



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP23/37

Thursday, 23 November 2023

Southern Cross Media Group Limited – Declaration of Unacceptable Circumstances

The Panel has made a declaration of unacceptable circumstances (Annexure A) in relation to an application dated 24 October 2023 by Keybridge Capital Limited in relation to the affairs of Southern Cross Media Group Limited (**Southern Cross**) (see [TP23/32](#)).

Background

As at market close on 19 June 2023, Allan Gray Australia Pty Limited (**Allan Gray**) had voting power in 21.71% of Southern Cross. At this time, Allan Gray also had voting power in 20.04% of ARN Media Limited (**ARN**).

After market close on 19 June 2023, ARN acquired 14.8% (in aggregate) of Southern Cross shares from Allan Gray and other Southern Cross shareholders (**ARN Acquisition**). As a result of the ARN Acquisition, Allan Gray's voting power in Southern Cross increased from 21.71% to 31.24% by operation of the deeming provision in s608(3)(a), resulting in 6.83% of Southern Cross shares having been acquired by ARN in contravention of s606 (allowing for Allan Gray's creep capacity).

Allan Gray subsequently acquired a further 0.08% of Southern Cross shares in contravention of s606.

A consortium comprising ARN and Anchorage Capital Partners Pty Limited subsequently submitted a non-binding indicative offer to acquire 100% of Southern Cross via a scheme of arrangement.

Declaration

ARN and Allan Gray both submitted that the contraventions were inadvertent. Notwithstanding this, the Panel considered that the circumstances were unacceptable:

1. because they constituted or gave rise to contraventions of s606 and the substantial holder provisions in s671B and/or

2. in relation to the contravention of s606 arising from the ARN Acquisition only, having regard to the effect that the Panel is satisfied the circumstances have had, are having, will have or are likely to have on:
 - (a) the control, or potential control, of Southern Cross or
 - (b) the acquisition, or proposed acquisition, by a person of a substantial interest in Southern Cross.

The Panel had regard to the matters in s657A(3) and did not consider it against the public interest to make the declaration.

Submissions in relation to orders are due by 5.00pm (Melbourne time) on Wednesday, 29 November 2023.

The sitting Panel is Michael Borsky KC (sitting President), Sylvia Falzon and Marina Kelman.

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

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ANNEXURE A

CORPORATIONS ACT

SECTION 657A

DECLARATION OF UNACCEPTABLE CIRCUMSTANCES

SOUTHERN CROSS MEDIA GROUP LIMITED

CIRCUMSTANCES

1. Southern Cross Media Group Limited (**Southern Cross**) and ARN Media Limited (**ARN**) are ASX listed companies.
2. Allan Gray Australia Pty Limited (**Allan Gray**) is a fund manager.
3. As at market close on 19 June 2023, Allan Gray had a relevant interest and voting power in 21.71%¹ of Southern Cross. At this time, Allan Gray also had a relevant interest and voting power in 20.04% of ARN.
4. After market close on 19 June 2023, ARN acquired a total of 35,505,074 Southern Cross shares (**ARN Acquisition**) from various Southern Cross shareholders including Allan Gray, consequently obtaining a relevant interest and voting power in 14.8% of Southern Cross.
5. As a result of the ARN Acquisition, Allan Gray's relevant interest and voting power in Southern Cross increased from 21.71% to 31.24%, comprising:
 - (a) 16.44% by operation of section 608(1)² through Allan Gray's direct holding of Southern Cross shares and
 - (b) 14.8% by operation of section 608(3)(a) through Allan Gray's relevant interest in ARN,other than as permitted by one of the exceptions in section 611³, resulting in 6.83% of Southern Cross shares having been acquired by ARN in contravention of section 606.

¹ Unless otherwise indicated, all percentages have been rounded to two decimal places

² Unless otherwise indicated, all statutory references are to the *Corporations Act 2001* (Cth), and all terms used in Chapters 6 to 6C have the meaning given in the relevant Chapter (as modified by ASIC)

³ Allan Gray was permitted to acquire voting power of up to 24.41% in Southern Cross under item 9 of section 611 at that time

6. Allan Gray did not give details of its deemed relevant interest in 14.8% of Southern Cross shares as required by section 671B.
7. On 7 July 2023 and 24 October 2023, Allan Gray acquired 130,422 Southern Cross shares and 62,317 Southern Cross shares respectively other than as permitted by one of the exceptions in section 611, resulting in further contraventions of section 606.
8. On 18 October 2023, ARN announced that a consortium comprising ARN and Anchorage Capital Partners Pty Limited had submitted a non-binding indicative offer to acquire 100% of Southern Cross via a scheme of arrangement.

CONCLUSION

9. It appears to the Panel that the circumstances are unacceptable circumstances:
 - (a) because they constituted or gave rise to contraventions of section 606 and section 671B and/or
 - (b) in relation to the contravention of section 606 arising from the ARN Acquisition only, having regard to the effect that the Panel is satisfied they have had, are having, will have or are likely to have on:
 - (i) the control, or potential control, of Southern Cross or
 - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in Southern Cross.
10. The Panel considers that it is not against the public interest to make a declaration of unacceptable circumstances. It has had regard to the matters in section 657A(3).

DECLARATION

The Panel declares that the circumstances constitute unacceptable circumstances in relation to the affairs of Southern Cross.

Tania Mattei
General Counsel
with authority of Michael Borsky KC
President of the sitting Panel
Dated 22 November 2023