



Monday, 17 July 2006

GasNet Australia Investments Limited – Application Withdrawn

The Takeovers Panel (**Panel**) advises that it has today consented to withdrawal of the application (**Application**) dated 11 July 2006 (TP 06-66) by GasNet Australia Investments Limited and GasNet Australia Limited (in its capacity as responsible entity of GasNet Australia Trust and GasNet Australia Investments Trust) (together **GasNet**).

The Application concerned an off-market scrip takeover offer (**Offer**) by BBI GP (Aust) Pty Limited (**Bidder**), a wholly owned subsidiary of Babcock & Brown Infrastructure Limited (**BBI**), in association with Australian Pipeline Trust (**APT**), for 100% of the securities in GasNet.

GasNet complained of three issues:

- The Bidder offering GasNet securityholders BBI scrip of a value which is less than \$2.55 per GasNet security (being the amount that GasNet submitted APT has agreed to pay to acquire, through a series of put and call options, GasNet securities from the Bidder immediately after the Offer).
- The failure of BBI to offer a \$2.55 cash alternative to GasNet securityholders.
- The use of a 'headline' valuation figure of the Offer in the bidder's statement that GasNet submits is based on a cum-distribution price of the BBI securities offered under the Offer, where GasNet securityholders are not entitled to the relevant BBI distribution in relation to any BBI securities they would receive under the Offer.

Disclosure issues

GasNet and the Bidder have informed the Panel that they have agreed, in relation to the disclosure issues:

- the form of revisions to the bidder's statement to address GasNet's complaints concerning the Bidder's use of a 'headline' valuation figure; and
- that BBI will dispatch its replacement bidder's statement no earlier than 24 July 2006.

The Panel commends the parties on reaching agreement on these issues.

Preliminary views of the Panel

Disclosure issues

The Panel had previously advised the parties that its preliminary view was that the Bidder should not have used a headline valuation of \$2.55 based on a cum-distribution BBI security price without clear qualification in the headline announcement, and clear explanation of any justification for doing so, given that GasNet securityholders would not receive the distribution. The Panel recognised, however, that in several places in communications with GasNet securityholders, and in the BBI bidder's statement, BBI did clearly explain that GasNet securityholders would not receive the BBI distribution and did clearly explain the implied value of the Offer if the full BBI distribution was deducted from the value of the BBI securities offered as consideration under the Offer.

Minimum bid price, and cash alternative issues

GasNet had submitted in the Application that, under the Joint Bidding Agreement between BBI and APT, APT had agreed to pay \$2.55 per GasNet security to acquire such securities from the Bidder immediately after the Offer, and accordingly:

- the minimum bid price rule in section 621(3) of the Corporations Act (**the Act**) required that the value of the Offer consideration must be at least equal to \$2.55; and
- the Bidder needed to offer a \$2.55 cash alternative to GasNet securityholders under the "equality principle" in section 602(c) of the Act (which requires that, as far as practicable, security holders have a reasonable and equal opportunity to participate in benefits accruing through a proposal to acquire a substantial interest).

The Panel's preliminary view was that the arrangements in the Joint Bidding Agreement between BBI and APT were unlikely to offend the equality principle in section 602(c), given that:

- there was no evidence that the bid was not a bona fide joint bid; and
- the combined holding of the joint bidders in the target was less than 20%.

The Panel noted that the Joint Bidding Agreement appeared to deal solely with transactions between BBI and APT in their role as joint bidders and their internal funding arrangements.

Accordingly, the Panel's preliminary view was that, even if GasNet were to establish that the provisions of the Joint Bidding Agreement gave rise to a technical contravention of section 621(3) (or other specific requirements giving effect to the principle in section 602(c)), the Panel would not be likely to make a declaration of unacceptable circumstances on the basis of the Applicant's submissions concerning the Offer terms.

Consent to withdraw

In light of the Panel's preliminary view and the parties' agreement on disclosure issues, GasNet requested the Panel's consent to withdraw its application, on the basis that no useful purpose would be served by continuing with the Application. The Bidder, BBI and APT did not object to GasNet's request.

Given the parties' agreement, and the preliminary views of the Panel as described above, the Panel considered that continuing the proceedings would not be likely to benefit the parties or their shareholders, or the market generally. Accordingly, the Panel consented to GasNet withdrawing the Application.

The sitting Panel in these proceedings was Elizabeth Alexander (Sitting President), Peter Scott and Karen Wood (Deputy President).

The Panel will publish its reasons for decision on its website in due course.

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