Takeovers Panel

Reasons for Decision MYOB Limited

In the Matter of MYOB Limited

[2008] ATP 27

Catchwords:

Relevant interest – bidder's statement – statement of shareholder intentions – commitments - truth in takeovers – relevant interest - inhibiting efficient competitive and informed market – contravention of s606 – information deficiency – broker valuations – sources of cash consideration

Manhattan Software Bidco Pty Limited – MYOB Limited – Archer Capital – HarbourVest Partners LLC - Guinness Peat Group Australia - Colonial First State Global Asset Management Australian Equities, Growth Team - Octavian Special Master Fund, LP - Schroders Investment Management

Corporations Act 2001 – 602, 606, 608, 636(1)(f), 638, 657A, 657D and 657E

North Sydney Brick & Tile Co Ltd v Darvall (1986) 10 ACLR 822; ASIC v Yandal Gold Pty Ltd (1999) FCA 799; Edensor Nominees Pty Ltd v ASIC [2002] FCAFC 72; TVW Enterprises Ltd v Queensland Press Ltd [1983] 2 VR 529; Jones v Dunkel (1959) 101 CLR 298; Sedimentary Holdings Ltd [2006] ATP 24; Advance Property Fund [2000] ATP 7; Vision Systems Ltd 01 [2006] ATP 32

INTRODUCTION

1. The Panel, Michael Ashforth (sitting President), Paula Dwyer and Marie McDonald, made a declaration of unacceptable circumstances. Manhattan, bidding for MYOB, entered into understandings with 4 investors which gave it a relevant interest in approximately 34% of MYOB shares. The relevant interest was acquired in contravention of s606[1] and inhibited an efficient, competitive and informed market for shares in MYOB.

2. In these reasons the following definitions apply.

Term	Meaning
Archer	Archer Capital, an Australian private equity firm
Colonial	Colonial First State Global Asset Management Australian Equities, Growth Team
GPG	Guinness Peat Group Australia
HarbourVest	HarbourVest Partners LLC
IAF	Institutional acceptance facility
investors	GPG, Colonial, Octavian and Schroders
Manhattan	Manhattan Software Bidco Pty Limited
MYOB	MYOB Limited
Octavian	Octavian Special Master Fund, LP
Schroders	Schroders Investment Management

3. In these proceedings the Panel:

   (a) adopted the published procedural rules and

[1] Unless otherwise indicated, references are to the Corporations Act 2001 (Cth)

(b) consented to parties being represented by their commercial lawyers.

FACTS

4. MYOB is a public company listed on ASX (ASX code: MYO). Manhattan is a bid vehicle jointly owned by entities managed or advised by Archer and HarbourVest.

5. On 30 October 2008, Manhattan announced an off-market takeover bid for MYOB. Manhattan is offering $1.15 per share (or $1.25 on reaching 90%), minus $0.1285 for a share capital reduction.

6. The bid is subject to a number of conditions, including:

   (a) minimum acceptance of at least 50.1%, which will not be waived

   (b) Foreign Investment Review Board approval

   (c) earnings, liabilities and cash confirmations in the target's statement and

   (d) MYOB's board recommendation in favour of the bid.

7. The investors hold approximately 34% of the issued shares in MYOB.[2] In its initial announcement of the takeover bid, and on page 12 of its bidder's statement, Manhattan made the following disclosure in relation to the intentions of the investors to accept the bid:

   "A number of MYOB institutional shareholders have already indicated to Manhattan Software that they will accept the Offer as soon as the Offer opens for all of their MYOB shares. These shareholders are Guinness Peat Group Australia, Colonial First State Global Asset Management Australian Equities, Growth Team and Octavian Special Master Fund, LP. MYOB's other significant institutional shareholder, Schroders Investment Management, has also indicated an intention to accept the Offer once it is open on the basis that acceptance will increase the likelihood of the Offer being increased to $1.25. In aggregate, MYOB Shareholders that have indicated they will accept the Offer once it is open represent 34% of the outstanding shares and 48% of the non Board member shareholdings."[3]

8. The bidder's statement disclosed that the investors consented to this statement.

9. On 7 November 2008, MYOB announced that it was in preliminary discussions with parties interested in presenting alternative proposals regarding a possible change in control of the company.

