Australian Government

Takeovers Panel

Reasons for Decision
Invest Blue Pty Ltd
[2025] ATP 5

Catchwords:

Decline to conduct proceedings – reducing company to less than 50 members – employee shareholders – timely application – extend time for making application

Corporations Act 2001 (Cth), sections 231, 657C(3)(b)

Guidance Note 1: Unacceptable Circumstances

Takeovers Panel Procedural Guidelines 2020, 4.6

Ringers Western Limited [2024] ATP 8, Mighty Kingdom Limited [2023] ATP 14, A S P Aluminium Holdings Pty Ltd [2023] ATP 8, Webcentral Group Limited 03 [2021] ATP 4, Molopo Energy Limited 01 & 02 [2017] ATP 10, The President's Club Limited 02 [2016] ATP 1, Careers Australia Group Limited 03 [2015] ATP 1, Careers Australia Group Limited [2012] ATP 5, Austral Coal Limited 03 [2005] ATP 14, Taipan Resources NL 07 [2000] ATP 18

Interim order	IO undertaking	Conduct	Declaration	Final order	Undertaking
NO	NO	NO	NO	NO	NO

INTRODUCTION

1. The Panel, Teresa Dyson (sitting President), Ruth Higgins SC and Reeny Paraskeva declined to conduct proceedings on an application by Kanenaro Pty Ltd ATF Denaro Family Superannuation Fund in relation to the affairs of Invest Blue Pty Ltd. The application concerned alleged contraventions of Chapter 6[1] in connection with Ironbark Investment Partners Pty Ltd's acquisition of Invest Blue Pty Ltd pursuant to a share purchase agreement executed and completed on 15 December 2023, and an alleged plan to reduce the number of Invest Blue Pty Ltd's shareholders below 51 prior to the transaction so that the takeovers provisions in Chapter 6 no longer applied to it. The Panel considered that there was no reasonable prospect that it would declare the circumstances unacceptable.

2. In these reasons, the following definitions apply.

Applicant	Kanenaro Pty Ltd ATF Denaro Family Superannuation Fund
Bare Trust Arrangements	has the meaning given in paragraph 13(b)
Equity Plan Services	Equity Plan Services Pty Ltd

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

Federal Court Proceedings	has the meaning given in paragraph 12
Invest Blue	Invest Blue Pty Ltd
Invest Blue Companies	Invest Blue and Invest Blue Support
Invest Blue Support	Invest Blue Support Pty Ltd, a related body corporate of Invest Blue
Ironbark	Ironbark Investment Partners Pty Ltd
Merger Summary	has the meaning given in paragraph 10
Online Shareholder Meeting	has the meaning given in paragraph 6
Share Purchase Agreement	has the meaning given in paragraph 11

FACTS

3. Invest Blue is a proprietary company limited by shares which operates in the financial services sector.

4. Mr Anthony Denaro, a former employee of Invest Blue Support, is both a beneficiary of the Denaro Family Superannuation Fund and a director of the Applicant.

5. On 1 March 2022, the Applicant was issued 9,819 ordinary shares in Invest Blue (which it acquired *"using approximately $220,000 of its own funds"*). At this time, Invest Blue was an unlisted public company with more than 50 members.

6. The Applicant submitted that, in or around June or July 2022, an online meeting was convened by Invest Blue with various employee shareholders, including Mr Denaro and *"dozens of other employees, possibly up to one hundred"* (**Online Shareholder Meeting**). During such meeting, two Invest Blue directors *"spoke on behalf of Invest Blue and said that the company needed the Employee Shareholders to move their shareholdings to a bare trust so that there were less than fifty shareholders in Invest Blue… The purported reasons given were for ASIC reporting reasons, for administrative convenience, and to make fundraising less cumbersome"* (as submitted by the Applicant).

7. In August 2022, the Applicant appointed Equity Plan Services to hold its Invest Blue shares on trust pursuant to a bare trust deed.

