



In the matter of Becker Group Limited

[2007] ATP 13

**Catchwords:**

*asset sale raises control issues; association, auction for control, book value; collateral benefits, competitive disposal of assets; commercial resolution; conditions; confirmation of no of future agreement, conflict of interests; break fee; content of target's statement; control premiums; effect on control; efficient market; elimination of benefits, equal opportunity to share in benefits; independent expert's report; implementation agreement; inducement; insider participation; interconnectedness, inter dependent transactions; market testing of asset value; no shop; no talk; non solicitation; orders; payment date; price adjustment mechanism; right to acquire asset; sale of asset; shareholder approval; shareholders entitled to act in own interests; statements as to intentions for assets in supplementary bidder's statement; supplementary bidder's/target's statement; undertaking, voting arrangements; voting by insider; voting exclusion order; voting intentions;*

*Corporations Act 2001 (Cth), sections 208, 602(a), 602(b), 602(c), 623; 657A*

*ASX listing rule 10.1*

*Becker Group Limited 01 [2007] ATP 13*

*Becker Group Limited; Dolphete Pty Ltd; Prime Television Ltd; Becker Film Group Pty Limited; Grant Thornton; Paul Ramsay Holdings Pty Ltd; Reading Entertainment Australia Pty Limited*

**These are the Panel's reasons for making a declaration of unacceptable circumstances and final orders in response to an application by Dolphete Pty Ltd under section 657C concerning the affairs of Becker Group Limited (see [TP07/30](#)). The application related to the proposed sale of Becker Group's Film Business to the major shareholders of Becker Group in conjunction with the takeover bid for Becker Group by Prime Television.**

## SUMMARY

1. These reasons relate to an application by Dolphete Pty Ltd (**Dolphete**) under section 657C of the Corporations Act (Cth) 2001<sup>1</sup> concerning the affairs of Becker Group Limited (**Becker Group**) (see [TP07/30](#)).
2. Becker Group is the subject of an off market takeover bid by Prime Media Broadcasting Services Pty Limited, a wholly owned subsidiary of Prime Television Ltd (together **Prime**), at \$0.47 per share (initially \$0.40 per share, increased on 25 May 2007 to \$0.43, and on 13 June 2007 to \$0.47) (**Prime Offer**).
3. At the same time as entering an Implementation Agreement in relation to the Prime Offer, Becker Group entered into an asset sale deed (**Asset Sale Deed**) with Becker Film Group Pty Limited (**BFG**), a company associated with two major shareholders and directors of Becker Group, Mr Richard Becker and Mr Russell Becker (**R&R Becker**)<sup>2</sup>, to sell Becker Group's film exhibition, production and distribution businesses (**Film Business**) to BFG for \$15.5 million (subject to adjustment) (**Asset Sale Proposal**).

<sup>1</sup> All statutory references are to the Corporations Act unless otherwise stated.

<sup>2</sup> BFG is controlled by R&R Becker who themselves control and are beneficial owners of 42.6% of the voting shares in Becker Group. For the ease of reference, where the Panel refers to BFG, it also refers to R&R Becker in their capacity as controllers of BFG.

## Reasons for Decision – Becker Group Limited 01

4. R&R Becker were directors of Becker Group and controlled 42.6% of Becker Group's shares. At the time of the Panel's decision Prime and interests associated with it controlled 24.11% of Becker Group.
5. The Asset Sale Proposal was subject to shareholder approval under ASX listing rule 10.1 and chapter 2E of the Corporations Act.
6. The Prime Offer and the Asset Sale Proposal were the result of negotiations between Prime, R&R Becker and Becker Group management, which commenced in June 2006 and which led to a formal proposal to Becker Group<sup>3</sup> in December 2006. Prime and Becker Group announced the Prime Offer and the Asset Sale Proposal together on 30 March 2007.
7. Becker Group advised the Panel that it undertook no market testing of the price of the Film Business or Becker Group itself because Becker Group considered the prices proposed for the Film Business and Becker Group itself were attractive and Becker Group was concerned not to lose the opportunity for its shareholders to consider the Prime Offer. Becker Group also submitted:

*“While a competitive 'auction' for the Film Business conducted by a competent investment banker may produce a good indication of the fair market price of the Film Business, it may not maximise the potential return on a sale of the Film Business (for example, because of the costs of the 'auction' process)”.*
8. In its application, Dolphete submitted that the Prime Offer and the Asset Sale Proposal were interdependent and that Prime, Paul Ramsay Holdings Pty Ltd (a major shareholder in Prime) and R&R Becker were acting in concert. Dolphete submitted that the arrangements surrounding the Prime Offer and the Asset Sale Proposal meant that, in effect:
  - (a) BFG would be able to acquire the Film Business of Becker Group without being required to obtain the approval of a majority of disinterested shareholders;
  - (b) Prime, by giving an additional benefit to BFG, would be able to obtain control of Becker Group by BFG accepting, even if no other shareholders accepted the Prime Offer;
  - (c) acquisition of the Film Business or of Becker Group would not take place in an efficient competitive and informed market; and
  - (d) the holders of Becker Group shares would not have a reasonable and equal opportunity to participate in the benefits accruing under the Prime Offer.
9. The Panel considered that the Asset Sale Proposal and Prime voting for the Asset Sale Proposal, and the effect of Prime's vote on the approval of the Asset Sale Proposal:
  - (a) amounted to benefits to BFG, in which no other shareholders of Becker Group would have an opportunity to participate; and
  - (b) were likely to have an effect on:

---

<sup>3</sup> Because of various conflicts of interests, only one member of the Becker Group board of directors was independent of the proposed transactions, the Chairman, Mr Greg Gardiner. Therefore, references to Becker Group considering the proposal are references to Mr Gardiner's considerations.

## Reasons for Decision – Becker Group Limited 01

- (i) the control or potential control of Becker Group, or the acquisition, or proposed acquisition of a substantial interest in Becker Group, since R&R Becker had said that they would accept the Prime Offer, in the absence of a superior offer, if the Asset Sale Proposal was approved,<sup>4</sup> and intended not to accept the Prime Offer if the Asset Sale Proposal was not approved; and
  - (ii) the efficient, competitive and informed market for control of the shares in Becker Group, since it was likely to affect the success of potential bidders seeking to acquire the whole of Becker Group.
10. The Panel also considered there were material information deficiencies requiring correction in the Notice of Meeting, Becker Group target's statement and the two independent expert's reports on the Asset Sale Proposal and Prime Offer respectively.
11. The Panel decided that the circumstances set out in the attached declaration constituted unacceptable circumstances under section 657A(2)(a) and (b). The Panel made final orders to remedy the unacceptable circumstances under section 657D as set out in the attached orders.

## THE PROCEEDINGS

### The Panel & Process

12. The President of the Panel appointed Geoff Brunson, Brett Heading (Sitting President) and Peter Scott (Deputy President) as the sitting Panel (the **Panel**) for the proceedings (the **Proceedings**) arising from Dolphete's application.
13. The Panel adopted the Panel's published procedural rules and consented to the parties being legally represented by their commercial lawyers for the purposes of the Proceedings.

### Background

14. Becker Group and Prime entered into an implementation agreement dated 30 March 2007 (**Implementation Agreement**) under which Prime Television Ltd agreed to make a bid for Becker Group, conditional on the Asset Sale Deed being executed. Becker Group agreed to a non-solicitation and no talk obligation and a break fee of \$500,000, which is 1.9% of the value implied by the Prime Offer. Prime agreed to reimburse Becker Group up to \$275,000 to offset 75% of Becker Group's costs in relation to the Prime Offer (regardless of whether or not the Prime Offer was successful).
15. At the same time as entering the Implementation Agreement, Becker Group entered into the Asset Sale Deed with BFG. Clause 4 of the Asset Sale Deed referred to the following pricing mechanism (**Pricing Adjustment Mechanism**) in relation to the sale of the Film Business:

***“4.1 Amount***

*The aggregate purchase price for the sales of the Assets is \$15,500,000, subject to adjustment as set out in clause 4.2 and clauses 14 and 15 and as otherwise set out in this Deed.*

---

<sup>4</sup> Clause 2.10 Becker Group target's statement.

## Reasons for Decision – Becker Group Limited 01

**4.2 Adjustment**

*If the Completion OSB + BGL Net Liabilities:*

- (a) *are more than \$10,888,553, the amount by which the Completion OSB + BGL Net Liabilities exceeds \$10,888,553 must be paid by BFG to BGL on the Adjustment Payment Date as an increase in the Purchase Price;*
- (b) *are less than \$10,888,553, the amount by which \$10,888,553 exceeds the Completion OSB + BGL Net Liabilities must be paid by BGL to BFG on the Adjustment Payment Date as a reduction in the Purchase Price.*

**4.3 Payments**

*BFG must pay, or cause to be paid, the Purchase Price to BGL or as BGL otherwise directs as to:*

- (a) *on Completion, \$15,500,000; and*
- (b) *if clause 4.2(a) applies, the Adjustment Payment on the Adjustment Payment Date."*

16. In essence, "Completion OSB + BGL Net Liabilities" is the debt that remains in Becker Group on completion of the asset sale. In the independent expert report on the asset sale it is described as follows:
- "... an adjustment after completion if the consolidated net liabilities of BGL on completion are more or less than \$10.9 million, after removing the assets and liabilities of the [Film Business] and applying the Asset Consideration proceeds to reduce debt."*
17. Grant Thornton Corporate (NSW) Pty Ltd (**Grant Thornton**), which provided two independent expert reports for the Asset Sale Proposal and the Becker Group target's statement submitted that the effect of the Pricing Adjustment Mechanism was that the purchase price for the Film Business would "*be affected by differences in the level of net debt between 31 December 2006 and completion date*".
18. Becker Group and Prime announced both the Prime Offer and the Asset Sale Proposal together in a joint media release on 30 March 2007.
19. The Asset Sale Proposal was subject to a number of conditions including shareholder approval by Becker Group shareholders and the Prime Offer becoming unconditional with Prime having voting power in Becker Group of at least 50%. The Asset Sale Proposal was subject to shareholder approval under ASX Listing Rule 10.1 and Chapter 2E of the Corporations Act. The resolution to consider the Asset Sale Proposal was set out in a notice of meeting sent to Becker Group shareholders on or about 17 May 2007, and lodged with the ASX on 22 May 2007 (**Notice**), with the shareholder meeting to be held on 15 June 2007<sup>5</sup>.
20. At the date of the Application, the Prime Offer was subject to a number of defeating conditions, including, in summary:
- (a) no prescribed occurrences except as may occur due to the Asset Sale Proposal;

---

<sup>5</sup> As a result of developments during the Proceedings, Becker Group postponed the meeting until 29 June 2007.

