



Australian Government

Takeovers Panel

**Reasons for Decision
PointsBet Holdings Limited 02
[2025] ATP 26**

Catchwords:

Decline to conduct proceedings – conditions – off-market takeover – competing offers – efficient, competitive and informed market – disclosure – standstill

Corporations Act 2001 (Cth), sections 602, 633(1), 650F, 657D

Guidance Note 7: Deal protection, Guidance Note 1: Unacceptable circumstances

Alinta Limited 01 [2006] ATP 15

Interim order	IO undertaking	Conduct	Declaration	Final order	Undertaking
NO	NO	NO	NO	NO	NO

INTRODUCTION

1. The Panel, Alberto Colla, Jon Gidney and Nicola Wakefield Evans AM (sitting President), declined to conduct proceedings on an application by betr in relation to the affairs of PointsBet. The application concerned an off-market takeover offer by MIXI Australia to acquire all of the ordinary shares in PointsBet. betr submitted that, by declaring the MIXI Bid unconditional while betr was restricted from dispatching its bidder's statement,¹ MIXI Australia denied PointsBet shareholders a reasonable and equal opportunity to consider the MIXI Bid and the betr Bid in parallel, which was contrary to an efficient, competitive and informed market. betr also submitted that the MIXI Confidentiality Deed contained a standstill provision which was unacceptable. The Panel considered that there was no reasonable prospect that it would declare the circumstances unacceptable.

2. In these reasons, the following definitions apply.

betr	betr Entertainment Limited
betr Bid	has the meaning given in paragraph 9
betr Bidder's Statement	has the meaning given in paragraph 12
Interim Order	the interim order made by the President in the <i>PointsBet Holdings Limited</i> proceedings on 29 July 2025, restraining betr from dispatching the betr Bidder's Statement
MIXI Australia	MIXI Australia Pty Ltd, a wholly owned subsidiary of MIXI, Inc

¹ Under the interim order made by the President on 29 July 2025 in the *PointsBet Holdings Limited* proceedings

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MIXI Bid	has the meaning given in paragraph 11
MIXI Bidder's Statement	has the meaning given in paragraph 13
MIXI Bid Implementation Deed	has the meaning given in paragraph 7
MIXI Confidentiality Deed	has the meaning given in paragraph 8
MIXI Scheme	has the meaning given in paragraph 5
PointsBet Holdings Limited proceedings	<i>PointsBet Holdings Limited</i> [2025] ATP 25

FACTS

3. PointsBet is an ASX listed company (ASX code: PBH).
4. betr is also an ASX listed company (ASX code: BBT).
5. On 26 February 2025, PointsBet announced it had entered into a scheme implementation deed with MIXI, Inc and MIXI Australia for the acquisition by MIXI Australia of 100% of the issued share capital of PointsBet by way of a scheme of arrangement (**MIXI Scheme**).
6. On 28 April 2025, betr announced that it had acquired a relevant interest in 19.9% PointsBet shares.
7. On 16 June 2025, PointsBet announced that it had entered into a bid implementation deed with MIXI, Inc and MIXI Australia (**MIXI Bid Implementation Deed**) pursuant to which MIXI Australia agreed to make an off-market takeover bid for all the issued share capital of PointsBet (**MIXI Bid**) at \$1.20² cash per PointsBet share conditional on the MIXI Scheme not being approved by the requisite majorities of PointsBet shareholders.
8. PointsBet's announcement disclosed key terms of the MIXI Bid Implementation Deed and attached a copy of the MIXI Bid Implementation Deed. Among other things, the MIXI Bid Implementation Deed referred to a confidentiality deed between PointsBet and MIXI, Inc (**MIXI Confidentiality Deed**). The terms of the MIXI Confidentiality Deed were not disclosed.
9. On 20 June 2025, betr announced its intention to make an off-market, all-scrip takeover offer for all shares in PointsBet not already held by betr (**betr Bid**) representing 3.81 betr shares for every 1 PointsBet share.
10. On 25 June 2025, the MIXI Scheme was not approved by PointsBet shareholders at the scheme meeting. This was principally due to betr voting its 19.9% Pointsbet

² Being the same consideration offered under the MIXI Scheme (at the time the MIXI Bid was announced)

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shareholding against the MIXI Scheme, consistent with betr's previously publicly stated voting intention.

