



Australian Government

Takeovers Panel

Reasons for Decision PointsBet Holdings Limited 03 [2025] ATP 29

Catchwords:

Decline to conduct proceedings – bidder’s statement – closing date – 50% threshold – automatic extension – efficient, competitive and informed market principle – whether application was timely

Corporations Act 2001 (Cth), sections 602(a), 624

Procedural Guidelines, paragraph 4.6(b)(vi)

Qantas Airways Limited 02R [2007] ATP 07

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 Entertainment Limited in relation to the affairs of PointsBet Holdings Limited. PointsBet was subject to two competing off-market takeover offers from betr and MIXI Australia Pty Ltd. The application concerned whether the issue of 10,750,550 PointsBet shares on the vesting of performance share rights by PointsBet was unacceptable because (among other things) the new shares were likely to be accepted into the MIXI bid and would push MIXI’s voting power over 50% in the final 7 days of its offer, interfering with an efficient, competitive and informed market. The Panel considered that, under the terms of issue PointsBet’s performance share rights could be accelerated and given competing bid conditions and other commercial factors, it was likely that most of the new shares issued on vesting would have accepted into the bid from MIXI in the ordinary course. 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 4(b)
MIXI	MIXI Australia Pty Ltd
MIXI Bid	has the meaning given in paragraph 4(a)
MIXI Bid Implementation Deed	has the meaning given in paragraph 8
MIXI Scheme	has the meaning given in paragraph 7

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New Shares	has the meaning given in paragraph 16
PointsBet	PointsBet Holdings Limited
PointsBet KEEP	has the meaning given in paragraph 5
PointsBet Performance Rights	has the meaning given in paragraph 5

FACTS

3. PointsBet is an ASX listed company operating as an online corporate bookmaker (ASX code: PBH).
4. PointsBet was subject to two competing off-market takeover offers, namely:
 - (a) a recommended cash offer from MIXI (**MIXI Bid**) and
 - (b) an unsolicited scrip takeover offer from betr (**betr Bid**).
5. On 28 November 2023, PointsBet shareholders approved the terms of PointsBet's Key Employee Share Plan (**PointsBet KEEP**) at a PointsBet general meeting. The PointsBet Keep provided for, among other things, the offer of performance rights (**PointsBet Performance Rights**), options and restricted shares to employees.
6. Clause 9.1(a) of the PointsBet KEEP provides that (among other things), where there is a takeover bid for PointsBet shares that PointsBet's board considers "*is likely to result in a change in the Control*" of PointsBet¹, the PointsBet board may exercise its discretion to vest PointsBet Performance Rights.
7. On 26 February 2025, PointsBet announced it had entered into a scheme implementation deed with MIXI and MIXI, Inc in relation to a proposed acquisition of PointsBet by MIXI (**MIXI Scheme**), under which PointsBet agreed to "*accelerate the vesting of, waive any vesting conditions or vesting periods applying to, or otherwise cancel, all Performance Share Rights*" if the MIXI Scheme was approved by PointsBet shareholders.²
8. On 16 June 2025, PointsBet, MIXI and MIXI, Inc entered into a bid implementation deed (**MIXI Bid Implementation Deed**) pursuant to which MIXI agreed to make the MIXI Bid, conditional on the MIXI Scheme not being approved by the requisite majorities of PointsBet shareholders. Under the MIXI Bid Implementation Deed, PointsBet agreed to ensure that all PointsBet options and PointsBet Performance

¹ As defined in s50AA. Unless otherwise indicated, all statutory references are to the *Corporations Act 2001* (Cth) and all terms used in Chapter 6, 6A or 6C have the meaning given in the relevant Chapter (as modified by ASIC)

² The scheme implementation deed also required PointsBet in the event that the scheme was approved by shareholders to "*make a cash payment to each holder of the vested or cancelled Performance Share Rights in lieu of an allocation of Shares in the amount of the Performance Share Right Consideration (less any applicable withholding tax and superannuation) in respect of each Performance Share Right held by that holder by no later than the Scheme Record Date.*"

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Rights were vested, lapsed or cancelled such that none would be outstanding following the close of the MIXI Bid.

