



Australian Government

Takeovers Panel

MEDIA RELEASE

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Friday, 13 September 2019

Pacific Energy Limited – Panel Receives Application

The Panel has received an application from QGIF Swan Bidco Pty Ltd (**QIC Bidco**)¹ in relation to Pacific Energy Limited.

Details of the application, as submitted by the applicant, are below.

A sitting Panel has not been appointed at this stage and no decision has been made whether to conduct proceedings. The Panel makes no comment on the merits of the application.

Details

On 24 July 2019, Pacific Energy announced that it had entered into a scheme implementation deed (**QIC SID**) with QIC Bidco to acquire Pacific Energy by way of scheme of arrangement for \$0.975 cash per share.

On or about 10 September 2019, Pacific Energy received a competing proposal from APC Bidco Pty Ltd (established by the OPTrust/ICG Consortium² – **Consortium**) for \$1.085 cash per share. Pacific Energy announced that it had entered into a deed with the Consortium (**APC Proposal Deed**) pursuant to which, subject to certain qualifications, the Consortium will become entitled to receive a break fee of \$2.5 million from Pacific Energy in the event Pacific Energy does not enter into a scheme implementation deed with the Consortium by 12 noon (WST) on Tuesday, 17 September 2019.

On 12 September 2019, QIC Bidco submitted its matching proposal to Pacific Energy at \$1.070 per share. The matching proposal provides that Pacific Energy shareholders will be entitled to additional consideration of \$0.005 per Pacific Energy share if the break fee under the APC Proposal Deed is not paid to the Consortium or APC Bidco.

QIC Bidco submits that entry into the APC Proposal Deed:

¹ A wholly owned subsidiary of QGIF Swan Holdco Pty Ltd

² Comprising OPSEU Pension Plan Trust Fund and Infrastructure Specialist Asset Management Limited in its capacity as trustee of one or more funds managed by Infrastructure Capital Group Limited

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- constituted a clear and wilful breach of the QIC SID by Pacific Energy denying QIC Bidco the benefit of its matching right
- was inconsistent with Pacific Energy's publicly disclosed intentions in the QIC SID with respect to how it would conduct its affairs with respect to QIC Bidco's proposal and any competing proposal
- included a break fee which reduces the value of the assets of Pacific Energy by \$2.5 million, the effect of which is that if QIC Bidco exercises its matching right under the QIC SID it acquires Pacific Energy with reduced assets.

QIC Bidco seeks interim orders to operate until determination of the Panel application, including:

- *"the operation of the APC Proposal Deed be suspended, and each of Pacific Energy and APC Bidco be restrained from enforcing or taking any action under, or contemplated by, the APC Proposal Deed, whether purporting to be done pursuant to that deed or not"*
- that Pacific Energy and APC Bidco be restrained from entering into their foreshadowed scheme implementation agreement *"and any other agreement in connection with the potential change in control of Pacific Energy in circumstances where that would amount to a breach of the QIC SID"* and
- that Pacific Energy be restrained from paying the break fee to APC Bidco.

QIC Bidco seeks the following orders (including such other orders as the Panel considers appropriate):

- the APC Proposal Deed be cancelled and
- *"APC Bidco be restrained from enforcing any rights against Pacific Energy under, or contemplated by, the APC Proposal Deed (including but not limited to the payment of the Consortium Break Fee)".*

Allan Bulman
Director, Takeovers Panel
Level 10, 63 Exhibition Street
Melbourne VIC 3000
Ph: +61 3 9655 3500
takeovers@takeovers.gov.au