8. On 19 April 2023, Invest Blue applied to convert from a public company to a proprietary company.

9. In August 2023, Ironbark, which already owned approximately 40% of the shares in Invest Blue through a related body corporate, offered to acquire all the remaining shares in the Invest Blue Companies that it did not already own in exchange for scrip in Ironbark (for Invest Blue shares) and a nominal cash amount (for Invest Blue Support shares).

10. In connection with Ironbark's offer, Invest Blue provided the Applicant with an undated 'merger summary' setting out (among other things) the key terms of the proposed transaction (**Merger Summary**). Relevantly, the Merger Summary stated that Equity Plan Services would act on behalf of shareholders in the bare trust to execute the Share Purchase Agreement and would contact shareholders to obtain their consent to do so.

11. Ironbark subsequently acquired all the issued shares in the Invest Blue Companies that it did not already own (including the Applicant's beneficially owned Invest Blue shares) for the consideration described above (**Ironbark Acquisition**) pursuant to a share purchase agreement executed and completed on 15 December 2023 (**Share Purchase Agreement**).

12. On 23 December 2024, Invest Blue Support commenced Federal Court proceedings against Mr Denaro alleging that he had breached certain post-termination employment obligations (**Federal Court Proceedings**).

APPLICATION

Declaration sought

13. By application dated 17 February 2025, the Applicant sought a declaration of unacceptable circumstances. It submitted (among other things) that:

    (a) At the time of the Ironbark Acquisition, Invest Blue was an unlisted company with over 50 members for the purposes of Chapter 6, as *"evidenced or implied by"* certain materials including share certificates, registry statements, the terms of the Share Purchase Agreement and Ironbark's post-merger register. Therefore, Ironbark failed to adhere to the requirements of Chapter 6 in respect of the Ironbark Acquisition, impacting Invest Blue shareholders' ability to properly assess the merits of Ironbark's proposal.[2]

    (b) If the Panel finds that Invest Blue was not a Chapter 6 company at the time of the Ironbark Acquisition, then steps taken by Invest Blue prior to the Ironbark Acquisition to establish a bare trust pursuant to which Equity Plan Services became the registered holder of shares in Invest Blue on behalf of employee shareholders (**Bare Trust Arrangements**) constituted unacceptable circumstances.

Orders sought

14. The Applicant did not seek any interim orders.

15. The Applicant sought final orders including that:

    (a) any transfers of shares under the Share Purchase Agreement be declared void and of no effect

[2] For example, Invest Blue shareholders were not provided with a bidder's statement, an independent expert's report or prospectus level disclosure in relation to the Ironbark scrip

(b) offers of and acceptances of Ironbark shares under the Share Purchase Agreement be rescinded and

(c) any bare trusts with Equity Plan Services as trustee relating to Invest Blue shares *"be vested and the Invest Blue shares be transferred to the beneficial holders"*.

Preliminary submissions

16. We received preliminary submissions from Invest Blue and Ironbark.

17. Invest Blue submitted (among other things) that:

(a) Immediately before the Ironbark Acquisition, it had only six members. In support, it provided a copy of its share register as at 14 December 2023 (the day before the execution and completion of the Share Purchase Agreement), which showed six registered shareholders.

(b) The decision to establish the Bare Trust Arrangements in July 2022 was not connected to the Ironbark Acquisition. Rather, it was motivated by a desire for Invest Blue to transition to a proprietary company to lessen the administrative and cost burdens associated with being a public company, and to facilitate plans for future growth and expansion generally. It follows that *"the Bare Trust Arrangements were unconnected to the control transaction complained of, and accordingly the Panel does not have jurisdiction to make a declaration of unacceptable circumstances as none of the criteria in s 657A(2) are satisfied"*.

18. Ironbark also submitted that immediately before the Ironbark Acquisition, Invest Blue only had six members and was therefore not subject to Chapter 6.

