



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP21/21

Thursday, 23 September 2021

AusNet Services Limited – Panel Receives Application

The Panel has received an application from Australian Pipeline Limited as responsible entity of the Australian Pipeline Trust and APT Investment Trust (**APA**) in relation to the affairs of AusNet Services Limited (**AusNet**). AusNet has received competing proposals made by APA and Brookfield Asset Management (**Brookfield**) for control of AusNet.

Details of the application, as submitted by APA and from public announcements, 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 1 September 2021, APA approached AusNet with a confidential, non-binding, indicative and conditional proposal to acquire all the issued shares in AusNet by way of scheme of arrangement for \$2.32 per share in cash and scrip.

On 20 September 2021, AusNet announced that it had:

- received an unsolicited, indicative, non-binding and conditional proposal from the infrastructure affiliate of Brookfield to acquire, by way of scheme of arrangement, all of the issued shares in AusNet at an indicative price of \$2.50 cash per share and
- entered into a confidentiality deed with Brookfield *“which provides for Brookfield to conduct due diligence and for the parties to negotiate a scheme implementation deed on an exclusive basis. Either party may terminate the exclusivity arrangements by giving the other 7 days' written notice”* and that no such notice may be given earlier than 7 weeks from 20 September 2021.

On 21 September 2021, APA announced that it had made a revised non-binding, indicative and conditional proposal to the board of AusNet to acquire all the issued

shares in AusNet by way of scheme of arrangement for \$2.60 per share in cash and scrip.

On the same day, AusNet announced (among other things) that it had received APA's revised non-binding indicative proposal and that *"AusNet will consider the APA Revised Indicative Proposal and has the ability to engage with APA following completion of the exclusivity period [with Brookfield]"*. AusNet's announcement attaches an extract of the exclusivity arrangements from the confidentiality deed with Brookfield.

APA submits that the *"exclusivity arrangements provide Brookfield with a minimum 8 week period of absolute exclusivity, involving "no-talk" and "notification" restrictions which are not subject to a customary "fiduciary out" for [AusNet] to respond to potential competing proposals"*.

APA submits (among other things) that:

- The exclusivity arrangements prevent AusNet *"from responding to a superior proposal provided by APA to acquire all of the issued shares of [AusNet] at an indicative value of \$2.60 per [AusNet] share"*.
- The circumstances (including the entry into the confidentiality deed with Brookfield) *"hinder, or are likely to hinder, the acquisition of control of [AusNet] taking place in an efficient, competitive and informed market, contrary to section 602(a) and deny, or are likely to deny, [AusNet] shareholders an opportunity to participate in the benefits of a proposal contrary to section 602(c)"*.¹

APA does not seek any interim orders. APA seeks final orders including that the exclusivity arrangements *"be terminated and/or be made subject to a customary "fiduciary out" to permit [AusNet] to respond to APA's proposal (and any other competing proposals)"*.

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¹ Unless otherwise indicated, all statutory references are to the *Corporations Act 2001* (Cth) and all terms used in Chapter 6 or 6C have the meaning given in the relevant Chapter (as modified by ASIC)