



Sunday, 6 May 2007

### **Qantas Airways Limited 02- Receipt of Application and Decision**

#### **Application**

The Takeovers Panel advises that it received an application yesterday from Airline Partners Australia Limited concerning APA's off-market, cash takeover bid for Qantas Airways Limited (**Offer**).

The Panel has decided not to commence proceedings in relation to APA's application.

APA's Offer closed at 7.00pm on Friday 4 May 2007 in accordance with the terms of the Offer and APA's public statements that the Offer would not be extended past that time and date. APA submitted that approximately 5 hours after the close of the Offer, and subsequent to APA's announcement on 4 May that the Offer had closed, an offshore arbitrage and special situation investor (**Late Investor**) holding Qantas shares, contacted APA and sent its acceptance form to APA for 98,445,907 Qantas shares, amounting to 4.96% of Qantas' issued share capital. APA submitted that had this acceptance been received within the Offer period, the Offer period would have automatically been extended for 14 days.

APA sought a declaration under section 657A that the closing of the APA offer and subsequent acceptance by the Late Investor constituted unacceptable circumstances. APA sought orders to the effect that APA be required to continue the Offer as if the acceptance of the Late Investor was received prior to 7.00 pm on 4 May 2007.

The President of the Panel has appointed Andrew Lumsden, Jennifer Seabrook and Nerolie Withnall (sitting President) as the sitting Panel to consider the application.

APA has indicated to the Panel that it intends to seek urgent review of this Panel decision.

#### **Decision**

In the absence of clear evidence to the contrary, the Panel does not accept that that the Offer period closing at 7pm 4 May 2007, in accordance with the bid terms and APA's public statements that the Offer would not be extended past that deadline, has an impact on the efficient, competitive or informed market for Qantas shares, or gives rise to unacceptable circumstances.

For the reasons outlined in the attachment to this media release, the Panel did not consider that the submissions in APA's application provided a sufficient basis for the Panel to commence proceedings in relation to the application.

The Panel President is currently appointing a sitting Panel to consider the review application.

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

## Annexure - Qantas Airways 02 - Panel Decision

1. The Takeovers Panel has considered the application from Airline Partners Australia Limited (**APA**) under section 657C of the Corporations Act 2001 (Cth) dated 5 May 2007 in relation to the affairs of Qantas Airways Limited (**Qantas**).
2. The Panel advises that it has declined to commence proceedings in relation to the application.

### Background

3. Pursuant to APA's 8th Supplementary Bidder's Statement dated 2 February 2007 that its offer for Qantas shares (**Offer**) would close at 7.00pm on Friday 4 May 2007, and APA's public statements that the Offer would not be extended past that time and date, the Offer closed at 7.00pm on Friday 4 May 2007. APA submitted that as at that time, it did not appear that APA had voting power in Qantas of more than 50%, the threshold which would have triggered an automatic extension of the Offer period of 14 days pursuant to section 624(2)(b) of the Corporations Act. APA made an announcement in respect of these circumstances to the market late on Friday 4 May 2007.
4. APA submitted that approximately 5 hours after the close of the Offer, and subsequent to APA's 4 May announcement an offshore arbitrage and special situation investor (**Late Investor**) holding Qantas shares, contacted APA and sent its acceptance form to APA for 98,445,907 Qantas shares, amounting to 4.96% of Qantas' issued share capital. APA submitted that had this acceptance been received within the Offer period, the Offer period would have automatically been extended for 14 days.
5. APA sought a declaration under section 657A that the closing of the APA offer and subsequent acceptance by the Late Investor constituted unacceptable circumstances. APA sought orders to the effect that;
  - APA be required to continue the Offer as if the acceptance of the Late Investor was received prior to 7.00 pm on 4 May 2007, and otherwise in accordance with Chapter 6 of the Corporations Act; and
  - APA inform shareholders of the extension of its Offer under section 624(2) as if the reference to "3 days after that event" was a reference to "3 days after an order of the Panel".
6. In its application, APA submitted that:
  - the Offer should not be allowed to close as a result of one shareholder not getting his acceptance in on time;
  - as far as APA was aware the only person who may be materially affected by the grant of the orders is Qantas, no Qantas shareholder would be detrimentally affected by the granting of the order requested and no-one would suffer any detriment by letting the Offer continue;

