in deciding the terms of the acquisitions from any officer or employee of Hochtief AG or Hochtief Australia;
 - (v) to refrain from trading in Leighton Shares in a personal capacity during the period covered by the Instruction and to otherwise comply with the insider trading provisions in the *Corporations Act*; and
- (i) specified that the Instruction could be varied by Hochtief AG provided that confirmation was first given to Mr Lancero and Mr Somerville that Hochtief AG, Hochtief Australia and their respective officers were not in possession of price sensitive information at the time of the variation.

28 November 2013 - Meeting of Directors of Hochtief Australia

31. At 5.00 pm on Thursday 28 November 2013, a meeting of the directors of Hochtief Australia was held. Relevantly, Mr Sassenfeld, Mr Robinson and Mr Lancero were present. The following resolutions were passed:

“It was RESOLVED that, Hochtief Australia Holdings Ltd purchase on the Australian Stock Exchange ordinary shares in Leighton Holdings Limited (Leighton shares) up to a maximum of 4.8M shares through sharebroker JP Morgan Sydney. The funds will be provided by HOCHTIEF Asia Pacific GmbH in due course.

It was RESOLVED that, Mr Kenneth Lancero, as Company Secretary, and William Somerville, who has consented to the appointment, be the Authorised Representative and Signatory to act on behalf of the company in relation to the purchase of Leighton shares through JP Morgan Sydney.

It was RESOLVED that the attached overall instruction be approved and sent to Kenneth Lancero and William Somerville.

This specific instruction from Hochtief AG covers the parameters of the transaction and the chinese (sic) wall arrangements between Mr Lancero, Mr Somerville and the directors of Hochtief Australia Holdings Limited and Hochtief AG.”

A copy of the minutes of the meeting is at Appendix 4.

29 November 2013 - Communication of the Instruction to Mr Lancero and Mr Somerville

32. On Friday 29 November 2013, Mr Hoestermann, on behalf of Hochtief AG, sent an email to Mr Lancero copied to Mr Sassenfeld, Mr Robinson, Mr Sonnenberg and others, that

stated "Please find attached the new instruction for the upcoming transaction beginning January 2014." and attached the Instruction.

33. Mr Robinson then sent an email to Mr Somerville forwarding Mr Hoestermann's email (including the attached Instruction) that stated "For your information ...".
34. Mr Lancero sent a reply email to Mr Somerville, copied to Mr Robinson that stated "FYI I've already profiled. Thanks".
35. Mr Lancero then sent an email to Mr Hoestermann, copied to Mr Sassenfeld, Mr Robinson, Mr Sonnenberg and Mr Somerville and others that stated "Acknowledging receipt of the instruction."

3 December 2013 - Chinese Wall Arrangements

36. On Tuesday 3 December 2013, Mr Sonnenberg, sent an email to Mr Robinson titled "Chinese wall arrangements in respect of Leighton Holdings". The email attached the Instruction, as well as a document with the subject "Chinese wall arrangements in respect of Leighton Holdings Limited". In the email, Mr Sonnenberg stated:

"A Chinese wall has been established to ensure that price sensitive information regarding Leighton which may come known to HOCHTIEF, HTAHL and its respective officers does not become known to Ken, William or JP Morgan (Quarantined Persons) during the period of acquisitions.

It is important that we strictly comply with the Chinese wall arrangements set out in the attached instruction."

A copy of the 3 December 2013 email is at Appendix 5. The reference to HTAHL, here and elsewhere, is a reference to Hochtief Australia.

13 December 2013 - Meeting of the Leighton Audit Committee

37. On Friday 13 December 2013 at 7:00 am, a meeting was held of the Leighton Audit Committee.
38. Papers were circulated prior to the meeting. The papers included a paper titled "Leighton Group Report November 2013". The paper contained the following under the heading "Leighton Group Guidance Overview".

	Guidance	Forecast	Consensus
Underlying NPAT (UNPAT)	520 – 600	580	537
Gearing (%)	25% - 35%	34.5%	29.0%

39. The report stated at page 5 under the heading "Profit and Loss":

"Year-To-Date

Driven by November's performance, the Group's NPAT remains on budget at \$514m. Year-to-date UNPAT of \$470m was also impacted by the movement in restructuring costs (+11m) in November.

Year-End Forecast

The Group's Forecast PBT and NPAT have decreased by -\$90m and -\$87m to \$736m and \$508m respectively. Increased forecasts at TPL (up \$24m to \$450m) and LPPL (up \$19m) have been offset by expected transactional adjustments (-\$100m). These adjustments are primarily an estimate included for the LWIN transaction as well as anticipated valuation adjustments against the investment portfolio. Forecast UNPAT remains within the guidance range after increasing by \$40m to \$580m. In addition to the transaction adjustments, this was also driven by increased Restructuring Costs."

