



Tuesday, 3 July 2007

Becker Group Limited 02 – Final decision

The Takeovers Panel advises that, on the basis of confirmations and undertakings received from parties, it has declined to commence proceedings in relation to an application by Dolphete Pty Limited, concerning the affairs of Becker Group Limited (see [TP07/41](#)).

Background

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. The Prime Offer has been declared free of all defeating conditions and is currently due to close on 12 July 2007.

The Panel had previously considered a proposed transaction to sell Becker Group's film, exhibition and distribution businesses (**Film Business and Asset Sale Proposal**) to Becker Film Group Pty Limited (**BFG**), a company associated with two major shareholders and directors of Becker, Richard and Russell Becker (**Messrs Becker**). The Panel decided that the interconditionality of the Asset Sale Proposal and the Prime Offer resulted in an unequal benefit being conferred on Messrs Becker which was not available to other Becker Group shareholders.

The Panel made a declaration of unacceptable circumstances and final orders including preventing Prime from voting on the Asset Sale Proposal (see [TP07/41](#) for details of the Panel's decision in the Becker Group 01 proceedings).

Following the Panel's decision in the Becker Group 01 proceedings, Becker Group announced that it would not be proceeding with the Asset Sale Proposal and that the meeting to consider the Asset sale Proposal had been cancelled.

Dolphete's application dated 25 June 2007 related to the acceptance by Messrs Becker (42.6% shareholders in Becker Group) into the Prime Offer on 22 June 2007. Dolphete submitted that such an acceptance, at that time, was inappropriate in the face of the unconditional nature of the Prime Offer, the Prime Offer closing date, and Becker Group's announcement that it had received preliminary expressions of interest which potentially could lead to a takeover bid in competition with the Prime Offer.

In its application Dolphete submitted that the acceptance, if allowed to stand, would close 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. Dolphete also submitted that the Panel should infer the existence of a special benefit from the early acceptance of Messrs Becker.

Decision

The Panel considered it was open for Messrs 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 Messrs Becker had not accepted into the Prime Offer on the basis of an arrangement, understanding or expectation regarding any special benefit not afforded equally to all Becker Group shareholders participating in the Prime Offer.

Before deciding whether or not to commence proceedings, the Panel requested the following to assist in its deliberations:

1. Confirmation from Prime, Messrs Becker and Becker Group as to whether or not an arrangement (formal or otherwise), understanding or expectation existed involving Messrs 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;
2. If there were no arrangement as outlined above, advice as to whether Prime would be prepared to provide an enforceable undertaking to the Panel that Prime would issue a supplementary bidder's statement to address, to the Panel's satisfaction:
 - (a) that there is no arrangement, understanding or expectation as outlined above;
 - (b) Prime's intentions concerning the Film Business following the close of its Offer; and
 - (c) 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.

Each of Prime, Messrs Becker and Becker Group has agreed to provide the confirmations and undertakings requested by the Panel.

Having received confirmations and undertakings that addressed its concerns, the Panel has declined to commence proceedings in relation to Dolphete's additional application.

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.

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