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Monday, 28 May 2007

**Magna Pacific (Holdings) Limited 04 - Panel Decision**

The Takeovers Panel advises that it has decided not to commence proceedings in relation to an application from Magna Pacific (Holdings) Limited (see TP07-27).

Magna Pacific is currently the subject of an off-market, cash takeover bid by Lionsgate Australia Pty Ltd. The Panel has previously received applications concerning Lionsgate's bid:

- from Magna Pacific in relation to the Lionsgate's Bidder's Statement; (Magna Pacific 01 (see [TP07-07](#) and [TP07-11](#));
- from Lionsgate in relation to certain issues relating to the proposed scheme of arrangement between Magna Pacific and destra Corporation Limited (see TP07-14 and TP07-16); and
- from Lionsgate in relation to Magna Pacific's target's statement. This application was subsequently withdrawn (see TP07-17 and TP07-25).

Magna Pacific's application related to a letter sent by Lionsgate to Magna Pacific shareholders on 9 May 2007 advising of the extension of the Lionsgate offer to 15 June 2007 (the **Lionsgate Letter**). The Lionsgate Letter also stated:

*"Lionsgate does not believe Magna Pacific shareholders have been adequately informed about the risks and conditions of the destra proposal.*

*The Lionsgate Australia Offer remains the only offer capable of acceptance now and I [Simon Franks, Lionsgate Chairman] believe is worthy of serious consideration. Unlike the proposed destra scheme, the Lionsgate Australia Offer has no hurdles in front of it and has no defeating conditions. You will be paid within 7 days of receipt of your acceptance. I urge you to consider the risks of not accepting this Offer and waiting to see if the destra proposal is implemented."*

In its application, Magna Pacific submitted that Lionsgate had deliberately attempted to trick unaware and unsophisticated Magna Pacific shareholders into accepting Lionsgate's offer in circumstances where no properly informed Magna Pacific shareholder would accept Lionsgate's offer at this time. Magna Pacific submitted that on this basis the Lionsgate Letter amounted to unacceptable circumstances.

At the time of the application Lionsgate's offer was for \$0.32 per Magna Pacific share, while the market price for Magna Pacific shares was \$0.42, the cash alternative consideration under the destra Proposal was \$0.38 per Magna Pacific share and the

value of the scrip/cash alternative consideration under the destra Proposal was \$0.47.

### **Decision**

The Panel considers that the Lionsgate's Letter falls short of good market practice and may create a false and misleading impression. However, in the absence of any evidence that Magna Pacific shareholders have been influenced by, or have accepted Lionsgate's offer on the basis of, the Lionsgate Letter, the Panel does not consider that the submissions in Magna Pacific's application provide a sufficient basis for the Panel to commence proceedings. If evidence emerged from shareholders that they had been misled, having acted on the Lionsgate Letter and accepted the offer, the Panel would consider commencing proceedings.

Although it has declined to commence proceedings, the Panel is disappointed with Lionsgate's recent correspondence to shareholders and with Magna Pacific's limited attempt to address its concerns commercially, or address the circumstances by writing to Magna Pacific shareholders.

The Panel will publish its reasons for declining to commence proceedings on its website at [www.takeovers.gov.au](http://www.takeovers.gov.au) in due course.

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