40. Present at the Leighton Audit Committee meeting were, relevantly, Mr Sassenfeld and Mr Robinson. Also in attendance were 3 representatives from Deloitte.

A copy of the minutes is at Appendix 6.

13 December 2013 - Meeting of the Leighton Board of Directors

41. Also on Friday 13 December 2013, at 8:00 am, following the Leighton Audit Committee meeting, there was a meeting of the directors of Leighton. Present at the meeting were, relevantly, Mr Sassenfeld and Mr Robinson.

42. It was noted at pages 4 and 5 in the signed and dated minutes of the meeting of directors that:

"The Board considered the 'Leighton Group Report' which had been circulated to the Board prior to the meeting and discussed the following matters with Management:

- that the Company remains on target to meet the underlying net profit after tax in the guidance range of \$520-600m."

A copy of the minutes is at Appendix 7.

10-12 January 2014 – Papers for Meetings of the Leighton Audit Committee and Board of Directors

43. On Friday 10 January 2014, Leighton's company secretary sent an email to the members of the Leighton Audit Committee and Board of Directors, including Mr Sassenfeld and Mr Robinson, stating:

"This is to advise that the papers which are to be discussed at the Leighton Holdings Audit Committee meeting to be held from **3.00pm-6.00pm** (Sydney

time) on **Tuesday 14 January 2014** are being *progressively* published on the FACTS system at <http://facts.leighton.com.au> under the **LHL Audit Committee folder**.

Please note that a Draft Agenda and **Agenda item 6: Deloitte Report to the Leighton Holdings Limited Audit Committee** has been published.

Additional papers will be published over the weekend ahead of the meeting on Tuesday, an email confirmation will be sent once additional papers are available.”

44. On Sunday 12 January 2014, Leighton’s company secretary sent an email to, amongst others, Mr Sassenfeld and Mr Robinson, stating:

“This is to advise that the **complete Audit Committee papers** which are to be discussed at the Leighton Holdings Audit Committee meeting to be held from **3.00pm-6.00pm** (Sydney time) on **Tuesday 14 January 2014** have now been published on the FACTS system at <http://facts.leighton.com.au> under the **LHL Audit Committee folder**.

I have removed the two papers published on Friday as they are included in the consolidated papers published today.”

45. The Draft Management Review Ongoing: Leighton Holdings Limited Preliminary Reporting to Hochtief 31 December 2013 dated 14 January 2014 (**Management Report**) identified the Leighton Group’s Underlying NPAT or UNPAT at \$583.3 million for the 12 months ending December 2013, compared to \$448.6 million for the 12 months ending December 2012. The Management Report stated the profit attributable to members as \$508.7 million for the 12 months ending December 2013, compared to \$450.1 million for the 12 months ending December 2012.

46. The Deloitte Report to the Leighton Audit Committee for the year ended 31 December 2013 (**Deloitte Audit Report**) stated:

“We have not identified any unadjusted differences that could, in our judgment, either individually or in aggregate have a significant effect on the financial report for the year ended 31 December 2013. The net effect of the unadjusted differences identified was to overstate profit after income tax by approximately \$9.7 million.”

47. The Deloitte Audit Report provided as follows:

	Year ended 31 Dec 2013	Year ended 31 Dec 2012
Profit before income tax	731.7 million	563.1 million
Profit for the year	468.9 million	442.1 million
Profit attributable to members	508.4 million	450.1 million

13-14 January 2014 - Communications re January Acquisition Strategy

48. On Tuesday, 14 January 2014 at 2.38am, Mr Hoestermann sent an email to Mr Lancero, copied to Mr Robinson, stating:

“Haven't heard anything regarding the 1st 2014 program which could have started already. Did you start to buy LHL shares already?

Any reason for not reporting or a delay?

Please double check again that due to the instruction letter, signed on Nov. 28th, 2013, this program has to be finished by Jan, 31st 2014.

Would appreciate an update.”

A copy of Mr Hoestermann's email is at Appendix 8.

49. On Tuesday 14 January 2014 at 7:37am, Mr Robinson replied arranging to contact Mr Hoestermann and separately forwarded Mr Hoestermann's email to Mr Lancero stating “Please do not respond.”

THE INFORMATION - LEIGHTON PRELIMINARY 2013 FINANCIAL YEAR RESULTS

50. At 3.00 pm on Tuesday 14 January 2014, a meeting of the Leighton Audit Committee was held in Sydney (**14 January 2014 Leighton Audit Committee meeting**). Relevantly, Mr Sassenfeld and Mr Robinson attended as members of the Leighton Audit Committee.
51. The papers which had been published electronically between 10 and 12 January 2014 were made available to the attendees in hard copy and were tabled at the meeting, and included:

(a) the Management Report; and

(b) the Deloitte Audit Report.

