



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP22/36

Wednesday, 4 May 2022

Virtus Health Limited 04R – Panel Declines to Conduct Proceedings

The review Panel has declined to conduct proceedings on a review application dated 22 April 2022 from CapVest Partners LLP (**CapVest**) in relation to the affairs of Virtus Health Limited (**Virtus**). The application sought a review of the initial Panel's decision in *Virtus Health Limited 03* (see [TP22/30](#)).

Virtus is the subject of competing control proposals for all its fully paid ordinary shares from CapVest and BGH Capital Pty Ltd¹ (**BGH**).

CapVest² has a concurrent scheme at \$8.15 per share and an off-market takeover bid at \$8.10 per share (conditional on, among other things, the scheme not proceeding).

BGH has made an off-market takeover bid for Virtus at \$8.00 per share which is conditional only on the matters listed in section 652C, generally known as “prescribed occurrences”.

BGH has proposed to instruct its broker to acquire Virtus shares on market above its bid price based on the disclosure in its bidder's statement and market announcement announcing its bid. CapVest submitted that this would give rise to unacceptable circumstances if BGH did not first announce to the ASX that the offer price under its bid will be increased³ and the amount of that increase.

The review application concerned the decision of the initial Panel not to make a declaration of unacceptable circumstances and accept an undertaking from BGH requiring BGH to announce immediately when an order it has placed on market is matched at a higher price than the bid price (and otherwise to follow the usual ASX market procedures) before it can make any further on market purchases.⁴

¹ in its capacity as investment manager or adviser to the constituent entities of BGH Capital Fund I. Its bid is being made by Oceania Equity Investments Pty Ltd (as trustee for the Oceania Trust) and A.C.N. 658 293 166 Pty Ltd, each currently wholly-owned by BGH Capital Fund I

² through its bidding vehicle, Evergreen BidCo Pty Ltd

³ noting section 651A which operates to automatically increase the bid price to the higher price

⁴ BGH is permitted to complete the unfilled balance under the order that resulted in the higher price

The review Panel agreed with the conclusions of the initial Panel that BGH's proposal did not undermine the existence of an efficient, competitive and informed market, noting also the undertaking provided by BGH. The review Panel concluded there was no reasonable prospect that it would make a declaration of unacceptable circumstances. Accordingly, the review Panel declined to conduct proceedings.

As the proceedings are determined, the interim orders (see [TP22/33](#)) cease to have effect, although the undertaking given to the initial Panel remains in place.

The sitting Panel was Rory Moriarty, John O'Sullivan (the sitting President) and Karen Phin.

The Panel will publish its reasons for the decision in due course on its website www.takeovers.gov.au.

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