



Thursday, 09 March 2006

Sydney Gas Limited - Panel Decision

The Takeovers Panel advises that it has made a declaration of unacceptable circumstances and final orders in response to an application from Sydney Gas Limited (**Sydney Gas**), in relation to a takeover offer by Queensland Gas Company Limited (**Queensland Gas**) for all the shares in SGL (**Offer**).

The Panel considers that deficiencies which the Panel has identified in relation to the bidder's statement and supplementary bidder's statement dispatched by Queensland Gas on 28 February give rise to unacceptable circumstances.

The Panel's declaration of unacceptable circumstances is attached at Annexure A and the orders it has made are attached at Annexure B.

The Panel has made orders that:

1. Queensland Gas immediately advise the market:
 - (a) of the information deficiencies identified by the Panel;
 - (b) that it will provide a replacement bidder's statement which identifies and corrects the information deficiencies identified by the Panel;
 - (c) that no further acceptances on the original Queensland Gas bidder's statement and first supplementary bidder's statement will be valid, and existing acceptances are revoked; and
 - (d) that Queensland Gas will extend its offer period to one month after the date of dispatch of the replacement bidder's statement;
2. all current acceptances, and acceptances before the dispatch of the replacement bidder's statement, are revoked;
3. Queensland Gas is to send a replacement bidder's statement, which, to the satisfaction of the Panel, identifies and corrects the information deficiencies identified by the Panel;
4. Queensland Gas extend the offer period of its bid to at least one month after the dispatch of the replacement bidder's statement; and
5. the date by which Sydney Gas must dispatch its target's statement be extended to one week after the dispatch of the Queensland Gas replacement bidder's statement.

The Panel considers that the circumstances:

- (a) are unacceptable having regard to the effect of the circumstances on:
 - (i) the control or potential control of Sydney Gas; and
 - (ii) the possible acquisition of a substantial interest by Queensland Gas in Sydney Gas; and
- (b) are unacceptable because they constitute, or give rise to, a contravention of sections 636(1)(g), 636(1)(m) and 670A of the Corporations Act 2001 (*Cth*)¹,

by causing Sydney Gas shareholders to make decisions whether or not to hold their Sydney Gas shares, accept the Queensland Gas Offer, or dispose of them in other ways, on the basis of misleading and inadequate information and causing the market for control of Sydney Gas Limited shares not to be efficient competitive and informed, and that Sydney Gas shareholders would not have all material information² required to be disclosed to allow them to assess the merits of the Queensland Gas Offer. The Panel considers the deficiencies it has identified are material to Sydney Gas shareholders' assessment of the merits of the Queensland Gas Offer.

The Panel notes that Queensland Gas has indicated its intention to seek review of the Panel's decision.

The sitting Panel is: Michael Ashforth, Braddon Jolley (sitting President) and John O'Sullivan.

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¹ Unless stated, all statutory references are to provisions of the Corporations Act.

² By "enough information" the Panel infers that shareholders must have enough *non-misleading* information, and that the inclusion of misleading information in the documents provided to shareholders on which to make their decision is likely to cause them not to have enough information.

ANNEXURE A – DECLARATION OF UNACCEPTABLE CIRCUMSTANCES



Corporations Act Section 657A Declaration of Unacceptable Circumstances

In the matter of Sydney Gas Limited

WHEREAS

- A. On 20 January 2006 Queensland Gas Company Limited (**QGC**) announced its intention to make a takeover offer for Sydney Gas Limited (**SGL**).
- B. On 14 February 2006 QGC lodged and served a bidder's statement (**Original Bidder's Statement**).
- C. On 22 February 2006 the Takeovers Panel (**Panel**) received an application dated 22 February 2006 from SGL under section 657C of the Corporations Act 2001 (Cth) in relation to the affairs of SGL.
- D. On or about 28 February 2006 QGC despatched to SGL shareholders the Original Bidder's Statement and a supplementary bidder's statement dated 27 February 2006 (**Supplementary Bidder's Statement**). QGC had prepared a replacement bidder's statement but did not obtain ASIC or SGL consent to substitute it for the Original Bidder's Statement and decided not to wait two weeks before dispatch of its bidder's statements and offer.
- E. The Original Bidder's Statement and the Supplementary Bidder's Statement contain information deficiencies, in that:
 - (a) they omit certain material information,
 - (b) some statements are misleading in material respects, and
 - (c) they are confusing(**information deficiencies**).
- F. The information deficiencies give rise to unacceptable circumstances in relation to the affairs of SGL by causing SGL shareholders to make decisions whether or not to hold their shares, accept the QGC takeover offer, or dispose of the shares in other ways on the basis of misleading and inadequate information and causing the market for control of SGL shares not to be efficient competitive and informed.
- G. The Panel considers that the circumstances are unacceptable circumstances:

- (a) having regard to the effect of the circumstances on:
 - (i) the control or potential control of SGL; and
 - (ii) the proposed acquisition of a substantial interest by QGC in SGL;
and
- (b) because they constitute, or give rise to, a contravention of sections 636(1)(g), 636(1)(m) and 670A of the Corporations Act.

H. The Panel considers that it would not be against the public interest to make a declaration of unacceptable circumstances.

Under section 657A of the Corporations Act, the Panel declares that the information deficiencies constitute unacceptable circumstances in relation to the affairs of SGL.