## Reasons for Decision – Becker Group Limited 01

- (b) no material acquisitions and disposals except for certain excluded proposed transactions, including the Asset Sale Proposal; and
  - (c) no material adverse change in the business of Becker Group, including Becker Group entering into an agreement in relation to acquisition or disposal of assets the value of which is \$500,000 or more, except for the Asset Sale Proposal.
21. At the date of the Application, Paul Ramsay Holdings Pty Ltd (**Paul Ramsay Holdings**), a company controlled by Mr Paul Ramsay (a director of Becker Group), was a 41% shareholder in Prime Television and a 19.7% shareholder in Becker Group. Prime Television held a further 3% of shares in Becker Group. Paul Ramsay Holdings and Prime Television had indicated that they intended to vote their combined 22.7% shareholding in favour of the Asset Sale Proposal.<sup>6</sup> R&R Becker indicated that they intended to accept the Prime Offer “in the absence of a superior offer” if the Asset Sale Proposal resolution was passed by Becker Group shareholders.
22. Becker Group (through its Chairman) commissioned an Independent Expert's Report from Grant Thornton to accompany the Notice (**Asset Sale Report**), which included a valuation and analysis of advantages and disadvantages for non-associated shareholders. Grant Thornton also produced a similar report in relation to the Prime Offer to accompany the Becker Group target's statement (**Target Statement Report**).
23. Grant Thornton concluded that the Asset Sale Proposal was fair and reasonable to the non-associated shareholders of Becker Group in the absence of a superior offer.
24. In its bidder's statement, Prime stated in section 16.4 that it intended that the Film Business be sold to BFG under the Asset Sale Deed. On 25 May 2007, Prime increased its offer from \$0.40 to \$0.43 and announced that it would waive all conditions of the Prime Offer (including the 80% minimum acceptance condition) upon acquiring a relevant interest in at least 50% of Becker Group shares. On 13 June 2007 Prime increased its offer to \$0.47 and declared its bid unconditional. Prime stated in its ASX announcement in respect of the increased offer price that:

*“Prime's increased Offer price is based on an assumption that the film and cinema business will be purchased for a higher price than the consideration to be received under the Asset Sale Deed referred to in the Notice of Meeting dated 11 May 2007.”*

### Application

25. Dolphete submitted in its application that the Prime Offer and the Asset Sale Proposal were effectively “interconditional transactions” which gave rise to unacceptable circumstances because:
- (a) BFG would be able to acquire the Film Business without being required to obtain the approval of a majority of disinterested shareholders;
  - (b) Prime, by giving an additional benefit to BFG – being the right to acquire the Film Business, the benefit to BFG of securing that acquisition at a favourable value or at all, or the benefit of the Prime Television/Paul Ramsay Holdings votes to secure the necessary shareholder approval - would be able to obtain control of Becker Group by BFG accepting, even if no other shareholders accepted the Prime Offer. Dolphete submitted that it was clear from the

---

<sup>6</sup> During the Proceedings Paul Ramsay Holdings accepted the Prime Offer and so would not hold any shares in Becker Group at the date of the shareholders' meeting.

## Reasons for Decision – Becker Group Limited 01

circumstances that BFG would be induced to accept the Prime Offer by reason of the approval of the Asset Sale Proposal and this, of itself, would establish that BFG would receive a benefit not available to other Becker Group shareholders; and

- (c) control of Becker Group would be acquired by Prime in a market that was not efficient, competitive and informed.
26. Dolphete said it was *“concerned that Prime and BFG are for all intents and purposes seeking to split up Becker Group between them under transactions which effectively avoided the need for minority (unassociated) shareholder approval and close off the prospect of a rival offer being made.”*
27. Dolphete sought a declaration of unacceptable circumstances having regard to the purposes of Chapter 6 set out in section 602 and the effect on control or potential control of Becker Group.
28. Dolphete sought orders that:
- (a) corrective and additional disclosure be made in a form approved by the Panel;
  - (b) the votes cast by Paul Ramsay Holdings and Prime in respect of the Asset Sale Proposal resolution not be counted;
  - (c) Prime include as part of the Prime Offer an acceptance condition of 50.1% of shares held by minority shareholders;
  - (d) Paul Ramsay Holdings and Prime and the interests associated with Richard and Russell Becker must accept any higher offer for Becker Group which was not matched by Prime Television; and
  - (e) the no-solicitation, no-talk and break fee provisions of the Implementation Agreement be set aside.

**Developments following application**

29. During the Proceedings, the Panel invited parties to consider alternative commercial solutions to address the circumstances which Dolphete had submitted were unacceptable and which the Panel indicated raised concerns for it.
30. Since the date of the Application, events have occurred as a part of the Proceedings and as part of commercial developments concerning the Prime Offer and competition for Becker Group and the Film Business. The events include:
- (a) the offering by various parties of undertakings to the Panel to mitigate the circumstances which Dolphete had submitted were unacceptable (**Proposed Undertakings**);
  - (b) the emergence of persons, other than Prime and BFG, who expressed interest to Becker Group in making offers for either Becker Group as a whole or the Film Business; and
  - (c) variations to the Prime Offer as set out in paragraph 24 (together **New Circumstances**).
31. The Panel did not consider that the New Circumstances:
- (a) changed its finding that the circumstances set out in Dolphete’s application amounted to unacceptable circumstances and that orders were warranted; or

## Reasons for Decision – Becker Group Limited 01

- (b) would adequately remedy the effects of the unacceptable circumstances on Becker Group shareholders and the market for control of Becker Group.

## DISCUSSION

### Jurisdiction

32. Becker Group submitted that the application did not raise circumstances which fell within s657A(2)(a) or s657A(2)(b), essentially because it related to whether Prime Television and Paul Ramsay Holdings were associated with BFG and should be permitted to vote at Becker Group's shareholders' meeting. For this reason Becker Group submitted that the application should properly be considered by ASIC, ASX or the courts. The Panel did not accept this submission. The Panel considered that the application raised issues which were directly related to control or potential control of Becker Group and which were directly related to the efficient, competitive and informed market for control of Becker Group shares. The Panel considered that it was not necessary for it to consider whether parties were associated in order to deal with the Application.
33. The Panel recognises that circumstances that provide a basis for consideration by the Panel may also involve circumstances that provide a basis for consideration by ASIC, ASX or the courts on different jurisdictional bases. The Panel considered that the matters raised in the application could be considered under section 657A(2)(a) or (b).
34. BFG and Prime submitted that the Panel should not accept that part of Dolphete's application which related to the Film Business because, they submitted, the Asset Sale Proposal was a proposal which related to the disposal of an asset and that the Takeovers Panel should not involve itself in such transactions. However, the Panel considered that the Asset Sale Proposal and the Prime Offer were interrelated (as discussed below). On that basis, the Asset Sale Proposal was likely to have an effect on the price for which control of Becker Group was acquired, and the other interrelated aspects meant that the Asset Sale Proposal was likely to have an effect on the efficient competitive and informed market for control of Becker Group and Becker Group shares.

### Interdependence of Prime Offer and Asset Sale Proposal

35. Prime, Becker Group and BFG submitted that the two transactions were separate.
36. Becker Group submitted that there was obviously a connection between the transactions because they were being put forward to Becker Group shareholders as complementary transactions, recommended in the absence of a superior offer. However, it said, they were negotiated at arm's length. Further, Becker Group submitted that interdependence required that each proposal be dependent on the other, and these were not.
37. BFG submitted that only two points connected the Prime Offer and the Asset Sale Proposal - the carve out of the asset sale in the defeating conditions of the Prime Offer, and the condition in the Asset Sale Deed that the Prime Offer be unconditional and that Prime receive acceptances to at least 50%. BFG offered amendments to the Asset Sale Deed and suggested amendments to the terms of the Prime Offer to break these connections.

## Reasons for Decision – Becker Group Limited 01

38. In the Target Statement R&R Becker indicated that they would accept the Prime Offer if the Asset Sale Proposal was approved in the absence of a superior proposal. Grant Thornton stated in its letter to the Chairman of Becker Group (set out in the Notice) that R&R Becker had stated that they did not intend to accept the Prime Offer unless the Asset Sale was approved. The Panel noted BFG's submission that it was reserving its position in the event that the Asset Sale Proposal was not approved. BFG submitted that the Prime Offer did allow for the Asset Sale Proposal, however, the Prime Offer was not conditional on the Asset Sale Proposal and it was open to R&R Becker to accept a higher offer and that R&R Becker had indicated they would accept any superior offer if the Asset Sale Proposal was approved by Becker Group shareholders. Prime submitted that it was willing to complete the Prime Offer regardless of whether the Asset Sale Proposal proceeded.
39. The Panel did not accept these submissions. The Panel considered that although the transactions may have been technically separate, in substance, and for practical purposes, the Prime Offer and Asset Sale Proposal were interdependent and had been designed as integrated parts of a single transaction.
40. The Panel considered the factors in paragraphs 41 to 49 below in reaching its conclusion on interdependence.