19. It further submitted that the Panel has no jurisdiction to consider steps taken by Invest Blue prior to the Ironbark Acquisition to establish the Bare Trust Arrangements, as *"[t]he steps taken by the Invest Blue Companies to restructure a year before Ironbark had made an offer to acquire Invest Blue are beyond the remit of the Panel and consistent with the principles at s 602 of the Act: Takeover Panel Guidance Note 1: Unacceptable Circumstances [25]-[32]"*.

DISCUSSION

20. We have considered all the material presented to us in coming to our decision, but only specifically address those matters that we consider necessary to explain our reasoning.

Whether Invest Blue was a Chapter 6 company

21. One of the purposes of Chapter 6 outlined in section 602 is to ensure that the acquisition of control over the voting shares in a listed company, or an unlisted company with more than 50 members, takes place in an efficient, competitive and informed market.

22. We did not accept the Applicant's submission that, at the time of the Ironbark Acquisition, Invest Blue was an unlisted company with over 50 members for the purposes of Chapter 6, as *"evidenced or implied by"* certain materials including share

certificates, registry statements, the terms of the Share Purchase Agreement and Ironbark's post-merger register.

23. 'Member' is defined in section 231 as follows:

> *"A person is a member of a company if they:*
>
> *(a) are a member of the company on its registration; or*
>
> *(b) agree to become a member of the company after its registration* ***and their name is entered on the register of members****; or*
>
> *(c) become a member of the company under section 167 (membership arising from conversion of a company from one limited by guarantee to one limited by shares)"* (emphasis added).

24. Invest Blue provided a copy of its share register as at 14 December 2023 (the day before the execution and completion of the Share Purchase Agreement) which showed that it had six members. Accordingly, it was not a Chapter 6 company at the time of the Ironbark Acquisition.

Jurisdiction

25. As noted above, Invest Blue and Ironbark submitted that the Bare Trust Arrangements were *"unconnected"* to the control transaction in question and accordingly the Panel does not have jurisdiction to make a declaration of unacceptable circumstances as none of the criteria in section 657A(2) are satisfied.

26. In our view, the fact that the Bare Trust Arrangements were completed and Invest Blue was no longer a Chapter 6 company at the date of the application does not necessarily remove the Panel's jurisdiction.

27. In *Careers Australia Group Limited 03,*[3] the Panel considered a bid by Cirrus in relation to Careers Australia that closed 18 months prior to the application being made. Although the Panel decided not to conduct proceedings, it stated the following in relation to its jurisdiction to consider the application (footnotes omitted):

> *"26. Cirrus' bid closed some 18 months ago. In our view, the fact that a bid has closed does not necessarily remove the Panel's jurisdiction. In Qantas 02, the Panel declined to conduct proceedings on an application to reopen a bid to allow a late acceptance to be counted which would have taken the bidder over 50%. The Panel considered that it had jurisdiction although the bid was closed. The Panel said at [14]:*
>
> > *The Panel's decision not to commence proceedings was not based on any view that it did not have jurisdiction to consider the application.*
>
> *27. Careers Australia is now 99.99% owned by Cirrus and is no longer a Chapter 6 company, although it was at the time of the bid. In our view, this fact does not necessarily remove the Panel's jurisdiction. If the view were taken to the contrary, a curious situation would arise that the Panel would have jurisdiction at the beginning of*

[3] [2015] ATP 1

a bid but not necessarily towards the end of a successful bid, at least in the case of an on-market or unconditional bid. This cannot have been intended.

28. However, the fact that a bid has closed may be a factor relevant to whether the Panel should conduct proceedings."

28. We consider the situation here is somewhat analogous. An interpretation that the Panel's jurisdiction is lost once a company ceases to be a Chapter 6 company would lead to an unintended consequence whereby transactions and corporate actions involving the removal of a company from Chapter 6 escape regulatory scrutiny after they are completed.

29. We also note that section 657A(2) allows us to consider circumstances that "have had" an effect on control or the acquisition of a substantial interest or having regard to the purposes of Chapter 6, or have "constituted" or "gave rise" to a contravention of Chapter 6, 6A, 6B or 6C.