Application

10. By application dated 10 November 2008, MYOB sought a declaration of unacceptable circumstances. MYOB submitted that the statements of the investors' intentions set out acceptance commitments from the investors. The commitments:

    (a) confer a relevant interest on Manhattan in contravention of s606 and

    (b) have an anti-competitive effect on the market in MYOB shares which offends the principles in chapter 6 because they tied up control of MYOB before any bid was launched, thus inhibiting an efficient, competitive and informed market.

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[2] GPG holds approx 13.47%, Colonial holds approx 7.94%, Schroders holds approx 9.24% and Octavian holds approx 2.16%

[3] There are irrelevant differences between the two quotes

11. MYOB also submitted that the following disclosures in Manhattan's bidder's statement were deficient:

    (a) the broker valuations, on the basis that it was unclear whether the valuations contained control premiums. We declined to conduct proceedings in respect of this. We are satisfied that additional disclosure Manhattan agreed to make in a replacement bidder's statement addressed any issue.

    (b) the sources of cash consideration for the bid, on the basis that there was a lack of disclosure of the identity of the persons providing funding and arrangements for provision of those funds. We were minded to conduct proceedings in relation to this, but adequate supplementary disclosure which more clearly described the position and was reviewed by us, was made in a replacement bidder's statement.

Interim orders

12. MYOB sought an interim order restraining dispatch of the bidder's statement pending determination of the application. We declined this, but made interim orders:

    (a) restraining the investors from accepting Manhattan's offer. The investors could, however, lodge acceptances into an IAF that entitled them to withdraw their acceptances for any reason and at any time before the takeover bid was declared free of conditions

    (b) that any public statements made by Manhattan regarding acceptances of its bid identify that any acceptance by an investor into the IAF was subject to the interim orders and may be withdrawn

    (c) that Manhattan ensure that its takeover bid did not become unconditional and

    (d) that none of the investors make any public statements, or consent to any public statements being made, in relation to whether or not they may accept Manhattan's offer, unless approved by the Panel.

Final orders

13. MYOB varied the final orders it sought, to the following effect:

    (a) the "acceptance commitments" be no longer binding and Manhattan make an ASX announcement to this effect

    (b) the investors be restrained from accepting the offer or agreeing or committing to do so until the offer has been open for acceptance for at least 21 days and

    (c) Manhattan dispatch a supplementary bidder's statement in a form approved by the Panel which addresses these matters.

DISCUSSION

Relevant interest

14. The definition of 'relevant agreement' in s9 refers to an 'agreement, arrangement or understanding'. The panel was satisfied that there was an understanding and did not need to determine whether other elements of the definition were also present.

15. A person has a relevant interest in securities if (among other things) the person has power to dispose, or control the exercise of a power to dispose, of the securities.[4] It does not matter how remote the power is or how it arises. It does not matter whether the power is indirect, informal or unenforceable. It may be express or implied. It extends to power or control that is, or can be, exercised as a result of, by means of, or by the revocation or breach of, a trust, agreement, practice or any combination.[5]

16. The test looks at the existence of the power, not at how it derives.[6] As Merkel J put it:

"Although the power to exercise control may be informal, indirect and unenforceable I accept that it must involve some true or actual measure of control (that is, in the context of the extended meaning of "control" provided for in s 30(4)) over the disposal of the shares and not be "control" that is minor, peripheral, or merely hypothetical, theoretical or notional".[7]

17. If what is involved is an unenforceable arrangement or understanding, whether some true measure of control exists is determined on the assumption that the parties act in accordance with, rather than contrary to, their arrangement or understanding.[8]

18. It is clear from the language of the section, and from past court decisions,[9] that s608 should be interpreted broadly.

19. MYOB submitted that the intention statements evidenced agreements between Manhattan and each of the investors to accept the bid. At the very least, they evidenced an understanding with each of the investors. While the statements were made by Manhattan, each investor had reviewed and consented to the form of the statements. They would be aware that a person named in a document with that person's consent as having made a statement is liable for loss or damage caused by the inclusion of that statement in the document.[10]

20. Manhattan provided copies of email correspondence and details of discussions which took place between it (through UBS, its financial adviser) and each of the investors in relation to their support of the bid. The discussions were not recorded verbatim and the details of discussions provided did not purport to reflect actual statements made but were simply recollections of discussions. The investors were invited to do the same, and to explain their reasons for agreeing to the statements. They declined, without explanation, to take up that opportunity. Nor did any of them elect to become a party to the proceedings.