*Structural interconnectedness*

41. The Panel considered the following factors were evidence of the structural interconnectedness between the Prime Offer and the Asset Sale Proposal:
- (a) clause 1.1 of the Implementation Agreement made the agreement conditional on the execution of the Asset Sale Deed;
  - (b) the definition of "Transaction" in the Implementation Agreement (clause 14.1), which "*means the Bid and the transactions contemplated by the Asset Sale Deed*", strongly suggested that the parties regarded the two transactions as aspects of one single transaction;
  - (c) the Asset Sale Deed was annexed to the Implementation Agreement establishing that the Asset Sale was a fundamental component of Prime agreeing to make its Offer and suggesting that the Prime Offer and Asset Sale Deed were negotiated as a "package" designed to take Becker Group "private"<sup>7</sup>;
  - (d) the finance for the Asset Sale Proposal was dependent on R&R Becker being paid for their Becker Group shares under the Prime Offer (this is confirmed by the Completion Date for the Asset Sale Proposal being defined as after the date at which payment was to have been made under the Prime Offer);
  - (e) the Asset Sale Deed contained a condition requiring the Prime Offer to become unconditional, with Prime having voting power of at least 50% of Becker Group shares<sup>8</sup>;

---

<sup>7</sup> This suggestion was reinforced by correspondence between parties provided to the Panel in response to its brief

<sup>8</sup> The Panel did not consider the fact that Prime had declared its bid unconditional at the time of its decision changed its finding that the transactions were interdependent.

## Reasons for Decision – Becker Group Limited 01

- (f) the Pricing Adjustment Mechanism in the Asset Sale Deed meant that that purchase price of the Film Business was directly connected to the fixed level of debt that Prime would acquire in Becker Group. Becker Group submitted:

*“Prime wanted to ensure that it acquired the assets which it wanted whilst at the same time taking over no more than the \$10,888,553 in net liabilities referenced, and the Becker Family had to accept responsibility for any movements up or down in the net assets of the Group prior to Completion”* (see paragraph 91 to 94 for further discussion of the Pricing Adjustment Mechanism).

*Commercial context*

42. The Panel considered the commercial context of the transaction structure was such that, while strictly the Prime Offer may not have been conditional on the Asset Sale Proposal, there was no realistic prospect that Prime would obtain control of the Becker Group unless the Asset Sale Proposal was approved and the Asset Sale Proposal would not proceed unless R&R Becker had sold their Becker Group shares under the Prime Offer.

*Intentions regarding the Prime Offer*

43. R&R Becker had stated publicly that they intended to sell their 42.6% shareholding into the Prime Offer (in the absence of a superior offer) if the Asset Sale Proposal was approved by Becker Group shareholders. In the Grant Thornton report R&R Becker are reported as stating that they do not intend to accept the Prime Offer unless the Asset Sale Proposal was approved<sup>9</sup>.
44. In its submissions, BFG reserved its position as to how it would respond to the Prime Offer (or any other offer) if the Asset Sale Proposal was not approved. BFG also stated in its submissions that it would accept any superior takeover offer if the Asset Sale Proposal was approved by Becker Group shareholders.

*History of negotiations*

45. The Asset Sale Proposal and the Prime Offer were negotiated at the same time, largely between Prime, R&R Becker, and Becker Group. They reflect the final iteration of negotiations going back to June 2006. It appeared to the Panel that between June 2006 and December 2006 the negotiations were between Prime and R&R Becker, with the proposal in close to its current form first being presented to the Chairman of Becker Group in December 2006<sup>10</sup>. The proposal was first presented as a takeover offer by Prime for all of Becker Group. The Asset Sale Proposal appeared to be a counter proposal from R&R Becker as an indispensable element of the Prime Offer. It appeared to the Panel from the correspondence produced in response to its brief that between June 2006 and December 2006 the Asset Sale Proposal was negotiated between BFG and Prime and included as part of the Proposal put to the Chairman of Becker Group.
46. The negotiations considered different ways in which the Film Business assets might be held by interests associated with R&R Becker and the remaining businesses of Becker Group might be held by interests associated with Prime. Documentary

---

<sup>9</sup> Page 2 of the Grant Thornton letter to the Chairman of Becker Group dated 27 April 2007 and published in the Notice.

<sup>10</sup> Statement by Chairman of Becker Group.

## Reasons for Decision – Becker Group Limited 01

evidence provided to the Panel indicated that Prime had entered into negotiations directly with R&R Becker in relation to a pre-sale agreement concerning the sale of the Film Business. Although a formal agreement was not executed the negotiations strongly suggested a mutuality involved in the planning and design process of the two transactions.

47. The role of the independent chairman of Becker Group appeared, on the documents produced at the request of the Panel, to have formally begun on 29 March 2007, less than an hour before the company agreed to sign the Implementation Agreement and Asset Sale Deed and that formal conflict of interest protocols were adopted at the same time. However, Becker Group submitted that *“The Board of Becker Group has been mindful throughout the transaction of the conflicts of interest involved, and has managed this in an appropriate manner, adopting a conflicts protocol which more than adequately addresses these issues”*. Becker Group submitted that its solicitors had drafted conflict protocols more than a month prior to the signing of the Implementation Agreement and Asset Sale Deed, despite being signed and adopted only one hour prior to the signing. The Panel considers that negotiations developed in a way that supports its view that the transactions were interdependent.

*Timing*

48. The completion date of the Asset Sale Proposal was defined to occur immediately after the completion of the Prime Offer. The Panel took this to have been constructed so as to allow R&R Becker to use the funds from sale of their Becker Group shares to assist them meet their obligations under the Asset Sale Proposal.

*Independent Expert*

49. Grant Thornton stated in its report for the Asset Sale Proposal that *“Practically, the Takeover and the Asset Sale are interrelated notwithstanding that this is not the legal form of the transactions.”* and that *“It is important to emphasise that the non-associated shareholders’ consideration of the advantages and disadvantages associated with the Asset Sale may be interdependent notwithstanding this is not the legal form of the transactions”*.

**Unacceptable benefit**

50. Dolphete submitted that any of the following could be viewed as a benefit to BFG<sup>11</sup> which offended the equality principle in s602(c):
- (a) the right to acquire the Film Business;
  - (b) securing that acquisition at a favourable value; or
  - (c) the votes of Prime and Paul Ramsay Holdings which would ensure the necessary shareholder approval for the Asset Sale Proposal (which in turn would allow Prime to obtain control of Becker Group by BFG accepting the Prime Offer).
51. After the Panel received the Application, Reading Entertainment Australia Pty Limited (**Reading**) requested the Panel’s permission to join the proceedings as a party. Reading is a substantial shareholder in Becker Group. Reading also has a

---

<sup>11</sup> For convenience, the Panel refers in this section to a benefit being afforded to BFG as a shorthand to also refer to the benefits which might flow to R&R Becker in their capacities as beneficial owners of Becker Group shares.

## Reasons for Decision – Becker Group Limited 01

substantial interest in cinema businesses in the US. During the proceedings, Reading provided an expression of interest to Becker Group in acquiring the Film Business and potentially Becker Group as a whole. Reading submitted that BFG was receiving a benefit from Becker Group, with Prime's support, being an exclusive opportunity to acquire the Film Business, and may be receiving an additional benefit through acquiring the Film Business at a discount.

52. The Panel considered that the interconnectedness of the Prime Offer and the Asset Sale Proposal gave rise to the clear implication of a quid pro quo between Prime and BFG: Prime, with 24.11% of Becker Group (and around 40% of the available votes at the Asset Sale Proposal), could, for practical purposes, ensure approval of the sale to BFG, or make approval of the sale highly likely<sup>12</sup>. R&R Becker, with control over 42.6% of Becker Group, had the ability to have a material effect on the level of success of the Prime Offer. If the Asset Sale Proposal was approved, R&R Becker had indicated they would accept the Prime Offer which would give Prime over 65% of the shares, and majority control, in Becker Group. If the Asset Sale Proposal was not approved R&R Becker had indicated they may not accept the Prime Offer.
53. Dolphete submitted that the net effect of the arrangements among BFG, Prime and Paul Ramsay Holdings was inconsistent with the principles in section 602 that the acquisition of control of listed companies should occur in an efficient, competitive and informed market, and that holders of relevant classes of voting shares should all have a reasonable opportunity to participate in any benefits accruing to the holders through any proposal under which a person would acquire a substantial interest in the company.
54. The Panel acknowledged that the effect of the transactions could have been achieved in other ways, for example, by sale of the On-site Broadcasting business that Prime wished to acquire and privatisation of the assets that BFG proposed to acquire, and that perhaps there would be in that case a less clear quid pro quo. However the transactions were not structured in that way, or indeed in any other way that might reduce or even eliminate the suggestion of a benefit. The Panel considered that the parties had failed in their submissions to rebut the clear implication of the quid pro quo set out above.
55. In reaching its conclusion that the interdependence of the Asset Sale Proposal and Prime Offer conferred an unacceptable benefit on BFG, the Panel considered the issues below.

*Right to acquire Film Business - Market testing*

56. The Panel considered that it was open to BFG to seek to acquire the Film Business, but it should not do so in a way that conferred on it a benefit in which all Becker Group shareholders would not have a reasonable and equal opportunity to participate. The practical effect of the interconnectedness of the transactions was to exclude other interested parties from seeking to acquire the Film Business.
57. A further effect, discussed below, was the value at which BFG was to acquire the Film Business. Despite the interconnectedness of the transactions, the Panel would

---

<sup>12</sup> The effectiveness of Prime's voting power on the Asset Sale Proposal was emphasised by the fact that Mr Timothy Keen, an executive director of Becker Group, who held 4% of the shares in Becker Group (and 8% of the voting power on the Asset Sale Proposal) had stated in the Notice that he intended to vote for the Asset Sale Proposal.

