



Friday, 10 February 2006

Bridgewater Lake Estate Ltd - Decision

The Takeovers Panel (**Panel**) advises that it has considered the application by Lowell Pty Ltd (**Lowell**) in relation to the affairs of Bridgewater Lake Estate Ltd (**Bridgewater**) (see [TP06/07](#)).

The Panel has declined to make a declaration of unacceptable circumstances in the application by Lowell in relation to acquisitions of shares in Bridgewater by Glebe Asset Management Ltd and Glebe Administration Board (together **Glebe**) and Harvest Living Ltd (**Harvest Living**).

Background

Glebe has a relevant interest in 22.23% of the voting power in Bridgewater and holds 893,690 Bridgewater convertible notes, which it has acquired via a series of transactions over a number of years.

Harvest Living recently agreed to acquire 9.8% of the voting power in Bridgewater.

In summary, Lowell's application alleged that the acquisition of a parcel of 148,280 shares in Bridgewater by Glebe in 2004 resulted in a contravention of section 606 of the Corporations Act 2001 (Cth) and the recent acquisition by Harvest Living of shares in Bridgewater resulted in a contravention of section 606 when Harvest Living and its associates voting power in Bridgewater is aggregated.

Lowell's application alleged that a number of the parties to the transactions, and their representatives, including Harvest Living and Glebe, were associates of each other and that they had been acting in concert to obtain control over Bridgewater without offering other shareholders an equal benefit, and that in so doing they had breached the 20% threshold in section 606 of the Corporations Act.

Decision

The Panel declined to make a declaration of unacceptable circumstances in relation to the application by Lowell primarily on the basis that it did not accept Lowell's submissions in relation to association between the various parties given the evidence which Lowell was able to put before it, nor did it consider any breach of section 606 had occurred.

The Panel did not consider, when looking at the series of transactions referred to by Lowell, that there was a convincing case made out that the persons referred to by

Lowell had acted in concert to acquire or consolidate control of Bridgewater. The Panel considered that for each of the relevant transactions, on an individual basis, and for the pattern of transactions overall, there were reasonable commercial bases or explanations.

On that basis, the Panel considered that Lowell had not provided sufficient argument and evidence to justify the Panel in not accepting those reasonable commercial explanations for the transactions and patterns of behaviour.

As it has previously said in a number of matters relating to associations, the Panel recognises the difficulties which an external person such as Lowell will have in providing hard evidence of associations and agreements which will frequently not be written or formal, and which will (if they are illegal), usually be hidden. On that basis, the Panel was prepared to consider Lowell's submissions as to what conclusions and inferences the Panel should take from patterns of behaviour where individual transactions might not of themselves be clearly impugnable. However, even taking a broad view of the series of transactions and relationships which Lowell submitted to the Panel were evidence of association and concerted action, the Panel was not convinced that it should not accept the submissions of the other parties that the transactions were reasonable, commercial, and not part of any agreement or concerted action to acquire control of Bridgewater.

That is not to say that Lowell's submissions were unreasonable, farfetched, or devoid of reasonable concern. However, given the plausible responses by the other parties, the Panel was not convinced that it should accept Lowell's submissions as to association and unacceptability over the submissions of the other parties in the absence of firm evidence to the contrary from Lowell.

The Panel also declined Lowell's application for an extension of time in relation to the alleged breach of section 606 in 2004 by Glebe on the basis that it considered that that limb of the application would not succeed even if an extension were granted.

The sitting Panel which considered the application was Alison Lansley (Sitting President), Byron Koster and Alastair Lucas.

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

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