11. On 26 June 2025, MIXI Australia announced its intention to make the MIXI Bid.
12. On 16 July 2025, betr lodged its bidder's statement in relation to the betr Bid (**betr Bidder's Statement**).
13. On 17 July 2025, MIXI Australia lodged its bidder's statement in relation to the MIXI Bid (**MIXI Bidder's Statement**) and PointsBet announced that the PointsBet directors unanimously recommended that PointsBet shareholders accept the MIXI Bid in the absence of a superior proposal.
14. The MIXI Bidder's Statement stated (among other things) that:
 - (a) the MIXI Bid was subject to a limited number of conditions, including a 50.1% minimum acceptance condition and
 - (b) MIXI Australia would use its best endeavours to pay accepting PointsBet shareholders by the later of 15 business days after the MIXI Bid became unconditional or 10 business days after acceptance of the offer.
15. On 22 July 2025, MIXI announced that the MIXI Bid had opened and was scheduled to close on 25 August 2025 unless extended or withdrawn. MIXI Australia also disclosed that the PointsBet directors had agreed to consent to MIXI Australia sending the MIXI Bidder's Statement to PointsBet shareholders earlier than the timeframe specified under section 633(1).³
16. On 24 July 2025, PointsBet released its target's statement in response to the MIXI Bid, with PointsBet directors maintaining their recommendation that PointsBet shareholders accept the MIXI Bid in the absence of a superior proposal.
17. On 29 July 2025, PointsBet lodged an application to the Panel seeking a declaration of unacceptable circumstances in relation to the betr Bid and sought an interim order that betr be restrained from dispatching the betr Bidder's Statement until the disclosure deficiencies identified by PointsBet in its application were rectified or until further order.
18. Also on 29 July 2025, the President made the Interim Order to that effect.
19. On 30 July 2025, betr announced that it intended to increase its offer (once opened) to 4.219 betr shares for every 1 PointsBet share held.
20. On 8 August 2025, MIXI Australia announced (among other things) that:
 - (a) it was increasing the consideration under the MIXI Bid to \$1.25 cash per PointsBet share and that this offer price was "best and final" (provided that MIXI Australia reserved the right to increase the offer price if it acquired more than 50% of PointsBet shares)

³ All statutory references are to the *Corporations Act 2001* (Cth), and all terms used in Chapters 6 to 6C have the meaning given in the relevant Chapter (as modified by ASIC)

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- (b) the MIXI Bid was free from all of the remaining conditions in the MIXI Bidder's Statement, including the minimum acceptance condition, and therefore was unconditional and
- (c) its voting power in PointsBet was 26.27%.

APPLICATION

Declaration sought

- 21. By application dated 9 August 2025, betr sought a declaration of unacceptable circumstances. betr submitted that in declaring the MIXI Bid unconditional and stating that it would commence processing payments to accepting PointsBet shareholders, MIXI Australia:
 - (a) was "*seeking to exploit the procedural consequences of ongoing Takeovers Panel proceedings (being a delay in the despatch of betr's replacement bidder's statement and the opening of the betr Offer) to enhance and potentially secure its control of PointsBet before the betr Offer is sent to PointsBet shareholders and open for acceptances*" and
 - (b) had in effect 'locked up' existing acceptances "*at a time when the outcome of the Takeovers Panel proceedings are unknown and pressuring undecided shareholders into accepting the MIXI Offer without the ability to weigh the benefits that may be available under the betr Offer.*"
- 22. betr also submitted that the MIXI Confidentiality Deed had not been disclosed to the market, which was inconsistent with the policy that takeovers take place in a competitive, efficient and informed market.
- 23. betr submitted that the effect of the circumstances was to deny PointsBet shareholders a reasonable and equal opportunity to consider and participate in the betr Bid, contrary to section 602(a) and section 602(c).

Interim order sought

- 24. betr sought an interim order that MIXI Australia be restrained from processing acceptances under the MIXI Bid until such time as the *PointsBet Holdings Limited* proceedings be determined.

