



Monday, 27 February 2006

Citect Corporation Limited - Unacceptable Circumstances

The Takeovers Panel advises that it has made a declaration of unacceptable circumstances, and orders in an application from Schneider Electric Australia Holdings Pty Limited (**SEAH**) in relation to the affairs of Citect Corporation Limited (**Citect**).

Citect is currently the subject of two acquisition proposals:

- (a) a scheme of arrangement proposed by SEAH (**SEAH Scheme**); and
- (b) a conditional takeover bid by Thoma Cressey Equity Partners, Inc. (**Thoma Cressey**) (a US based private equity firm) made through a subsidiary TCEP Australia Pty Ltd (**TCEP**).

The application followed an announcement by Thoma Cressey on Friday 10 February 2006, that TCEP Australia LLC had acquired 15.1% of the voting shares in Citect (**15.1% Parcel**) in off-market transactions for \$2.00 cash from certain institutional holders (**Selling Shareholders**). Thoma Cressey had advised that the acquisitions meant that the offer price under TCEP's bid was "automatically increased" to \$2.00 cash per share and that it would vote against the SEAH Scheme.

The Panel considered that in acquiring the 15.1% Parcel unconditionally in off-market transactions on 9 February 2006, TCEP Australia LLC (the indirect parent of TCEP) gave benefits to the Selling Shareholders which were likely to induce them to dispose of shares in Citect to TCEP Australia LLC, and which were not offered to all holders of securities in the bid class under the TCEP bid. The Panel considered that this constituted or gave rise to a contravention of section 623 of the Corporations Act 2001 (*Cth*) and therefore to unacceptable circumstances.

The Panel noted that TCEP Australia LLC did not make its offers to the Selling Shareholders on-market. There is a specific exception to the benefits prohibition in section 623, which allows acquisitions to be made on-market. Making the offers on-market would have allowed all Citect shareholders the possibility to sell their shares at the higher price to TCEP Australia LLC, and would have allowed the market to assess its position in the circumstances of TCEP Australia LLC's offer.

The Panel also considered that TCEP or TCEP Australia LLC not giving a substantial holding notice by 9.30 a.m. on Friday 10 February 2006 in relation to the acquisition by TCEP Australia LLC of some or all of the 15.1% Parcel the previous day

constituted or gave rise to a breach of section 671B of the Corporations Act and therefore to unacceptable circumstances.

Having considered the purposes of the takeovers chapter, (including the principle of equality of opportunity, and the interests of an efficient competitive and informed market for shares in Citect) and the public interest, the Panel decided to make a declaration of unacceptable circumstances.

The Panel has made the following orders to remedy the unacceptable circumstances:

1. that TCEP declare its bid free of all conditions

The Panel considered that this would protect the interests of the shareholders of Citect by providing to all Citect shareholders the benefit of certainty of contract which TCEP Australia LLC had given to the Selling Shareholders.

2. that TCEP, or TCEP Australia LLC, pay the difference between \$2.00 per share and any lesser amount for which any person sold Citect shares on 10 February 2006, during the period when TCEP had failed to lodge a substantial holding notice

The Panel expects this will be about \$0.08 per share in respect of the 4,450 shares traded before a trading halt was applied in the stock. The Panel considered that this would protect the interests of those shareholders who sold shares on-market during the period when TCEP or TCEP Australia LLC had failed to inform the market of its 9 February acquisitions, and would remedy any harm caused to these shareholders by that failure.

As part of the resolution of the proceedings, the Panel also accepted an undertaking from TCEP Australia LLC that it would not vote the shares in the 15.1% Parcel against the SEAH Scheme unless the Citect board of directors had withdrawn its recommendation for the SEAH scheme.

The Panel considered that this undertaking would protect the interests of SEAH, as a rival bidder, and would remedy any unfair advantage which TCEP might be considered to have gained in the competition for control of Citect, by the off-market, unconditional acquisitions.

The Panel considered that this combination of orders and undertaking would best protect the interests of Citect shareholders while not inhibiting competition for Citect.

The President of the Panel appointed Graham Bradley, Marie McDonald (sitting President) and Jenny Seabrook as the sitting Panel to consider the application.

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

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