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Australian Securities and Investments Commission Levies Another Greenwashing Fine

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The Australian Securities and Investments Commission (ASIC) appears to be making up for lost time as it imposed another greenwashing-related **penalty**, this time against Black Mountain Energy, an upstream oil and gas company, in the amount of AU$39,960. This follows closely on the heels of greenwashing violations found against **Tlou Energy Limited** and the **Australian unit of a U.S. headquartered asset manager**. The infringement notices related to statements contained in three announcements by Black Mountain claiming that it “was creating a natural gas development project with ‘net-zero carbon emissions’,” and that “the greenhouse gas emissions associated with Project Valhalla would be net zero.” ASIC was “concerned that BME either did not have a reasonable basis to make the representations, or that the representations were factually incorrect.”

As set forth in its **infringement notices**, ASIC based this view on, among other things, its conclusion that at the time it made the statements in question Black Mountain: (i) “had not progressed any specific works related to its net zero aim and had not allocated funding for such works”; (ii) “had not progressed any specific works regarding how it would design Project Valhalla to minimise or eliminate carbon dioxide emissions or attain net zero carbon emissions and had not developed a detailed plan for how it would achieve its aim”; (iii) “had not undertaken any specific modelling of carbon dioxide emissions that were likely to be generated by, or might be expected to arise from, the production of gas from Project Valhalla, which would be required to be offset in order to achieve carbon neutrality”; (iv) “had not undertaken any substantive modelling of the likely cost involved in offsetting any carbon dioxide emissions from Project Valhalla”; (v) “its net zero emissions target would only apply if BME was able to progress to production and was not intended to apply in relation to any exploratory or development activities”; (vi) “it did not have a credible or feasible plan for an ‘unconventional drilling’ approach or any other approach that would produce carbon neutral natural gas”; and (vii) “it had no credible basis for asserting that the natural gas it produced would be carbon neutral.”

Taking the Temperature: Australian regulators have been quite active over the past few months in connection with alleged greenwashing and also in assessing climate change impacts on financial stability. The Australian Treasury recently launched a consultation on climate related financial disclosure and the Australian Prudential Regulatory Authority conducted a climate vulnerability assessment with the country's five largest banks. The basis for ASIC's greenwashing allegations against Black Mountain provide a good illustration of the types of issues public companies should consider when making sustainability claims. The absence of funding dedicated to the project in question, the state of progress on technical work to bring the project to fruition, the completion of cost assessment or "substantive modelling," or lack of a "plan B" all could call into question the adequacy of the basis for sustainability related statements related to green initiatives.