## Reasons for Decision – Becker Group Limited 01

have been more likely to accept that no unacceptable benefit was being conferred on BFG if the process of, or purchase price for, sale of the Film Business had been publicly and transparently tested in a competitive environment. In this case there was no evidence that such a process was undertaken or that the market value for the Film Business had been so determined. The interdependent transactions suggested to the Panel that:

- (a) appropriate potential bidders had not been informed of the proposed transaction, and were not provided with sufficient time and information to enable them to assess whether or not to bid and how much;
- (b) the highest bidder would not have a real opportunity to acquire the Film Business; and
- (c) there were commercial barriers to becoming a bidder for the Film Business.

58. The emergence of two prospective rival bidders for the Film Business after the Proceedings commenced demonstrated that there was potential for a competitive process in determining a value for the assets. On this basis the Panel concluded that allowing BFG to acquire the Film Business free from competition (regardless of whether there were potential higher offers) in circumstances where the transaction was clearly interconnected with the Prime Offer and the acceptance by R&R Becker of the Prime Offer, would be inconsistent with the equality principle in section 602(c) and amounted to a benefit.

*Fair value of Film Business*

59. The Panel considered that if BFG acquired the Film Business at a favourable value in these circumstances, it would receive a benefit which was not open to other BFG shareholders. The Panel accepts that an asset may be acquired by a major shareholder without it necessarily involving a benefit that offends the purposes of chapter 6. That was not the case here.
60. Becker Group submitted that the benefit was not an unacceptable benefit as the Asset Sale Proposal was a sale at arm's length and that it was seeking approval under chapter 2E only because it was taking a "belt and braces" approach to the transaction rather than because of a legal requirement. The Panel did not accept this submission and considered the commercial context of, and history of negotiations in relation to, the Prime Offer and Asset Sale did not reflect an arm's length transaction.
61. BFG submitted that it was not relevant how the sale price was determined, but rather that the independent expert had established the price was fair and reasonable. The Panel did not accept this submission.
62. The Panel also considered that, given that the price of the Film Business appeared to be integrally linked to the price which Prime was offering under the Prime Offer, any concern over the price of the Film Business would raise concerns for the efficient, competitive and informed market for Becker Group.
63. The Panel did not consider that it should substitute its judgment for the commercial judgment of the independent chairman in deciding an acceptable price at which the Film Business should be sold. However the lack of market testing and the factors below appeared to the Panel to suggest that the Film Business may have been undervalued.

*Discount from book value*

64. The purchase price under the Asset Sale Proposal of \$15.5 million (subject to adjustment) for the Film Business is shown in the Independent Expert's Report<sup>13</sup> as occurring at \$15.3 million lower than the book value of the net assets and \$6.7 million lower than the net tangible assets as reflected in the company's reviewed accounts for the period ended 31 December 2006. The Panel noted that the Becker directors allowed the December accounts to be published showing the Film Business being valued at approximately \$30.8 million (as value in use to the company), in the knowledge that the company had recently agreed to a proposed sale price of \$15.5 million (subject to adjustment), which they had evidently determined to be a fair sale price for the non-interested shareholders.
65. The Panel considered Becker Group's submissions in relation to the differences between "carrying value" and "recoverable amount", that:
- "A true and fair carrying value of assets in the books of an account does not necessarily reflect a sale value and an impairment assessment requires future cash flows of individual assets to be estimated, discounted with an appropriate discount rate and then compared to the carrying value of the asset. A prospective purchaser may not agree with those expected future cash flows or expected yields or discount rates and a business which is offered for sale is only worth what a purchaser is prepared to pay."*
66. However, the Panel did not accept that these submissions provided a satisfactory explanation for the chairman of Becker Group recommending the sale of the Film Business at 49% of its book value or 69% of its net tangible asset value having approved the December accounts showing the Film Business being valued at approximately \$30.8 million. Similarly, the Panel did not consider that the Notice or the Target's Statement provided adequate explanation to Becker Group shareholders of the issue.

*Voting on asset sale*

67. The Panel considered there was a strong implication from the circumstances before it that the quid pro quo for R&R Becker's acceptance of the Prime Offer was the approval and completion of the Asset Sale Proposal which would be virtually assured by Prime's vote<sup>14</sup>. The Panel considered that Prime voting for the Asset Sale Proposal, and its effect on the approval of the Asset Sale Proposal, was a benefit to R&R Becker in which no other shareholders of Becker Group would have an opportunity to participate and accordingly would amount to unacceptable circumstances.
68. The Panel considered the Prime vote was a clear inducement to R&R Becker to accept the Prime offer and that it was an inducement that was likely to ensure control passed to Prime. The fact that Prime's vote acted as an inducement was indicative to the Panel of the existence of a benefit to BFG in which other shareholders of Becker Group did not have an opportunity to participate.
69. Accordingly, the Panel considered Prime voting to approve the Asset Sale Proposal was in itself a benefit that would amount to unacceptable circumstances.

---

<sup>13</sup> page 45 under the heading "Disadvantages"

<sup>14</sup> Especially when the voting intentions of Mr Keen were factored in.

## Reasons for Decision – Becker Group Limited 01

70. A further basis for preventing Prime from voting is that it would allow the Asset Sale Proposal to be determined by a majority of properly informed disinterested shareholders (assuming the identified information deficiencies were corrected - see discussion below at 79 and following). Analogous with item 7 of section 611, the Panel considered that it was open for properly informed independent shareholders to consent to, or reject, another shareholder obtaining a benefit which related to control of the company and which other shareholders did not receive.

**Why were Proposed Undertakings not acceptable?**

71. Before reaching its decision, the Panel indicated its concerns with the interdependence of the transactions to the parties and encouraged them to attempt to negotiate a commercial resolution which would address its concerns.
72. The parties offered various undertakings including that:
- (a) Prime would -
    - (i) vote against the Asset Sale Proposal if a superior offer for the Film Business (on no less favourable terms as under the Asset Sale Deed) emerged;
    - (ii) announce that it would waive any breach of the defeating conditions of its Offer that would result from a disposal, or an agreement to dispose of the Film Business, pursuant to a superior competing offer for the Film Business; and
    - (iii) increase the cash consideration under its Offer by an amount equal to the increase in headline consideration to be received by Becker Group from an acquirer of the Film Business (relative to the \$15.5 million headline consideration proposed to be received by Becker Group under the Asset Sale Deed) divided by the number of issued shares in Becker Group.
  - (b) Becker Group would -
    - (i) treat the condition in the Asset Sale Deed relating to the success of the Prime Offer as being fulfilled in the event that a person, other than Prime, made a cash takeover bid for Becker Group at an offer price of 43 cents per share or higher and that takeover bid became unconditional, and the bidder received acceptances such that the bidder had voting power in Becker Group of at least 50% (unless a precondition of the third party bid was that the Asset Sale Deed does not proceed); and
    - (ii) terminate the Asset Sale Deed, if a person other than BFG provided a binding superior offer to Becker Group to acquire the Film Business and Becker Group intended to accept that offer,
  - (c) BFG would, subject to the Panel confirming that it would not make any orders that Prime or Mr Keen (CEO of Becker Group) may not vote at the adjourned shareholders meeting, agree to terminate the Asset Sale Deed if the Film Business were to be sold to a third party and the sale to BFG were not to proceed (together Proposed Undertakings).
73. BFG continued to reserve its position in relation to accepting the Prime Offer in the event it was not able to acquire the Film Business (either by reason of the Asset Sale

## Reasons for Decision – Becker Group Limited 01

Proposal not being approved or a superior third party offer for the Film Business emerging and being accepted by Becker Group). However BFG submitted that:

*“The Panel might be concerned to know that in the circumstances where the Film Business is sold to BFG (following shareholder approval) the Becker family wouldn't act economically irrationally by accepting into the Prime bid if it was plainly economically disadvantageous for it to do so. The Becker family does not intend to act economically irrationally”.*

74. The Panel did not consider that the Proposed Undertakings severed the commercial and practical interdependence of the two transactions as the undertakings did not change the underlying commercial position. In other words, despite the undertakings, it would still have been possible for, and in the commercial interests of:
- (a) Prime to vote in favour of the Asset Sale Proposal; and
  - (b) BFG to acquire the Film Business and sell its shares into the Prime Offer, even if there were other competing proposals.
75. In addition, as the attempts at a commercial resolution progressed during the Proceedings, the Panel became concerned that it was being drawn into very detailed aspects of the commercial negotiations between the parties. Although the Panel had expressly encouraged a commercial resolution, the Panel did not consider it appropriate for it to become immersed in structuring a particular outcome for the parties. The Panel's primary concern was that any commercial outcome was consistent with the principles of Chapter 6.
76. The Panel did not consider the orders that it made prevented the parties reaching a commercial resolution. Similarly, the Panel saw no evidence that its making orders had prematurely extinguished any chances of a commercial resolution.
77. The Panel considered that it was the responsibility of the independent chairman to oversee a process that resulted in transactions acceptable to Becker Group shareholders. The Panel considered its orders would allow disinterested shareholders to decide the outcome of the Asset Sale Proposal and the Prime Offer. If one or other were not approved, the status quo would be preserved to that extent. It would then be for the independent chairman to manage any further process in a manner consistent with his duties and the principles in Ch 6. It was open to Prime and R&R Becker to improve their bids in a way that would be acceptable to a majority of non-associated shareholders. It would also be open for any other bidder to bid for the company as a whole or separately for either the Film Business or the On Site Broadcasting business.
78. The Panel did not consider that a sale of the Film Business to R&R Becker and an acquisition of Becker Group by Prime would be unacceptable in themselves. However, the Panel considered that the process, and the interdependence, meant that the Asset Sale Proposal and Prime Offer, as presented to the Panel constituted unacceptable circumstances, and the proposed undertakings did not adequately remedy the unacceptable circumstances.

**Information deficiencies***Notice of Meeting*

79. The Panel considered there were material information deficiencies in the Notice of Meeting in relation to the issues set out below.