9. On 17 June 2025, in an ASX announcement responding to PointsBet proceeding with the MIXI Bid, betr noted (among other things) *“that the MIXI Proposal provides for the accelerated 100% vesting of management performance rights, which is not conditional on future service. By contrast, betr has not committed to cash-out management performance rights and the betr Proposal will require management to remain employed and satisfy the relevant vesting milestones in the ordinary course.”*
10. On 26 June 2025, PointsBet announced that (among other things) the MIXI Scheme was not approved by the requisite majorities of PointsBet shareholders.
11. On 17 July 2025, MIXI lodged its bidder’s statement and, on 22 July 2025, the MIXI Bid was open for acceptance.
12. On 8 August 2025, MIXI declared the MIXI Bid unconditional and increased the consideration from \$1.20 to \$1.25 cash per PointsBet share stating that this offer price was “best and final” (provided that MIXI reserved the right to increase the offer price if it acquired more than 50% of PointsBet shares).
13. On 19 August 2025, MIXI released a substantial holder notice stating that its voting power in PointsBet was 36.72%.
14. On 21 August 2025, MIXI announced (among other things) that:
 - (a) it would increase its offer price to \$1.30 per PointsBet share (if MIXI acquired 90% or more of PointsBet shares)
 - (b) the \$1.30 price was ‘Last and Final’ and would not be increased and
 - (c) the MIXI Bid would not be extended, except *“as required by section 624 of the Corporations Act if, in the last 7 days of the Offer Period, [MIXI] acquires more than 50% of PointsBet shares, or [MIXI] improves the offer consideration (i.e. as a result of acquiring more than 90% of PointsBet shares). In either case, the Offer Period will be automatically extended by 14 days.”*
15. On 25 August 2025, MIXI released a substantial holder notice stating that its voting power in PointsBet was 37.86%.
16. On 26 August 2025, PointsBet announced, in an Appendix 2A, that 10,750,550 new shares (**New Shares**) had been issued on the vesting of PointsBet Performance Rights.
17. On 27 August 2025, MIXI released a substantial holder notice stating that its voting power in PointsBet was 42.38%, including as a result of acquisitions of a relevant interest pursuant to acceptances under the MIXI Bid as follows:
 - (a) 11,513,963 PointsBet shares on 26 August 2025 and
 - (b) 905,955 PointsBet shares on 25 August 2025.
18. On 28 August 2025, in its second supplementary target’s statement in relation to the MIXI Bid, PointsBet advised that as of that date MIXI had a relevant interest in 46.72% of PointsBet shares.

19. The MIXI Bid was scheduled to close on 29 August 2025 at 7pm (Melbourne time).

APPLICATION

Declaration sought

20. By application dated 28 August 2025 (received at 2.57pm Melbourne time), betr sought a declaration of unacceptable circumstances. betr submitted that the exercise of the PointsBet board's discretion to vest the PointsBet Performance Rights was unacceptable given that (among other things):
- (a) it was not reasonable for the PointsBet board to determine on 25 August 2025 that a change of control of PointsBet was likely
 - (b) there was no urgency for the PointsBet board to accelerate the vesting of the PointsBet Performance Rights and
 - (c) it *"resulted in the issuance of approximately 3.09% of PointsBet's share capital (post-dilution), all or substantially all of which appear to have been immediately accepted into the MIXI Offer (based on the level of acceptances disclosed in MIXI's substantial holding notice dated 27 August 2025). This act has interfered with an efficient and competitive market in PointsBet Shares"*.
21. betr submitted that the 3.09% of PointsBet's share capital (post-dilution) represented by the PointsBet Performance Rights shares *"is potentially very material to the control of PointsBet"* in the context of the betr Bid.

Interim orders sought

22. betr sought an interim order to the effect that the New Shares not be counted towards the calculation of MIXI's voting power in PointsBet for the purposes of section 624(2) (see paragraph 14(c) above).
23. betr also sought an interim order that PointsBet be prevented from accelerating the vesting of any remaining PointsBet options or PointsBet Performance Rights. We did not need to consider this interim order, because on 28 August 2025 PointsBet announced that 850,000 options and 218,136 PointsBet Performance Rights were cancelled, and that it no longer had options or PointsBet Performance Rights on issue.

Final orders sought

24. betr sought final orders to the effect that:
- (a) the New Shares be cancelled
 - (b) PointsBet be required to re-issue 10,750,550 PointsBet Performance Rights to the original holders of the PointsBet Performance Rights on the same terms prior to their vesting and
 - (c) MIXI be required to provide an undertaking that it would offer withdrawal rights to any PointsBet shareholder who accepted the MIXI Bid at any time on and from 24 August 2025.

DISCUSSION

25. We have considered all the material and address specifically only that part of the material we consider necessary to explain our reasoning.
26. Given when the MIXI Bid was scheduled to close, we informed parties that we would meet at 10am (Melbourne time) on 29 August 2025 to consider betr's request for interim orders on an urgent basis.
27. We received preliminary submissions from MIXI and PointsBet.
28. MIXI submitted, among other things, that (footnote omitted):

"The offer period is scheduled to close at 7.00pm (Melbourne time) today (29 August 2025) and, pursuant to its "last and final" statement, MIXI Australia is unable to extend the offer period further unless required by section 624(2) of the Corporations Act. As at the time of these submissions, MIXI Australia has voting power in 47.34% of PointsBet. There is therefore a real possibility that MIXI Australia's voting power in PointsBet increases to more than 50% during the course of today and prior to the end of the offer period, which would trigger the automatic 14-day extension under section 624(2) of the Corporations Act.

