



**In the matter of Health Communication Network Limited  
[2004] ATP 29**

**Catchwords:**

*announcement of takeover bid – breach of condition – efficient, competitive and informed market – request for consent to withdraw application*

*Corporations Act 2001 (Cth) section 621*

*ASIC Class Order 00/2338*

**These are the Panel's reasons for consenting to a request by Health Communication Network Limited to withdraw its application dated 16 November 2004 regarding its affairs. On 18 November 2004, the Panel issued a media release substantially to the following effect concerning the application.**

## **THE PROCEEDINGS**

1. These reasons relate to an application (the **Application**) to the Panel from Health Communication Network Limited (**HCN**) dated 16 November 2004 in relation to a proposed takeover bid by IBA Health Limited (**IBA**).
2. The Panel consented to a request by HCN to withdraw the Application.

## **THE PANEL**

3. The President of the Panel appointed Chris Photakis (sitting President), Robyn Ahern (sitting Deputy President) and Mark Paganin as the sitting Panel (the **Panel**) to consider the Application.

## **APPLICATION**

### **Background and the Application**

4. IBA announced its intention to make a takeover bid for all the ordinary shares in HCN on 3 November 2004. That announcement indicated that the proposed offer was subject to several conditions, including a condition that between the announcement date and the date of the offer (inclusive), IBA shares not trade below \$0.70 on ASX at any time on any ASX trading day (**IBA Price Condition**).
5. IBA made a subsequent announcement on 15 November 2004 advising that on 11 and 12 November 2004, a number of IBA share trades took place at \$0.69. IBA's announcement went on to say that:

*IBA is not obliged, at this time, to decide and IBA has not decided whether it will rely on the breach of the condition. IBA will make this decision before making any offer, when the precise number of shares that IBA would be obliged to issue pursuant to the takeover offer is known. IBA expects to lodge its bidder's statement by the end of November 2004.*
6. HCN's Application submitted that unacceptable circumstances existed because:

## Takeovers Panel

### Reasons for Decision – Health Communication Network Limited

- (a) the breach of the IBA Price Condition had the effect of giving IBA an option whether or not to proceed with its announced bid; and
- (b) IBA's refusal to tell the market "in a timely manner" whether or not it intended to rely on the breached condition detracted from an efficient, competitive and informed market for HCN shares.

#### Further announcement by IBA

7. On 17 November 2004, after receiving a copy of HCN's Application, IBA made another announcement advising of a further breach of the IBA Price Condition on 17 November (in addition to the breaches which occurred on 11 and 12 November). The announcement went on to make the following clarification regarding the IBA Price Condition:

*IBA confirms that it will not rely on the [IBA Price] Condition (including the breaches that occurred on 11 November, 12 November and 17 November 2004) provided that the volume weighted average price of its scrip is not less than \$0.70 at the time at which the value of its offer is determined for the purposes of section 621 of the Corporations Act (as modified by ASIC Class Order 00/2338).*

## DECISION

8. HCN sought to withdraw its Application in light of the limitation IBA had placed on its ability to exercise the IBA Price Condition, as stated in IBA's 17 November announcement (set out in [7] above).
9. The Panel consented to HCN's withdrawal of its Application. At the time of receiving HCN's request for consent, the Panel had not made a decision as to whether or not to commence proceedings on the Application.

**Chris Photakis**

**President of the Sitting Panel**

**Decision dated 18 November 2004**

**Reasons published 24 November 2004**