



Wednesday, 21 March 2007

Magna Pacific (Holdings) Limited – Panel Decision

The Takeovers Panel advises that it has made a final decision in relation to the application from Magna Pacific (Holdings) Limited (**Magna Pacific**), concerning an off-market, cash takeover bid for Magna Pacific by Lionsgate Australia Pty Ltd (**Lionsgate**).

The Panel considered that there were statements in, and omissions from, the Lionsgate bidder's statement dated 13 February 2007 (**Lionsgate Bidder's Statement**) which were sufficiently misleading to give rise to unacceptable circumstances. Lionsgate has agreed to dispatch a replacement bidder's statement to Magna Pacific shareholders (**Lionsgate Replacement Bidder's Statement**). The Panel considers that the Lionsgate Replacement Bidder's Statement addresses its concerns and accordingly, decided that it was unnecessary (in the public interest) to make a declaration of unacceptable circumstances.

Lionsgate opinions and emotive language

The Panel considered that Lionsgate had not provided adequate information as to how it formed certain views and forward looking statements expressed in the Lionsgate Bidder's Statement in relation to:

- its statement, and accompanying graph, on Magna Pacific's cash balances which were given prominent focus in the opening section of the Lionsgate Bidder's Statement;
- Lionsgate's expectation as to future performance of a number of films for which Magna Pacific had bought the full Australian rights;
- a statement that Lionsgate considered that Magna Pacific's business model may have an adverse effect on Magna Pacific's business; and
- a heading claiming "Highly uncertain dividends", where the paragraph under the heading merely said that a decline in Magna Pacific's future financial performance (and other financial matters) would affect Magna Pacific's ability to pay dividends (collectively, the **Lionsgate Statements**).

The Panel considered that the Lionsgate's Statements were forward looking statements and some were also prospective financial statements. The Panel considered that:

- Lionsgate should have reasonable grounds for all forward looking statements; and

- where those statements were material, Magna Pacific shareholders would be likely to expect, and would reasonably expect, to find those grounds clearly disclosed in the Lionsgate Bidder's Statement.

The Panel considered that Lionsgate's use of the chart, and expressing the above opinions without adequate supporting information, created a misleading impression.

The Panel considered that emotive language in relation to Lionsgate's view on Magna Pacific's business model and its ability to pay dividends was not adequately supported. It was the Panel's view that the stronger and more emotive the language a bidder or target uses, the more accompanying evidence and explanation that will be required to substantiate the statement.

The Panel is satisfied that the Lionsgate Replacement Bidder's Statement addresses its concerns in relation to the Lionsgate Statements.

Reference date for calculation of premium

The Panel also had concerns with the presentation of the date against which Lionsgate had calculated the premium which it stated its offer represents over market values for Magna Pacific shares.

In the Lionsgate Bidder's Statement, Lionsgate chose 23 January 2007 as the reference date against which Lionsgate calculated its premium, rather than 1 February 2007 which was the date on which Lionsgate announced its takeover offer. Whilst Lionsgate's bidder's statement footnoted the fact that discussions with a shareholder had commenced on the date that Lionsgate had chosen, the Panel did not consider that Lionsgate had adequately explained why the date was chosen or why the discussions were significant for the calculation of the offer premium. Therefore, the Panel has required Lionsgate to provide additional information on this issue in the replacement bidder's statement.

The Panel accepted that Lionsgate may have valid reasons for calculating the premium by reference to a date other than the date immediately prior to the announcement of its offer (**Pre-announcement date**). The Panel considered, however, that where Lionsgate chose an alternative date to the Pre-announcement date it should have provided an explanation for why it considered that the date chosen is more appropriate than the Pre-announcement date.

The Panel also considered that that Lionsgate's comparison of the premium under its takeover offer against the premiums cited for other takeover offers was likely to have been misleading. The Panel considered that the normal practice in calculating offer premiums in the market is to use the market price immediately prior to the offer announcement. The Panel considered it misleading for Lionsgate to compare the offer premium which it chose to calculate with other takeover premiums without making the difference in calculation bases clear in all comparisons. In this respect, the Panel further decided that Lionsgate should **also** show the calculation of its premium against the market price of Magna Pacific shares on 1 February 2007. The Panel did not suggest that in every instance where a bidder chooses a date other than the Pre-announcement date for calculating a premium, the bidder will also be required to show the premium by reference to the Pre-announcement date. However, the Panel considered additional disclosure was required in this case given Lionsgate's use of

the premium offered under its bid and its comparison of its premium against premiums offered under other takeover bids (which are more commonly calculated by reference to Pre-announcement dates).

Lionsgate made some corrections of items which it had previously agreed with Magna Pacific, and there were other claims raised by Magna Pacific in its application to the Panel on which the Panel did not require Lionsgate to make additional disclosures.

The sitting Panel in these proceedings is Susan Doyle, Braddon Jolley (sitting President) and Karen Wood. The Panel will publish its reasons for the decision on its website when they are given to parties.

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