



Tuesday, 19 December 2006

Queensland Gas Company Limited – Panel Decision

The Takeovers Panel (**Panel**) advises that it has considered the application (**Application**) from Santos CSG Pty Ltd (**Santos**) in relation to its off-market takeover offer for Queensland Gas Company Limited (**QGC** and **Offer**). Having regard to the further disclosures agreed to be provided by QGC in a second supplementary target's statement, the recent announcements by QGC about the proposed transaction with AGL Energy Ltd (**AGL Proposal**) and the proposed transaction with Sentient Gas (**Sentient Proposal**) (collectively the **Proposals**) the further information to be provided in the notice of meeting and explanatory memorandum for those Proposals and submissions from QGC and Santos, the Panel has decided not to make a declaration of unacceptable circumstances in relation to the Application.

QGC has agreed to provide a supplementary target's statement to address a number of issues raised by the Panel which were the subject of the Application and which also addresses a number of issues raised by Santos. The Panel has also considered the recent announcements by QGC in relation to the AGL Proposal¹ and the Sentient Proposal².

The Panel considered that the Application must be considered in light of the recent announcement of the Proposals, which are subject to the approval of QGC shareholders. QGC announced that it will send the notice of the meeting and explanatory memorandum to QGC shareholders in January 2007. QGC has also advised the Panel that it has appointed Deloitte Corporate Finance Pty Ltd (**Deloitte**) to prepare an independent expert's report³ to accompany the notice and explanatory memorandum, advising whether, in Deloitte's opinion, the AGL Proposal is fair and reasonable to QGC shareholders. QGC has advised the Panel that Deloitte will assess the value of QGC shares on a stand alone basis for the purpose of its report.

The Panel considered that QGC's directors will have an obligation to provide proper disclosure about the AGL Proposal and Sentient Proposal and the basis of their recommendations for those Proposals in the notice of meeting and explanatory memorandum for those Proposals.

¹ As described in QGC's Media Release dated 05/12/06 and QGC's first supplementary target's statement dated 07/12/06.

² Sentient Gas is constituted by a number of entities which are part of the Sentient Global Resources Funds which are managed by the Sentient Group, an independent private equity investment firm specialising in the global resources industry <http://www.thesentientgroup.com/index.html>.

³ The report is for the purposes of item 7 of section 611.

The Panel also considered that if Deloitte's report is prepared on this basis, QGC shareholders should have sufficient information to be able to assess:

- (a) the value of QGC shares on a stand alone basis; and
 - (b) the relative merits and demerits of Santos' Offer and the AGL Proposal;
- and information to assist them to assess the Sentient Proposal.

The information package that QGC shareholders will receive for the AGL and Sentient Proposals will assist QGC shareholders to decide whether or not they should accept the Santos Offer. Accordingly, the Panel did not consider that QGC shareholders would be materially assisted by receiving further information in the form of another supplementary target's statement explaining only the basis of QGC's directors' recommendation in relation to the Santos Offer. This is fundamentally because:

- (a) further information will be provided in mid-late January 2007 in the forthcoming notice of meeting and explanatory memorandum (including the Deloitte independent expert's report) in relation to the AGL Proposal ;
- (b) the closing date for Santos' Offer has been extended to 31 January 2007;
- (c) the meeting to consider the AGL Proposal is not due to be held until February 2007; and
- (d) QGC shareholders who choose to trade in the current market know that they are trading in a period prior to significant information releases in relation to proposals that may change the value of their shares materially.

The Panel advised both Santos and QGC in relation to each of the issues set out below that if the explanatory memorandum and the Deloitte expert's report are not adequate or there is a material deficiency of information following the January releases of information, it would be open for Santos or any other person to make a further application to the Panel.

Background

Santos submitted that QGC's target statement in relation to the Offer (**QGC's Target's Statement**), contained a number of deficiencies. Santos submitted, amongst other things, that QGC's Target's Statement:

1. does not provide sufficient information to support the recommendation of QGC's directors that QGC shareholders should reject the Offer;
2. does not contain a technical expert's report issued in November 2006, commissioned by QGC, in relation to QGC's reserves position (**Technical Expert's Report**); and
3. contains other misleading and deceptive statements.