- there had been potentially misleading circumstances arising from media coverage;
- it cannot be said that having the Offer close on 4 May 2007 causes the acquisition of control over Qantas shares to take place in a efficient, competitive or informed market;
- extending the Offer period would not deprive shareholders of information concerning the bidder or the merits of the Offer (in the terms of section 602(b)(i) and (iii));
- shareholders have not had a reasonable opportunity to participate in the Offer because that opportunity is being denied to them as a consequence of a single foreign shareholder accepting late;
- the Panel has, in past matters, taken action to promote the interests of shareholders in receiving and being able to participate in takeover bids; and
- notwithstanding the late acceptance lodged by the Late Investor, there is a significant likelihood that APA had over 50% when the Offer closed in any event (through the operation of clause 7.3 of the Offer terms providing a relevant interest in all of the shares held by those holders who purported to accept for only part of their holdings).

### **Jurisdiction**

7. The Panel considers that it was open for the Panel to commence proceedings in relation to APA's application. The Panel's decision not to commence proceedings is not based on any view that it did not have jurisdiction to consider the application.

### **No unacceptable circumstances**

8. There has been extensive coverage by Qantas, APA and the media of the deadlines in relation to the Qantas bid. The Panel considers that the market was extremely well informed of the fact that:
  - the Qantas bid was due to close by 7pm 4 May 2007;
  - if 50% acceptances were received by the deadline the Offer period would be extended; and
  - if the 50% threshold was not obtained by the deadline the bid would close, and all acceptances would lapse.
9. The Panel notes that, notwithstanding APA's submission that there is a significant likelihood that APA had (through the operation of clause 7.3 of the Offer terms) over 50% when the Offer closed, APA announced to the market on 4 May 2007 that it appeared that acceptances had not reached the 50% level

required to extend the Offer, and that if this was confirmed, the Offer would not proceed.

10. The circumstances of which APA has complained are in relation to a single sophisticated shareholder, with a significant interest (4.96%) in Qantas, who should have been well aware of the closing time and date for the Offer and of the implications of not meeting that deadline.
11. The Panel does not accept that misleading circumstances have arisen from media coverage of the Qantas bid that would cause the Late Investor not to be aware of the deadline and of the implications of not meeting that deadline.
12. The Panel does not accept that the Offer period closing in accordance with the bid terms (i.e. 50% acceptances not achieved by 7pm, 4 May 2007) and APA's public statements that the Offer would not be extended past that closing time (except if the 50% threshold had been met), deprives Qantas shareholders of information concerning the bidder or the merits of the Offer.
13. The Panel does not accept that Qantas shareholders have not had a reasonable opportunity to participate in the Offer or that a single shareholder failing to deliver its acceptance by the close of the Offer has denied shareholders a reasonable opportunity to participate in the Offer. Shareholders were well aware of the deadlines and the implications of not accepting by the deadlines.
14. The Panel notes that, following APA's announcement of a Panel application, the Panel executive has received a number of comments from Qantas shareholders indicating their concern with the bid proceeding, after it had closed in accordance with the bid terms and APA's public statements.

### **Decision**

15. In the absence of clear evidence to the contrary, the Panel does not accept that the Offer period closing in accordance with the bid terms and APA's public statements that the Offer would not be extended past the deadline has had an impact on the efficient, competitive or informed market for Qantas shares, or gives rise to unacceptable circumstances.
16. For the reasons outlined above, the Panel did not consider that the submissions in APA's application provided a sufficient basis for the Panel to commence proceedings in relation to the application.