*Price Adjustment Mechanism*

80. The Notice sets out the following in relation to the price adjustment mechanism:

*“Becker Film Group Pty Limited has agreed to pay \$15.5 million to the Company on the completion of the Asset Sale (Completion). This amount is subject to adjustment after Completion if a Completion Date balance sheet reveals that the consolidated net liabilities of Becker Group are more or less than \$10,888,553, after removing assets and liabilities relating to the Film and Cinema Businesses and applying the \$15.5 million in sale proceeds to reduce debt. If the net liabilities exceed \$10,888,553, the purchase price will be increased by the amount of the excess, and if the net liabilities are less than \$10,888,553, the purchase price will be reduced by the amount of the shortfall.”*

81. The effect of fixing the amount of debt that the Becker Group would have at the date of completion of the Asset Sale at \$10,888,553 was that any unexpected additional cash flow to the Becker Group would pass to BFG to reduce the purchase price for the Film Business, and conversely, any increase in liabilities would be met by BFG rather than Prime.
82. The Panel considered that the Notice did not adequately disclose how the price adjustment mechanism was likely to affect the price paid by BFG for the Film Business and failed to give Becker Group’s reasonable estimates of the price adjustments which were likely to occur. The Panel considered the timing of completion of the asset sale (and the level of net debt at that time) had the potential to materially affect the Purchase Price. Accordingly, the Panel considered that Becker Group shareholders voting on the Asset Sale Proposal would reasonably expect to be provided with Becker Group’s reasonable estimate of the levels of net debt and the expected purchase price after adjustment in order to be able to assess the merits of the Asset Sale Proposal.

*Book value v purchase price*

83. Becker Group's full year accounts were signed off in August 2006. The Panel noted that directors are required to assess the carrying value of assets on the books, and ensure that the accounts are "true and fair". Given that no change was included in the half yearly report of February 2007, and that the directors signed a declaration that the financial statements and notes contained in the half year report give a true and fair view of the financial position of Becker Group as at 31 December 2006, Becker Group shareholders were entitled to assume that the book value of the assets had not changed at the time the purchase price under the Asset Sale Proposal was negotiated.
84. The Panel did not consider the Notice adequately explained the basis on which the Film Business was valued at approximately \$30.8 million in the company's reviewed accounts for the period ended 31 December 2006, and why that value was significantly higher than the proposed sale price of \$15.5 million to BFG (subject to adjustment), which the directors had evidently determined was a fair sale price for the non-interested shareholders.

**Reasons for Decision – Becker Group Limited 01**

85. Becker Group submitted that under the Accounting Standards an asset is only carried at more than its recoverable amount if its carrying amount exceeds the amount to be recovered through use or sale of the asset. Becker Group submitted that an impairment assessment was carried out and reviewed by the auditors when the 2006 year full year accounts were signed off in August 2006 and when the December 06 half year accounts were issued in February 2007 and at both times the carrying values were considered to be true and fair.
86. As noted above, while the Panel accepted Becker Group's analysis of the Accounting Standards, it did not accept that Becker Group's submission was an adequate explanation of why the proposed sale value should be so much lower than the fair carrying value. The Panel considered that shareholders when considering the Asset Sale Proposal should have had information from Becker Group setting out the basis on which the Film Business was valued at approximately \$30.8 million in the company's reviewed accounts for the period ended 31 December 2006, and an explanation of why that value was significantly higher than the proposed sale price of \$15.5 million (subject to adjustment), which the directors had evidently determined is a fair sale price for the non-interested shareholders.

*No market testing*

87. The Panel was concerned that the Notice did not include any advice to Becker Group shareholders that no market testing process had been undertaken in relation to the Asset Sale Proposal or the Prime Offer before it was recommended by the chairman of Becker Group, and that the Notice did not include an explanation as to why no market testing had been undertaken.

*Target's Statement*

88. The Panel initially had concerns with certain disclosure in Becker Group's target's statement including:
- (a) the implications of the price adjustment mechanism for the Asset Sale Proposal;
  - (b) the implications of the 42.6% shareholding of R&R Becker on the control premium.
89. Accordingly the Panel made orders to correct these information deficiencies. However in light of developments discussed below at paragraph 116, the Panel did not consider its orders in relation to the target's statement continued to be necessary and varied its orders accordingly.

*Independent Expert's Reports*

90. The Panel considered there were material information deficiencies requiring correction in the Asset Sale Report<sup>15</sup> in relation to the issues set out below.

*Asset Sale Report - Price Adjustment Mechanism*

91. The Panel did not consider either of the two Independent Experts Reports adequately explained the mechanism of the debt adjustments, and the implications and expected effects of the adjustment on the Purchase Price. This was most problematic in the Asset Sale Report because of the direct effect that the Price Adjustment Mechanism

---

<sup>15</sup> The Panel was similarly concerned where these issues were apparent in the Independent Expert's Report in relation to the Prime Offer.

## Reasons for Decision – Becker Group Limited 01

might have on the price paid by BFG for the Film Business. The Panel was concerned that the Independent Expert had not addressed any analysis of the likely levels of debt in Becker Group at Completion Date in the Asset Sale Report.

92. The Panel considered that this mechanism appeared unusual as any unexpected extra cash flow into Becker Group before completion would not flow to the company. The Independent Expert in its submissions confirmed that it was unusual for an adjustment mechanism to operate on net liabilities retained by Becker Group rather than on the net assets acquired by BFG however this was not disclosed in the Asset Sale Report. For example, the Panel considered that any free cash flow from operations from the whole of Becker Group would reduce the purchase price but would not necessarily entail any additional liabilities, the result being that any such cash flow would simply be denied to Becker Group minorities if Prime did not acquire 100% of Becker Group. If Prime acquired 100% of Becker Group the cash flow would not have affected the Becker Group minorities (unless Prime might have been pressured to increase its bid price in the face of strong positive cash flows over the period). The mechanism may have had some benefit for Becker Group minorities in that if the cash flow had been negative over the period BFG was exposed to the downside rather than the Becker Group minorities, and Prime was less likely to seek to rely on any defeating conditions in its offer if it was insulated from negative cash flows.
93. The Independent Expert submitted that it had been advised by management of Becker Group that levels of net debt were not expected to be materially different at completion date from the net debt as at 31 December 2006 and accordingly the Independent Expert did not allow for any material change to the purchase price as set out in the Asset Sale Deed. The Panel considered however that the timing of completion of the Asset Sale (which was directly linked to the close of the Prime Offer) may have affected the price paid for the Film Business, and this had not been adequately disclosed.
94. Given the potential for the timing of completion to affect the Purchase Price, the Panel considered the Independent Expert should have explained, particularly in the Asset Sale Report, whether (and how) lower or higher levels of debt would have affected the Independent Expert's opinion that the Asset Sale Proposal was fair and reasonable in the absence of a higher offer.

*Control premiums*

95. The two Independent Expert's Reports each included two tables at Appendix D (figures 29 and 30) setting out control premiums in "comparable transactions", which Grant Thornton sourced from Bloomberg. The Panel considered that, on one definition, a control premium is the percentage above the prevailing market price a bidder is required to pay to gain control of a company. On the basis of that definition the Panel noted the following :
  - (a) there were a considerable number of share buy-backs included in the tables at Appendix D which would generally be regarded as capital management and which do not attract a control premium. The Panel did not consider it appropriate to include share buy-backs for the purposes of comparison;
  - (b) a number of "strategic" share transactions were included in the table even where the transactions did not deliver control to the acquirer; and

## Reasons for Decision – Becker Group Limited 01

- (c) the calculation of the premium for a number of the examples presented appeared to the Panel to be inaccurate (see Annexure D). The Panel was also concerned that there was no explanation in the Independent Expert's Reports of the basis on which the premiums were calculated – it was not clear whether the premiums were based on a 1 day VWAP, a 1 month VWAP or another basis.
96. Accordingly, the Panel considered that Grant Thornton had used irrelevant data and had uncritically adopted data that was either incomplete or misleading in the impression it gave.
97. The Panel considered that:
- (a) combining premiums for takeovers with other types of non-control transactions; and
  - (b) the uncritical use of premiums for takeovers taken from a commercial source, gave a misleading impression of the appropriate premium for control when assessing the fairness and reasonableness of the Asset Sale Proposal and the Prime Offer. On this basis the Panel ordered Becker Group to give to Becker Group shareholders a revised or supplementary Independent Expert's Report addressing, to the Panel's satisfaction, comparative control premiums for similar transactions and the reasons for adopting those premiums.

*Implications of majority shareholding*

98. The Independent Expert's Report set out at section 6.3 the implications of R&R Becker's 42.6% shareholding on the control premium:

*"The relatively low premium paid in connection with our assessed valuation range of the Film and Cinema Assets, is, in our opinion, due to the following,*

- *the Becker Family already own a relevant interest of 42.6% of the Film and Cinema Assets through their existing holdings in BGL;*
- *the Becker Family's pre-existing entitlements in 42.6% of the issued capital of the Company is able to potentially prevent/block potential alternative offer for the Company and the Film and Cinema Assets. Accordingly, BGL's assets are relatively less appealing and contestable;*
- *as discussed in section 7 of this Report, the Takeover and the Asset Sale are practically interrelated between each other notwithstanding that this is not the legal form of the transactions. The Becker Family has stated that they do not intend to accept the Takeover Offer unless the Asset Sale is approved. In addition, if the Asset Sale does not proceed, Prime may let the Takeover Offer lapse by not waiving the 80% minimum acceptance condition given the Film and Cinema Assets are non-core assets for Prime. Accordingly, we believe, the bargaining power of the Becker Family has affected the terms of the Asset Sale and it is reflected in a low premium paid in connection with our assessed valuation range of the Film and Cinema Assets"*

99. The expert stated that it considered that the Asset Sale Proposal was fair and reasonable to the non-associated shareholders of Becker Group in the absence of a superior offer.
100. The Panel did not consider the Independent Expert had adequately explained its reasons for taking into account the shareholding of R&R Becker or the prospect of a superior offer in coming to a conclusion about whether the Asset Sale Proposal was

## Reasons for Decision – Becker Group Limited 01

fair to the non-associated shareholders of Becker Group. The Panel acknowledged that market practice, and the relevant ASIC Policy Statement, would normally allow an expert to take issues such as the level of the shareholding of R&R Becker and the possibility of a superior offer into account when considering whether or not a proposal was **reasonable** to the non-associated shareholders of Becker Group, in the absence of a superior offer, but not in relation to fairness. The Panel also considered the Independent Expert had failed to consider the strategic and financial benefits to any alternative buyers of the Film Business.