A copy of the Management Report is at Appendix 9.

A copy of the Deloitte Audit Report is at Appendix 10.

52. At the Tuesday 14 January 2014 Leighton Audit Committee meeting:
- (a) Leighton's Deputy Chief Financial Officer presented the Management Report and reported that, subject to final audit by Leighton's external auditors, Leighton's financial results for the year ended 31 December 2013 were expected to be:
- (i) a profit attributable to members or NPAT of \$508.7 million; and
- (ii) an UNPAT of \$583.8 million.

(b) Leighton's external auditors (Deloitte) presented the Deloitte Audit Report and reported that, subject to their completion of the audit of the consolidated financial report of Leighton for the year ended 31 December 2013:

- (i) they expected Leighton's NPAT to be \$508.4 million;
- (ii) they would be in a position to sign an unqualified unmodified opinion on the Deloitte Audit Report; and
- (iii) the significant accounting estimates and judgements used in the preparation of the respective reports were subject to the occurrence of any event after 31 December 2013 that would impact an accounting estimate or judgment by more than \$40 million.

A copy of the minutes of the meeting is at Appendix 11.

AWARENESS OF THE INFORMATION

- 53. As at 4.46 pm on Tuesday 14 January 2014, when the 14 January 2014 Audit Committee Meeting closed, Mr Sassenfeld and Mr Robinson were aware that for the 2013 financial year Leighton's profit was expected to be an UNPAT of \$583.8 million (market guidance was \$520 million to \$600 million) and an NPAT of between \$508.4 and \$508.7 million (**the Information**).
- 54. On and from Tuesday 14 January 2014, Hochtief AG, through Mr Sassenfeld, possessed the Information.
- 55. The Information was not generally available and would not have been discoverable upon inquiry by a third party.
- 56. If the Information had been generally available, a reasonable person would have expected it to have a material effect on the price of ordinary shares in Leighton.
- 57. On Tuesday 14 January 2014 at 8:21pm, Mr Hoestermann replied to Mr Robinson's email referred to at paragraph 49 saying "Sure, I am in the office."

ACQUISITION OF LEIGHTON SHARES

20 - 24 January 2014 - Acquisition of Leighton Shares

- 58. On Monday 20 January 2014, Hochtief Australia through JP Morgan, on behalf of Hochtief AG, commenced purchasing Leighton Shares in accordance with the Instruction and pursuant to the January Acquisition Strategy.
- 59. Between 20 January 2014 and 24 January 2014, Hochtief Australia, through JP Morgan, in accordance with the Instruction, on behalf of Hochtief AG acquired 1,137,163 Leighton Shares for \$18,281,512.22 (excluding fees) as follows:

Date	Volume Purchased	Average Price per Share	Consideration (excluding fees)	Fees
20/01/2014	195,000	\$15.9529	\$3,110,815.50	\$8,554.74
21/01/2014	213,554	\$16.0624	\$3,430,189.77	\$9,433.02
22/01/2014	187,194	\$16.1048	\$3,014,721.93	\$8,290.48
23/01/2014	292,751	\$16.0934	\$4,711,358.94	\$12,956.24
24/01/2014	248,664	\$16.1444	\$4,014,531.08	\$11,039.96
Total	1,137,163		\$18,281,617.22	\$50,274.44

60. At 6:10 pm on Monday 20 January 2014 Mr Somerville sent an email to Mr Sassenfeld, Mr Hoestermann, Mr Robinson and others notifying of the acquisition of 195,000 Leighton Shares on the day under the Instruction, with attached contract note under the Instruction.
61. At 6.43 pm on Tuesday on 21 January 2014, Mr Somerville sent an email to Mr Sassenfeld and Mr Hoestermann, and others notifying of the purchase of 213,554 Leighton Shares with attached contract note of even date under the Instruction.
62. At 5.04 pm on Wednesday 22 January 2014, Mr Somerville sent an email to Mr Sassenfeld and Mr Hoestermann, and others notifying of the purchase of 187,194 Leighton Shares with attached contract note of even date under the Instruction.
63. At 4.52 pm Thursday on 23 January 2014, Mr Somerville sent an email to Mr Sassenfeld and Mr Hoestermann, and others notifying of the purchase of 292,751 Leighton Shares with attached contract note of even date under the Instruction.
64. At 5.02 pm on Friday 24 January 2014, Mr Somerville sent an email to Mr Sassenfeld and Mr Hoestermann, and others notifying of the purchase of 248,664 Leighton Shares with attached contract note of even date under the Instruction.

