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Wednesday, 20 June 2007

**Becker Group Limited - Final decision**

The Takeovers Panel advises that it has made a declaration of unacceptable circumstances and final orders in relation to an application by Dolphete Pty Limited, concerning the affairs of Becker Group Limited (see [TP07/30](#)).

The circumstances in question are identified in the attached declaration (Annexure A) (**Circumstances**). The Panel's final orders are attached as Annexure B.

**Background**

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 (initially \$0.40 per share, increased on 25 May 2007 to \$0.43, and on 13 June 2007 to \$0.47) (**Prime Offer**).

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. Under the Asset Sale Deed, Becker Group agreed 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**).

Messrs Richard and Russell Becker are directors of Becker Group and indirectly control 42.6% of Becker Group's shares. At the time of the Panel's decision Prime and interests associated with Paul Ramsay Holdings Pty Ltd controlled 24.11% of Becker Group.

The Asset Sale Proposal is subject to shareholder approval under ASX listing rule 10.1 and chapter 2E of the Corporations Act.

At the time of the application:

- the Asset Sale Proposal was conditional on the Prime Offer reaching 50% voting power and being declared unconditional (which would be achieved if Messrs Richard and Russell Becker accepted the Prime Offer);
- the Prime Offer was conditional on Prime gaining voting power of 80% (which would be impossible if Messrs Richard and Russell Becker did not accept the Prime Offer);
- the Prime Offer was conditional on Becker Group not disposing of any major assets, but included an exclusion which would allow the Asset Sale Proposal to

proceed (thus a proposal from any other person to acquire the Film Business would trigger one of the then terms of the Prime Offer);

- Prime had indicated its intention to vote in favour of the Asset Sale Proposal (which would have, for practical purposes, assured passage of the Asset Sale Proposal);
- Messrs Richard and Russell Becker had stated that if the Asset Sale Proposal was approved they intended to accept (in the absence of a superior offer) the Prime Offer (which would materially affect control of Becker Group and the ability of any other bidder to gain control of Becker Group);
- Becker Group had undertaken no market testing or enquiries as to the value of the Film Business or Becker Group itself; and
- Prime had been allowed to undertake detailed due diligence of Becker Group.

The Prime Offer and the Asset Sale Proposal are the result of negotiations between Prime, Mr Richard Becker and Mr Russell Becker, and Becker Group, which commenced in June 2006 and which led to a formal proposal to Becker Group in December 2006. Prime and Becker Group announced the Prime Offer and the Asset Sale Proposal together on 30 March 2007.

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.

### **Application**

In its application, Dolphete submitted that the Prime Offer and the Asset Sale Proposal were interdependent and that Prime, Paul Ramsay Holdings Pty Ltd and Messrs Richard and Russell Becker were acting in concert. Dolphete submitted that the arrangements surrounding the Prime Offer and the Asset Sale Proposal meant that, in effect:

- 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;
- 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;
- acquisition of the Film Business or of Becker Group would not take place in an efficient competitive and informed market; and
- the holders of Becker Group shares would not have a reasonable and equal opportunity to participate in the benefits accruing under the Prime Offer.

Dolphete also submitted that Becker Group had agreed no-talk and no-shop conditions under the Implementation Agreement which were anti-competitive and adversely affected the efficient competitive and informed market for Becker Group shares, especially where there had been no market testing of either the price of the Film Business or Becker Group itself.

## **Decision**

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 Richard and Russell Becker, in which no other shareholders of Becker Group would have an opportunity to participate; and
- was likely to have an effect on:
  - 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 had said that they would accept the Prime Offer if the Asset Sale Proposal is approved; and
  - the efficient, competitive and informed market for control of the shares in Becker Group, since it is likely to affect the success of potential bids to acquire the whole of Becker Group.

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.

## **Subsequent events**

During the proceedings, the Panel invited parties to consider alternative commercial solutions to address the circumstances which Dolphete had submitted were unacceptable in the Application and which the Panel indicated raised concerns for it.

Since the date of the Application, a range of events have occurred, both as a consequence of, or as a part of, the Panel's proceedings, and as part of commercial transactions concerned with the Prime Offer and competition for Becker Group and the Film Business. The events include the offering by various parties of undertakings to the Panel to mitigate the circumstances which Dolphete had submitted were unacceptable (**Proposed Undertakings**) and the emergence of persons, other than Prime and BFG, who have expressed interest in making offers for either the Film Business or the whole of Becker Group, and variations of the Prime Offer (**New Circumstances**).

The Panel has considered all of the Proposed Undertakings offered and New Circumstances which have been put before it. The Panel considers that the New Circumstances, and Proposed Undertakings offered, do not change its finding that the Circumstances are unacceptable circumstances or that orders are warranted and do not adequately remedy the effects of the unacceptable circumstances on Becker Group shareholders and the market for control of Becker Group.

## Orders

The Panel has made final orders under section 657D:

- 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
- 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.

The Panel's final orders are attached as Annexure B.

The sitting Panel for these Proceedings was Geoffrey Brunson, Brett Heading (sitting President) and Peter Scott.

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

Nigel Morris  
Director, Takeovers Panel  
Level 47, 80 Collins Street  
Melbourne, VIC 3000  
Ph: +61 3 9655 3501  
[nigel.morris@takeovers.gov.au](mailto:nigel.morris@takeovers.gov.au)

## 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>1</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>2</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.

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<sup>1</sup> Now 24.11% as a result of acceptances.

<sup>2</sup> The Asset Sale Deed is annexed to the Implementation Agreement.

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.

### **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