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THE FIFTH HERBERT SMITH FREEHILLS AND NLU DELHI  
**INTERNATIONAL NEGOTIATION  
COMPETITION**  
THE RUB OF THE GREEN  
GREENWHEEL

7-9 SEPTEMBER 2018

# GENERAL BACKGROUND INFORMATION

## The parties

### GreenWheels Ltd

- Founded by entrepreneur Jeff Harris in 2008, GreenWheels Ltd ("**GreenWheels**"), a Hong Kong based limited company, has an app-based taxi business, popular in many Asian cities, including Tokyo, where the upcoming Summer Olympics is soon to take place. GreenWheels is a fast-growing company, last estimated to be worth US\$380million.
- A lucrative supply agreement with Pioneer Motors Ltd ("**Pioneer**") has enabled GreenWheels to develop a market-leading, eco-friendly fleet of cars. The cars use Pioneer's CarbonFree™ technology to produce up to 70 per cent less hazardous emissions than traditional fossil fuel-based cars. Three quarters of GreenWheels' fleet of taxis comprise these eco-friendly "Green" cars and the remaining quarter is made up of older, traditional fossil fuel-based cars.
- The popularity of GreenWheels' eco-friendly fleet has seen it become one of the most successful taxi companies in Tokyo, as it has capitalised on consumers' preferences for traditional engine-based vehicles which have a reduced environmental impact.
- Due to the environmental benefits of Pioneer's CarbonFree™ technology and various governmental measures to reduce urban pollution and car emissions, GreenWheels receives tax deductions in many of the Asian cities in which it operates, savings which it often passes on to its customers. This means that a typical GreenWheels journey in a CarbonFree™ taxi is often cheaper than a taxi journey using one of GreenWheels' competitors. However, such savings have ensured that GreenWheels' taxis are often in very high demand, and this regrettably means that customers are likely to suffer slightly longer than average waiting times if they wish to ride in a "Green" taxi.
- GreenWheels is looking forward to the 2020 Olympics in Tokyo as a prime opportunity to showcase its fleet and gain recognition for a superior taxi service.

### Pioneer Motors Ltd

- Pioneer is a small UK private company, which is part owned by private equity house Apex Partners, with an estimated market value of around US\$40-60million. Primarily an automobile manufacturer, Pioneer has a particular focus on manufacturing environmentally-friendly vehicles.
- Pioneer's primary business involves selling vehicles and vehicle parts to taxi and transportation companies which are looking to operate environmentally-friendly fleets. Most of the materials Pioneer use to manufacture its vehicles are designed and built in-house at the Pioneer factory, including Pioneer's own, unique CarbonFree™ technology. The CarbonFree™ vehicles and parts are more expensive than traditional vehicles and parts, but Pioneer have found that clients are happy to pay more for its fantastic green credentials.
- Pioneer was set up by the current CEO, Lewis Lancole, in 2010. The board is made up of eight directors, most of who have been on the board since the company was founded. Pioneer has a strong relationship with GreenWheels; in fact Lewis Lancole and GreenWheels CEO Jeff Harris were good friends prior to the existence of the supply agreement.
- Fundamental to Pioneer's CarbonFree™ range, is a catalytic converter, first developed by Pioneer four years ago, which can effectively reduce the carbon emissions of a range of fossil fuel-based vehicles by up to 70 per cent. The revolutionary technology has underpinned Pioneer's success in recent years and was crucial to securing the supply agreement with GreenWheels, which is worth an estimated US\$40million to Pioneer over four years.
- Alongside Pioneer's manufacturing service, Pioneer provides spare parts and repairs to its clients for all Pioneer models in its fleet. A potential issue is that Pioneer's repairs team is significantly smaller than its manufacturing team. It is often overworked and has to operate under acute time pressures.
- Pioneer has thought about increasing its client base in the past but it is currently using all its resources to service its existing clients. In addition, Pioneer is concerned that the public may be responding to recent industry reports questioning the long term prospects of its CarbonFree™ technology, due to the potential increase in use of electric cars. Further, Pioneer has recently been accused of poor management, with critics claiming that relatively little progress has been made by the company since it signed the supply agreement with GreenWheels.