*Book value v purchase price*

101. The Independent Expert's Report noted at p45 that the purchase price under the Asset Sale Proposal would be \$15.3 million lower than the book value of the net assets and \$6.7 million lower than the net tangible assets (see also paragraphs 83 to 86 above).

102. The Panel notes section 5.1 of the Independent Expert's Report in relation to the use of discounted cash flow methodology (which was the methodology used by Becker Group directors in signing off on the book value of the Film Business):

*"Predicting future cash flows is a complex exercise requiring assumptions as to the future direction of the company, growth rates, operating and capital expenditure and numerous other factors. An application of this method generally requires cash flow forecasts for a minimum of five years.*

*The Management of BGL have not prepared a five year forecast for the Film and Cinema Assets and therefore Grant Thornton Corporate Finance has not applied this methodology in our valuation assessment of Film and Cinemas Businesses."*

103. The Panel considered the Independent Expert's Report should include the basis of the valuation used by the Becker Group directors in signing off on the book value of the Assets in the company's reviewed accounts for the period ended 31 December 2006 and its relevance, if any, in determining the fairness and reasonableness of the Asset Sale Proposal to non-associated Becker Group shareholders. The Panel also considered there was no evidence that the Independent Expert had made enquiries as to why the directors had decided not to write down the value of the Film Business in the accounts.

104. The Panel made orders to address its concerns in relation to disclosure to Becker Group shareholders in the Notice, the Independent Expert's Report and the Becker Group target's statement.

**Other issues**

105. There were several issues with which the Panel had concerns but which were not integral to the Panel's final decision and declaration.

*Voting by Mr Keen*

106. Dolphete submitted that Mr Keen (the CEO of Becker Group) ought not to have been regarded as a disinterested minority shareholder for the purpose of voting on the Asset Sale Proposal due to Mr Keen's personal interest in the outcome of the Asset Sale Proposal. The Panel also notes that Mr Keen considered that he should not make a recommendation on the Asset Sale Proposal. The Explanatory Memorandum for the Asset Sale Proposal provides that Mr Keen,

## Reasons for Decision – Becker Group Limited 01

*“ believes he has a conflict of interest, due to an understanding that he has with [BFG] that he will be offered employment by [BFG] if the Asset Sale is completed. In addition, Mr Keen would be entitled to a termination payment of \$1,485,000 upon the termination of his employment as the Chief Executive Officer of the Becker Group, if the Asset Sale is completed. [BFG] has agreed to reimburse [Becker Group] for this payment.”*

107. Mr Keen held approximately 4% of Becker Group<sup>16</sup>. Although the Panel did not make a finding of unacceptable circumstances in relation to Mr Keen’s voting, it was not clear to the Panel why Mr Keen had not been excluded from voting his shares under ASX listing rule 10.1 or chapter 2E.

*Interpretation of non solicitation arrangements*

108. The Implementation Agreement between Becker Group and Prime contained the following non-solicitation clause:

**8.1 No solicitation or negotiations**

*Subject to clause 8.2, during the Non-Solicitation Period, Target must not and must ensure that its employees, officers and (to the extent it is reasonably able to influence them), its associates and advisers, do not and Target must not require any adviser or agent:*

- (c) **(no solicitation)** directly or indirectly solicit, initiate or encourage the initiation of any inquiries, proposals or discussions which could potentially lead to a Third Party Proposal (whether from a person with whom Target has previously been in discussions or not);*
- (d) **(no discussions)** directly or indirectly participate in any discussions or negotiations regarding a Third Party Proposal;*
- (e) **(no agreement)** accept or enter into, or offer to accept or enter into, any agreement, arrangement or understanding regarding a Third Party Proposal;*
- (f) **(no approval)** approve or recommend a Third Party Proposal or announce an intention to do so; or*
- (g) **(no information)** disclose any information about the business or affairs of the Target Group to a third party (other than a government agency or auditors) other than in the ordinary course of business.*

**8.2 Response to unsolicited approach**

*If clause 8.1(a) is complied with, nothing in clause 8.1(b), (c), (d) or (e) prevents any action by Target or its directors to respond to any approach by a third party if failure to do so would, in the reasonable opinion of the Non Associated Director, involve a breach of the duties as a director of Target. The reasonable opinion of the Non Associated Director must be based on specific legal and any advice considered by the Non Associated Director to be appropriate.”*

---

<sup>16</sup> Mr Keen has since sold into the Prime Offer.

## Reasons for Decision – Becker Group Limited 01

109. The Panel did not consider that the non solicitation clause itself was a cause for concern<sup>17</sup> however it did have concerns with the interpretation that Becker Group appeared to have adopted in responding to requests to negotiate from several third parties. The Panel considered that declining to respond to a third party's unsolicited expression of willingness to make a superior offer to the Prime Offer, other than by referring the third party to the terms of Becker Group non-solicitation obligations, may have had a "significant deterrent impact on the competition for control or on current or potential counter-proposals" as per Guidance Note 7 paragraph 7.9a.
110. The Panel considered it would be appropriate for Becker Group to advise third parties what information Becker Group would require before it could reasonably enter into any discussions under its non-solicitation restrictions in relation to a superior offer to Becker Group shareholders.

## DECLARATION

111. It appeared to the Panel that the circumstances referred to in these reasons were unacceptable having regard to:
- (a) the effect that the Panel is satisfied that the circumstances have had, are having, or are likely to have, on :
    - (i) the control or potential control of Becker Group;
    - (ii) the proposed acquisition by Prime of a substantial interest in Becker Group; and
  - (b) the purposes of Chapter 6 of the Corporations Act as set out in section 602.
112. The Panel considered that it was not against the public interest to make a declaration of unacceptable circumstances in relation to the circumstances before it and the affairs of Becker Group.
113. The Panel had regard to the matters in section 657A(3), but did not consider whether the unacceptable circumstances constituted, will constitute or were likely to have constituted or given rise to a contravention of Chapters 6, 6A, 6B or 6C of the Corporations Act.
114. The Panel made a declaration that the circumstances were unacceptable circumstances (as set out in Annexure A).

## ORDERS

### Initial orders

115. The Panel made final orders under section 657D (as set out in Annexure B):
- (a) preventing Prime, or any associate of Prime from exercising any voting rights (directly or by proxy) attached to Becker Group securities held or controlled by them on any resolution to approve the Asset Sale while Prime (or an associate) is making a takeover bid for Becker Group; and

---

<sup>17</sup> See the Panel's decision in *Magna Pacific (Holdings) Limited 02* [2007] ATP 03 where the Panel considered a non solicitation clause requiring legal advice that "failing to respond **would** breach fiduciary duties" (emphasis added) to be overly onerous and that this may have effectively rendered the fiduciary exception meaningless.

## Reasons for Decision – Becker Group Limited 01

- (b) requiring Becker Group to provide its shareholders with corrective disclosure to address the material information deficiencies set out in the attached declaration and sufficient time to consider the additional disclosure.

**Subsequent events and varied orders**

116. Following the Panel's decision, Becker Group announced that it had,

*“decided to cancel the general meeting to approve the sale of the film and cinema businesses to BFG and others ... The Board notes the decision of the Takeovers Panel and the orders made by the Panel preventing Prime and its associates from voting at the general meeting and requiring additional disclosure in relation to the Asset Sale Proposal.”*

117. In light of this development the Panel considered its orders relating to the Asset Sale Proposal were no longer relevant and varied its orders as attached at Annexure C.

118. Despite Prime having increased its shareholding to around 75%, and Reading having increased its shareholding to around 19%, the Panel considered that it was important that remaining shareholders in Becker Group receive correct information on which to base their decision whether or not to accept Prime's offer. For these reasons the Panel required Becker Group to provide a revised Independent Expert's Report in relation to the Prime Offer.

119. The Panel's varied orders required Grant Thornton to produce a revised Target's Statement Report to address the Panel concerns relevant to the Prime Offer *“to the Panel's satisfaction”*. The Panel considered Grant Thornton's approach to preparing the revised report to be unsatisfactory and requested a series of amendments. The Panel's concerns included the following:

- (a) the Panel was not satisfied the revised report addressed its concerns as to the appropriateness of the information relied on. The Panel considered that, irrespective of the expert's conclusions, as a matter of practice any information set out in an expert report must be appropriate in its entirety;
- (b) despite having been informed of the Panel's concern Grant Thornton initially<sup>18</sup> continued to include non-control transactions in its data set for Appendix D;
- (c) the Panel notified Grant Thornton that if it continued to rely on the sample the Panel had identified as problematic as a basis for its opinion, the Panel required more detail in relation to the sample; e.g. what is the average premium excluding the "non control" transactions, what is the average premium taking into account the fact that in several cases there were competing bids ;
- (d) in its revised reports Grant Thornton changed its analysis of control premiums to rely on the median value rather than the average, initially comparing a median to an average value without disclosing that it had changed or giving any explanation of the reasons for changing or the effect of changing from average to median. The Panel required Grant Thornton, if it wished to change from average control premiums to median to:
  - (i) clearly disclose the fact that it had changed the metric it used;
  - (ii) explain why it had changed the metric;

---

<sup>18</sup> In Grant Thornton first revised Target Statement Report dated 6 July 2007.