Alleged plan to remove Invest Blue from the ambit of Chapter 6

30. The Applicant submitted that if the Panel finds that Invest Blue was not a Chapter 6 company at the time of the Ironbark Acquisition, then the Bare Trust Arrangements were unacceptable because "*[t]he actual reason motivating Invest Blue (possibly at the instigation or initiative of Ironbark) to establish the Bare Trust Arrangements was to extinguish the Employee Shareholders as members of the company for the purposes of Chapter 6 in connection with the subsequent merger*".

31. In support of this, the Applicant submitted:

    (a) The failure to unwind the Bare Trust Arrangements when the Ironbark Acquisition commenced suggests that their establishment may have been primarily or solely intended to enable Invest Blue and/or Ironbark to avoid the operation of Chapter 6.

    (b) No advice or communication was provided to shareholders who transferred their holdings into the bare trust to inform them that doing so might deprive them of their Chapter 6 rights in the event of a future change of control transaction. As a result, those shareholders were not in a position to make an informed decision.

    (c) There was a high degree of cooperation between Ironbark and Invest Blue in the lead-up to the Ironbark Acquisition, and Invest Blue acted as the chief proponent of the transaction on behalf of Ironbark. In addition, Ironbark was a substantial shareholder at the time the Bare Trust Arrangements were completed and one of its executives was a nominee director on the Invest Blue board from 29 August 2019 until 15 December 2023 (the date of the Ironbark Acquisition). Given these circumstances, the Panel may infer that Invest Blue's attempt to extinguish Chapter 6 rights was intended to facilitate Ironbark's acquisition without requiring compliance with Chapter 6 requirements and processes.

32. As mentioned, Invest Blue submitted that the decision to establish the Bare Trust Arrangements in July 2022 was not connected to the Ironbark Acquisition but rather was motivated by a desire for Invest Blue to transition to a proprietary company to lessen the administrative and cost burdens associated with being a public company, and to facilitate plans for future growth and expansion generally.

33. In *Careers Australia Group Limited,*[4] the Panel considered whether an offer by the majority shareholder to buy the shares of 40 shareholders under separate option arrangements was unacceptable in circumstances where, if those offers were accepted, and options exercised, the number of shareholders would fall from 88 to below 50, thus removing the company from Chapter 6. The Panel declined to make a declaration of unacceptable circumstances after an undertaking was given that in effect limited the exercise of options to such a number that the company would be left with 62 members. However, in its reasons, the Panel acknowledged:

> *"We accept there will be circumstances in which removal of a company from the ambit of Chapter 6 will clearly not be unacceptable, for instance, if a company ends up with 50 or fewer shareholders by coincidence; that is, as an ancillary result of some other act. Where there is a plan or proposal designed to cause a company to be taken outside the ambit of Chapter 6, unacceptable circumstances may, in our view, arise."*

34. Unacceptable circumstances may arise where there is a deliberate strategy to reduce the number of shareholders in a company with a view to taking the company outside the ambit of Chapter 6 and depriving shareholders of the benefits and protections afforded under that Chapter.

35. Certain matters initially concerned us. The Merger Summary provided to Invest Blue shareholders around the time of its offer to acquire the Invest Blue Companies (presumably around August 2023) stated that a financial services firm had *"completed an extensive project over the last 10 months to determine an independent valuation of both businesses"*. In our view, this indicated that the Ironbark Acquisition may have been under contemplation at the time that the Bare Trust Arrangements were completed.