VARIATION OF THE INSTRUCTION

23 January 2014 – Proposed Extension of Completion Date

65. At 2:46 pm on Thursday 23 January 2014, Mr Robinson sent an email to Mr Sonnenberg attaching a document titled "VARIATION OF INSTRUCTION" which stated:

"The acquisition of the Leighton shares by Ken Lancero and Will Somerville has been slow due to delays in arrival of funds and the extremely low volume of trading (average 600k per day compared to 1.2m) over the last week. The purchase of the full 4.8m is not likely to occur therefore before 31 January at the current acquisition rate.

..... I propose to vary the instruction by increasing the time period to 14 February. I can confirm that we continue to be NOT in possession of any price sensitive information. If the attached document could be signed and returned on 27 January that would be most helpful."

A copy of Mr Robinson's email (**23 January 2014 email**) together with the attachment is at Appendix 12.

27 January 2014 – Meeting of the Directors of Hochtief Australia and resolution to vary the Instruction

66. On 5:00pm on Monday 27 January 2014, a meeting of the directors of Hochtief Australia was held. The meeting was relevantly attended by, Mr Sassenfeld, Mr Robinson and Mr Lancero. At the meeting, a document entitled "VARIATION OF INSTRUCTION" (the **Variation of Instruction**) in the form attached to the 23 January 2014 email was tabled. The following resolutions were adopted:

"It was RESOLVED that, the previous instruction issued to Kenneth Lancero and William Somerville on 28 November 2013, regarding the purchase of 4.8M LEI shares through JPM, be amended to extend the completion date of acquisitions from 31 January 2013 to 14 February 2014.

It was RESOLVED that, the attached amendment to the instruction be approved and sent to Kenneth Lancero and William Somerville."

A copy of the minutes of the meeting, which attached the Variation of Instruction, is at Appendix 13.

67. On or about 27 January 2014, the Variation of Instruction was signed by Mr Sassenfeld and Mr Hoestermann for Hochtief AG. The Variation of Instruction was in the following terms:

"HOCHTIEF acknowledge that due to market conditions the daily volume turnover in Leighton Shares on the Australian Stock Exchange is substantially less than anticipated and therefore difficult for you to execute the instructions and complete all acquisitions by the date nominated in Clause 1 (e) of the instructions being 31 January 2014.

HOCHTIEF therefore varies the instructions and directs you to complete the acquisition of 4.8 million Leighton shares before the 14th February 2014. In all other respects the instructions are unchanged.

HOCHTIEF, HTAHL and its respective officers do not currently possess any price sensitive information regarding Leighton Holdings Limited."

68. On Monday 28 January 2014, Hochtief Australia, through its stockbroker (JP Morgan), in accordance with the Instruction, on behalf of Hochtief AG and pursuant to the January Acquisition Strategy acquired 358,165 Leighton Shares for a total cost of \$5,741,333.00 (excluding fees) plus fees of \$15,788.66 on the ASX and Chi-X Australia markets.

69. At 4.42pm on 28 January 2014, Mr Somerville sent an email to Mr Sassenfeld and Mr Hoestermann, and others notifying of the purchase of 358,164 Leighton Shares with attached contract note of even date under the Instruction.

29 January 2014 – Variation of Instruction communicated to Mr Lancero

70. At 2:56 am on Wednesday 29 January 2014, Mr Hoestermann sent via email a copy of the signed Variation of Instruction to Mr Lancero, copied to Mr Sassenfeld, Mr Robinson, Mr Sonnenberg and others, with a message stating "Attached Variation of Instruction as of today."

A copy of the email with the attached Variation of Instruction is at Appendix 14.

71. On the morning of Wednesday 29 January 2014, Mr Lancero informed Mr Somerville via email that, "per revised instruction", the last day for acquiring shares in Leighton had been extended to 14 February 2014.

FURTHER ACQUISITION OF LEIGHTON SHARES

27 January 2014 to 4 February 2014 - Acquisition of Leighton Shares

72. From Tuesday 29 January 2014 to Monday 3 February 2014, Hochtief Australia, through JP Morgan, in accordance with the Instruction and Variation of Instruction, on behalf of Hochtief AG and pursuant to the January Acquisition Strategy applied for and acquired 1,275,616 Leighton Shares for a total cost of \$20,725,116.77 (including associated fees) or \$20,668,279 (excluding fees) on the ASX and Chi-X Australia markets as follows:

Date	Volume Purchased	Average Price per Share	Consideration (excluding fees)	Fees
29/01/2014	254,928	\$16.2058	\$4,131,312.18	\$11,361.11
30/01/2014	389,745	\$15.9717	\$6,224,890.22	\$17,118.45
31/01/2014	430,943	\$16.4217	\$7,076,816.66	\$19,461.24
03/02/2014	200,000	\$16.1763	\$3,235,260.00	\$ 8,896.97
Total	1,275,616		\$20,668,279	\$56,837.77

73. At 5.00pm on 29 January 2014, Mr Somerville sent an email to Mr Sassenfeld and Mr Hoestermann, and others notifying of the purchase of 254,928 Leighton Shares with attached contract note of even date under the Instruction and Variation of Instruction.
74. At 4.47pm on 30 January 2014, Mr Somerville sent an email to Mr Sassenfeld and Mr Hoestermann, and others notifying of the purchase of 389,745 Leighton Shares with attached contract note of even date under the Instruction and Variation of Instruction.
75. At 4.56pm on 31 January 2014, Mr Somerville sent an email to Mr Sassenfeld and Mr Hoestermann, and others notifying of the purchase of 430,943 Leighton Shares with attached contract note of even date under the Instruction and Variation of Instruction.

76. At 5.05pm on 3 February 2014, Mr Lancero sent an email to Mr Hoestermann and others, and copied to Mr Sassenfeld notifying of the purchase of 200,000 Leighton Shares with attached contract note of even date under the Instruction and Variation of Instruction.
77. The trading by Hochtief Australia in Leighton Shares from Wednesday 29 January 2014 to Monday 3 February 2014 comprised about:
- (a) 6,706 separate transactions across the ASX and Chi-X Australia markets ;
 - (b) 20.25% of the total volume traded across the ASX and Chi-X markets (1,275,616 out of the total of 6,297,557 Leighton shares traded); and
 - (c) 21.4871% of the total value traded across the ASX and Chi-X markets (\$20,668,279 out of the total value of \$96,202,043.43 traded).

A table breaking down the trading by Hochtief Australia in Leighton Shares on the ASX and Chi-X compared to the rest of the market is at Appendix 15

WITHDRAWAL OF THE INSTRUCTION

78. On or about Monday 3 February 2014, Hochtief AG determined to cease acquiring Leighton Shares through Hochtief Australia pursuant to the January Acquisition Strategy.

3 February 2014 – Meeting of the Directors of Hochtief Australia

79. At 5.00pm on Monday 3 February 2014, a meeting of the directors of Hochtief Australia was held, relevantly attended by Mr Sassenfeld, Mr Robinson and Mr Lancero.
80. A document titled “WITHDRAWAL OF INSTRUCTION” was tabled (**Withdrawal of Instruction**). It was addressed to Mr Lancero and Mr Somerville from Mr Sassenfeld and Mr Hoestermann on behalf of Hochtief AG and dated 3 February 2014. It stated:
- “HOCHTIEF AG (HOCHTIEF) hereby withdraws and revokes with immediate effect the instructions given to you dated 28 November 2013 and 27 January 2014 (the instructions) whereby on behalf of HOCHTIEF Australia Holdings Limited (HTAHL) you were to acquire shares in Leighton Holdings Limited (Leighton Shares).”
81. At the meeting, the following resolutions were adopted:
- “It was RESOLVED that, the previous instruction issued to Kenneth Lancero and William Somerville on 28 November 2013 (and amended 27 January 2014), regarding the purchase of 4.8M LEI shares through JPM, be withdrawn and revoked with immediate effect.

It was RESOLVED that, the attached revocation of the instruction be approved and sent to Kenneth Lancero and William Somerville.”

A copy of the minutes, including the Withdrawal of Instruction, is at Appendix 16 (**3 February 2014 minutes**).

3-4 February 2014 – Communication of the Withdrawal of Instruction

82. At 5:05 pm on Monday 3 February 2014, following the meeting, Mr Lancero sent an email to Mr Hoestermann and others at Hochtief AG, copied to Mr Sassenfeld, Mr Robinson and Mr Somerville, advising of the purchase of Leighton Shares, and attaching an excel spreadsheet and contract note relating to the day’s trade. In the email, Mr Lancero notes:

“We have now crossed the 1% threshold from the previous notice of substantial shareholding lodged to the market last 31 Dec. Please expect an announcement on Wednesday.”

83. Mr Lancero then, at 5:09 pm on Monday 3 February 2014, sent an email to Mr Richard Molesworth and Mr Nicholas Mannion at JP Morgan, copied to Mr Robinson, Mr Somerville and others, stating:

“There won’t be any further orders from today. Unless otherwise advised.”

84. At 5:26 pm on Monday 3 February 2014, Mr Robinson sent an email to Mr Sassenfeld, copied to Mr Hoestermann, attaching an unsigned copy of the Withdrawal of Instruction, which stated:

“Further to the decision to postpone the current acquisitions to the 2nd quarter I attach a notice to my staff to cease further activity. Would you please sign this and email to Ken Lancero.”

