



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP14/53

Wednesday, 2 July 2014

Envestra Limited – Panel Receives Application

The Panel has received an application from Envestra Limited in relation to its affairs. Envestra is the subject of an off-market takeover bid by CK ENV Investments Pty Ltd, which is wholly owned by Cheung Kong (Holdings) Limited, Cheung Kong Infrastructure Holdings Limited and Power Assets Holdings Limited (together, “**CK Consortium**”).

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

Cheung Kong Infrastructure Holdings (Malaysian) Limited, a member of the CK Group, holds 313,645,693 Envestra shares (approximately 17.46%).

On 8 May 2014, Envestra announced that it had received an indicative, conditional off-market takeover proposal for Envestra at \$1.32 per share from the CK Consortium, subject (among other things) to due diligence and entry into a bid implementation agreement.

On 30 May 2014, Envestra and CK ENV announced that they had entered into a bid implementation agreement under which CK ENV would make a conditional off-market bid for all the shares in Envestra at \$1.32 per share. Each announcement also stated:

*“Envestra shareholders will be entitled to receive a final dividend of up to \$0.035 per Envestra share in respect of the financial year ending 30 June 2014, provided that such dividend is declared (or determined to be paid) on or prior to 21 August 2014 (**Final Dividend**) without any reduction to the [Consortium] Offer price of \$1.32 per [Envestra] share.”*

This was reflected in the bid implementation agreement, which was also released on ASX.

On 11 June 2014, Envestra informed CK ENV that it proposed to declare a final dividend of up to \$0.035 per share with ex-dividend and record dates around mid-July.

On 19 June 2014, the CK Consortium informed Envestra that they objected to an accelerated declaration and payment of the final dividend, and that the purpose of the clause in the bid implementation agreement was to protect minority shareholders remaining in Envestra as at August 2014 (ie, who had not accepted the offer) as Envestra needed the ability to pay the ordinary-course dividend to them.

On 28 June 2014, Envestra was informed that the offer period would be one month.

Envestra submits that, if the final dividend were declared and paid according to Envestra's historical practice, it will be after the offer has closed and Envestra shareholders who accept the offer may not receive the final dividend.

Envestra submits, among other things, that:

- CK ENV has an obligation under section 631 of the *Corporations Act 2001* to make its bid on not substantially less favourable terms than announced, and therefore must:
 - facilitate the declaration of the final dividend and
 - refrain from declaring its offer free from conditions and transferring shares so as to defeat the entitlement of Envestra shareholders to the dividend
- CK ENV must conduct itself in accordance with its unqualified statements regarding dividends and
- by reserving its rights, CK ENV has failed to provide Envestra shareholders with all material information.

Envestra seeks interim orders restraining CK ENV from despatching its Bidder's Statement and (after the offer opens) from declaring the offer unconditional, pending the determination of the application.

Envestra seeks final orders including to the effect that:

- CK ENV not rely on payment of a final dividend for the purpose of any defeating condition or to reduce the offer price
- CK ENV not declare the offer unconditional so as to defeat the entitlement of Envestra shareholders to the final dividend and
- CK ENV and the CK Consortium either withdraw the objection to payment of the final dividend with a record date during the offer period or extend the offer period so that it will not close until after the record date for the final dividend.

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