The interim order sought by betr would therefore deprive PointsBet shareholders of the benefit intended by the legislature in enacting section 624 to have a reasonable and equal opportunity to accept a takeover bid after control has passed. As betr itself notes in its Application, its own offer will also remain open for many weeks, such that the natural and intended operation of section 624(2) will provide PointsBet shareholders with an opportunity to consider both offers in light of the prevailing circumstances. Accordingly, the interim order sought by betr would be inimical to an efficient, competitive and informed market."
29. MIXI's submission highlights the potential impact of making an interim order in this case. In addition, there are public interests considerations that are relevant in taking actions that may affect the operation of the 14 day automatic bid extension rule in section 624(2).³ We consider that to intervene here, there needs to be clear material to demonstrate that the issue of New Shares and the acceptance of at least some of them into the MIXI Bid was contrary to an efficient, competitive and informed market (section 602(a)).
30. PointsBet submitted (among other things) that:
 - (a) It *"first discussed potential treatment of the PSRs with MIXI in 2024 and on 26 February 2025 contractually agreed with MIXI (in the context of the prior scheme) to ensure none were on issue upon implementation of that transaction"*.
 - (b) PointsBet's obligations to deal with the PointsBet Performance Rights under the MIXI Implementation Deed were public before betr announced its intention to bid on 20 June 2025.
 - (c) Holders of PointsBet Performance Rights were free to deal with the New Shares they received as they wished and *"it is unsurprising that the vast majority of these*

³ *Qantas Airways Limited* 02R [2007] ATP 07 at [49] to [51]

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shareholders elected to accept the MIXI bid before it potentially closed because that is entirely consistent with the behaviour of PointsBet shareholders as a whole”.

- (d) Pursuant to the MIXI Bid Implementation Deed, “PointsBet was obliged to vest the [PointsBet Performance Rights] by no later than the end of the offer period under the MIXI Offer”.
 - (e) In effect PointsBet’s board reasonably determined that a takeover bid for PointsBet shares was likely to result in a change of control of PointsBet and were entitled to exercise their discretion in this regard.
31. We recognised that the timing of the decision to vest the PointsBet Performance Rights (and the likelihood that the New Shares would be accepted into the MIX Bid) may have had an effect on the momentum, or appearance of momentum, on the MIXI Bid. However, while the vesting of performance rights prior to control passing is not common in our experience, the terms of the PointsBet KEEP and the agreement between PointsBet and MIXI regarding the PointsBet Performance Rights as reflected in the MIXI Bid Implementation Deed were fully disclosed to the market. Moreover, betr was fully aware of these terms as evidenced by its statement in its ASX Announcement on 17 June 2025.⁴
32. In the circumstances, we are not satisfied that the issue of New Shares and the acceptance of at least some of them into the MIXI Bid was contrary to section 602(a). On the other hand, we consider that the interim order sought by betr would likely have an undesirable impact on an efficient, competitive and informed market.
33. MIXI also submitted that betr’s application was not timely within the meaning of paragraph 4.6(b)(vi) of the Panel’s Procedural Guidelines. While we do not go so far, we consider that being asked potentially to affect the operation of section 624 one day prior to the scheduled close of a bid also weighs heavily against making an interim order.
34. We considered whether we should otherwise conduct proceedings, even though we were not minded to make any interim orders, in light of the impact the vesting of the PointsBet Performance Rights may have on the success of the MIXI Bid. However, drawing on our commercial experience, we do not consider that there were any final orders that could be made after 29 August 2025 that would be appropriate.
35. On 29 August 2025 at 2.28pm (Melbourne time), PointsBet announced that MIXI had informed PointsBet that MIXI had received acceptances that its voting power in PointsBet had increased to more than 50% and that in accordance with section 624 the closing date of MIXI’s Bid would automatically be extended by 14 days. We informed parties of our decision at 2.48pm the same day.

⁴ The betr Bid was conditional on no PointsBet options or PointsBet Performance Rights vesting in connection with its offer. It was not conditional on no PointsBet Performance Rights vesting in connection with the MIXI Bid.

DECISION

36. 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).

**Nicola Wakefield Evans AM
President of the sitting Panel
Decision dated 29 August 2025
Reasons given to parties 6 November 2025
Reasons published 10 November 2025**

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Advisers

Party	Advisers
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MIXI	Clayton Utz
PointsBet	Baker McKenzie