



Friday, 28 April 2006

Sydney Gas Limited 02 – Panel Declines to Commence Proceedings

The Takeovers Panel advises that it has declined to commence proceedings in relation to an application from Queensland Gas Company Limited (**Queensland Gas**) received on Monday 24 April 2006, concerning the affairs of Sydney Gas Limited (**Sydney Gas**), and specifically concerning a takeover offer by Queensland Gas for all the shares in Sydney Gas and a recapitalisation plan announced by Sydney Gas on 7 April 2006 (**Recapitalisation Plan**).

The Panel decided not to commence proceedings after Sydney Gas offered to disclose further information concerning the identity and likely shareholdings of the underwriter and sub-underwriters of the Recapitalisation Plan. The Panel considered that the additional disclosure offered by Sydney Gas would remedy any information deficiencies identified by Queensland Gas and it would not be in the public interest to make a declaration of unacceptable circumstances in relation to the information deficiencies submitted by Queensland Gas.

The Panel could not find any basis for Queensland Gas' allegations that the underwriter and a Sydney Gas shareholder which has committed to subscribe under the Recapitalisation Plan (**Committed Shareholder**), are associated.

Queensland Gas Application

Queensland Gas submitted (amongst other matters) that the Sydney Gas target's statement, the prospectus relating to the Recapitalisation Plan and the notice of meeting to approve the Recapitalisation Plan (**Recapitalisation Documents**) were, together, deficient because they failed to provide Sydney Gas shareholders with sufficient information in relation to the Recapitalisation Plan.

The Recapitalisation Plan seeks to raise up to \$50 million and involves the following elements:

- (a) an underwritten, non-renounceable pro rata rights issue to Sydney Gas shareholders of ordinary shares in Sydney Gas at a ratio of 1 for 2.43 existing shares;
- (b) a non-underwritten, non-renounceable pro rata issue to Sydney Gas convertible noteholders; and
- (c) the issue of convertible notes to Babcock & Brown Securities Pty Ltd and its associates.

Queensland Gas submitted to the Panel that the Recapitalisation Documents were deficient because they did not disclose:

- (a) the identity of the sub-underwriters or their associates or any person who would have voting power by reason of the sub-underwriters obtaining any Sydney Gas shares;
- (b) the voting power of the sub-underwriters (current voting power and future potential voting power as a result of the sub-underwriting);
- (c) whether there is any limitation on the proportion of the shortfall which the Underwriter may sub-underwrite;
- (d) the intentions of any such sub-underwriters (or their associates or any person who would have voting power by reason of the sub-underwriters obtaining any Sydney Gas shares) in relation to Sydney Gas; or
- (e) whether any of the proposed sub-underwriters (or their associates or any person who would have voting power by reason of the sub-underwriters obtaining any Sydney Gas shares) is a person who already has a substantial interest in Sydney Gas or any voting power in Sydney Gas.

Queensland Gas also submitted that the underwriter and the Committed Shareholder are associates of each other, because of the Committed Shareholder's commitment to subscribe and the underwriter's commitment to underwrite.

Sydney Gas Additional Disclosure

In response to the application, Sydney Gas offered to the Panel to disclose in a notice to Sydney Gas shareholders the identity of the underwriter, the sub-underwriters and the Committed Shareholder and to disclose the voting power which each might have in various scenarios following the Recapitalisation Plan.

Sydney Gas also advised that none of the underwriter or sub-underwriters had any material shareholding in Sydney Gas and that it was not aware of any associations between them.

Decision

The Panel provided Queensland Gas with an opportunity to provide the Panel with any comments it wished concerning the Sydney Gas proposed announcement.

After considering Queensland Gas' submissions on Sydney Gas' proposed additional disclosure, the Panel declined to conduct proceedings on two bases:

- (a) Sydney Gas' proposed additional disclosure remedied any information deficiencies identified by Queensland Gas; and
- (b) the Panel could not find a basis for Queensland Gas' allegations concerning association between the underwriter and the Committed Shareholder.

The Panel considered that the additional disclosure by Sydney Gas would be disseminated adequately to Sydney Gas shareholders prior to the time for delivery of proxies and prior to the time of the meeting of Sydney Gas shareholders to consider the Recapitalisation Plan.

The President of the Panel appointed the same members who considered the Sydney Gas Limited 01 matter, Michael Ashforth, Braddon Jolley (sitting President) and John O'Sullivan.

The Panel will publish its reasons for decision on its website in due course.

Nigel Morris
Director, Takeovers Panel
Level 47, 80 Collins Street, Melbourne, VIC 3000,
Ph: +61 3 9655 3501 nigel.morris@takeovers.gov.au