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THE SIXTH HERBERT SMITH FREEHILLS AND NLU DELHI

# **INTERNATIONAL NEGOTIATION COMPETITION**

GREEN IS GOOD

GENERAL BACKGROUND  
INFORMATION

6-8 SEPTEMBER 2019

# GENERAL BACKGROUND INFORMATION

## The parties

### X-On Power plc

- X-On Power plc ("**X-On**") is a multi-national, publically-traded energy and utilities company which primarily operates in the oil and natural gas industry along with some vaguely-defined "green" projects. One of its major operational and profitable limbs is located in the Middle East. The company has a market capitalisation of approximately £103 billion.
- The largest shareholder of X-On is its founding chair and CEO Rex Anderson, who holds a 40% stake in the firm. A career businesswoman in the energy sector, she is widely respected by X-On's shareholders and its board of directors (the "**Board**") for the continued success of X-On and was lauded for the move to diversify into green energy. She has an excellent relationship with the Board and her suggestions are highly influential, even among the non-executive directors.
- In 2016, X-On raised capital by way of a placing, through which one of its minority shareholders, GreenDream Capital L.P. ("**GreenDream**") raised its equity shareholding in X-On to 23%. Since GreenDream's investment, X-On has seen a growth in its investment in green projects, which have in general proven to be profitable.
- As X-On continues to develop and expand, the Board, led by Rex, has recently spotted a non-green M&A opportunity in Brazanlia, a country located in South America, which it views as a stepping stone to gaining first-mover advantage in a high-growth market in the developing world.

### GreenDream Capital L.P.

- GreenDream is a private investment fund, incorporated in the Canalands in 2002, focusing on investment in primarily green projects. It is the third fund of its kind in a string of successful funds managed by its General Partner, Jamie Longsberg, who is a former environmental scientist and activist. In his seven years at the helm of GreenDream, Jamie has progressively grown the fund – the fund today has close to £45 billion in assets under its management.
- Jamie is highly respected as an academic, but is also a hugely influential market-mover in the renewables sector. Environmentalists largely do not see a conflict of interest between Jamie's financial investments and his environmentalist values. He is influential among the shareholders. Newspapers have quoted industry leaders as saying "*Where GreenDream goes, the greenback follows*".
- GreenDream is committed to investing in cutting-edge green technologies, backed by Jamie's decades of research, which anticipates a cliff-edge for traditional oil and gas suppliers as institutional and retail investors take greater stock of the transition risk from climate change, and ever-more stringent global warming targets.
- It was Jamie who was responsible for mooted X-On's initial (and profitable) diversification into clean energy and sustainability projects. Whilst X-On is not one of GreenDream's most profitable investments, it is a very high profile one.
- Other institutional investors are looking to follow GreenDream's example of investing into such hybrid companies or green energy companies, but must first satisfy themselves that they have the expertise to do so.

## Background

Jamie has been informed of X-On's plans for the next financial year. The listed flagship projects include a proposal to invest in a non-green M&A opportunity in Brazilia. Jamie is very concerned about the company's direction and continued focus on non-green projects despite having previously stressed the importance and need for a move away from the traditional oil and gas industry to invest more into sustainable technology. The previous green projects, many suggested by Jamie, have been successful and whilst not the driving deliverable for X-On, have been profitable (mostly due to continued and increasing government subsidy for renewable energy ventures). Jamie believes that X-On should continue growth in the less saturated renewable energy market and move away from an oil and gas industry which not only has many major competitors, but also faces ever-increasing environmental restrictions.

The X-On Board, however, believes that it has spotted a prime opportunity to expand its profitable business limb and enter into a developing market before its competitors. It believes that the value of the company will almost certainly grow as a result. Apart from the capital investment, the Board does not see this investment as a risky one. Instead, the Board considers further investment into green projects presenting far greater risk given that they are unfamiliar with the technology.

In order to fund the business opportunity, X-On will need to raise further capital. It expects that it will need approximately £250 million to acquire the Brazilian target ("**Target**"), including its facilities and staff. X-On has £100 million reserved for contingencies, but would prefer to raise capital from its investors than dip into its contingency funds or raise capital from the debt market.

Having consulted various investment banks, there appears to be a positive market with institutional investors happy to invest in hybrid companies such as X-On. None of the significant minority shareholders wish to sell their stake or have their shareholdings diluted. Under X-On's articles of association, it has the authority to allot up to 10% of new shares each year on a non-pre-emptive basis, but this itself is unlikely to be sufficient to attract any investor. Therefore, in all likelihood, shareholder approval for the authority to allot new shares by way of a placing on a non-pre-emptive basis will be required. The X-On Board think that this will attract new investors to invest into the company.

GreenDream looks to be the only significant minority shareholder who has the capabilities or appetite to increase or maintain its shareholding in the case of a new placing programme. Industry

pundits believe that GreenDream is keen to secure a large stake in any potential equity raising, enabling it to have greater influence in the longer term with Jamie eyeing a board seat either for himself or another GreenDream nominee to influence strategic direction at one of the largest energy companies in the world with a view to changing the direction of energy companies worldwide.

Jamie has a very good working relationship with Rex and the Board at X-On, but has taken notice of murmurings of employee discontent surrounding equal access to opportunity at X-On from his business contacts. Jamie is unsure as to the severity of the problem but is keen to avoid any news leaking to the press on this front. The Board has previously published statements and reviewed its Equal Opportunity Policy and is confident that it is compliant with legislative requirements.

Jamie has requested to have an informal meeting with Rex representing the Board to discuss his concerns. Rex has circulated an agenda ahead of the meeting and this includes a discussion on the proposed business plans for the next financial year.

Jamie has requested that the issue of equal opportunity be added to the agenda and wishes to find out exactly what the issue is and how X-On can avoid any further problems down the line. Thus far, media coverage has been avoided despite X-On being a public company, but the effects of any such scandal will tarnish the company's image.

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