A copy of Mr Robinson’s email, including attachment, is at Appendix 17.

85. At 3.03 am on Tuesday 4 February 2014, Mr Hoestermann sent an email to Mr Lancero, copied to Mr Sassenfeld, Mr Robinson and others, attaching the signed Withdrawal of Instruction.

A copy of Mr Hoestermann’s email is at Appendix 18.

86. By return email, sent at 9:43 am on Tuesday 4 February 2014, Mr Lancero stated:

“Acknowledging receipt of instructions. There wont be any orders to be processed from today on relating to the previous instructions.”

MARKET ANNOUNCEMENT RE HOCHTIEF AG'S FURTHER INCREASED OWNERSHIP IN LEIGHTON

87. On Wednesday 5 February 2014, Hochtief Australia released through the ASX a document titled "Form 604 Notice of change of interests of substantial holder" under section 671B of the Corporations Act dated 3 February 2014. The notice was given by Hochtief Australia on behalf of itself and Hochtief AG (and its related bodies corporate) and stated that as a result of on-market acquisitions by Hochtief Australia between 30 December 2013 and 3 February 2014, Hochtief Australia had increased its ownership in Leighton Shares by 3,420,943 Leighton Shares and increased its voting power by 1.02% (from 57.75% to 58.77%). The acquisitions resulted from implementation of a swap strategy (for trading on 30 December 2013) and the January Acquisition Strategy (for trading from 20 January 2014 to 3 February 2014).

EARLY FEBRUARY 2014 PRESS COVERAGE

88. Hochtief AG's acquisition of Leighton Shares from 20 January 2014 to 3 February 2014 received substantial press coverage, including in major Australian daily newspapers, in February 2014 following Hochtief AG's release through the ASX of the Form 604 referred to in paragraph 87 and also following the release of Leighton's Preliminary Final Results for the financial year ended 31 December 2013 on 20 February 2014.
89. On Friday 7 February 2014, the Australian Financial Review published an article on page 15 by Jenny Wiggins titled "ASA queries Hochtief trades ahead of Leighton's results". Among other things, the article stated:

"The ASA on Thursday sent a letter to the Australian Securities Exchange -asking why trading blackouts did not apply to Hochtief, given it has several board seats at Leighton.

...

"It doesn't seem right that a party with inside information on the forthcoming result can purchase shares so soon before making a material earnings release to the market," the ASA's policy and engagement coordinator, Stephen Mayne, said in a letter to the ASX.

The ASX does not prescribe blackout periods and Hochtief, which is listed in Germany, is not subject to ASX listing rules.

...

"By now [Hochtief] will be in -possession of the results, the audit -process will be largely complete, so Hochtief has information that the market doesn't have and they are trading."

Three Hochtief-appointed directors sit on Leighton's 10-member board ...

Hochtief has only been making substantial trades in Leighton's shares since June, when it signalled intentions to creep up the group's shareholder - register..."

A copy of the article is at Appendix 19.

MARKET ANNOUNCEMENT BY HOCHTIEF AUSTRALIA IN RESPONSE TO PRESS COVERAGE

90. On Wednesday 12 February 2014, Hochtief Australia sent a letter to the Chairman of Leighton at that time, Mr Robert Humphris, denying that it had engaged in insider trading. On Thursday 13 February 2014, Leighton sent the letter to ASX Market Announcements Platform for publication and the letter was published that same day to the market.

91. Hochtief Australia's letter defined Hochtief AG as "Hochtief" and stated:

"The ASA appears to suggest that HOCHTIEF recently acquired shares in Leighton Holdings Limited ('Leighton') with the benefit of price sensitive information concerning Leighton's soon to be announced result for the 2013 financial year. This is not the case.

HOCHTIEF issued instructions to acquire the shares in question during the prescribed securities trading period ('window') following Leighton earnings announcements for the 30 September 2013 quarter.

Authorisation was given to third parties not involved in Leighton and who were not in possession of any price sensitive information to acquire a certain number of shares on or by a future date. The Hochtief nominee directors on the Leighton Board played no role in the purchase of shares at the time of acquisition."

A copy of the letter from Leighton to ASX Market Announcements Platform, including attachment, is at Appendix 20.

92. The letter was incorrect to the extent that Hochtief AG, by the issue of the Variation of Instruction, had procured Hochtief Australia to purchase the Leighton Shares while in possession of inside information.

