



Thursday, 31 August 2006

Orion Telecommunications Limited – Panel declaration and orders

The Takeovers Panel advises that it has made a declaration of unacceptable circumstances and final orders in relation to an application dated 3 July 2006 from Orion Telecommunications Limited (**Orion**) in relation to acquisitions of shares in Orion by TelEurope Ltd and various associates (**TelEurope**), and Lewis Securities Ltd and various associates (**Lewis Associates**). The Panel published a Media Release in relation to the application on 4 July 2006 ([TP06-64](#)).

As at 24 April 2006, TelEurope had a relevant interest in 19.9% of Orion shares, and the Lewis Associates had relevant interests in 6.66% of Orion shares. Between 24 April 2006 and 30 June 2006, the Lewis Associates acquired approximately 5.4% of Orion shares (**Lewis Acquisitions**).

On the basis of the evidence presented in the proceedings, the Panel found that TelEurope and the Lewis Associates:

- (a) had, by 24 April 2006, formed an understanding that they would use their combined voting power (if necessary) for the purpose of influencing the composition of Orion's board and the conduct of Orion's affairs;
- (b) subsequently acted in concert with respect to the operations of, and the composition of the board of, Orion;
- (c) accordingly, were associates under both paragraphs (b) and (c) of section 12(2) of the Act from, at least, 24 April 2006; and
- (d) accordingly, each of the Lewis Acquisitions in Orion gave rise to a contravention of section 606 of the Corporations Act 2001 (*Cth*) (**Act**).

Neither TelEurope nor the Lewis Associates disclosed their association, and aggregated voting power, in substantial holding notices.

The Panel considered that the circumstances constituted by the association of TelEurope and the Lewis Associates and the Lewis Acquisitions (**Circumstances**) were unacceptable because they constituted, or gave rise to, a contravention of section 606(1) and 671B of the Act.

The Panel, having taken into account the matters set out in section 657A(3) of the Act (and in particular the fact that the Lewis Acquisitions had not taken place in an efficient, competitive and informed market in accordance with section 602(a) of the Act), considered that it would not be against the public interest to make a declaration of unacceptable circumstances. The Panel therefore made the declaration in Annexure A.

Orders

The Panel has made the orders set out in Annexure B, which includes orders to:

- (a) vest in ASIC for sale, the Orion shares acquired under the Lewis Acquisitions;
- (b) restrict the exercise of voting rights by the Lewis Associates and TelEurope and their associates prior to 24 October 2007 to (in total) 20% of Orion shares plus an additional 3% on each 6 month anniversary (subject to an exception for shares acquired under a takeover bid or scheme);
- (c) restrict acquisitions of further Orion shares by the Lewis Associates and TelEurope and their associates beyond the number of shares they are permitted to vote;
- (d) restrict disposal of Orion shares by the Lewis Associates and TelEurope to each other and their associates until 24 October 2007.

The sitting Panel in these proceedings was Robyn Ahern, Denis Byrne (Deputy President) and Byron Koster (Sitting President).

The Panel will publish its reasons for decision on its website in due course.

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**Annexure A - declaration
Corporations Act
Section 657A
Declaration of Unacceptable Circumstances**

In the matter of Orion Telecommunications Limited

WHEREAS

1. The Takeovers Panel (**Panel**) has received an application from Orion Telecommunications Limited (**Orion**) in relation to the affairs of Orion.
2. As at 24 April 2006 TelEurope Ltd had a relevant interest in 19.9% of Orion shares, and Lewis Securities Ltd, together with the associates listed in its substantial holder notice dated 20 June 2006, (**Lewis Associates**) had relevant interests in 6.66% of Orion shares. In all substantial holder notices given to Orion by each of TelEurope Ltd and the Lewis Associates after 24 April 2006:
 - (a) the Lewis Associates have not disclosed TelEurope Ltd as an associate (nor vice versa); and
 - (b) the Lewis Associates have not included Orion shares in which TelEurope Ltd had a relevant interest as part of their substantial holding (nor vice versa).
3. Between 24 April 2006 and 30 June 2006, the Lewis Associates acquired approximately 5.4% of Orion shares.
4. On the basis of the evidence presented in the proceedings, the Panel finds that by 24 April 2006, TelEurope Ltd, Mr Lewis and Lewis Securities Ltd had formed an understanding that they would use their combined voting power (if necessary) for the purpose of influencing the composition of Orion's board and the conduct of Orion's affairs.
5. The Panel also finds that in furtherance of the understanding referred to in recital 4, TelEurope Ltd, Mr Lewis and Lewis Securities Ltd acted in concert with respect to the operations of, and the composition of the board of, Orion.
6. As a result of the matters described in recitals 4 and 5, TelEurope Ltd, Mr Lewis and Lewis Securities Ltd have been associates in relation to Orion under paragraphs (b) and (c) of section 12(2) of the Corporations Act since at least 24 April 2006 and accordingly:
 - (a) the failure of each of TelEurope Ltd and Lewis Securities Ltd to disclose their association and the relevant interests of the other in their substantial holding notices, as described in recital 2 above, constitutes or gives rise to a contravention of section 671B of the Corporations Act; and