21. The unqualified nature of the intention statements and the fact that the acceptances were to occur at the beginning of the bid would be very unusual in the absence of an agreement, arrangement or understanding. It is at odds with commercially rational behaviour and common market practice not to hold off accepting an offer until late in a bid period and not to qualify the intention statement as subject to a superior proposal.

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4 Section 608(1)
5 Section 608(2)
6 ***North Sydney Brick & Tile Co Ltd v Darvall*** (1986) 10 ACLR 822
7 ***ASIC v Yandal GoldPty Ltd (1999) FCA 799*** at [73], upheld on appeal in ***Edensor Nominees Pty Ltd v ASIC*** [2002] FCAFC 72 at [33]
8 ***Edensor***, Ibid at [33]
9 For example, ***TVW Enterprises Ltd v Queensland Press Ltd*** [1983] 2 VR 529 at 540
10 Section 670B, item 10

22. We are prepared to draw an inference that there was an understanding between Manhattan and each of the investors, which gave Manhattan a relevant interest in the securities of each of the investors, based on the intention statements, consents, notes of discussions and emails. None of the four investors responded to the two invitations of the Panel to give evidence or make submissions. We drew an inference from the unexplained lack of response by each of the investors that they did not have information that would have assisted them. [11]

23. One of the investors, Schroders, made a statement in slightly different terms to the others; that is, three of them consented to the statement that the investors "***will accept the Offer as soon as the Offer opens"*** and Schroders consented to the statement that it would "***accept the Offer once it is open on the basis that acceptance will increase the likelihood of the offer being increased to $1.25".*** The difference does not matter in our view. We think the form of the discussions differed only because Schroders wanted to make it clear that it was only willing to accept at $1.15 in order to increase the prospects of the price being increased to $1.25, not because of a different commitment. The statements are to similar effect. Also, the remaining statements relating to Schroders in the bidder's statement do not distinguish between Schroders and the other investors. For example, one statement reads ***"shareholders representing 48% of non-Board held shares have indicated that they will accept the Offer".*** This includes Schroders.

24. ASIC submitted that the statements should be treated the same way. They are all in the same place in the bidder's statement and there is little to distinguish them in terms of treatment by the bidder. We agree.

25. Octavian, in correspondence with Manhattan, suggested alternative wording which qualified the intention statement. But in the end it agreed to the use of the unequivocal language.

26. Manhattan conceded that the statements were unusual. It submitted they were a result of its concern, "borne out of its (and the Investors') previous discussions with the MYOB board", about the MYOB board's repeated attempts to prevent any auction for control of the company and that the MYOB board, relying on a 27% stake held by one of the directors, would immediately reject its bid. It denied the statements were indicative of an understanding with the investors to accept the bid or gave rise to a relevant interest in their MYOB shares. We do not accept that the objective was to facilitate an auction. It cannot facilitate an auction when commitments are made for 34%[12] of the shares prior to the bid without any carve out for a superior proposal. The actions of the investors and the professed desire for an auction are inconsistent. The concerns about the MYOB board's reaction do not justify the actions taken.

27. If the objective was to facilitate an auction, that could have been more readily achieved (without giving rise to unacceptable circumstances) by indicating an

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[11] ***Jones v Dunkel*** (1959) 101 CLR 298

[12] There is evidence that the investors knew that the others were making statements. For example, draft consent letters circulated by UBS included the names of the other investors. While we do not have enough to draw an inference that the investors were associated, we are satisfied that each knew that the percentage of shares involved in the various arrangements was much greater than just their own. There is also evidence of GPG liaising with Schroders

intention to accept the offer in the absence of a superior proposal. Alternatively, the investors could have indicated an intention to accept into the IAF, which would have preserved the option to withdraw if a superior offer emerged. The effect of the understanding was that 34% of the shares in MYOB would be accepted into Manhattan's offer as soon as the offer opened. Although it was possible that those acceptances could be withdrawn (for example, if the 50% minimum acceptance condition was not satisfied or if the offer was extended by more than a month) that does not alter the position that Manhattan would have a measure of control over a 34% holding of MYOB shares for a significant period of time.

