



In the Matter of Origin Energy Limited 02

[2008] ATP 23

Catchwords:

Target's statement – deficiencies in disclosure – basis for target directors' recommendation to reject takeover offer – independent expert's report – undervalue statements – CSG monetisation process – risk disclosure – reversionary rights – broker share price targets – reserves and resources – inclusion of technical expert's report

BG International (AUS) Investments 1 Pty Limited – Origin Energy Limited

Corporations Act 2001 – 602, 638, 657A, 657D and 657E

Queensland Gas Company Limited [2006] ATP 36

INTRODUCTION

1. The Panel, Diana Chang, Chris Photakis (sitting President) and Simon Withers, declined to make a declaration of unacceptable circumstances on the basis that events have overtaken the application.

2. In these reasons the following definitions apply.

Term	Meaning
BG	BG International (AUS) Investments 1 Pty Limited
CSG	coal seam gas
LNG	liquefied natural gas
NSAI report	a report prepared by Netherland, Sewell & Associates, Inc in relation to Origin's CSG assets
Origin	Origin Energy Limited
Tri-Star	Tri-Star Australia Holding Company

3. In these proceedings the Panel:

- (a) adopted the published procedural rules and
- (b) consented to parties being represented by their commercial lawyers.

FACTS

- 4. Origin is a public company listed on ASX (ASX code: ORG). BG is a wholly owned subsidiary of BG Group plc.
- 5. On 30 April 2008, BG made an unsolicited proposal to acquire all Origin shares by way of scheme of arrangement at \$14.70 per share. This was later increased to \$15.50 per share. However, on 30 May 2008, following Santos Limited's announcement on 29 May 2008 of its entry into a joint venture agreement with Petronas to develop its

CSG reserves and the receipt of a NSAI report, Origin announced it was rejecting the proposal. Following this, Origin commenced the “CSG monetisation process”.¹

6. On 24 June 2008, BG announced an off-market takeover bid for Origin at \$15.50 per share.
7. On 4 July 2008, Origin’s directors announced their intention to recommend that shareholders reject the offer.
8. On 10 July 2008, BG served its original bidder's statement on Origin and lodged it with ASIC and ASX. A replacement bidder’s statement was lodged with ASIC and ASX on 30 July 2008.
9. On 19 August 2008, Origin lodged its target’s statement with ASIC and ASX and served a copy on BG.
10. On 22 August 2008, BG wrote to Origin drawing its attention to what BG considered were material deficiencies in the target’s statement. They were not resolved by negotiation and BG made this application.
11. On 8 September 2008, Origin announced a proposed CSG-LNG joint venture with ConocoPhillips. The announcement included the conclusions of the independent expert valuing Origin shares in the range of \$28.55 to \$30.71.
12. BG announced on 9 September 2008 that it would not increase or extend its offer for Origin or waive any of the conditions to the offer. BG’s offer is scheduled to close on 26 September 2008.

Application

13. By application dated 29 August 2008, BG sought a declaration of unacceptable circumstances in relation to the following alleged deficiencies in Origin's target's statement:
 - (a) inadequate disclosure of information supporting the rejection of BG’s bid as undervaluing Origin
 - (b) inadequate disclosure about Origin’s CSG monetisation process
 - (c) inadequate disclosure of risks if Origin shareholders reject BG’s offer
 - (d) inadequate disclosure and misleading statements concerning the reversionary rights Tri-Star holds over some of Origin’s CSG assets
 - (e) misleading presentation of broker share price targets and historical trading data for Origin shares and
 - (f) misleading statements and omissions concerning the level of Origin’s reserves and resources.

¹ The “CSG monetisation process” involved the sale of a share of Origin’s CSG reserves to a partner who would jointly develop the reserves with Origin. It was, according to Origin, conducted to accelerate the development of Origin’s CSG reserves and to allow Origin to determine whether direct participation in a CSG-LNG project may deliver additional value for Origin shareholders

14. The Panel did not conduct proceedings on all issues. The Panel did conduct proceedings on issues relating to disclosure about the CSG monetisation process and reversionary rights, but the concerns were not made out.