MARKET ANNOUNCEMENT OF LEIGHTON 2013 FINANCIAL YEAR PRELIMINARY FINAL REPORT

93. At 9.01 am on Thursday 20 February 2014, Leighton released through the ASX a document titled "Preliminary Final Report (Appendix 4E) and Management Commentary of the year ended 31 December 2013" (**Preliminary Final Report**), a media release

titled "Leighton FY13 underlying NPAT up 30% to \$584m, within guidance; NPAT up 13% to \$509m"; and an investor presentation titled "Preliminary Final Results".

94. The Management Commentary for the year ended 31 December 2013 stated:

“For the year ended 31 December 2013 (FY13), the Leighton Group recorded Statutory Net Profit after Tax (NPAT) of \$509 million and Underlying Net Profit After Tax (UNPAT) of \$584 million.

This result represented an increase of 13% and 30% respectively over the NPAT and UNPAT performance in the year ended 31 December 2012 (FY12).”

95. The media release stated:

- “Underlying Net Profit after Tax (NPAT) of \$584 million, up 30% on FY12
- Underlying NPAT margin of 2.4% of revenue, up from 1.9% in FY12
- NPAT of \$509 million, up 13% on FY12

...

- 2014 underlying NPAT expected to be \$540 million to \$620 million and gearing to be within target range of 20% to 35%, subject to market conditions and/or unfavourable developments
- Final dividend of 60 cents per share, 50% franked, payable on 4 April 2014.”

A copy of the Preliminary Final Report and media release is at Appendix 21.

PRICES FOR LEIGHTON SHARES - 6 JANUARY TO 26 FEBRUARY 2014

96. Between 6 January 2014 and 26 February 2014 the consolidated traded prices and volumes of Leighton Shares on the ASX and Chi-X Australia markets were:

Date	On- Market Prices per Leighton Share					Total Volume traded	Total Value of trades	Total Number of Trades
	Opening Price	Highest Price	Lowest Price	Closing Price	Average Price			
06/01/14	\$16.280	\$16.400	\$16.150	\$16.240	\$16.284	655,282	\$10,670,067	4,624
07/01/14	\$16.180	\$16.290	\$16.110	\$16.150	\$16.201	689,755	\$11,174,235	5,244
08/01/14	\$16.300	\$16.360	\$16.140	\$16.310	\$16.272	744,022	\$12,105,878	6,458
09/01/14	\$16.420	\$16.430	\$16.060	\$16.150	\$16.157	917,609	\$14,825,953	9,563
10/01/14	\$16.160	\$16.390	\$16.080	\$16.380	\$16.270	1,081,204	\$17,580,411	5,774
13/01/14	\$16.380	\$16.380	\$16.180	\$16.200	\$16.283	525,733	\$8,560,546	4,690
14/01/14	\$16.100	\$16.150	\$15.540	\$15.680	\$15.742	1,687,306	\$26,568,716	9,216
15/01/14	\$15.750	\$15.880	\$15.620	\$15.650	\$15.684	1,029,697	\$16,192,879	7,090
16/01/14	\$15.820	\$15.880	\$15.740	\$15.850	\$15.842	1,260,631	\$19,967,443	8,120
17/01/14	\$15.850	\$16.040	\$15.810	\$15.850	\$15.890	617,239	\$9,807,611	4,179
20/01/14	\$16.000	\$16.090	\$15.850	\$15.960	\$15.955	674,861	\$10,765,061	4,053
21/01/14	\$15.990	\$16.160	\$15.930	\$16.060	\$16.059	766,343	\$12,306,460	4,576

