



---

Monday, 29 October 2007

## Golden Circle Limited 02 – Panel Declines to Commence Proceedings

The Panel has decided not to commence proceedings on the application dated 24 October 2007 from Merim Pty Ltd (**Applicant**) in relation to the affairs of Golden Circle (see [TP 07/82](#)).

On 4 October 2007, Golden Circle convened a shareholder meeting for 29 October 2007 (**Shareholder Meeting**), to seek shareholder approval to a proposed recapitalisation and refinance involving Anchorage Capital Partners Pty Ltd (**Anchorage** and **Anchorage Proposal**). Part of the Anchorage Proposal involves the cancellation of certain existing convertible notes and Anchorage subscribing for a 35% shareholding in Golden Circle at \$0.80 per share.

The Explanatory Statement that accompanied the notice of that meeting advised that Golden Circle had received and rejected an alternative conditional proposal from Coca Cola Amatil Limited (**CCA**) under which CCA would acquire 100% of the shares in Golden Circle at \$1.00 per share. On 22 October 2007, Golden Circle announced that the CCA offer had been revised slightly (without any increase in the price), but that such revised offer had also been rejected by the Board. On 23 October 2007, the Golden Circle Board announced that a further conditional proposal had been received from Pure & Natural Beverages and a private equity firm to acquire 100% of the shares in Golden Circle at \$1.05 per share, but that that proposal had too been rejected in favour of the Anchorage Proposal.

In its application dated 24 October 2007, the Applicant submitted that Golden Circle had not provided shareholders with sufficient information on the comparative advantages and disadvantages of the two other proposals (from CCA and from Pure & Natural Beverages) compared to the Anchorage Proposal.

While the Panel was concerned about the level of disclosure made in the Notice of Meeting dated 4 October 2007 about the relative merits of the Anchorage and CCA proposals, the Panel noted that Golden Circle shareholders had been aware since receipt of the 4 October explanatory statement of the terms of the Anchorage Proposal and the CCA Proposal. Shareholders had also been made aware as soon as practicable of the terms of the Pure & Natural proposal. The Panel also noted that the application by Merim had been received late in the notice period for the meeting following the receipt by Golden Circle of the revised CCA offer and the offer from Pure & Natural Beverages, and that there was a material risk that the Anchorage Proposal may terminate if the meeting is postponed. On this basis, the Panel was not

mind to commence proceedings in respect of the application, provided additional disclosure was made concerning the Golden Circle Board's reasons for recommending the Anchorage Proposal over the two alternative proposals. Golden Circle has agreed to prepare and issue an update to shareholders addressing these issues.

Golden Circle agreed to post the update on its website for shareholders on 26 October 2007, and will make it available at the meeting on 29 October 2007.

The Applicant also submitted that the Anchorage Proposal required that the terms of the convertible notes be amended and therefore the company's constitution would be improperly amended by the proposal proceeding. The Panel decided it would not commence proceedings in respect of this, on the basis that this was a question of the proper legal construction of the terms of the notes which was more appropriately dealt with through the courts, and that this course of action was available to the Applicant if it wished to pursue it.

In light of the above, the Panel decided not to commence proceedings.

The President appointed Guy Alexander, Teresa Handicott and Chris Photakis as the Panel to hear the Application.

The Panel will publish its reasons for declining to commence proceedings on its website at [www.takeovers.gov.au](http://www.takeovers.gov.au) 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)