Final orders sought

- 25. betr sought final orders that:
 - (a) MIXI Australia be restrained from processing acceptances under the MIXI Bid until such time as the *PointsBet Holdings Limited* proceedings be determined.
 - (b) the closing date of the MIXI Bid be extended to allow shareholders a reasonable opportunity to consider both the MIXI Bid and the betr Bid
 - (c) MIXI Australia be required to offer withdrawal rights to certain accepting shareholders and
 - (d) PointsBet be required to release the MIXI Confidentiality Deed.

DISCUSSION

MIXI Bid unconditional

26. betr submitted that, by declaring the MIXI Bid unconditional, MIXI Australia had restricted the withdrawal rights previously offered to accepting PointsBet shareholders under the MIXI Bid, which had *“the unacceptable effect of “locking up” existing acceptances”*. betr submitted that doing so during the *PointsBet Holdings Limited* proceedings and with the Interim Order in place prevented a genuine contest for control of PointsBet.
27. MIXI Australia submitted that *“[t]here is no rational policy basis for prohibiting a bidder from, or requiring a bidder to delay, making a declaration that its offer is unconditional merely because a competing bidder has been restrained by the Panel from despatching a competing offer, particularly where (as here) this is due to acknowledged material deficiencies in its bidder's statement.”*
28. MIXI Australia also submitted that declaring the MIXI Bid unconditional did not give rise to unacceptable circumstances because:
 - (a) its decision to declare the MIXI Bid free from the remaining conditions was prompted by the receipt of FIRB approval, being the only non-waivable condition under the MIXI Bid, not by the Interim Order nor any other matter before the Panel
 - (b) acceptances under the MIXI Bid had stalled since betr announced on 30 July 2025 that it would increase the consideration under the betr Bid, which suggested that a material proportion of PointsBet shareholders may be deferring their acceptances of the MIXI Bid pending their consideration of the betr Bid and
 - (c) the MIXI Bid would remain open until 25 August 2025, so that there was no time pressure for PointsBet shareholders to accept the MIXI Bid.
29. MIXI Australia noted that, on the other hand, *“[a]ny delay in payments, as sought by betr, would clearly prejudice the interests of PointsBet shareholders who have accepted the MIXI Offer with the legitimate expectation of receiving timely payment.”*
30. PointsBet submitted that *“MIXI should not be ‘punished’ because the Panel has decided to issue an interim order and conduct proceedings in connection with betr’s bid because of the problematic way in which betr has chosen to proceed and the misleading nature of its disclosures.”*
31. PointsBet also submitted that restraining MIXI Australia from processing acceptances under the MIXI Bid would disturb transactions which have already taken place between a bidder and shareholders, which would be fundamentally different from the context in which the Interim Order was made.
32. On 14 August 2025, we informed parties of our decision to accept betr’s undertaking and not make a declaration of unacceptable circumstances in relation to the affairs of PointsBet in the *PointsBet Holdings Limited* proceedings. Accordingly, the Interim Order ceased to have effect on that day.

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33. On 18 August 2025, betr released its replacement bidder's statement and announced that the betr Bid was open for acceptance.
34. betr submitted that the processes of the Panel exist to protect market integrity and that MIXI Australia had taken tactical advantages of our processes, which undermined the Panel's role.
35. Section 650F(1)(b) provides that a bidder may free its offer from its conditions by giving the target a notice not less than 7 days before the end of the offer period.
36. MIXI Australia did so and while MIXI Australia relying on momentum may have been detrimental to the betr Bid, we do not consider that this necessarily rendered the circumstances unacceptable. The existence of unacceptable circumstances does not depend on conduct or intention.⁴ Instead, we considered the effect of the circumstances on the market in the light of the principles in section 602.
37. We considered that PointsBet shareholders would have an opportunity to consider the merits of, and participate in, either the MIXI Bid or the betr Bid. In coming to that conclusion, the following circumstances were relevant:
 - (a) The status of the *PointsBet Holdings Limited* proceedings. betr applied to the Panel on Saturday 9 August 2025. On Tuesday 12 August 2025, we informed the parties that we were minded not to make a declaration of unacceptable circumstances subject to betr executing an undertaking in a form we did not object to, which was done on 14 August 2025. Given the expedited process in the *PointsBet Holdings Limited* proceedings, we were confident that a determination would be achieved promptly so that the Interim Order would cease to have effect.
 - (b) The fact that acceptances under the MIXI Bid had stalled since betr's announcement that it would increase the consideration under the betr Bid suggested that a significant number of PointsBet shareholders had not yet formed a view with regards to the MIXI Bid and therefore would be considering the betr Bid.
 - (c) The MIXI Bid would remain open until 25 August 2025, unless extended, so that PointsBet shareholders would have approximately a week to consider the competing bids.
38. Given the above, we were not satisfied that the circumstances raised in betr's application were contrary to the principles in section 602.
39. We note that acceptances under the MIXI Bid increased significantly at the start of the *PointsBet Holdings Limited* proceedings. We accept that this may have been detrimental to betr and the betr Bid while the Interim Order was in place. However, the rationale for the Interim Order was precisely to protect market integrity in light of the inadequate disclosure in the betr Bidder's Statement.