28. The discussions between Manhattan and the investors do not rebut the inference we have drawn from the intention statements that there was an understanding between Manhattan and each of the investors. Moreover, in some instances the discussions support the drawing of the inference. For example:

    (a) On 27 October UBS said to GPG that Manhattan was nervous about the level of shareholder support and that "***[o]ur best shot at getting to 100% is to generate some real momentum out of the blocks. Can and will GPG support the offer publicly? …***" GPG said it would "***support the deal".***

    (b) During a discussion on 28 October 2008, UBS expressed concern to GPG that without support from a "***more neutral party***", like Schroders, the bid would be "***dead in the water***".

    (c) On 28 October UBS asked Colonial: ***"Would you guys be supportive of such an offer…"*** Colonial responded: ***"We will be supportive and frankly just want to see this process started….***"

    (d) In discussions with Octavian on or about 28 October 2008, UBS indicated that if Manhattan didn't have "***sufficient support upfront***", its bid was "***likely to be a bit of a waste of time***". Octavian responded: "***Understand the strategy and the importance of support and that sounds broadly acceptable though you will need to speak to our lawyers regarding the form of any statement we can make."***

29. MYOB submitted that Manhattan could enjoin the investors to accept, in accordance with their representations. MYOB referred to the truth in takeovers policy as support for this. ASIC also submitted that the intention statements were not adequately qualified and the truth in takeovers policy would require the investors to act in accordance with them and accept into the bid once it was open. We do not need to decide this. The question is not whether the truth in takeovers policy gives a particular person (other than a regulator) a right to enforce an acceptance in accordance with the statement. Here, the statements, to which the truth in takeovers policy also applies, evidence understandings.

30. The understandings go beyond mere support for a bid. Prior to the statements being made, Manhattan had negotiated with each investor for its firmest show of support, reflected in the unqualified nature of the statements and the fact that the acceptances were to occur at the beginning of the bid. We think it is clear that there were understandings that the investors would accept if the bid was made.

31. We should not be taken to be saying that a shareholder cannot make a statement that attracts the truth in takeovers policy without giving rise to a relevant interest. A

bidder is free to canvass a shareholder on its likely reaction to a bid. The shareholder may inform the bidder that its present intention is to accept.

32. Manhattan's actions constituted more than the canvassing of shareholders. It had an understanding with each investor. In our view, the intention statements and the consents for them to be included in the bidder's statement appear to be a means to give effect to the understanding; that is, a way to put the investors under an obligation to the bidder. The understanding did not need to be legally enforceable. It was sufficient that the parties would act in accordance with it, although the intention statements do give a measure of control.

33. In our view, the investors committed themselves to accepting the bid if Manhattan made the bid. By entering into a relevant agreement with each of the investors to accept the takeover bid, Manhattan acquired a relevant interest in MYOB shares in excess of the 20% threshold. It did so in contravention of s606.

34. That section is a cornerstone of the takeovers legislation, fundamental to the achievement of the purposes of chapter 6 as set out in s602. Having regard to those purposes, in particular that the acquisition of control over voting shares in a listed company should take place in an efficient, competitive and informed market, we are satisfied that the circumstances are unacceptable.

Efficient competitive and informed market

35. We are also satisfied that the circumstances are otherwise unacceptable having regard to the purposes of chapter 6 set out in s602.

36. MYOB submitted that the commitments of each of the investors were intended to deter a rival bidder and they inhibit an efficient, competitive and informed market because they tied up control of MYOB before any bid was launched.

37. In ***Sedimentary Holdings***[13] there is an implication that a pre-bid agreement might substantially lessen the prospect of a competing proposal emerging. In ***Vision Systems***[14] the Panel made it clear that an agreement was unlikely to affect competition in an unacceptable manner if the agreement related to a stake of up to 19.9%. Here, the circumstances relate to a stake of 34%.

38. It is clear that the purpose of the statements was to support the Manhattan takeover bid. Manhattan was concerned about rival bidders. Although in the context of a cost agreement, the following discussion with Colonial illustrates the importance of possible rival bidders emerging. On 29 October, Manhattan was said to be ***"nervous of the possibility of being outbid… There is a real possibility of Archer being topped by a competing bidder given Manhattan needs to get to 50% before it can even think about waiving conditions and that is clearly not going to happen until it is clear that there is no superior proposal"***. Similarly on 29 October, it was stated that ***"There is real nervousness that Archer could look foolish if a competing bidder blows them out of the water"***.

