



Thursday, 2 March 2006

Dromana 01R - Decision

The Takeovers Panel advises that it has declined the application by Mr John Hempton, a shareholder in Dromana Estate Limited (**Dromana**), for review of the decision made by the sitting Panel in the Dromana 01 proceedings in relation to Dromana's current rights issue.

The Panel made its decision following Dromana's undertaking to remove a cap on the number of additional shares for which individual shareholders could subscribe in the event of a shortfall in Dromana's rights issue. Dromana also accepted a proposal from the Panel for an allocation policy for any shortfall shares in place of the cap.

Background

On 11 January 2006, Dromana announced a non-renounceable rights issue of fully paid ordinary shares to existing shareholders with Australian and New Zealand addresses at a price of 7 cents per share on the basis of 1 new share for every share held (**Initial Rights Issue**). Dromana lodged a prospectus with the ASX on 11 January 2006 (**Initial Prospectus**).

The Panel received an application on 15 January 2006 from two shareholders, including Mr Hempton, in relation to the Initial Rights Issue [TP06/09](#). In response to comments by the Panel during the Dromana 01 Proceedings, Dromana advised that a proposed underwriting of the Initial Rights Issue would not proceed. Dromana also undertook to revise aspects of disclosure in the Initial Prospectus and to remove the retention of a discretion by Dromana's directors in relation to the operation of the shortfall facility. The decision in Dromana 01 was announced by Panel media release [TP06/12](#) on 14 February 2006.

On 15 February 2006, the Panel received Mr Hempton's application for review of the Dromana 01 decision

Decision

The Panel made its decision to decline the review application following Dromana's undertaking to remove a cap of 300,000 shares which applied to applications for shares under the shortfall facility of the New Rights Issue. In the Dromana 01 Proceedings, the directors of Dromana advised that they originally proposed to deal with any perceived inequity of distribution between shareholders in any shortfall under the Initial Rights Issue by reserving a discretion to reject applications for

shortfall shares. That discretion was removed as part of the Dromana 01 Proceedings and replaced by the cap. The Panel was mindful of Domana's need to raise funds and of the desirability for shareholders to be able to maintain their proportional interests in Dromana if they wished. However, the Panel had concerns that the cap may interfere inappropriately with the acquisition of control of shares in Dromana in an efficient competitive and informed market. Therefore, the Panel proposed that the cap be removed.

Instead of a cap, the Panel proposed that the New Rights Issue contain a provision to the effect that shortfall applications may be scaled back only if each of the following conditions were met:

- (a) the number of shares applied for under the shortfall facility exceeds the number of shares available for distribution under the shortfall facility, and
- (b) the applications are scaled back reasonably and fairly having regard to:
 - (i) the number of shares in the shortfall,
 - (ii) the number of shareholders applying for shortfall shares,
 - (iii) the number of shares held by each applicant for shortfall shares, and
 - (iv) the number of shares applied for by each applicant for shortfall shares, and
- (c) the scaling back is applied as uniformly as possible to all applications.

As a result of Dromana providing the Panel with an undertaking to remove the cap and replace it with the above scale back condition, the Panel declined Mr Hempton's application.

Other Issues

Association

Part of Mr Hempton's review application was that the Dromana 01 Panel had erred in not finding that various parties, including some directors of Dromana, are associated in relation to the affairs of Dromana. Such a finding would have a range of consequences, including affecting the number of shares which different persons could take up under the Initial Rights Issue and now the New Rights Issue. During these proceedings, the Panel noted the existence of various business relationships, investment connections and some consistency of behaviour between various parties, which Mr Hempton had pointed to in his submissions. However, on the basis of the evidence before it, the Panel did not consider it could find that the associations which Mr Hempton inferred, do in fact exist.

Foreign Shareholders

The Panel reiterated concerns expressed by the Dromana 01 Panel that shareholders with addresses outside Australia and NZ will not be entitled to participate in the Initial Rights Issue or New Rights Issue. This is especially as most of them are shareholders who acquired their shares as a result of Dromana seeking a secondary

listing on the Alternative Investment Market (AIM) in London. While the Panel accepted Dromana's submissions that the cost of issuing a prospectus in London would almost equal the funds which might be raised from the foreign shareholders under the Initial and the New Rights Issues, the Panel considered that this is an issue which companies should consider before seeking foreign listings.

Renounceability

The Panel also reiterated its general preference for renounceability of rights issue, for the reasons set out in the Panel's [Guidance Note on Rights Issues](#). However, the Panel considered that the current price of Dromana shares, the reformulated shortfall allocation policy and the other circumstances of Dromana in this application meant that the non-renounceability of the New Rights Issue would not give rise to unacceptable circumstances.

The sitting Panel which considered the application was Byron Koster, Marian Micalizzi (Sitting President) and Robyn Pak-Poy.

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

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