## Reasons for Decision – Becker Group Limited 01

- (iii) show the effect of changing from average to median values (i.e. what the average and median values of Grant Thornton’s original set of premiums were); and
  - (iv) show the effect on both average and median values of the changes to premiums that the Panel required (i.e. what the new average and median values were) so that Becker Group shareholders could see the changes to both average and median values that steps such as removing the share buy-backs from the data set had made;
- (e) Grant Thornton excluded a number of transactions in the amended versions of its report on the basis that they were competitive transactions where there had been more than one competing bidder. Grant Thornton said it had excluded these because competitive bidding situations generated higher control premiums and at the time of the Target Statement Report there had been no announced rival offer for Becker Group. Grant Thornton decided to exclude competitive transactions after the Panel had required it to remove non-takeovers transactions from the sample. The Panel was concerned that exclusion of competitive transactions biased the results to understate the level of premiums paid in listed company takeovers and did not accept Grant Thornton’s argument that such transactions are irrelevant in this context; and
- (f) the Panel did not consider the Bloomberg control premium analysis reflected a meaningful control premium for competitive bids. For example, because of the methodology used in calculating the Bloomberg premiums, some of the premiums cited in the Bloomberg report appeared not to be indicative of the total premiums which target shareholders received as part of the control transaction<sup>19</sup>. The Panel suggested that Grant Thornton review several examples where the values used by Grant Thornton appeared anomalous. The Panel required Grant Thornton to explain the changes to shareholders.
120. The Panel noted Grant Thornton’s submissions that if criticism were to be levelled in relation to the control premiums issue, then the most apposite criticism should be that Grant Thornton used a commercially available measure of “control premiums” without adequately assessing how the measure was derived and the data within it. The Panel considers that the issue is one that experts using similar commercial measures should consider carefully before assuming the measures are appropriate, and should disclose their analysis of the appropriateness of the measure.
121. On 2 August Becker Group released a supplementary target’s statement which contained the revised Independent Expert’s Report. Although the Panel continued to have concerns with the approach taken to the data used in Appendix D of the report the Panel did not wish to delay any further the release of the report and considered it more appropriate to raise its concerns in these reasons.

**Brett Heading**  
**President of the Sitting Panel**  
**Decision dated 14 June 2007**  
**Reasons published 24 September 2007**

---

<sup>19</sup> See Annexure D for examples of transactions which the Panel raised with Grant Thornton.





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

**In the matter of BECKER GROUP LIMITED**

**WHEREAS**

*Background*

1. Becker Group Ltd (**Becker Group**) is a listed public company. It is the subject of an off market takeover bid by Prime Media Broadcasting Services Pty Limited (**Prime**), a wholly owned subsidiary of Prime Television Ltd, at \$0.47 per share (initially \$0.40 per share, increased on 25 May 2007 to \$0.43, and on 13 June 2007 to \$0.47) (**Prime Offer**). Prime is controlled by Mr Paul Ramsay. Prime and Mr Ramsay controlled approximately 22.7%<sup>20</sup> of Becker Group shares when the Prime offer was made. The independent chairman of Becker Group has recommended that shareholders accept the Prime Offer in the absence of a superior proposal.
2. At the same time as entering the agreements concerning the Prime Offer, Becker Group entered into an asset sale deed (**Asset Sale Deed**<sup>21</sup>) with Becker Film Group Pty Limited (**BFG**), a company associated with two major shareholders and directors of Becker Group, Mr Richard Becker and Mr Russell Becker, to sell Becker Group's film, exhibition, production and distribution businesses (**Film Business**) to BFG for \$15.5 million (**Asset Sale Proposal**). Mr Richard and Russell Becker are directors of Becker Group and indirectly control 42.6% of Becker Group's shares.
3. The sum payable by BFG for the Film Business is to be adjusted under Clause 4.2 of the Asset Sale Deed according to a formula which relates to the "net liabilities" of Becker Group at the time of completion of the Asset Sale Proposal (**price adjustment mechanism**).
4. The Asset Sale Proposal is subject to shareholder approval under ASX listing rule 10.1 and chapter 2E of the Corporations Act.

*Expert reports*

5. An independent expert, Grant Thornton Corporate (NSW) Pty Ltd (**Grant Thornton**), has prepared two independent expert's reports.
6. The first is a report on whether the proposed Asset Sale Proposal is fair and reasonable to non-associated shareholders of Becker Group dated 27 April 2007. This report is attached to the shareholder notice of meeting documentation (**Notice**).
7. The second is a report on whether the Prime Offer is fair and reasonable to shareholders of Becker Group dated 27 April 2007.

---

<sup>20</sup> Now 24.11% as a result of acceptances.

<sup>21</sup> The Asset Sale Deed is annexed to the Implementation Agreement.

### *Related transactions*

8. The Prime Offer and Asset Sale Proposal are related transactions. The Panel considers them to be interdependent for practical purposes for the following reasons:
  - (a) the Prime Offer contains a defeating condition regarding the sale of assets other than in the Asset Sale Proposal;
  - (b) the Asset Sale deed contains a condition requiring the Prime Offer to become unconditional, with Prime having voting power of at least 50% of Becker Group shares;
  - (c) Richard and Russell Becker have stated publicly that they intend to sell their 42.6% shareholding into the Prime Offer if the Asset Sale Proposal is approved by Becker Group shareholders;
  - (d) the transactions were negotiated at the same time, between largely the same persons. They reflect the final iteration of negotiations going back to at least September 2006. The negotiations considered different ways in which the assets would be held by interests associated with Richard and Russell Becker and the remaining businesses of Becker Group would be held by interests associated with Prime;
  - (e) the price adjustment mechanism for the Asset Sale Proposal; and
  - (f) the timing of completion of the Asset Sale Proposal in relation to the Prime Offer.
9. Prime and Mr Ramsay, with 24.11% of Becker Group, can, for practical purposes, ensure approval of the sale to BFG, or make approval of the sale highly likely.
10. Richard and Russell Becker, with control over 42.6% of Becker Group, can have a material effect on the level of success of the Prime Offer.
11. Prime voting for the Asset Sale Proposal, and its effect on the approval of the Asset Sale Proposal, is a benefit to Richard and Russell Becker which no other shareholders of Becker Group will have an opportunity to participate in.
12. Prime voting for the Asset Sale Proposal, and its effect on the approval of the Asset Sale Proposal is likely to have an effect on:
  - (a) the control or potential control of Becker Group, or the acquisition, or proposed acquisition of a substantial interest in Becker Group, since Richard and Russell Becker have said that they will accept the Prime Offer if the Asset Sale Proposal is approved; and
  - (b) the efficient, competitive and informed market for control of the shares in Becker Group, since it is likely to affect the success of potential bidders seeking to acquire the whole of Becker Group.

### *Information deficiencies*

13. There are material information deficiencies in the Notice and the independent expert's report on the proposed Asset Sale concerning:
  - (a) the implications of the price adjustment mechanism for the Asset Sale; and
  - (b) the control premiums relied on;

- (c) the implications of the Becker's 42.6% shareholding on the control premium;
  - (d) the difference between the book value of the Film Business at 31 December 2006 and the Asset Sale Proposal price;
  - (e) why there was no market testing process undertaken in relation to the Asset Sale Proposal; and
  - (f) the interdependence of the transactions.
14. There are material information deficiencies in the Becker Group target's statement and the independent expert's report on the Prime Offer concerning:
- (a) the implications of the price adjustment mechanism for the Asset Sale Proposal;
  - (b) the control premiums relied on; and
  - (c) the implications of the Becker's 42.6% shareholding on the control premium.
15. The independent expert's reports for the Becker Group target's statement and the Notice:
- (a) combines premiums for takeovers and other types of transactions; and
  - (b) uses premiums for takeovers taken from a commercial source, in a manner which gives a misleading impression of the appropriate premium for control which Grant Thornton applied when assessing the fairness and reasonableness of the Asset Sale Proposal and the Prime Offer.
16. The Notice and the Becker Group target's statement fail to disclose adequately how the price adjustment mechanism is likely to affect the price paid by BFG for the Film Business and fails to give Becker Group's reasonable estimates of the price adjustments which are likely to occur, and fails to explain why the difference between the book value of the Film Business and the Asset Sale Proposal price or the lack of market testing process was appropriate.

*Circumstances unacceptable*

17. It appears to the Panel that the circumstances referred to above (**Circumstances**) are unacceptable having regard to:
- (a) the effect that the Panel is satisfied that the circumstances have had, are having, or are likely to have, on :
    - (i) the control or potential control of Becker Group;
    - (ii) the proposed acquisition by Prime of a substantial interest in Becker Group; and
  - (b) the purposes of the Chapter 6 of the Corporations Act as set out in section 602.
18. The Panel considers that it is not against the public interest to make a declaration of unacceptable circumstances in relation to the Circumstances and the affairs of Becker Group.
19. The Panel has had regard to the matters in section 657A(3), but has not had regard to whether the Circumstances constitute, will constitute or are likely to constitute or give rise to a contravention of Chapters 6, 6A, 6B or 6C of the Corporations Act.

Under section 657A of the Corporations Act, the Takeovers Panel declares that the Circumstances constitute unacceptable circumstances in relation to the affairs of Becker Group.

