



Australian Government

Takeovers Panel

MEDIA RELEASE

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Pacific Energy Limited - Panel Declines to Make Declaration

The Panel has declined to make a declaration of unacceptable circumstances in response to an application dated 13 September 2019 from QGIF Swan Bidco Pty Ltd (**QIC Bidco**)¹ (see [TP19/53](#)).

On 24 July 2019, Pacific Energy Limited 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 a total cash value of \$0.975 per share (inclusive of a \$0.015 final dividend).

On 9 September 2019, Pacific Energy received a competing proposal from APC Bidco Pty Ltd (established by the OPTrust/ICG Consortium² - **Consortium**) for a total cash value of \$1.085 per share (inclusive of a \$0.015 final dividend), conditional upon entry into a deed with the Consortium (**APC Proposal Deed**). On 10 September 2019, Pacific Energy entered into the APC Proposal Deed pursuant to which, subject to certain qualifications, the Consortium would become entitled to receive a break fee of \$2.5 million from Pacific Energy in the event Pacific Energy did not enter into a scheme implementation deed with the Consortium by 12 noon (WST) on Tuesday, 17 September 2019 (**APC Break Fee**).

On 16 September 2019, following the exercise of QIC Bidco's matching right under the QIC SID, Pacific Energy announced that it recommended that all its shareholders vote in favour of a revised QIC Bidco offer for a total cash value of \$1.085 per share (inclusive of a \$0.015 final dividend). Accordingly, the APC Break Fee has been triggered.

QIC Bidco submitted that entry into the APC Proposal Deed was unacceptable because (among other things) it constituted a breach of the QIC SID (denying QIC Bidco the full benefit of its matching right) and the APC Break Fee imposed an impermissible payment trigger and caused a diminution in the value of Pacific

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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Energy with the effect of making the company less attractive to an acquirer and less likely to attract competing proposals.

The Panel considered that (among other things):

- As a result of entering into the APC Proposal Deed, Pacific Energy facilitated a rival proposal leading to a materially higher offer.
- In substance the break fee under the APC Proposal Deed was not anti-competitive or coercive.

The Panel considered that it is not against the public interest to decline to make a declaration of unacceptable circumstances. On the basis of the above, the Panel decided not to make a declaration of unacceptable circumstances.

The sitting Panel was Ron Malek (sitting President), Rory Moriarty and David Williamson. The Panel will publish its reasons for the decision in due course on its website www.takeovers.gov.au.

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