36. We were also concerned that the only material provided by Invest Blue to Invest Blue employee shareholders around the time of the Applicant's entry into its bare trust deed with Equity Plan Services was a slide deck from the Online Shareholder Meeting[5] which showed the company's growth strategy, its upcoming acquisition activity and its plan for employees to take up additional shares. While we appreciate

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[4] [2012] ATP 5. See also *A S P Aluminium Holdings Pty Ltd* [2023] ATP 8, where the Panel considered an application for a declaration of unacceptable circumstances concerning the affairs of a proprietary company with more than 50 members. The claims primarily concerned alleged contraventions of the 20% rule and alleged attempts to avoid the application of the takeovers provisions by reducing the number of shareholders to 50 or below. The Panel was not satisfied the applicant had established that the circumstances were unacceptable but agreed with the excerpt quoted from *Careers Australia Group Limited* in paragraph 33 of these reasons

[5] Invest Blue referred to this slide deck as *"a slide deck from the Invest Blue shareholder meeting dated 27 June 2022"*. We assume that the *"shareholder meeting dated 27 June 2022"* is the Online Shareholder Meeting referred to in paragraph 6 of these reasons

that the Bare Trust Arrangements may have helped facilitate these plans (as submitted by Invest Blue), Invest Blue did not provide us with any supporting material or correspondence to shareholders explaining the basis for the Bare Trust Arrangements or their potential impact.

37. However, in the circumstances, we consider it unlikely that further enquiries would lead us to find that there was a deliberate strategy to reduce the number of shareholders in Invest Blue with a view to taking the company outside the ambit of Chapter 6 and depriving shareholders of the benefits and protections afforded under that Chapter. In coming to this conclusion, we consider it relevant that:

    (a) Invest Blue submitted:

        (i) the decision to establish the Bare Trust Arrangements in July 2022 was not connected to the Ironbark Acquisition but rather motivated by a desire for Invest Blue to transition to a proprietary company to lessen the administrative and cost burdens associated with being a public company, and to facilitate plans for future growth and expansion generally and

        (ii) while Invest Blue requested all employee shareholders utilise the Bare Trust Arrangements, it did not give a direction to this effect. The Invest Blue register dated 14 December 2023 showed some individual shareholders declined to utilise the Bare Trust Arrangements.

    (b) Considerable time has elapsed since the completion of the Bare Trust Arrangements and Ironbark Acquisition. It would be no straightforward matter to reconstruct what information was available to Invest Blue shareholders and the full rationale for Invest Blue undertaking the Bare Trust Arrangements. In our view, the circumstances surrounding the Bare Trust Arrangements are likely to require information gathering and forensic analysis that the Panel is not best equipped to undertake.

    (c) The Applicant's allegation that it was 'misled' in relation to the Bare Trust Arrangements may be better dealt with by a Court.[6] In this regard, we note the Applicant's submission that in correspondence to Invest Blue Support's lawyers in connection with the Federal Court Proceedings, the following potential cross-claims have been referred to *"(a) breach of directors' duties claim against the directors of Invest Blue in connection with their Attempted Extinguishment of Chapter 6 Rights and for failing to require Ironbark to comply with Chapter 6"* and *"(b) An oppression claim against Ironbark for inducing or requiring Invest Blue to proceed with the merger in breach of the Chapter 6 requirements"*.

    (d) There was limited material supporting the Applicant's submission that there was a deliberate strategy to deprive shareholders of the benefits and protections afforded under Chapter 6.

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[6] *Mighty Kingdom Limited* [2023] ATP 14 at [73]. See also *Ringers Western Limited* [2024] ATP 8 at [34]-[35] and *Careers Australia Group Limited 03* [2015] ATP 1 at [43]-[49]

Remedies available

38. Paragraph 4.6(b) of the Panel's Procedural Guidelines identifies "*the remedies available*" as a factor the Panel considers in deciding whether to conduct proceedings.

39. As mentioned, the Applicant sought final orders to declare void any transfers, and to rescind the offers and acceptances, under the Share Purchase Agreement. In our view, these orders are apt to be unfairly prejudicial to various parties, including the Invest Blue Companies, Ironbark, and former Invest Blue shareholders.

40. In forming this view, we considered Invest Blue's submission that "*[t]he Invest Blue Companies and Ironbark have organised their business affairs, including carrying out merger integration activities, for more than 14 months, on the basis of the relevant arrangements relating to the Ironbark Acquisition*".

