



**In the matter of Becker Group Limited 02  
[2007] ATP 15**

**Catchwords:**

*association, auction for control, collateral benefits, competitive disposal of assets; confirmation of no of future agreement, curtailing of efficient market by precipitate acceptance; efficient market; elimination of benefits, shareholders entitled to act in own interests; statements as to intentions for assets in supplementary bidder's statement; undertaking,*

*Corporations Act 2001 (Cth), sections 602, 657A*

*Becker Group Limited 01 [2007] ATP 13*

*Becker Group Limited; Dolphete Pty Ltd; Prime Television Ltd*

**These are the Panel's reasons for declining to commence proceedings in relation to an application by Dolphete Pty Ltd concerning the affairs of Becker Group Limited. The Panel declined on the basis of supplementary disclosure and various undertakings received from parties.**

## **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 [TP07/41](#)).
2. Dolphete submitted that the acceptance by Mr Richard Becker and Mr Russell Becker (**R&R Becker**) of the Prime Offer closed off the competition for control of Becker Group. Dolphete submitted that the acceptance, at that time, was inappropriate;
  - (a) when Becker Group had announced that it had received preliminary expressions of interest which potentially could lead to a takeover bid in competition with the takeover offer by Prime Media Broadcasting Services Pty Limited (**Prime Offer**), a wholly owned subsidiary of Prime Television Ltd (together **Prime**); and
  - (b) given the unconditional nature of the Prime Offer and the Prime Offer closing date.
3. The Panel declined to commence proceedings in relation to Dolphete's application on the basis of supplementary disclosure and various undertakings received from parties.
4. The President of the Panel appointed Geoff Brunson, Brett Heading (Sitting President) and Peter Scott (Deputy President) as the sitting Panel to consider Dolphete's application.

## **BACKGROUND**

5. Becker Group is the subject of an off-market takeover bid by Prime Media Broadcasting Services Pty Ltd (**Prime** and **Prime Offer**), a wholly owned subsidiary of Prime Television Limited.

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

## Takeovers Panel

### Reasons for Decision – Becker Group Limited 02

6. At the same time as entering an agreement in relation to the Prime Offer, Becker Group entered into an asset sale deed with a company associated with R&R Becker, two major shareholders and directors of Becker Group, to sell Becker Group's film, exhibition, production and distribution businesses (**Film Business**) to them for \$15.5 million (subject to adjustment) (**Asset Sale Proposal**).
7. The Panel has previously made a declaration of unacceptable circumstances in relation to the Asset Sale Proposal. The Panel made orders preventing Prime from voting on the Asset Sale Proposal (see [TP07/39](#)). Following the Panel's decision in *Becker Group Limited 01* [2007] ATP 13, on 22 June 2007 the meeting to consider the Asset Sale Proposal was cancelled. On the same day R&R Becker accepted the Prime Offer for their 42.6% shareholding.
8. Dolphete's latest application related to the acceptance by R&R Becker of the Prime Offer when Becker Group had announced that it had received preliminary expressions of interest which potentially could lead to a takeover bid in competition with the Prime Offer. Dolphete submitted that the acceptance, at that time, was inappropriate given the unconditional nature of the Prime Offer and the Prime Offer closing date.
9. Dolphete submitted that the acceptance, if allowed to stand, closed off the potential for any higher offer, such that the existing competition and potential competition in the market for control of Becker Group (to which Becker Group referred in an ASX announcement dated 13 June 2007) would be destroyed.

## DECISION

10. The Panel considered it was open for R&R Becker as shareholders of Becker Group to decide if, and when, they would accept the Prime Offer. The Panel was concerned however to ensure that R&R Becker had not accepted into the Prime Offer on the basis of any arrangement, understanding or expectation regarding any special benefit not offered equally to all Becker Group shareholders participating in the Prime Offer.
11. Before deciding whether or not to commence proceedings, the Panel requested the following to assist in its deliberations:
  - (a) Confirmation from Prime, R&R Becker and Becker Group as to whether or not an arrangement (formal or otherwise), understanding or expectation existed involving R&R Becker (or any of their associates or controlled entities) and either Prime or Becker Group (or any of their respective associates or related parties) in relation to any material commercial transaction or relationship; and
  - (b) If there were no arrangements as outlined above, whether Prime would provide an enforceable undertaking to the Panel that Prime would issue a supplementary bidder's statement to address, to the Panel's satisfaction:
    - (i) that there is no arrangement, understanding or expectation as outlined above;
    - (ii) Prime's intentions concerning the Film Business following the close of its Offer; and
    - (iii) if Prime does intend to proceed with a sale of the Film Business, its intentions as to the process by which the sale will be conducted.

## Takeovers Panel

### Reasons for Decision – Becker Group Limited 02

12. Each of Prime, R&R Becker and Becker Group agreed to provide the confirmations and undertakings requested by the Panel. On 3 July Prime released its second Supplementary Bidder's Statement which stated:
- “Following the close of the Prime Offer, Prime will conduct a broad based review of the operations, assets, structure and employees of Becker Group. In the course of this review, Prime will focus on a number of key areas, including, but not limited to, the possible separation of the various businesses of Becker Group. Final decisions will only be reached after that review and in light of all material facts and circumstances existing at that time.*
- If, as a result of this review, Prime did decide that Becker Group should divest the Film Business, it would, at that time, conduct an appropriate and proper process for that sale, taking into account its obligations to both Becker Group and the shareholders in Prime. If such a sale process is conducted, Prime would, through its Becker Group Board representatives and subject to the proper performance of its duties, seek to procure Becker Group to accept the best offer for the Film Business.”*
13. The Panel was unwilling to commence proceedings based on Dolphete's submission that there was an inappropriate association or benefit, given that:
- (a) the commercial mutuality of interests which had concerned the Panel in the Becker Group 01 proceedings had ceased to exist (i.e. the potential benefit to Prime from supporting the sale of the Film business to BFG) when BFG accepted Prime's offer, and this was supported by the confirmations and undertakings provided to the Panel;
  - (b) other potential bidders had not provided sufficient indication to the market or to the Panel that control of Prime was still seriously in contest, insofar as they failed to announce any competing bid prior to BFG accepting Prime's bid, despite some material time elapsing (albeit with some difficulties gaining due diligence access to Becker Group); and
  - (c) there is no obligation on a shareholder (such as BFG) to act in accordance with the wishes or the interests of other shareholders (e.g. to facilitate an auction) when deciding when or whether to accept a bid, in the absence of circumstances that might otherwise require it to do so.
14. Having received confirmations and undertakings that addressed its concerns, and for the other reasons above, the Panel declined to commence proceedings in relation to Dolphete's application.

**Brett Heading**

**President of the Sitting Panel**

**Decision dated 3 July 2007**

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