Orders

15. BG sought final orders that:
 - (a) Origin prepare and lodge a supplementary target's statement correcting the alleged deficiencies in a form approved by the Panel
 - (b) Origin instruct any independent expert it has appointed to consider in its report the potential effects of the alternative interpretation of how the reversionary rights are triggered and
 - (c) any other orders the Panel considers appropriate.

DISCUSSION

16. Subsequent events have overtaken the application. In particular, Origin's announcements dated 8 September 2008 and BG's announcement dated 9 September 2008 effectively end BG's bid. Supplementary disclosure, that includes the independent expert's report, is expected to resolve concerns regarding disclosure and, therefore, the Panel has decided not to make a declaration of unacceptable circumstances.
17. Origin submitted that on the one hand its directors were obliged to advise shareholders of their view that BG's offer undervalued Origin, but on the other hand it was inappropriate to provide a quantitative valuation of Origin before the outcome of the CSG monetisation process was known.
18. However, to avoid the target's statement being used as a precedent where it might be inappropriate to do so in a different context, the Panel considers that it should address some of the issues raised in the application.

Disclosure of information supporting the statement that BG's offer undervalues Origin

19. A statement that an offer "undervalues" the target implies that there has been an assessment of value by the directors of the target. Origin's target's statement did not sufficiently disclose the bases on which the directors considered that the bid undervalued Origin.
20. The reasons Origin gave for its view that the BG offer "undervalued" Origin included reference to broker share price targets (in the range of \$17.01 to \$20.00 per share) and the benchmarks ascribed to the Santos/Petronas deal. However, these were not adopted by the directors. This warranted a clear explanation of why this information was relevant. For example, Origin submitted that the broker share price targets were not presented as a valuation of Origin shares but merely as a useful indicator of market views.
21. A footnote to a prominent graph indicating that the broker share price targets were post-bid and that the directors had not adopted the average 12-month share price target (of \$17.99) was not sufficiently prominent or otherwise adequate to explain

why this information was relevant. This had the effect of overstating the importance of the broker valuations.

22. The Panel accepts, as stated in Guidance Note 18, that it is common practice to quote broker valuations or price recommendations in support of arguments but the presentation of this information should allow shareholders to assess the proper weight that should be given to the information.²

Reserves and resources

23. The Panel considered that, once Origin had quoted the conclusions from the NSAI report, it was potentially misleading for shareholders not to be given either a copy of the NSAI report evaluating Origin's CSG reserves, or the underlying assumptions and qualifications.³ The significant increase in reserves was presented as an important reason for the directors' recommendation.

DECISION

24. As noted, events have overtaken the application and the Panel decided not to make a declaration of unacceptable circumstances. The Panel considered it was not against the public interest to decline to make a declaration. As the Panel declined to make a declaration it did not make any final orders, including any costs orders.
25. Consistent with the decision in Queensland Gas,⁴ the Panel considers that there is no need for Origin shareholders to receive further information in the form of a supplementary target's statement in relation to these matters prior to the release of the independent expert's report. If the independent expert's report is thought to be inadequate, or a material deficiency of information remains after the report has been released, or there is insufficient time for Origin shareholders to consider the new information, BG or any other person may make a further application to the Panel.

Post-script

26. The Panel notes the release of the independent expert's report on 15 September 2008.

Chris Photakis

President of the Sitting Panel

Decision dated 10 September 2008

Reasons published 23 September 2008

² Guidance Note 18: Takeover Documents at [20]

³ Consistent with Queensland Gas Company Limited [2006] ATP 36, this matter could be dealt with in the independent expert's report, but this does not mean that a target's statement is not the appropriate place for such matters ordinarily to be dealt with

⁴ Queensland Gas Company Limited [2006] ATP 36