41. The passage of time since any relevant circumstances occurred makes it more difficult for the Panel now to respond to those circumstances through the creation of new rights and obligations. As noted in Guidance Note 1:

> *"The Panel aims to correct unacceptable circumstances as quickly and as cost effectively as possible. It seeks to ensure that control transactions are decided by informed security holders who have confidence in the integrity of Australia's market for corporate control."*[7]

We consider intervening at this stage may risk creating further uncertainty rather than providing an effective remedy.

Timeliness and request for extension of time

42. For the following reasons, we think the application was not timely:

    (a) The Ironbark Acquisition and Bare Trust Arrangements were completed more than 14 months and 2 years, respectively, before the application was made.

    (b) There are now limited remedies available.[8]

    (c) Having regard to paragraphs (a) and (b), and the fact the application was only submitted after Invest Blue Support commenced the Federal Court Proceedings against Mr Denaro of the Applicant on 23 December 2024, we were concerned that the application may have been tactical. This concern was heightened by the potential cross-claims in those proceedings referred to by the Applicant in paragraph 37(c) above. The Panel's role is to resolve material disputes, not to facilitate procedural manoeuvring.[9]

43. Further, we considered that an extension of time under section 657C(3)(b) was needed to make the application because it was not brought within two months of the date the alleged unacceptable circumstances occurred.

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[7] Guidance Note 1: Unacceptable Circumstances at [4]
[8] See paragraphs 38 to 41 above
[9] *Taipan Resources NL 07* [2000] ATP 18 at [54]-[55]

44. The Applicant submitted "*there is sufficient material available to the Panel in the form of the ASIC company extracts to suggest that the [Ironbark Acquisition] has not yet been completed. If so, then we do not consider that any extension of time is required*".

45. Ironbark submitted that while part of the purchase consideration was structured with a deferred component, completion of the Share Purchase Agreement occurred on 15 December 2023 when all the shares in the Invest Blue Companies not already owned by Ironbark were transferred to Ironbark. In accordance with its completion obligations, Ironbark also issued new shares to the sellers under the Share Purchase Agreement on the same date. Invest Blue too submitted that the Ironbark Acquisition completed on 15 December 2023.

46. Based on Ironbark and Invest Blue's submissions, we are satisfied that the Ironbark Acquisition completed on 15 December 2023 and the application was therefore not made within the two-month period.

47. In the alternative, the Applicant submitted that "*[i]n the event that the Panel does come to the view that the merger has been completed then the Applicant would submit that this is clearly a case in which the Panel ought grant an extension of time*".

48. The relevant factors to consider in deciding whether to extend time have been set out in *Webcentral Group Limited 03*.[10] They are:

    "*(a) the discretion to extend time should not be exercised lightly*[11]

    (b) whether the application made credible allegations of clear and serious unacceptable circumstances, the effects of which are ongoing[12]

    (c) whether it would be undesirable for a matter to go unheard, because it was lodged outside the two month time limit, if essential matters supporting it first came to light during the two months preceding the application[13] *and*

    (d) whether there is an adequate explanation for any delay, and whether parties to the application or third parties will be prejudiced by the delay.[14]"

49. Citing *Webcentral Group Limited 03*, the Applicant referred to each of these factors as follows:

    (a) While the discretion to extend time should not be exercised lightly, "*the actions undertake[n] by Invest Blue and Ironbark were calculated, egregious and a direct attempt to circumvent their respective obligations under Chapter 6 and also to suppress the rights available under Chapter 6 to the Applicant (and other Employee Shareholders)*".

    (b) The evidence provided by the Applicant is credible and "*clearly indicates that Invest Blue was a Chapter 6 company as a matter of law at the time of commencement*

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[10] *Webcentral Group Limited 03* [2021] ATP 4
[11] *Austral Coal Limited 03* [2005] ATP 14 at [18]
[12] Ibid at [19] and *The President's Club Limited 02* [2016] ATP 1 at [143]
[13] *Molopo Energy Limited 01 & 02* [2017] ATP 10 at [248]
[14] Ibid at [249]

of the merger. If Invest Blue was a Chapter 6 company at such time then the contraventions of Chapter 6 committed by Ironbark could hardly be more serious and far reaching".