Date	On- Market Prices per Leighton Share					Total Volume traded	Total Value of trades	Total Number of Trades
	Opening Price	Highest Price	Lowest Price	Closing Price	Average Price			
22/01/14	\$16.010	\$16.200	\$15.940	\$16.170	\$16.095	855,037	\$13,762,762	6,394
23/01/14	\$16.080	\$16.260	\$15.950	\$16.100	\$16.098	1,009,174	\$16,246,119	6,940
24/01/14	\$16.010	\$16.260	\$16.000	\$16.140	\$16.146	730,590	\$11,795,318	5,869
28/01/14	\$16.000	\$16.260	\$15.940	\$16.040	\$16.034	1,276,935	\$20,480,614	10,857
29/01/14	\$16.140	\$16.330	\$16.100	\$16.300	\$16.211	870,474	\$14,106,187	7,053
30/01/14	\$16.200	\$16.200	\$15.850	\$15.990	\$15.972	1,227,344	\$19,639,744	6,080
31/01/14	\$15.990	\$16.580	\$15.980	\$16.450	\$16.413	2,140,621	\$35,339,072	8,126
03/02/14	\$16.320	\$16.460	\$15.985	\$16.150	\$16.148	1,679,245	\$27,116,971	8,094
04/02/14	\$15.850	\$15.860	\$15.550	\$15.750	\$15.721	1,456,442	\$22,924,961	7,230
05/02/14	\$15.750	\$15.960	\$15.390	\$15.470	\$15.621	1,748,334	\$27,301,952	10,661
06/02/14	\$15.470	\$15.780	\$15.470	\$15.470	\$15.700	899,917	\$14,073,718	7,669
07/02/14	\$15.800	\$16.130	\$15.740	\$16.000	\$15.981	887,001	\$14,170,436	10,156
10/02/14	\$16.000	\$16.425	\$15.960	\$16.340	\$16.312	1,213,486	\$19,788,371	6,680
11/02/14	\$16.290	\$16.430	\$16.110	\$16.300	\$16.335	834,719	\$13,634,986	5,857
12/02/14	\$16.300	\$16.340	\$15.970	\$16.190	\$16.109	1,647,181	\$26,539,973	8,849
13/02/14	\$16.190	\$16.270	\$16.040	\$16.190	\$16.151	799,355	\$12,912,327	5,237
14/02/14	\$16.320	\$16.340	\$16.130	\$16.340	\$16.258	1,024,365	\$16,653,639	4,961
17/02/14	\$16.400	\$16.530	\$16.130	\$16.240	\$16.309	735,122	\$11,985,505	3,909
18/02/14	\$16.240	\$16.290	\$15.920	\$16.110	\$16.068	703,760	\$11,308,457	3,324
19/02/14	\$16.350	\$16.560	\$16.260	\$16.410	\$16.440	1,108,123	\$18,192,620	6,449
20/02/14	\$18.300	\$18.400	\$16.900	\$17.210	\$17.587	4,498,614	\$79,024,512	14,197
21/02/14	\$17.500	\$17.500	\$16.980	\$17.360	\$17.245	1,812,756	\$31,245,666	7,500
24/02/14	\$17.200	\$17.350	\$17.100	\$17.230	\$17.223	1,475,975	\$25,428,156	7,085
25/02/14	\$17.400	\$17.550	\$17.300	\$17.390	\$17.423	969,588	\$16,893,334	5,787
26/02/14	\$17.430	\$18.120	\$17.430	\$18.090	\$17.900	1,786,094	\$31,971,556	8,774

A copy of the consolidated ASX and Chi-X trade data is at Appendix 22.

97. On Thursday 20 February 2014, following the announcement by Leighton to the ASX of the Preliminary Final Report at 9:01am, there was a material increase in the price and volume of Leighton Shares traded on the ASX and Chi-X markets. Relevantly, Leighton Shares:
- (a) opened at a price of \$18.30 per share;
 - (b) closed at a price of \$17.21 per share, an increase of 4.88% from the closing price of \$16.41 per share on 19 February 2014;
 - (c) traded at an intra-day high of \$18.40 per share;
 - (d) traded at an intra-day low of \$16.90 per share;

- (e) traded for a total volume of 4,498,614 which was 5.1 times higher than the average traded volume of 874,145 shares over the previous five trading days; and
- (f) the total value traded was \$79,024,512.00.

IMPACT OF CONDUCT ON THIRD PARTIES

98. Hochtief AG and ASIC are in dispute as to the amount of profit made by Hochtief AG by reason of the contravention.
99. The dispute concerns the number of days on which Hochtief Australia traded in Leighton shares by reason of the contravention:
- (a) ASIC contends that four days of trading were procured by Hochtief AG (being 29-31 January 2014 and 3 February 2014).
- (b) Hochtief AG contends that one day of trading was procured by Hochtief AG (being 3 February 2014).
100. Hochtief AG and ASIC agree that the appropriate method of calculating the amount of profit made on each day on which the Court finds the trading occurred by reason of the contravention should be according to the following formula:
- $$\text{Profit} = \text{NS} \times (\text{LP} - \text{AP})$$
- Where:
- **NS** is the number of shares purchased by Hochtief AG by reason of the contravention;
 - **LP** is the last traded price on 20 February 2014 (being \$17.21); and
 - **AP** is the average price at which shares were purchased excluding fees by Hochtief Australia on each day that trading occurred by reason of the contravention.
101. The parties respectfully request that the Court:
- (a) make the declaration the subject of prayer 1 of the Originating Process; and
- (b) make a finding as to the profit made by Hochtief AG as a result of the contravention declared by the Court.

102. The parties respectfully request a subsequent hearing at which, following receipt of evidence and submissions from the parties, the Court will be requested to impose a penalty.

DATED: 29TH JANUARY 2016

Signed on behalf of ASIC



CHRISTOPHER SAVUNDRA

Signed on behalf of Hochtief AG by its lawyer

