



Friday, 4 May 2007

Queensland Cotton Holdings Limited - Panel Decision

The Takeovers Panel has considered the application (the **Application**) from Louis Dreyfus Cotton International NV, a company incorporated in Belgium, under section 657C of the Corporations Act 2001 (Cth) dated 16 April 2007 in relation to the affairs of Queensland Cotton Holdings Limited.

On the basis of undertakings and confirmations provided by parties in response to the Panel's initial enquiries, the Panel has decided not to commence proceedings in relation to the Application.

In its Application, Louis Dreyfus submitted that:

1. a Takeover Bid Implementation Agreement dated 6 March 2007 (**TBIA**) that Queensland Cotton had entered with Olam International Limited included terms regarding "no-shop", "no-talk" and fiduciary exception that had an anti-competitive effect on the market for control of Queensland Cotton;
2. the Queensland Cotton Board was incorrectly interpreting and applying the terms of the TBIA by amongst other things:
 - (a) declining to advise Louis Dreyfus what information Louis Dreyfus needed to provide to the Queensland Cotton board for the proposal it had submitted to be considered a "Competing Proposal" which the Queensland Cotton board could consider within the terms of the fiduciary exception in the TBIA; and
 - (b) declining to provide Louis Dreyfus with access to confidential information to enable Louis Dreyfus to assess whether or not to make a formal takeover bid for Queensland Cotton.

Louis Dreyfus submitted that this was causing the acquisition of control of Queensland Cotton to take place in a market that was not efficient, competitive and informed; and

3. Queensland Cotton's target's statement in respect of the bid by Olam, and its subsequent market announcement dated 16 April 2007, contained false or misleading disclosures, specifically in relation to the possible competing proposal by Louis Dreyfus.

Olam had submitted that the TBIA was "in accordance with market practice" for this type of agreement.

The TBIA contained the following:

1. “no-shop” and “no-talk” provisions;
2. a further provision that the “no-talk” provision would cease to apply if compliance with it would, in the opinion of the board of Queensland Cotton reasonably formed in good faith for a proper purpose, in reliance on legal advice and having received financial advice that the competing proposal is superior to the Olam offer, constitute a breach of any statutory or fiduciary duties of the Queensland Cotton board (Fiduciary Exception Provision); and
3. provisions as to when a break fee may be payable by Queensland Cotton;

On 2 April 2007, Louis Dreyfus wrote to Queensland Cotton advising, amongst other things:

1. that it was seriously considering, and had taken extensive steps to make, a competing proposal, as defined in the TBIA (Competing Proposal). It said the Competing Proposal would be superior to the Olam Offer;
2. that it needed to undertake due diligence in respect of non-public information of Queensland Cotton; and
3. that it was seeking the same level of access to Queensland Cotton’s confidential information and management as had been given to Olam.

On 3 April 2007, Queensland Cotton responded to the effect that it did not regard the contents of the 2 April Letter as a “firm proposal” and, given the “no-shop” and “no-talk” provisions, there was no basis to provide access to Louis Dreyfus.

Louis Dreyfus replied on 10 April with a revised proposal which it submitted was a “Competing Proposal”. Louis Dreyfus also requested the Queensland Cotton board, if it did not consider Louis Dreyfus’ proposal to be a “Competing Proposal”, to clarify any additional steps Louis Dreyfus needed to take or information it needed to provide to permit access to Queensland Cotton’s confidential information.

On 11 April 2007, Queensland Cotton further responded to the effect that:

1. Louis Dreyfus had not provided a basis for Queensland Cotton to give access to confidential information without breaching the TBIA and potentially triggering payment of a break fee;
2. Louis Dreyfus’ proposal did not meet the requirement for a “Competing Proposal” that was superior to the Olam offer; and
3. the board was unable to provide any guidance on the steps Louis Dreyfus needed to take or information it needed to provide to permit access to Queensland Cotton’s confidential information due to the “no-shop” provision and break fee provision.

Interpretation of the TBIA

The Panel considered that an initial significant issue before it that might have given rise to unacceptable circumstances was whether Queensland Cotton was interpreting the TBIA in a restrictive way that prevented Queensland Cotton from being able to clarify what additional steps or information Louis Dreyfus would need to provide for its proposal to be considered a Competing Proposal.

In correspondence with the Panel, Queensland Cotton identified specific criteria that it considered would have to be met for it to consider Louis Dreyfus's proposal to be a Competing Proposal. The criteria were, it said, customary Australian market practice. The Panel considered that it was possible for the parties to resolve this issue if Olam confirmed that, in the event that Louis Dreyfus made a proposal to Queensland Cotton which satisfied the criteria then Olam would not object to Queensland Cotton relying on the fiduciary exception provision. That would allow Queensland Cotton to participate in any discussions or provide some or any information to Louis Dreyfus as considered appropriate by the Queensland Cotton board. Olam also needed to confirm that merely by so doing a break fee payment would not be required under the TBIA. The Panel accepted that Olam's confirmation could be made subject to:

1. the terms and conditions of the further proposal, including price; and
2. Queensland Cotton receiving all appropriate external advices (including that the further proposal was superior to the Olam offer).

The Panel advised parties that if it received the undertakings and confirmations requested that it considered that it would not be minded to commence proceedings in response to Louis Dreyfus's application, as the most pressing issue would have been resolved.

The parties agreed to provide undertakings and confirmations to the Panel to the following effect:

1. Olam undertook to the Panel in terms of the confirmation the Panel requested;
2. Louis Dreyfus confirmed that it had submitted a further proposal to Queensland Cotton which satisfied the criteria; and
3. Queensland Cotton confirmed that it sought to engage with Louis Dreyfus in relation to this further proposal in reliance on the fiduciary exception provision in the TBIA.

The Panel considers that the most pressing issues raised in the Application have been resolved by the co-operation of the parties and that commercial negotiations are progressing. Therefore, the Panel did not consider that there was a basis to commence proceedings.

Disclosure in target's statement and subsequent announcement

The Panel indicated that Queensland Cotton shareholders would expect to be advised of some or all elements of the Louis Dreyfus proposal and of their directors' progress in negotiations with Louis Dreyfus. The Panel considers that disclosure of these developments could have been addressed in a number of ways. The Panel noted that one of the ways this could be done would be by the issue of a supplementary target's statement by Queensland Cotton.

The Panel notes that it is now for the directors of Queensland Cotton to make a decision as to whether or not to grant access to Louis Dreyfus to some or all of Queensland Cotton's confidential information. The Panel did not comment on what the engagement between Queensland Cotton and Louis Dreyfus must be, and left open the possibility of a further application (by any party) if it considers it appropriate in the future.

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