(c) It would be undesirable for this matter to go unheard based upon the following matters which only came to light during the two months preceding the application:

(i) at the time of the execution of the Share Purchase Agreement, Mr Denaro of the Applicant did not obtain legal advice

(ii) the Applicant's lawyer was first provided with the Share Purchase Agreement on 15 January 2025 and prior to receiving legal advice the Applicant *"had no insight whatsoever that the takeovers regime may have been breached"* and

(iii) the Applicant is not the only person affected by the contraventions of Chapter 6 and it is *"very likely that other shareholders have no awareness that the requirements of Chapter 6 may have been breached"*.

(d) No third parties will be prejudiced by any delay in bringing the application.

50. Also citing the factors in *Webcentral Group Limited 03*, Invest Blue submitted that the Panel should not grant an extension of time because:

(a) A considerable amount of time has passed since the Ironbark Acquisition and Bare Trust Arrangements were completed. No adequate explanation has been provided for the delay, particularly having regard to letters that Invest Blue provided to us dated 15 May 2024 and 25 September 2024 which indicate that the Applicant's lawyer was closely examining the Bare Trust Arrangements and the Ironbark Acquisition during that period.

(b) Contrary to the Applicant's submission that its lawyer was first provided with the Share Purchase Agreement on 15 January 2025, the agreement was provided to the Applicant on 12 October 2023.

(c) The Bare Trust Arrangements were unconnected to the Ironbark Acquisition.

(d) The Invest Blue Companies and Ironbark have organised their business affairs, including carrying out merger integration activities, for more than 14 months, on the basis of the relevant arrangements relating to the Ironbark Acquisition. If the Applicant is granted an extension, they will suffer material prejudice as a result of the delay. Moreover, every shareholder of Ironbark will also suffer prejudice.

51. For similar reasons to those submitted by Invest Blue in paragraphs 50(a) and 50(d) above, Ironbark too submitted that we should not exercise our discretion to extend time.

52. In the circumstances, it was unlikely that we would exercise our discretion to extend time, noting (among other things) that we should not exercise our discretion lightly[15] and:

    (a) The Ironbark Acquisition and Bare Trust Arrangements were completed more than 14 months and 2 years, respectively, before the application was made.

    (b) Having regard to the untimeliness in bringing the application,[16] we were not persuaded there was an adequate explanation for why the Applicant did not apply before 17 February 2025. We do not consider the delay in the Applicant providing the Share Purchase Agreement to its lawyer would justify an extension.

    (c) We considered that there were arguments which weighed against granting an extension, including the untimeliness in bringing the application,[17] the difficulties we would likely face in gathering information,[18] the strength of the evidence,[19] the potential availability of an alternative forum[20] and prejudice to parties to the application and third parties.[21]

53. However, given that there is no reasonable prospect that we would make a declaration of unacceptable circumstances, we consider that it is unnecessary to consider the Applicant's request for an extension of time further.

DECISION

54. We do not consider that there is any reasonable prospect that we would make a declaration of unacceptable circumstances. Accordingly, we have decided not to conduct proceedings in relation to the application under regulation 20 of the *Australian Securities and Investments Commission Regulations 2001* (Cth).

55. Given that we have decided not to conduct proceedings, we do not (and do not need to) consider whether to make any interim or final orders.

Teresa Dyson
President of the sitting Panel
Decision dated 25 February 2025
Reasons given to parties 14 March 2025
Reasons published 20 March 2025

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[15] See paragraph 49(a)
[16] See paragraph 42
[17] Ibid
[18] See paragraph 37(b)
[19] See paragraph 37(d)
[20] See paragraph 37(c)
[21] See paragraphs 38 to 41

Advisers

Party	Advisers
Applicant	Pointon Partners
Invest Blue Pty Ltd	Hall & Wilcox
Ironbark Investment Partners Pty Ltd	Kardos Scanlan