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HD **AGL's only option is to appeal MacGen ruling F**

BY JOHN DURIE

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AGL has no choice but to appeal the Australian Competition & Consumer Commission's rejection of its Macquarie Generation bid, relying on NSW Treasurer Mike Baird's patience and the absence of another bidder prepared to pay more than $1.5 **billion** for the asset.

AGL's attempt to propose a behavioural undertaking, offering to reserve power in the hedging market, was rejected by the ACCC for being difficult to police and too uncertain.

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Whether the Australian Competition Tribunal agrees remains to be seen, and AGL will also argue that its lower costs translate into cheaper power for consumers. Baird's dream run in privatisations came to an abrupt end yesterday and, having attempted the **sale** at what may be the bottom of the market with demand falling, he now must cool his heels unless ERM comes back with a higher offer.

That was uncertain last night, and Baird, who will come back to market with $30bn of network assets to sell after next year's election, will want to ensure he is seen as running open and fair **sale** processes.

AGL has had a long history of disputes with the ACCC and yesterday's rejection was not much of a surprise.

The ACCC rejected the bid because it would have left NSW as the most concentrated state, with the top three electricity retailers controlling close to 80 per cent of generation capacity, compared to Victoria where the share is closer to 70 per cent.

Continued on Page 24

Continued from Page 17

AGL boss Michael Fraser made clear last week he disputed the ACCC's logic, which suggests, subject to **board** approval and the willingness of Baird to wait, that he will appeal the decision.

Certainly advisers will be hoping so. Baird told The Australian yesterday, ``I respect the ACCC's decision and will stick to it,'' adding: ``I won't sell the asset for below fair value.''

The question now is what is fair value, given rival bidder ERM came in at just more than $1.4bn in a highly leveraged bid, which would have seen the **company** raise $500m in **equity** and $900m in debt. The **company** talked to underwriter UBS to establish its next move. ACCC chairman and chief executive Rod Sims is a big supporter of privatisation and has long argued electricity assets are better run in private hands, but not at any cost, and in this case he argues the cost would be borne by NSW consumers.

Given falling demand for electricity in a weak economy, many would argue this is the bottom of the market, and given that a private seller would be tempted to do what Baird has said and withdraw the asset from the market to wait until the market improved.

Politically there are other dynamics at play, which may tend to make Baird bend, particularly if ERM were to raise its bid a touch.

In the middle of this stalemate, AGL and ERM are likely to see their stock prices under pressure until there is some clarity.

NSW has three big electricity retailers: AGL, Origin and **Energy** Australia. The latter two have their own generation capacity so don't need to be active in the swaps market.

AGL has no generation capacity in NSW but does elsewhere, which means it plays the swaps market, but if it got control of Macquarie it would be long electricity and hence would withdraw from swaps.

The ACCC fears this would cut liquidity and in doing so raise costs and hence barriers to entry to rival players such as ERM.

AGL had offered to reserve some capacity for the swaps market but the ACCC worried that this would be hard to monitor.

The remaining generation capacity in NSW is provided by Snowy Hydro, which has plentiful capacity but its output tends to be restricted to ``peaking'' capacity.

Delta Hydro, which is also on the block, is small and is not considered to be big enough to provide meaningful support.

There are a half-dozen rival small players in the NSW market, all of whom strongly opposed the AGL **purchase**.

If AGL is blocked and doesn't appeal it will be considered ex growth by the market, which will be a negative.

Baird must weigh the disappointment of losing the highest bid, which in the ACCC's view would hurt NSW consumers, against the rational desire to see electricity assets in the right private hands and, of course, more money in the coffers to invest in infrastructure.

Telstra all talk?

MICHAEL Vertigan and his fellow NBN committee members had a forum last week in Sydney to shop attitudes to life under the National Broadband Network.

At the meeting, Telstra's Tony Warren was read as going out of his way to say the **company** had crossed the Rubicon and was now working to life post its fixed-line monopoly, and structural separation was very much part of its post-NBN thinking.

Vertigan committee member and former Telstra adviser Henry Ergas is of a course a former mentor to Warren. The Telstra mantra says it would prefer to maintain its control of the network but if structural separation is the law then it would proceed accordingly.

This week at a Sydney luncheon, Telstra boss David Thodey talked up the growth path ahead of the **company** as he swore off past references to the ``incumbent telco''.

The days of being seen as the best parking lot on the bourse it seems are not in Thodey's future as he chases more growth to pay higher dividends in the future.

All this growth talk has some wondering whether a major **acquisition** in the wings. It seems not, but instead a series of smaller deals designed to plug more traffic into Telstra's Asian network.

In fact, growth is picking up, with revenue up 3.5 per cent in the last half, compared to 2.1 per cent in the last half of the 2013 financial year and 1.3 per cent in the first half that year. In this context Telstra's top line growth has more than doubled in a year, which can only be good news, even if the translation to the earnings before interest, tax, depreciation and amortisation line is less certain.

The international **business** after the **Hong Kong** CSL**sale** will be just 2 per cent of earnings, and network application services not much more. But it is growing.

All this new Telstra talk warms the soul, but at last week's industry forum scepticism ran high, in part because one day the **company** says it is fully accepting the days of structural separation, and on the next it talks up fibre-to-the-node trials and fibre to multi-premise buildings.

The Vertigan committee is seeking public submissions by March 14. Its role bemuses some, given it is due to report mid year, around the same time as NBN Co expects to have concluded talks with Telstra on how to incorporate its multi-technology platform into the existing contract.

The cost-benefit analysis provided by Vertigan will surely have some valuations, which would be relevant to Telstra and NBN Co.

Others think the exercise is to get more ammunition to throw at the opposition, which at this stage in the game is at best superfluous.

Certainly when the committee raised the issue of post-NBN regulation without the ACCC the industry protested loudly at the Sydney meeting.

It wants someone to keep Telstra in line because, as much as Thodey wants to shake the incumbent telco tag, that is how his opponents see him.

While on telco matters, the departure of Kevin Russell from Optus is an overwhelming negative, highlighting his frustration at the command and control governance from head office.

Russell was in charge of consumer yet ran the single biggest operation within the **group**, without the freedom to manage the portfolio as he wanted. He wanted to be country head and Singtel wanted a divisional manager.

Ramsay's luck

SOMETIMES trades just work out well, as appears to be the case for AMP when it **sold** just over one **million** Prime Media shares before news broke that Paul Ramsay was about to sell his **stake** in the **company**.

A substantial shareholder notice filed by AMP noted it collected 96c a share on its sales dated February 27, only to bounce back after market buying big lines in the Ramsay selldown at 87c a share.

In all, AMP now owns 6.4 per cent of Prime or 23.5 **million** shares, having acquired more than 12 **million** shares or about 10 per cent of the block trade in deals closed on February 28.

The Ramsay exit was arranged through UBS, which acquired his **stake** through an underwriting deal at 87c. Sometimes you just get lucky.

Milk price

NEXT week Fonterra is due to unveil its latest farm gate price en route to what is expected to be a final price of somewhere between $6.60 and $6.80 a kilogram of **milk** solids. The latest Fonterra price in Australia was $6.36 a kilogram, and it should be noted that a previous reference in this column incorrectly translated the price into a per litre measure.

CO astcmb : Australian Competition Tribunal | macgen : Macquarie Generation | agkega : AGL Energy Limited | auccc : Australian Competition and Consumer Commission

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