QGC made an announcement to Australian Stock Exchange Limited (**ASX**) on 5 December 2006 (**ASX Announcement**) and issued a first supplementary target's statement dated 7 December 2006 (**First Supplementary Target's Statement**) in relation to the AGL Proposal and Sentient Proposal. The ASX Announcement and First Supplementary Target's Statement states that the AGL Proposal and Sentient

Proposals are subject to QGC shareholder approval at an extraordinary general meeting (**EGM**) expected to be held in February 2007. QGC states that it will commission an independent expert to confirm that the AGL Proposal is fair and reasonable for QGC shareholders.

QGC states in the First Supplementary Target's Statement that it expects that QGC shareholders will receive a notice of the EGM, explanatory memorandum and independent expert's report (**EGM Documentation**) in early January 2007. QGC later advised the Panel that it expected the EGM Documentation to be despatched in mid to late January 2007.

Decision

Basis for QGC's directors' recommendation

The Panel considered that QGC's directors will have an obligation to provide proper disclosure about the AGL Proposal and Sentient Proposal and the basis of their recommendations for those Proposals in the EGM Documentation. The Panel also considered that if Deloitte prepares its report in accordance with:

1. policy guidance issued by the Australian Securities and Investments Commission (that is, policy statements 74 and 75 and practice notes 42 and 43); and
2. Deloitte's terms of engagement, Deloitte will provide an assessment of the value of QGC's shares on a stand alone basis,

then QGC's shareholders should have sufficient information to be able to assess:

1. the value of QGC shares on a stand alone basis; and
2. the relative merits and demerits of Santos' Offer and the AGL Proposal.

The above factors will assist QGC shareholders to decide whether or not they should accept the Offer.

Accordingly, on the basis of the further information to be provided to QGC shareholders in the EGM Documentation, the Panel did not consider that QGC shareholders would be materially assisted by receiving further information in the form of another supplementary target's statement explaining only the basis of QGC's directors' recommendation in relation to the Offer.

Disclosure of Technical Expert's Report

The Panel considered that as Deloitte will assess the value of QGC shares on a stand alone basis, it will need to take into account all relevant underlying data about QGC's operations, including its reserves position. The Panel expects that in order to properly conduct the valuation, Deloitte will need to have regard to the Technical Expert's Report and any other similar technical expert reports, and form a view as to the reliability of those reports. The Panel considers that it is a matter for Deloitte to decide the nature and character of the technical expert information which it will address in its independent expert report. It is not appropriate for the Panel to pre-empt the independent expert's decision in this respect.

Accordingly, the Panel did not consider that QGC shareholders would be materially assisted by QGC releasing the Technical Expert's Report before the EGM Documentation is despatched to QGC shareholders.

Other Disclosure Issues

Santos submitted a list of other disclosures in QGC's Target's Statement which Santos submitted were inadequate or misleading. The Panel considered that the further supplementary target's statement agreed to be issued by QGC was adequate to address any concerns that the Panel had in relation to those other disclosure issues raised in the Application.

The Panel considered that QGC should disclose more information about the Sentient Proposal, in particular, a more complete summary of the commercial and financial terms of the Sentient Proposal, the extent to which the Sentient Proposal is interdependent with the AGL Proposal and what part or parts of the Sentient Proposal will be placed before the QGC shareholders for their decision. The Panel considered that this disclosure could be given to QGC shareholders in the EGM Documentation.

On the basis of the further disclosures agreed to be provided by QGC in a second supplementary target's statement, the recent announcements by QGC about the AGL Proposal and Sentient Proposal and the further information to be provided in the EGM Documentation, and the submissions from QGC and Santos, the Panel has decided not to make a declaration of unacceptable circumstances in relation to the Application. The Panel did not consider it to be against the public interest to decline to make a declaration of unacceptable circumstances.

The sitting Panel which considered the application is Meredith Hellicar, Norman O'Bryan SC (sitting President) and Simon Withers.

The Panel will publish its reasons for the decision on its website when they are given to parties.

Nigel Morris
Director, Takeovers Panel
Level 47, 80 Collins Street
Melbourne, VIC 3000
Ph: +61 3 9655 3501
nigel.morris@takeovers.gov.au