**Brett Heading**

**President of the Sitting Panel**

Dated 14 June 2007



**Annexure B**  
**Corporations Act**  
**Section 657D**  
**Orders**

**In the matter of BECKER GROUP LIMITED**

**WHEREAS**

1. The Panel has made a declaration of unacceptable circumstances in relation to the affairs of Becker Group Ltd (**Becker Group**).
2. Becker Group is the subject of an off market takeover bid by Prime Media Broadcasting Services Pty Limited (**Prime**), a wholly owned subsidiary of Prime Television Ltd, at \$0.47 per share (**Prime Offer**).
3. Becker Group proposes the sale of assets (**Asset Sale**), namely its film, exhibition, production and distribution businesses (**Assets**), to Becker Film Group Proprietary Limited (**BFG**). Becker Group has entered into a deed (**Asset Sale Deed**) with BFG to complete the Asset Sale. The Asset Sale is conditional on Becker Group shareholder approval.
4. An independent expert, Grant Thornton Corporate (NSW) Pty Ltd, has prepared two independent expert's reports, one in relation to the Prime Offer and one in relation to the Asset Sale.

**THE PANEL ORDERS THAT**

*Voting on Asset Sale*

1. None of Prime, Paul Ramsay Holdings Pty Ltd or any associate of Prime or Paul Ramsay Holdings Pty Ltd may exercise, or allow the exercise of, any voting rights (directly or by proxy) attached to securities held or controlled by them on any resolution to approve the Asset Sale while Prime (or an associate) is making a takeover bid for Becker Group.

*Disclosure concerning Asset Sale and Prime Offer*

2. Becker Group will provide to Becker Group shareholders in sufficient time for them to consider before any resolution to approve the Asset Sale is considered:
  - (a) disclosure in a new or amended notice of meeting and supplementary target's statement in relation to the Asset Sale which addresses, to the Panel's satisfaction:
    - (i) the operation of the price adjustment mechanism in the Asset Sale deed, and the expected final asset sale price;
    - (ii) the basis on which the Assets were valued at approximately \$30.8 million in the company's reviewed accounts for the period ended 31 December 2006, and an explanation of why that value is significantly higher than the proposed sale price of \$15.5 million (subject to adjustment), which the

directors have evidently determined is a fair sale price for the non-interested shareholders; and

- (iii) why there was no market testing process undertaken in relation to the Asset Sale Proposal,
- (b) a new or revised independent expert report which addresses, to the Panel's satisfaction:
- (i) comparative control premiums for similar transactions and the reasons for adopting those comparatives;
  - (ii) in coming to a conclusion about whether the Asset sale is fair and reasonable in the absence of a superior offer, the reasons for taking into account the shareholdings of BFG and its associates;
  - (iii) any effect on the Becker Group shareholders of the price adjustment mechanism in the Asset Sale deed, and the expected final asset sale price;
  - (iv) the basis of valuation used by the Becker Group directors in signing off on the book value of the Assets in the company's reviewed accounts for the period ended 31 December 2006 and its relevance, if any, in determining a fair value in the context of the Asset Sale Proposal; and
  - (v) developments in relation to third party interest in acquiring the Film Business or the Becker Group as a whole.

**Brett Heading**

**President of the Sitting Panel**

Dated 19 June 2007



**Annexure C  
Corporations Act  
Section 657D(3)  
Variation of Orders**

**In the matter of BECKER GROUP LIMITED**

**Pursuant to:**

1. Section 657D(3) of the Corporations Act 2001 (Cth); and
2. A declaration of unacceptable circumstances in relation to the affairs of Becker Group Ltd (**Becker Group**) made by the President of the Sitting Panel on 14 June 2007

**THE PANEL ORDERS THAT**

The orders made by the President of the Sitting Panel on 19 June 2007 in relation to Becker Group be varied by:

- (a) Deleting orders 1 and 2, and
- (b) Substituting the following:

Becker Group will provide to Becker Group shareholders in sufficient time for them to consider before the close of the Prime Offer, a new or revised independent expert report which addresses to the Panel's satisfaction:

comparative control premiums for similar transactions and the reasons for adopting those comparatives; and

developments in relation to third party interest in acquiring the Film Business or the Becker Group as a whole.

**Brett Heading**

**President of the Sitting Panel**

Dated 3 July 2007



## Annexure D

### Examples of apparently incorrect premiums

#### **1) MYOB / Solution 6:**

Grant Thornton: 4.4% premium

##### **Scheme book:**

"Based on the market value of MYOB Shares as at the close of trading on 26 March 2004 of \$1.16 (being the last price at which MYOB Shares were traded prior to the announcement of the Merger), the value of the Scheme Consideration and the Capital Return was \$0.85 per Solution 6 Share or \$216 million. This represents a **premium of 21%** for Solution 6 Shareholders compared to the Solution 6 share price as at the close of trading on 26 March 2004 of \$0.70."

**PwC (IER):** "a premium over the VWAP of Solution 6 shares during this period of 37%"

#### **2) Affinity Equity Partners / Colorado:**

Grant Thornton: 5.6%

**Target's Statement:** "The Increased Offer of \$4.70 per share is attractive as: \$4.70 is 24% above the COLORADO closing price on 21 June 2006 of \$3.80 (the last close prior to ARH becoming a substantial shareholder in COLORADO; \$4.70 is 42% above the COLORADO closing price on 14 June 2006 of \$3.30 (the last close prior to COLORADO announcing the appointment of Gresham Advisory Partners as its financial adviser)

#### **3) Bosch / Pacifica Group:**

Grant Thornton: 6.4%

**Grant Samuel (IER):** "The Bosch Offer of \$2.20 per share cash represents a substantial premium to the price at which Pacifica shares traded prior to the announcement of the initial Bosch Offer on 18 October 2006:"

	<b>VWAP</b>	<b>Premium</b>
One day	1.92	15%
One week	1.81	22%
One month	1.62	36%
29 July-28 August 2006	1.94	14%
29 August-17 October 2006	1.57	40%
Three months	1.78	24%

"In Grant Samuel's view, the Bosch Offer represents a significant premium to the price at which Pacifica shares would trade in the absence of the Offer or a similar proposal."

#### **4) MFS / Villa World**

Grant Thornton: 6.4%

##### **Deloitte Corporate Finance (IER):**

"The consideration offered pursuant to the Takeover Offer represents a premium to the VWD share price prior to the announcement on 21 April 2006. The consideration offered per VWD share represents:

## Annexure D - Becker Group Limited

- a premium of 20% to 28% to the closing price for a VWD share on 20 April 2006 of \$1.64
- a premium of 27% to 35% to the 30-day VWAP of \$1.55
- a premium of 28% to 37% to the 90-day VWAP of \$1.53."

**5) Macquarie Bank / RG Capital Radio**

Grant Thornton: 6.6%

**Grant Samuel (IER):** "The consideration of \$3.00 is at a 3.4% premium to the price at which RG Capital Radio shares last traded prior to the announcement of the Proposal. This is an atypically small premium."

"The market for RG Capital Radio shares is not deep. The shares trade relatively infrequently and since January 2001 have only traded on average twice per day. In fact, the pre-announcement price of \$2.90 represents only two trades totalling 917 shares on 31 May 2004."

**6) Macquarie Office Trust / Principal Office Trust**

Grant Thornton: 6.7%

**Deloitte Corporate Finance (IER):** "In the four days ending 27 May 2004, approximately 18% of PAOs units changed hands and the price increased by approximately 12% to close at \$1.22 amid speculation of a takeover. As of 28 May 2004, the market had started to price the possibility of a takeover offer into the PAO unit price. In the absence of the Takeover Offer, or an alternative offer, it is likely that PAO units would trade below the trading prices achieved since 28 May 2004."

**Target's Statement:** PAO Unitholders who accept the Offer will obtain: • a 12.4% Offer Premium to the PAO Unit Price; Based on the 5 day volume weighted average price of PAO Units to 16 July 2004, being the Business Day prior to the announcement of discussion between the parties, of \$1.20, and the 5 day volume weighted average price of MOF Units to 17 August 2004, being the latest possible date prior to finalising this Target's Statement, of \$1.18."

**7) Mirvac / James Fielding**

Grant Thornton: 7.4%

**Explanatory Memorandum:** "the Proposal represents an implied acquisition price of \$3.33 per JFG Security. This represents a premium of: - 6 per cent to the closing price of JFG Securities on 11 October 2004 of \$3.13; - 10 per cent to the 30 day VWAP to 11 October 2004 of \$3.02; - 16 per cent to the 12 month VWAP to 11 October 2004 of \$2.86; and - 38 per cent to JFG's NTA per JFG Security at 30 June 2004 of \$2.41."

**8) Bravoscar / Freedom**

Grant Thornton: 8.3%

**KPMG Corporate Finance (IER):**

	VWAP	Implied premium
1 day	1.96	7.1%
1 week	1.99	5.6%
1 month	1.94	8.2%
3 months	1.86	12.9%
6 months	1.85	13.7%
12 months	1.88	11.7%

**9) Harmony Gold / Abelle**

Grant Thornton: 8.2%

**Grant Samuel (IER):**

	<b>Share price</b>	<b>Premium</b>
Day prior to bid	1.80	11.1%
1 week prior to bid - VWAP	1.79	11.6%
1 month prior to bid - VWAP	1.90	5.5%
3 months prior to bid - VWAP	1.78	12.1%
6 months prior to bid - VWAP	1.79	11.7%

"Analysis based on bid premiums needs to be treated with some caution. Given the limited liquidity in Abelle shares the pre-bid share price may not have been a reliable indicator of value. Moreover, expectations that Harmony would ultimately seek to acquire the minority shareholdings in Abelle may have supported Abelle's pre-bid share price"

**10) Strathig / R.M. Williams**

Grant Thornton: 8.7%

**Grant Samuel (IER):** "The prices at which RM Williams shares trade are distorted by the company's extremely limited free float. With two substantial shareholders holding an 84% interest and significant related party interests and director/employee shareholdings, RM Williams' free float is effectively only around 5-10% of its issued capital base, or 1-2 million shares."

"There is no meaningful market for RM Williams shares. Share trading on the ASX is almost non-existent with only 70 trades and 61,400 shares traded in the first six months of 2003. Accordingly, the share price should not be taken as necessarily representing a fully informed, well-traded measure of the portfolio value of an RM Williams share;"