



Tuesday, 22 August 2006

Nexus Energy Limited -Decision

The Takeovers Panel advises that it has considered the application (**Application**) by Nexus Energy Ltd (**Nexus**) dated 27 July 2006 in relation to an off-market takeover offer (**Anzon Offer**) for Nexus by Anzon Australia Ltd (**Anzon**), which closed on 6 June 2006 (see TP 06/69).

The Panel has decided not to make a declaration of unacceptable circumstances in relation to the Application. However, had the effect of either of the circumstances complained of in the Application been greater, the Panel may well have come to a different conclusion. As it is, the Panel's conclusion is based on the lack of evidence presented to it of any significant effect of the circumstances, rather than any approval or acceptance by the Panel of those circumstances.

Background

The Application related to:

- (a) the acquisition by Anzon Energy Limited (**AEL**), Anzon's majority shareholder and parent company, of shares in Anzon during the Anzon Offer period (**Acquisitions**); and
- (b) the announcement by Anzon during the Anzon Offer period of a bonus offer of options (**Bonus Options**) at a premium to the market price of Anzon shares. After the Anzon Offer closed, Anzon reduced the exercise price of the options.

In summary, Nexus submitted to the Panel that:

- (a) the Acquisitions by AEL, and AEL's failure to make timely disclosure of those Acquisitions during the Anzon Offer period; and
- (b) the announcement of the Bonus Options,

led to the creation of a false market in Anzon shares during the Anzon Offer period and a false impression given to the market and Nexus shareholders as to the value or perceived value of the Anzon shares offered as consideration under the Anzon Offer.

Decision

Acquisitions by AEL

The Panel was concerned that the trading in Anzon shares by AEL on a number of days was not adequately explained. Overall, the Panel was concerned that the trading on those days had the appearance of being designed to support the share price of Anzon rather than to enable AEL to acquire Anzon shares at the lowest possible prices.

The Panel also considered that the common directors of Anzon and AEL should have assumed that, given the particular circumstances of this case, disclosure of the Acquisitions and AEL's intention to make the Acquisitions would be required. Anzon and AEL submitted that the announcement made to ASX by Anzon on 2 May 2006, when it released a letter from AEL to Anzon stating that AEL was "keen to maximise its ownership interest in Anzon Australia", put "the market on notice that AEL intended to purchase Anzon shares". The Panel did not accept that submission. If that announcement was intended to avoid the need for further disclosure when the Acquisitions occurred, the Panel considers that it was seriously inadequate.

The Panel considered that, notwithstanding the concerns set out above, it should decline to make a declaration of unacceptable circumstances with respect to the Acquisitions, given that:

- (a) despite the fact that some aspects of AEL's trading with which the Panel had concerns were not satisfactorily explained by AEL, no probative evidence was presented to the Panel to establish that the Acquisitions had been large enough to create a false market or a false impression as to the value of Anzon shares;
- (b) the Panel was not satisfied that non-disclosure of the Acquisitions had had any material effect on Nexus shareholders' decision whether to accept the Anzon Offer; and
- (c) the Panel was not satisfied that the circumstances constituted by AEL's acquisitions of Anzon shares during the Anzon Offer period gave rise to a contravention of Chapters 6 to 6C, or that they were large enough to have a material effect on the control or potential control of Nexus or Anzon or the acquisition or proposed acquisition of a substantial interest in Nexus or Anzon.

Bonus Option

Anzon submitted to the Panel that the Bonus Options had been issued as a reward to Anzon shareholders for the positive performance of Anzon, in circumstances where it could not pay dividends to shareholders.

However, the Panel found it difficult to accept that the Bonus Option issue could be regarded as a reward to Anzon shareholders given the structure of the issue, including the short exercise period and the premium of the initial exercise price over the underlying Anzon share price on the day the Bonus Options were announced. On that basis, the Panel was concerned that the issue of Bonus Options appeared to have some other motive. The Panel considered that Anzon, as an offeror of scrip during a takeover period, should have been particularly careful not to engage in any capital management which might give the impression that it was seeking to affect the

perceived value of the securities it was offering as consideration under its takeover offer.

However, ultimately the Panel did not consider that it was presented with evidence that the Bonus Option issue had any demonstrated effect on the market for Anzon shares, nor did it apparently influence Nexus shareholders to accept the Anzon Offer. Accordingly, the Panel considered that it should not make a declaration of unacceptable circumstances with respect to the Bonus Option issue.

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