- (b) the acquisitions of Orion shares described in recital 3 above constitute or give rise to a contravention of section 606(1) of the Corporations Act.

The Panel considers that it would not be against the public interest to make a declaration of unacceptable circumstances.

Under section 657A of the Corporations Act, the Takeovers Panel declares that the circumstances relating to:

- (a) the understanding between TelEurope Ltd, Mr Lewis and Lewis Securities Ltd (as discussed in recital 4);
- (b) TelEurope Ltd, Mr Lewis and Lewis Securities Ltd acting in concert (as discussed in recital 5);
- (c) the failure of each of TelEurope Ltd and Lewis Securities Ltd to disclose their association and the relevant interests of the other in their substantial holding notices (as discussed in recital 2); and
- (d) the acquisitions of Orion shares by the Lewis Associates (as discussed in recital 3),

constitute unacceptable circumstances in relation to the affairs of Orion.

Byron Koster

President of the Sitting Panel

Dated 3 August 2006



Annexure B - orders

Orion Telecommunications - Panel Final Orders

**Corporations Act
Section 657D
Final Orders**

In the matter of Orion Telecommunications Limited

Pursuant to section 657D of the Corporations Act 2001 (**Act**) and pursuant to a declaration of unacceptable circumstances made by the Panel on 3 August 2006, the Takeovers Panel HEREBY ORDERS:

Divestment order

1. that the legal title to and beneficial ownership of the ordinary shares in Orion Telecommunications Ltd (**Orion**) listed in Schedule 1 (the **Sale Shares**) be vested in the Australian Securities and Investments Commission (**ASIC**) by the transfer of the Sale Shares from the holders to ASIC for ASIC to:
 - (a) sell the Sale Shares; and
 - (b) subject to any requirement arising under a Tax Law, account to the persons who, immediately before the making of this order, were the registered holders of the relevant Sale Shares for the proceeds of sale, net of the costs, fees and expenses of the sale and any costs, fees and expenses incurred by ASIC, or which ASIC reasonably incurs, or estimates it will incur, in complying with these orders (even where those costs, fees or expenses are incurred in relation to any earlier unsuccessful attempt to sell the Sale Shares). If ASIC considers there to be a reasonable doubt as to whether a requirement has arisen under a Tax Law, ASIC is not required to so account for that proportion of the proceeds relating to the apparent requirement until it has determined whether a requirement has, in fact, arisen;
2. that ASIC retain an investment bank or licensed stock broker (**Appointed Seller**) which:
 - (a) ASIC considers to be appropriately licensed to conduct the sale; and
 - (b) provides to ASIC a statutory declaration that, having made proper inquiries, the Appointed Seller is not aware of any interest, past, present, or prospective which could conflict with the proper performance of the Appointed Seller's functions in relation to the disposal of the Sale Shares;
3. that ASIC will instruct the Appointed Seller:
 - (a) to seek to maximise the sale price of the Sale Shares;
 - (b) that none of the Parties may buy any of the Sale Shares;

- (c) that it obtain from any prospective purchaser of Sale Shares a statutory declaration or statement in accordance with rule 7.1(c) of the Panel's Rules for Proceedings that it is not associated with any of the Parties;
- 4. without limiting ASIC's ability to seek further orders, that ASIC seek further orders from the Panel if the Appointed Seller is unable to dispose of the whole parcel within 6 weeks from the date of engagement of the Appointed Seller, without, in its reasonable opinion acting as expert, unduly depressing the market price of Orion ordinary shares;
- 5. that each person who immediately before the making of this order, was a legal or beneficial owner of Sale Shares must not sell, transfer, mortgage or otherwise deal with the Sale Shares (except to give effect to the vesting or sale), or exercise the votes attached to the Sale Shares, until the vesting is completed by registration of a transfer or transmission of the Sale Shares (**Transfer**);
- 6. that Orion not register any transfer or transmission of the Sale Shares which is in breach of the order in (5) (except to give effect to the vesting) or pay any dividend on the Sale Shares, until Transfer;
- 7. that each Party and ASIC have the liberty to apply for further orders in relation to the matters covered by orders (1), (2), (3), (4), (5) and (6);

