



**In the matter of Magna Pacific (Holdings) Limited 03
[2007] ATP 08**

Catchwords:

Deficient disclosure – reporting of Panel decision – independence of expert – supplementary target’s statement – genuine attempt at commercial resolution before engaging with Panel – consent to withdraw application

Procedural Rule 14

Magna Pacific (Holdings) Limited – Lionsgate Australia Pty Ltd – destra Corporation Limited

These are the Panel’s reasons for consenting to Lionsgate Australia Pty Ltd withdrawing its application in relation to the target’s statement of Magna Pacific (Holdings) Limited (see [TP07/25](#)).

APPLICATION

1. These reasons relate to an application to the Panel dated 12 April 2007 from Lionsgate Australia Pty Ltd (**Lionsgate**), a wholly owned subsidiary of Lions Gate Entertainment Inc. Lionsgate is currently making an off-market, cash takeover bid for Magna Pacific (Holdings) Limited (**Magna Pacific**) at an offer price of \$0.32 per Magna Pacific share (see [TP07/17](#)).
2. The Panel had previously received applications in relation to Lionsgate's bidder's statement (Magna Pacific 01 see [TP07/07](#)) and announcements by Magna Pacific concerning a proposed scheme of arrangement with destra Corporation Ltd (Magna Pacific 02 see [TP07/14](#) and [TP07/16](#)).
3. Following Panel proceedings in Magna Pacific 01, Lionsgate dispatched a replacement bidder's statement to Magna Pacific shareholders on 23 March 2007.
4. Magna Pacific issued its target's statement on 5 April 2007.
5. In its application dated 12 April 2007, to which these reasons relate, Lionsgate submitted that there were deficiencies in the disclosure made in the Magna Pacific target's statement relating to:
 - (a) Magna Pacific's reporting of the Panel's decision in Magna Pacific 01 proceedings; and
 - (b) the expert report commissioned by Magna Pacific for inclusion in the Magna Pacific Target's Statement.
6. Certain claimed deficiencies related to issues which the Panel had addressed in the Magna Pacific 02 proceedings (see [TP07/16](#)).
7. Lionsgate sought a declaration of unacceptable circumstances and orders requiring Magna Pacific to issue a replacement target's statement.

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THE PANEL & PROCESS

8. The President of the Panel appointed Susan Doyle, Braddon Jolley (sitting President) and Karen Wood (sitting Deputy President) as the sitting Panel to consider Lionsgate's application.
9. After considering Lionsgate's application, the Panel invited Lionsgate to attempt to resolve its concerns directly with Magna Pacific. The Panel considered that parties should make a genuine attempt to resolve issues commercially before engaging with the Panel.

DECISION

10. On 4 May 2007 Magna Pacific issued a supplementary target's statement that the parties agreed sufficiently addressed the concerns raised in Lionsgate's application. Lionsgate advised the Panel the same day that it proposed to withdraw its application.
11. The Panel welcomed the commercial resolution of Lionsgate's concerns. The Panel considered it appropriate for Lionsgate to engage Magna Pacific in discussion on the issues outlined in its application and only come back to the Panel with any serious outstanding issues. Having regard to the supplementary target's statement issued by Magna Pacific, the Panel considered the issues in Lionsgate's application had been adequately addressed. In accordance with Procedural Rule 14, the Panel was satisfied that it was not against the public interest or the matters set out in sections 602 to consent to Lionsgate withdrawing its application.
12. The President of the Panel accepted Lionsgate's request for withdrawal.

Braddon Jolley
President of the Sitting Panel
Decision dated 8 May 2007
Reasons published 3 July 2007