



Australian Government

Takeovers Panel

MEDIA RELEASE

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DataDot Technology Limited - Declaration of Unacceptable Circumstances and Orders

The Panel today made a declaration of unacceptable circumstances (Annexure A) and final orders (Annexure B) in relation to an application dated 26 May 2009 from Mr William Cleugh, a shareholder of DataDot Technology Limited, in relation to DataDot's affairs (see [TP09/38](#)).

Background

DataDot undertook a 1:1 non-renounceable rights issue at 1 cent per share. The rights issue was underwritten by KTM Capital Pty Ltd, of whom Mr Tod McGrouther and Mr Keith Kerridge are the directors. The rights issue was sub-underwritten by TM Consulting Pty Limited, controlled by Tod McGrouther and his wife, and Bannaby Investments Pty Limited, controlled by Keith Kerridge. Following the sub-underwriting TM Consulting had a relevant interest in 17.2% of DataDot and Bannaby Investments had a relevant interest in 19.7% of DataDot.

Declaration

The Panel considered that the circumstances were unacceptable because:

- (a) all reasonable steps to minimise the potential control effects of the rights issue were not taken, specifically:
 - (i) no facility was offered for shareholders to take up shares in excess of their entitlement and
 - (ii) no enquiries were made of any persons other than TM Consulting and Bannaby Investments to sub-underwrite the rights issue after the decision was made to revise the rights issue offer price to 1 cent per share
- (b) the control effect of the rights issue was material because the Panel considered that TM Consulting and Bannaby Investments were associates in relation to the affairs of DataDot

- (c) the disclosure of the potential control effects and sub-underwriting arrangements in the letter of offer was insufficient and misleading and
- (d) TM Consulting and Bannaby Investments had failed to comply with their substantial holding notice obligations.

The Panel did not consider it against the public interest to make the declaration, and in making it had regard to the matters in s657A(3).

Orders

The Panel has made orders to the effect that:

- (a) TM Consulting and Bannaby Investments divest shares they received as sub-underwriters of the DataDot rights issue so that shareholders who were originally entitled to participate in the rights issue are offered:
 - as many shares as is necessary for them to take up what was their full original entitlement in the rights issue (if applicable) and
 - shares in excess of their entitlement
- (b) applications to participate in the excess shares are scaled back by Datadot on a reasonable and fair basis
- (c) the letter of offer for the sale discloses, among other matters, the possible control effect of the sub-underwriting on DataDot and
- (d) that TM Consulting and Bannaby Investments correct their respective substantial shareholder notices to reflect that they are associates and to attach a copy of the relevant sub-underwriting agreements.

The sitting Panel was Martin Alciaturi, Braddon Jolley (sitting President) and Alastair Lucas.

The Panel will publish its reasons for the decision in due course on its website www.takeovers.gov.au.

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Takeovers Panel

Annexure A

Corporations Act

Section 657A

Declaration of Unacceptable Circumstances

DataDot Technology Limited

CIRCUMSTANCES

1. DataDot Technology Limited (**DataDot**) undertook a 1:1 non-renounceable rights issue at 1 cent per share, as announced on 24 March 2009.
2. The rights issue was underwritten by KTM Capital Pty Ltd (**KTM**). Mr Tod McGrouther and Mr Keith Kerridge are the directors of KTM. Mrs Vicki McGrouther and Keith Kerridge are the major shareholders of KTM.
3. KTM arranged for the rights issue to be sub-underwritten by TM Consulting Pty Ltd (**TM Consulting**) and Bannaby Investments Pty Ltd (**Bannaby Investments**). Tod McGrouther is the sole director of, and he and his wife the only shareholders in, TM Consulting. Keith Kerridge is the sole director and shareholder of Bannaby Investments.
4. It was agreed that the rights issue be sub-underwritten in equal proportions. However, it was subsequently agreed that the sub-underwriters' proportions be changed so that:
 - (a) 36,887,049 shares were issued to TM Consulting and
 - (b) 38,287,049 shares were issued to Bannaby Investments.
5. Following the sub-underwriting, TM Consulting had a relevant interest in 17.2% of DataDot and Bannaby Investments had a relevant interest in 19.7% of DataDot.
6. The Panel considers that TM Consulting and Bannaby Investments are associates under section 12(2) of the Corporations Act in relation to the affairs of DataDot.
7. All reasonable steps to minimise the potential control impact of the rights issue on DataDot were not taken as:
 - (a) no facility for shareholders to take up shares in excess of their entitlement was included in the rights issue, even though requested subsequently by DataDot's chairman
 - (b) no inquiries were made of potential sub-underwriters at 1 cent per share other than TM Consulting and Bannaby Investments
 - (c) KTM did not inform DataDot of the sub-underwriters and
 - (d) insufficient disclosure was made in the letter of offer of the sub-underwriting and potential control impact of the rights issue (the **Rights Issue circumstances**).
8. In addition, in the letter of offer there was:
 - (a) insufficient disclosure of:
 - (i) the sub-underwriting