⁴ Guidance Note 1: Unacceptable circumstances at [24]

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40. In any event, given acceptances under the MIXI Bid had recently stalled, based on our commercial experience, we consider it unlikely that it would be “*extremely difficult – perhaps impossible – to restore a genuine contest for control of PointsBet*” as submitted by betr.
41. Uncertainty is a material disincentive to shareholders accepting takeover offers.⁵ The Panel typically only orders that a bidder is restrained from processing acceptances if it considers that these acceptances likely occurred on an uninformed basis.
42. Here, given PointsBet shareholders had been accepting the MIXI Bid on an informed basis, we did not consider that restraining MIXI Australia from processing acceptances was required. In fact, we consider that the prejudice caused to PointsBet shareholders who accepted the MIXI Bid, being the delay in the payment of consideration, would likely be unfair and potentially contrary to our statutory powers.⁶

MIXI Confidentiality Deed

43. betr submitted that it understood, from conversations with other PointsBet shareholders, that the MIXI Confidentiality Deed contained a standstill provision pursuant to which MIXI Australia required PointsBet’s consent before it waived the 50.1% minimum acceptance condition. betr submitted that “*[i]f this is correct, the non-disclosure of the MIXI Confidentiality Deed is inconsistent with the policy that takeovers take place in a competitive, efficient and informed market.*”
44. Both MIXI Australia and PointsBet submitted that the MIXI Confidentiality Deed did not contain such a standstill provision and both offered to provide us with a full copy on a confidential basis. MIXI Australia also confirmed that “*MIXI Australia did not seek nor obtain any consent from PointsBet, under the Confidentiality Deed or otherwise, in relation to the Price Increase or Waiver*”.
45. We accepted MIXI Australia and PointsBet’s submission that the MIXI Confidentiality Deed did not contain a provision under which MIXI Australia was required to obtain PointsBet’s consent prior to waiving the minimum acceptance condition. We also accepted MIXI Australia’s submission that it did not seek or obtain such consent from PointsBet. Therefore, we did not need to consider this issue further.
46. Guidance Note 7⁷ provides that, at a minimum, the existence and nature of all material terms of any deal protection arrangement should normally be disclosed by no later than when the relevant control proposal is announced.
47. Here, PointsBet did disclose the key terms of the MIXI Bid Implementation Deed and attached a full copy of the MIXI Bid Implementation Deed. We did not consider that in the circumstances the MIXI Confidentiality Deed should be, or should have been, disclosed to the market.

⁵ *Alinta Limited 01* [2006] ATP 15

⁶ Under section 657D, the Panel may not make an order that would unfairly prejudice any person

⁷ Guidance Note 7: Deal protection at [53]

DECISION

48. For the reasons above, we do not consider that there is any reasonable prospect that we would make a declaration of unacceptable circumstances. Accordingly, we have decided not to conduct proceedings in relation to the application under regulation 20 of the *Australian Securities and Investments Commission Regulations 2001* (Cth).

Orders

49. Given that we have decided not to conduct proceedings, we do not (and do not need to) consider whether to make any interim or final orders.

**Nicola Wakefield Evans AM
President of the sitting Panel
Decision dated 18 August 2025
Reasons given to parties 29 October 2025
Reasons published 5 November 2025**

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Advisers

Party	Advisers
betr	Arnold Bloch Leibler
MIXI	Clayton Utz
PointsBet	Baker McKenzie