



**In the matter of Magna Pacific (Holdings) Limited 05  
[2007] ATP 16**

**Catchwords:**

*Issue of shares - voting power - scheme of arrangement - directors duties - jurisdiction - decline to commence proceedings*

*Magna Pacific (Holdings) Limited - Lionsgate Australia Pty Ltd - destra Corporation Limited - Prime Media Communication Limited*

## **SUMMARY**

These are the Panel's reasons for its decision not to commence proceedings in relation to an application by Lionsgate Australia Pty Limited (**Lionsgate**) dated 2 July 2007.

Lionsgate sought a declaration of unacceptable circumstances and orders concerning a placement of 16,200,000 fully paid ordinary shares by Magna Pacific (Holdings) Limited (**Magna Pacific**) to Prime Media Communications Limited (**Prime**).

The Panel did not consider that in the circumstances (and especially given the placement was for less than 15% of the issued capital and the Lionsgate offer had closed) the purpose behind the share placement was an issue for consideration by the Panel. Also, the Panel considered that issues relating to Prime voting its shares under the proposed scheme of arrangement with destra Corporation Limited were matters for the consideration of the Supreme Court of Queensland (given that the Court had ordered the convening of the Scheme meeting and was apprised of the voting issue).

## **APPLICATION**

1. Lionsgate's application dated 2 July 2007 related to Magna Pacific's notification to ASX on 2 July 2007 that it was in discussions for a placement of up to 15% of the company's issued capital, which placement would create a strategic alliance<sup>1</sup> (**Placement**).
2. Magna Pacific had previously announced the proposed acquisition of all its shares by destra Corporation Limited (**destra**) by a scheme of arrangement (**Scheme**). The Scheme was due to be considered by Magna Pacific shareholders at a meeting convened for 30 July 2007.
3. Lionsgate submitted that the Placement was likely to affect control of Magna Pacific by diluting the voting power of shareholders, including Lionsgate, who may not support the Scheme, thus increasing the prospects of success. Lionsgate also submitted that:

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<sup>1</sup> Magna subsequently announced to ASX (on 4 July 2007) that it had entered into a Placement Agreement with Prime Media Communications Limited.

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- (a) there was not a reasonable period for shareholders to consider the new information in the context of the Scheme;
  - (b) the Placement was likely to have a deterrent effect on any alternative control transactions; and
  - (c) the Placement would constitute an improper use of the Magna Pacific directors' power to issue shares in the company.
4. Lionsgate sought a declaration of unacceptable circumstances, interim orders restraining Magna Pacific from proceeding with the Placement pending the outcome of any Panel proceedings, and final orders preventing Magna Pacific from proceeding with the Placement.
  5. Following Lionsgate's application Magna Pacific and Prime agreed to make the Placement agreement conditional on the Panel not concluding that the issue of the shares to Prime would constitute unacceptable circumstances.

## THE PANEL & PROCESS

6. The President of the Panel appointed Braddon Jolley (sitting President), Heather Zampatti (sitting Deputy President) and Catherine Brenner as the sitting Panel to consider Lionsgate's application.

## BACKGROUND

7. On 13 February 2007, Lionsgate made an off-market, cash takeover bid for all of the shares in Magna Pacific for \$0.32 per share on the terms set out in its bidders statement dated February 2007, its supplementary bidders statement dated 21 March 2007, and its replacement bidders statement of the same date (the **Lionsgate Offer**).
8. On 30 March 2007 destra and Magna Pacific announced their intention to implement the Scheme. Under the Scheme, all of the shares in Magna Pacific were proposed to be acquired by destra for consideration of either \$0.38 cash, or 1 fully paid ordinary share in destra and \$0.15 cash.
9. The Panel has previously received applications concerning the Lionsgate Offer:
  - (a) from Magna Pacific in relation to Lionsgate's bidder's statement (see [TP07-07](#) and [TP07-11](#));
  - (b) from Lionsgate in relation to the proposed Scheme (see [TP07-14](#) and [TP07-16](#));
  - (c) from Lionsgate in relation to Magna Pacific's target's statement. This application was subsequently withdrawn (see [TP07-17](#) and [TP07-25](#)); and
  - (d) from Magna Pacific in relation to a letter sent by Lionsgate to Magna Pacific shareholders (see [TP07/27](#) and [TP07/31](#)).
10. On 29 June 2007 the Lionsgate Offer lapsed with Lionsgate holding 12.49% of Magna Pacific shares, 11.65% of which were acquired under a pre-bid acceptance agreement between Lionsgate and Macquarie Private Portfolio Management Limited.

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## DISCUSSION

### *Issue of Shares*

11. The Panel considered that the matters raised in Lionsgate's application with respect to the purpose behind the Placement were questions relating to directors' duties and did not raise issues for consideration by the Panel. The Panel noted the appropriate forum to raise these directors' duties issues was court and, given the Lionsgate Offer had lapsed, section 659B does not prevent Lionsgate from doing so.

### *Voting of shares*

12. The Supreme Court of Queensland had ordered the convening of the Scheme meeting to take place on 30 July 2007. The Panel noted that the Court has the discretion to determine the classes of person entitled to vote and to decide whether, in the exercise of its discretionary jurisdiction, the Scheme should be approved. Following Lionsgate's application, Magna Pacific advised the Panel of its intention to raise the issue of Prime voting in a separate class with the Court.
13. The Panel noted that it is generally reluctant to conduct proceedings directly concerning a scheme where the issue has already been taken up by the Court. The Panel was satisfied that the question of whether Prime would be entitled to vote on the Scheme would be brought to the attention of the Court and did not consider it appropriate for the Panel to consider the voting issue under Panel proceedings.

## DECISION

14. In light of the above, the Panel declined to commence proceedings.

**Braddon Jolley**

**President of the Sitting Panel**

**Decision dated 5 July 2007**

**Reasons published 17 July 2007**