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**Friday, 07 April 2006**

### **Alinta Limited 01 & 02 Applications**

The Takeovers Panel makes this announcement in respect of two applications dated 3 April 2006 (see [TP06/33](#)) by The Australian Gas Light Company (AGL) in relation to the bid by Alinta Group Holdings Pty Limited for AGL and the proposed bid by AGL for Alinta.

AGL submitted that there are issues which should be addressed in relation to:

- disclosure in Alinta's bidder's statement;
- demergers which Alinta proposes to implement if its bid succeeds; and
- the uncommon circumstances of two competing bids being made for each other.

AGL sought interim orders restraining dispatch of Alinta's bidder's statement until the Panel had determined the two applications. The Panel has decided not to make the interim orders requested.

Although the Panel did not make any interim order, it has required both parties to provide a number of undertakings to manage circumstances until the Panel has determined the applications. See below for a description of the undertakings which the Panel has required. Both AGL and Alinta have provided the undertakings that the Panel required.

#### **Restraining dispatch of the Alinta bidder's statement**

The Panel considered the issues raised by AGL in its applications, but it did not consider that allowing dispatch of the Alinta bidder's statement was likely to cause any material harm in relation to any of those issues which could not be remedied effectively by additional disclosure (if any) that the Panel requires after considering submissions in the applications.

#### **Resolution between parties**

The Panel has advised the parties that it would prefer that the parties continue to work towards negotiating a resolution of as many of the disclosure issues as possible. The Panel would be disappointed if the parties were unable to resolve any of the disclosure issues.

#### **Consequences of counter offers**

The Panel has advised both parties that the uncommon circumstances of two competing bids for each other potentially raise novel issues which the Panel is considering, including, for example, the question of what might occur if each of the

bidders received acceptances for more than 50% of the other. The Panel noted that such scenarios have been very infrequent in Australia and in other jurisdictions.

### **Undertakings**

The Panel has accepted an undertaking which Alinta has offered the Panel that, if the Panel allows Alinta to dispatch its bidder's statement on its current timetable, and the Panel later requires it, Alinta will send a further supplementary bidder's statement or replacement bidder's statement to AGL shareholders to address any disclosure issues raised by the Panel.

In addition, the Panel has required that:

1. Each party provide the Panel with a written undertaking that they will not cause or allow offers under their relevant takeover bid to become unconditional until the matters raised by both of the current applications have been determined by the Panel (including determination of any application for review made under section 657EA). The Panel considered that should any substantive orders be required, the undertakings would preserve the status quo while the applications were considered and ensure that the Panel's orders (if any) were not frustrated or constrained by completed contracts being difficult to unwind.
2. Alinta provide the Panel with a written undertaking that it will draft, and include in the package dispatched to AGL shareholders containing the Alinta bidder's statement, a letter, approved by the Panel, which brings the existence of the two proceedings before the Panel to AGL shareholders' attention and which advises AGL shareholders:
  - (a) of the general nature of the issues raised in the two applications;
  - (b) that the contents of the bidder's statement and, if relevant, any accompanying supplementary bidder's statement, are the subject of the Panel's two proceedings;
  - (c) that the uncommon circumstances of two competing bids for each other potentially raise novel issues which the Panel is considering, including, for example, the question of what might occur if each of the bidders received acceptances for more than 50% of the other;
  - (d) of the existence of the undertakings which the Panel has requested of both Alinta and AGL concerning the conditional status of both bids; and
  - (e) the Panel may make orders requiring corrective disclosure or additional disclosure to AGL shareholders, or may make orders intended to ensure that the uncommon circumstances of two competing bids for each other do not cause market disturbance or intractable legal issues for Alinta or AGL shareholders as a consequence of the two bids; and
3. AGL provide the Panel with a written undertaking that it will draft, and include in the package dispatched to Alinta shareholders containing the bidder's statement under its offer for Alinta, a letter, approved by the Panel, which brings to the attention of Alinta shareholders the existence of any issues arising from these or other proceedings before the Panel which the Panel considers are relevant for Alinta shareholders (including, for example, the existence of the undertakings which the Panel has requested of both Alinta and AGL concerning

the conditional status of both bids), and provides any cautionary advice which is relevant to those issues.

As noted above, both Alinta and AGL have provided the undertakings to the Panel.

The President of the Panel has appointed Stephen Creese, David Gonski AO (sitting President) and Teresa Handicott as the sitting Panel to consider the applications.

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