39. The understanding in this case had the effect of locking up the MYOB shares of the investors for a significant period of time, contrary to what is permitted by chapter 6. This had, has or is likely to have an anti-competitive effect on the market for MYOB

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[13] [2006] ATP 24 at [28]. See also ***Advance Property Fund*** [2000] ATP 7 at [44]

[14] [2006] ATP 32 at [30]. The Panel was further reassured by previous disclosure of a competing proposal and a section 631 announcement by Cytyc (the bidder) prior to entry into the pre-bid agreement

shares by deterring potential rival bidders and impeding an auction for control of MYOB and inhibits an efficient, competitive and informed market in MYOB shares.

40. Regardless of whether Manhattan had or has a relevant interest, the statements were included in the announcement and bidder's statement, with consent, as a result of an approach from Manhattan to the investors. The statements were the result of negotiation and in a form prepared by Manhattan. It was also understood that they would appear prominently in the announcement and the bidder's statement. The result had the effect of locking up the MYOB shares of the investors. The statements indicated, without qualification, that the investors would accept the bid as soon as it opened where the investors may not have any right to withdraw the acceptance in the future. This had, has or is likely to have an anti-competitive effect on the market for MYOB shares by deterring potential rival bidders and impeding an auction for control of MYOB and inhibits an efficient, competitive and informed market in MYOB shares.

Effect on control

41. Moreover, the understanding appears to us to be unacceptable having regard to the effect that we are satisfied it is having, has had, will have, or is likely to have, on control of MYOB.

42. The effect on control or potential control of MYOB comes about because approximately 34% of MYOB shares had been tied up before Manhattan made its bid, effectively preventing control of those shares being available to another bidder for a significant period and making the prospect of control of MYOB passing to another bidder more difficult. The acquisition or proposed acquisition of those shares, and the individual parcels (other than perhaps Octavian's), represent a substantial interest in MYOB.

Costs agreement disclosure

43. One last issue concerns disclosure. It appears that Manhattan and GPG[15] (through related entities) entered into a costs agreement in relation to the bid. While a matter for Manhattan, this seems to us to be material information that should be included in a supplementary bidder's statement.

DECISION

Circumstances unacceptable

44. It appears to the Panel that the circumstances of Manhattan entering into relevant agreements with each of the investors, evidenced by the highly unusual statements of intention in the initial takeover's announcement and bidder's statement, are unacceptable:

    (a) having regard to the effect that the Panel is satisfied that the circumstances have had, are having, or are likely to have, on the control or potential control of MYOB

    (b) having regard to the purposes of Chapter 6 set out in s602 or

[15] Perhaps also Colonial

(c) because they constituted or constitute, or gave or give rise to a contravention of s606.

45. The Panel considers that it is not against the public interest to make a declaration of unacceptable circumstances.

46. The Panel has had regard to the matters in s657A(3).

47. Accordingly, under s657A, the Panel declared that the circumstances constituted unacceptable circumstances in relation to the affairs of MYOB.

48. A copy of the declaration is annexure A.

Orders

49. Under s657D, the Panel is empowered to make any order[16] including a remedial order. Four tests must be met:

(a) The Panel has made a declaration under s657A. This it did on 21 November 2008.

(b) The Panel must not make an order if it is satisfied that the order would unfairly prejudice any person. This is discussed below.

(c) The Panel must give any person to whom the proposed order would be directed, the parties and ASIC an opportunity to make submissions. Manhattan, MYOB, ASIC and the investors were invited to comment on the orders proposed by the Panel. We only received submissions from MYOB and ASIC.

(d) The Panel must consider the orders appropriate either to:

- protect the rights and interests of persons affected by the unacceptable circumstances, or any other rights or interests of those persons or
- ensure that a takeover or proposed takeover proceeds as it would have if the circumstances had not occurred. We are satisfied that our orders do this.

50. We are not convinced that the contravention of s606 by Manhattan was deliberate. Accordingly, the orders made by the Panel reflect this. The Panel's final orders are set out in annexure B.

51. We are satisfied that the orders do not unfairly prejudice Manhattan, MYOB or any of the investors.

52. The effect of the orders is to release the investors from any commitment to accept the bid by Manhattan and prevent them from accepting, including lodging an acceptance into the IAF, prior to 9 December 2008. We consider that this period of time provides a sufficient opportunity for potential rival bidders to announce a rival proposal without materially affecting the timetable for Manhattan's bid. Where a superior proposal is announced prior to 9 December 2008, the investors are required to accept that superior proposal for their MYOB shares in the absence of a further superior proposal (which may include an improved offer by Manhattan).