# GENERAL BACKGROUND INFORMATION (CONTINUED)

## Background

It is the first week of May 2020 and in approximately 12 weeks' time the opening ceremony of the Summer Olympics in Tokyo will take place. GreenWheels has prepared extensively for the event, which it views as a particularly exciting commercial opportunity. With many tourists and senior political figures visiting Tokyo, there will be a significant increase in the need for transportation and an increased focus on which taxi companies deliver the best service. Throughout the media build-up, there has also been a recurring theme of the environmental impact of the Olympics, which GreenWheels believes will play nicely into its hands.

The Olympics may potentially offer additional economic benefits for GreenWheels, as the Olympics Committee is soon to choose an official taxi "sponsor" for the event. Whoever is picked as the Tokyo 2020 Olympics Official Taxi Company will enjoy significant media exposure, which is predicted to have an enormous impact on the selected company's revenue and future prospects.

During the first half of 2020 the GreenWheels board discussed making an offer to acquire a significant stake in Pioneer and Jeff Harris and Lewis Lancole had an initial discussion with no conclusion. As part of that discussion Jeff Harris had proposed that a number of GreenWheels directors would be appointed to the board of Pioneer and GreenWheels would acquire a stake of around 15-20% in Pioneer. GreenWheels considers that such an approach would lead to synergies between both companies.

However, on Monday 4 May 2020, the Head of Operations for GreenWheels is informed by a senior member of staff that a number of GreenWheels drivers based in Tokyo have recently reported issues with their CarbonFree™ cars. The outcome of initial tests suggests that many of the older catalytic converters purchased from Pioneer have ceased to function properly. It is believed that up to 50% of GreenWheels' CarbonFree™ fleet in Tokyo may be affected (around 250 vehicles). If all of these cars are unfit for operations, this would effectively remove GreenWheels' ability to compete with other taxi companies during the Olympics and without most of its "Green" taxis, GreenWheels can no longer promote its taxis as more environmentally friendly than its competitors (including UBER, CityTaxi and Hailo). GreenWheels are still investigating the full impact of the situation, but there are fears that it may not be safe to have certain taxis transporting customers and that GreenWheels'

operations in other Asian cities may also be affected.

GreenWheels CEO Jeff Harris quickly moves to arrange an emergency meeting with Pioneer to try to resolve the issue as soon as possible. At the meeting, GreenWheels' Head of Operations explains the issues they have encountered to the management team at Pioneer. GreenWheels requests that Pioneer repair all affected cars as a matter of extreme urgency – if the company cannot return to normal service levels by the end of May 2020, this will have a material impact on its chances of securing the lucrative sponsorship position as well as affecting its day-to-day operations over the longer term.

Pioneer explained to GreenWheels that due to the size of its repairs team they simply cannot repair that many cars in the time period due to the resources they have available. At best, Pioneer claim they could repair half of the affected vehicles before the start of the Olympics. The meeting ends on a sour note, with GreenWheels CEO Jeff Harris calling a premature end to the meeting, disappointed at the lack of progress.

The commercial arrangement between Pioneer and GreenWheels has developed over the past four years and the parties have built a close working relationship. This is reflected in the most recent contractual agreement between the parties (signed three years ago for a term of four years and which can be extended at the sole discretion of Pioneer by one year) which contained exclusivity provisions restricting Pioneer from selling CarbonFree™ products to any other company (in any jurisdiction) other than GreenWheels, although Pioneer's existing commercial agreements with other companies were allowed to continue. In return, GreenWheels is obligated to purchase all their "Green" vehicles from Pioneer, and can only use Pioneer for repairs on cars purchased from Pioneer.

GreenWheels initially reviewed the supply agreement with Pioneer with a relatively light touch. At the outset of the relationship, much of the commercial arrangement between the parties was the product of informal communications between the CEOs and not all of the agreed arrangement was reflected in the supply agreement. It was not envisaged by either side that a party would wish to terminate the

## GENERAL BACKGROUND INFORMATION (CONTINUED)

agreement early and the termination provisions only allow for termination by written, mutual consent. Currently, GreenWheels is still obliged to purchase a further 150 vehicles from Pioneer under the contract before it expires, but this obligation would fall away if GreenWheels is able to demonstrate that there are material defects with the products delivered by Pioneer.