Voting restriction orders

- 8. that the Lewis Associates (and any of their associates, other than the TelEurope Associates) must not exercise any voting rights at general meetings of Orion prior to 24 October 2007 in respect of more than the total of:
 - (a) 5% of Orion shares on issue;
 - (b) an additional 0.75% of Orion shares on issue on each 6 month anniversary of the date of these orders; and
 - (c) any Orion shares acquired by the Lewis Associates (and any of their associates, other than the TelEurope Associates) under a takeover bid or scheme of arrangement.
- 9. that the TelEurope Associates (and any of their associates, other than the Lewis Associates) must not exercise any voting rights at general meetings of Orion prior to 24 October 2007 in respect of more than the total of:
 - (a) 15% of Orion shares on issue;
 - (b) an additional 2.25% of Orion shares on issue on each 6 month anniversary of the date of these orders; and
 - (c) any Orion shares acquired by the TelEurope Associates (and any of their associates, other than the Lewis Associates) under a takeover bid or scheme of arrangement;
- 10. that, until 24 October 2007, Lewis Securities and TelEurope (and each of their associates) be restricted from disposing of any Orion shares to each other or to a

11. person who is an associate of any of the Lewis Associates or the TelEurope Associates, or a person with whom any of the Lewis Associates or the TelEurope Associates have a relevant agreement with respect to shares in, or control of Orion;
12. that each Party and ASIC have the liberty to apply for further orders in relation to the matters covered by orders (8), (9) and (10);

Creep order

13. that, until 24 October 2007, the Lewis Associates (and each of their associates, other than the TelEurope Associates) must not acquire a relevant interest in Orion shares if that would not have been permitted under section 606 of the Act if the voting power of the Lewis Associates in Orion at all times prior to Transfer was less than 19%;
14. that, until 24 October 2007, the TelEurope Associates (and each of their associates, other than the Lewis Associates) must not acquire a relevant interest in Orion shares if that would not have been permitted under section 606 of the Act if the voting power of the TelEurope Associates in Orion at all times prior to Transfer was less than 20%;

Acquisition restriction order

15. that the Lewis Associates (and each of their associates) must not acquire a relevant interest in any further Orion shares if, following such acquisition, the Lewis Associates would have voting power (excluding voting power arising from any shares held by the TelEurope Associates) in more shares than the number they are permitted to vote under Order (8); and
16. that TelEurope Associates (and each of their associates) must not acquire a relevant interest in any further Orion shares if, following such acquisition, the TelEurope Associates would have voting power (excluding voting power arising from any shares held by the Lewis Associates) in more shares than the number they are permitted to vote under Order (9).

Schedule 1 - the Sale Shares

- (A) 3,322,399 held by Lewis Securities Ltd; and
- (B) 832,098 shares held by Fixed Interest Pty Ltd.

Schedule 2 - Glossary

associate has the meaning given to that term by sections 12, 15 and 16 of the Act with the modification that in sub-paragraph 12(2)(a)(ii) the expression “a body corporate” is replaced by the expression “an entity” and “entity” has the meaning given in section 64A;

Lewis Associates means:

- Lewis Securities;
- Anthony Richard Lewis;
- Lewis Securities Ltd <Anthony R Lewis A/C>;
- Fixed Interest Pty Ltd;
- Interest Investments Pty Ltd;
- LSL Holdings Pty Ltd; and
- Vimow Pty Ltd.

Lewis Securities means Lewis Securities Ltd.

Orion means Orion Telecommunications Limited.

Party means each of the Lewis Associates and TelEurope Associates.

Tax Law means the *Income Tax Assessment Act 1936* (Cth), the *Income Tax Assessment Act 1997* (Cth) or any other law of the Commonwealth relating to taxation law.

TelEurope means TelEurope Ltd.

TelEurope Associates means:

- TelEurope;
- Hobart Properties and Securities Pty Limited;
- Roberts & Partners;
- Ian Noel Roberts;
- Ian Noel Roberts ATF <Roberts Medical Fund>; and
- Mr Christian Roberts.

Dated 31 August 2006

Byron Koster

By authority of the Sitting Panel