Braddon Jolley

President of the Sitting Panel

Dated 09 March 2006



**Corporations Act
Section 657D
Orders**

In the matter of Sydney Gas Limited

Pursuant to:

- (a) section 657D of the *Corporations Act 2001* (Cth); and
- (b) a declaration of unacceptable circumstances in relation to the affairs of Sydney Gas Limited (SGL) made by the Panel on 9 March 2006,

the Takeovers Panel **ORDERS**:

1. Queensland Gas Company Limited (QGC) is to immediately advise the market, in a form approved by the Panel, of the following:
 - (a) the Original Bidder's Statement and Supplementary Bidder's Statement contain information deficiencies identified by the Panel as set out in the annexure to these orders (**information deficiencies**);
 - (b) the nature of the information deficiencies;
 - (c) QGC will prepare and send each SGL shareholder a replacement bidder's statement which, to the satisfaction of the Panel, addresses in one document:
 - (i) the information in the Original Bidder's Statement and Supplementary Bidder's Statement and the information deficiencies; and
 - (ii) an explanation of what changes have been made from the Original Bidder's Statement and Supplementary Bidder's Statement;
 - (d) no further acceptances under the Original Bidder's Statement and Supplementary Bidder's Statement will be valid;
 - (e) any acceptances received under the Original Bidder's Statement and Supplementary Bidder's Statement will be revoked;
 - (f) QGC will extend the closing date of its offer until at least one month after the date of dispatch of the replacement bidder's statement.
2. Any acceptance under the Original Bidder's Statement and Supplementary Bidder's Statement, whether in paper form or electronically, before the date of the replacement bidder's statement is revoked.

3. Each accepting SGL shareholder is to be informed by pre-paid letter that the acceptance under the Original Bidder's Statement and Supplementary Bidder's Statement has been revoked.
4. QGC is to prepare and send to each SGL shareholder a replacement bidder's statement which, to the satisfaction of the Panel, addresses in one document:
 - (i) the information in the Original Bidder's Statement and Supplementary Bidder's Statement and the information deficiencies; and
 - (ii) an explanation of what changes have been made from the Original Bidder's Statement and Supplementary Bidder's Statement.
5. QGC is to extend the closing date of its offer until at least one month after the date of dispatch of the replacement bidder's statement.
6. The date by which SGL is required to dispatch its target's statement is extended to the date 1 week after the date of dispatch of the replacement bidder's statement.

Braddon Jolley

President of the Sitting Panel

Dated 09 March 2006

ANNEXURE TO PANEL ORDERS

In the matter of Sydney Gas Limited

Information deficiencies:

General

Supplementary Bidder's Statement's cover not clearly identifying that it contained substantive corrections

Annexure C to the Supplementary Bidder's Statement given too little prominence

Failing to describe the errors or deficiencies in the Original Bidder's Statement which the disclosures in Annexure C were correcting

Disclosure in relation to the Finance Offer

No clear and intelligible explanation of:

The conditional nature of the Finance Offer (as defined in the Supplementary Bidder's Statement)

The potential delays in being able to deliver the funds to SGL under the Finance Offer

Timing and steps required to implement the Finance Offer

The "certainty of funding" references without qualifications as above

Absence of references to dilution by redemption of the QGC convertible notes

Absence of reference to the possibility of the potential equity fundraising as a method which may involve no dilution of SGL shareholders

Absence of reference to the possibility that at least the first tranche of SGL convertible notes could be redeemed out of SGL's cash resources

Absence of sufficient references to regulatory constraints:

The circumstances under which QGC will need to procure SGL to obtain a waiver from ASX in relation to Listing Rule 7.1 approval, the history of ASX granting similar waivers and the timing and other issues which such a waiver would present

The possible voting restrictions under Listing Rule 7.1 and their effect on the likelihood of approval not being granted

The potential need for Listing Rule 7.9 and 10.11, and possibly Chapter 2E of the Corporations Act, approval and the factors affecting such approval

Whether Queensland Gas has applied to the ASX for any waivers of the Listing Rules

Whether it is feasible to call a shareholders' meeting before the scheduled closing date of the Offer or the scheduled date for redemption of the first

tranche of SGL's convertible notes to satisfy some of the regulatory approvals

No clear statement of the terms of the bridging finance that QGC is prepared to offer SGL

Recertification of Reserves

Insufficient prominence to the statements in Annexure B of the Supplementary Bidder's Statement in relation to the division of gas reserves attributable to QGC and its partners

Forward Looking Statements as to Revenue

Absence of at least one of the following in relation to revenue forecast in the Original Bidder's Statement:

Full financial forecasts, including a full discussion of the risk factors and volatility issues relating to production volumes and costs of production and sufficient information to assess the sensitivity of the forecast revenues and costs to changes in relevant variables

A full discussion of the risk factors and volatility issues relating to production volumes and costs of production together with a clear and prominent caution as to the implications of these on the revenue forecast

Alternatively, at QGC's election, QGC may formally withdraw the revenue forecast provided it makes very clear and prominent disclosure why the original revenue forecasts were misleading and unreliable and withdrawn.

Chinchilla Power Station

No clear and intelligible description of QGC's role in developing the Chinchilla Power Station

No clear and intelligible description of QGC's future role in the Chinchilla power station

Absence of sufficient information for SGL shareholders to make an informed assessment of the statement that "... Queensland Gas expects that it will be one of the country's lowest cost producers of electricity."

QGC's involvement in the supply or production of electricity should be clearly stated in a single place

No clear and intelligible description of whether QGC has contracts or agreements to supply electricity and the terms of any such supply

Proxy undertaking for conditional acceptances

No clear and intelligible explanation of the term of QGC's offer in section 6.8(f) of the Original Bidder's Statement, and the implications of that term

No clear and intelligible explanation of the effect of the grant of the proxy on who can vote at any SGL shareholders' meeting to consider the Finance Offer