The current version of the supply agreement allows for 10 working days to repair a vehicle or replace any faulty parts (see extract below):

*"10.1 If any Product(s) delivered to the Customer is not in conformity with the terms of Clause 6 (Product Specifications), or is otherwise not in conformity with the terms of this Agreement, then, the Customer may reject the Product(s) and the Supplier shall use all reasonable endeavours to repair or replace the Product(s) within ten (10) working days..."*

*10.7 Any costs and/or expenses incurred by the Customer resulting from the Supplier's delivery of a Product(s) that does not conform with*

*the terms of this Agreement shall be payable by the Supplier, provided that any such costs are notified to the Supplier within two (2) years from the date of Delivery of the Product(s)."*

Most of the faulty cars were purchased from Pioneer at the start of the contract. Therefore instead of having to repair the vehicles free of charge, Pioneer is able to charge its usual repair costs. The price for a new catalytic converter is set in the schedule to the agreement at US\$8,000 (this is Pioneer's normal price and reflects the cost of the unique and complex manufacturing process). The parties did not agree any warranties or an indemnity relating to the ongoing emissions performance of the converters.

A couple of days after their first meeting, the parties re-engage and a meeting is scheduled for the end of the week between the CEOs and external lawyers of each company. Prior to the meeting GreenWheels and Pioneer need to consider next steps and potential solutions to the dispute.

# GreenWheels

## Confidential information

1. GreenWheels may be able to claim damages for breach of contract if Pioneer cannot repair the convertors within the time period envisaged by the contract, but GreenWheels is unsure whether it wants to risk its relationship with Pioneer at this stage and understands the outcome of any litigation to be uncertain.
2. GreenWheels currently has a US\$10million working capital facility from HSBC which it could use, in a worst case scenario, to cover the cost of new catalytic convertors. However, although outside the repair or replace period, GreenWheels is reluctant to pay full price for the convertors to be replaced or repaired. It views the situation as entirely Pioneer's fault and believes, at the very least, a reduced price for the convertors and repairs can be negotiated.
3. Prior to engaging with Pioneer, GreenWheels sampled similar technology from another company, AutoTech Limited ("**AutoTech**"), which is an international automotive parts manufacturers head-quartered in Noida, India. AutoTech have developed a catalytic converter that reduces emissions by around 40%. AutoTech is a significantly larger company than Pioneer and due to its larger size, GreenWheels have initially estimated AutoTech could fit new catalytic converters in 250 cars within the space of six weeks. The cost per catalytic converter is likely to be US\$5,000.
4. In a recent emergency management meeting, GreenWheels felt this incident could be a good opportunity to re-negotiate the terms of the supply agreement with Pioneer. GreenWheels is of the view that it could be possible to lower the price per "Green" vehicle and the cost of related repairs going forward. GreenWheels would also prefer to amend the exclusivity provisions to give it the flexibility to use other suppliers, for repairs and parts and possibly vehicles. Such changes have strong support among the GreenWheels board as they feel the current issues with Pioneer demonstrate the disadvantages of only dealing with one supplier. Notwithstanding the benefits of the CarbonFree™ technology, there is no use in having the technology if GreenWheels does not have enough cars on the roads serving customers.
5. GreenWheels, although highly appreciative of the service and technology provided by Pioneer, has also long suspected that Pioneer could be run more efficiently. Indeed it was discussed at a board meeting several months ago that if GreenWheels could help with the management of Pioneer, both companies could become more successful. The idea of taking an equity stake in Pioneer was mooted which would allow GreenWheels to appoint directors to the board of Pioneer. The board initially earmarked around US\$25million to invest in Pioneer. However, the idea of finding alternative suppliers currently has more support than investing in Pioneer, due to the frustration caused by the faulty converters.
6. GreenWheels is acutely aware of the potential ramifications of the faulty convertors becoming public knowledge, as GreenWheels operates in a very competitive industry. A downside of switching suppliers (or indeed taking an equity stake in Pioneer) is the risk that the problems experienced by GreenWheels become public knowledge. This would reduce consumers' confidence in GreenWheels and therefore GreenWheels must pay careful attention to what information reaches the media in order to minimise any reputational damage.

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