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[16] Other than an order requiring a person to comply with a provision of Chapters 6, 6A, 6B or 6C

53. The orders do not preclude Manhattan from making a higher offer to secure the investors' MYOB shares where a rival bidder has announced a superior proposal. While the orders release the investors from their acceptance commitments for the time being, it does not preclude them accepting the Manhattan bid or a superior proposal. As they are already "sellers", they are not unfairly prejudiced by being required to accept a superior proposal. This would maximise the return on their investments.

Costs

54. The Panel did not make any costs orders.

Michael Ashforth
President of the Sitting Panel
Decision dated 21 November 2008
Reasons published 28 November 2008

Annexure A

Corporations Act
Section 657A
Declaration of Unacceptable Circumstances

In the matter of MYOB Limited

WHEREAS

1. MYOB Limited (MYOB) is the subject of an off-market takeover bid by Manhattan Software Bidco Pty Limited (Manhattan)
2. In its initial announcement of the takeover bid, and in the bidder's statement, Manhattan disclosed that each of Guinness Peat Group Australia, Colonial First State Global Asset Management Australian Equities, Growth Team, Octavian Special Master Fund LP and Schroders Investment Management (collectively, the investors) had indicated an unqualified intention to accept the takeover bid as soon as it opened
3. These statements by Manhattan to which the investors consented evidenced an understanding between Manhattan and each investor. The understanding was also evidenced by discussions and correspondence between the parties before the bid was announced
4. The understanding gave Manhattan a relevant interest in approximately 34% of the issued shares in MYOB held by the investors prior to the bid,

(collectively, the circumstances).

5. It appears to the Panel that the circumstances are unacceptable:
   (a) having regard to the effect that the Panel is satisfied that the circumstances have had, are having, or are likely to have, on the control or potential control of MYOB
   (b) having regard to the purposes of Chapter 6 set out in section 602 of the ***Corporations Act 2001*** (Cth) (the Act) or
   (c) because they constituted or constitute, or gave or give rise to a contravention of section 606 of the Act.
6. 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 MYOB Limited.
7. The Panel has had regard to the matters in section 657A(3) of the Act.

DECLARATION

Under section 657A, the Panel declares that the circumstances constitute unacceptable circumstances in relation to the affairs of MYOB Limited.

Alan Shaw
Counsel
with authority of Michael Ashforth
President of the Sitting Panel

Dated 21 November 2008

Annexure B

Corporations Act
Section 657D
Orders

IN THE MATTER OF MYOB LIMITED

PURSUANT TO

1. A declaration of unacceptable circumstances in relation to the affairs of MYOB Limited (***MYOB***) on 21 November 2008

2. Section 657D of the Corporations Act 2001 (Cth)

THE PANEL ORDERS

1. Each of Guinness Peat Group Australia, Colonial First State Global Asset Management Australian Equities - Growth Team, Octavian Special Master Fund LP, and Schroders Investment Management (each, an ***investor***) is released from any commitment to accept the offer by Manhattan Software Bidco Pty Limited under its takeover bid for MYOB Limited (***offer***).

2. Each investor must not accept the offer or commit to do so prior to 9 December 2008.

3. If a superior proposal for the acquisition of all the shares in MYOB is announced prior to 9 December 2008, each investor must accept (or, if a scheme, vote in favour of) that superior proposal in respect of all of their MYOB shares in the absence of a further superior proposal (which may include an improved offer by Manhattan).

4. Manhattan, MYOB or any investor may apply to the Panel, after having given 24 hours notice in advance to each party, seeking a variation of these orders – including an order adapting paragraph 3 in respect of non-cash consideration, conditions and proposed or actual transactions other than a takeover offer open for acceptance.

5. From the date of these orders, each investor must not lodge an acceptance into an institutional acceptance facility established for the purposes of the bid (***IAF***) prior to 9 December 2008. If an investor lodged an acceptance into an IAF before the date of these orders, that acceptance must be withdrawn forthwith. Each investor and Manhattan must take any action required to effect that withdrawal.

6. Manhattan must forthwith prepare and lodge a supplementary bidder's statement which explains these orders. The explanation must be in a form approved by the Panel.

Alan Shaw
Counsel
with authority of Michael Ashforth
President of the Sitting Panel

Dated 25 November 2008