- (ii) the potential voting power in DataDot that TM Consulting and Bannaby Investments may have obtained as a result of the sub-underwriting and
 - (iii) DataDot's need of funds and
 - (b) misleading disclosure in relation to the intentions of KTM, and the potential subscription by KTM (if shareholders did not take up all their entitlements), given that the rights issue had been fully sub-underwritten and relevant disclosure in relation to the sub-underwriters was not included (the **Letter of Offer circumstances**).
9. In addition, TM Consulting and Bannaby Investments each failed to comply with their substantial holding notice obligations by:
- (a) failing to disclose that they were associates
 - (b) failing to disclose their voting power in DataDot and
 - (c) failing to attach their sub-underwriting agreements with KTM (the **Substantial Holding Notice circumstances**).
10. It appears to the Panel that each of the Rights Issue circumstances, Letter of Offer circumstances and Substantial Holding Notice circumstances are unacceptable:
- (a) having regard to the effect that the Panel is satisfied the circumstances have had, are having, will have or are likely to have on:
 - (i) the control, or potential control, of DataDot or
 - (ii) the acquisition, or proposed acquisition, by TM Consulting and Bannaby Investments of a substantial interest in DataDot or
 - (b) having regard to the purposes of Chapter 6 set out in section 602 of the *Corporations Act 2001* (Cth) or
 - (c) because they:
 - (i) constituted, constitute, will constitute or are likely to constitute a contravention of a provision of Chapter 6C of the *Corporations Act 2001* (Cth) or
 - (ii) gave or give rise to, or will or are likely to give rise to, a contravention of a provision of Chapter 6C of the *Corporations Act 2001* (Cth).
11. 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 DataDot.
12. The Panel has had regard to the matters in section 657A(3).

DECLARATION

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

Alan Shaw
Counsel
with authority of Braddon Jolly
President of the Sitting Panel
Dated 17 June 2009



Australian Government

Takeovers Panel

Annexure B

Corporations Act

Section 657D

Orders

DataDot Technology Limited

PURSUANT TO

1. A declaration of unacceptable circumstances in relation to the affairs of DataDot Technology Limited (**DataDot**) on 17 June 2009.
2. Section 657D of the Corporations Act 2001 (Cth).

THE PANEL ORDERS

Divestment

1. TM Consulting Pty Ltd (**TM Consulting**) and Bannaby Investments Pty Ltd (**Bannaby Investments**) divest shares they received as sub-underwriters of the DataDot rights issue announced on 24 March 2009 as set out in these orders.

Offer of shortfall

2. Within 10 business days of these orders DataDot must, on behalf of TM Consulting and Bannaby Investments, offer eligible DataDot shareholders the 75,174,098 shares obtained by TM Consulting and Bannaby Investments under the rights issue short fall on terms to the following effect:
 - (a) the price is the rights issue price of 1 cent per share
 - (b) the offer is open for 2 weeks from the date the last of the offers is dispatched
 - (c) shareholders who did not take up their full entitlement in the rights issue are offered as many shares as is necessary for them to take up what were their full original entitlements
 - (d) shareholders are invited to apply to buy any shares remaining after the acceptances in order 2(c) have been satisfied in full, provided that applications for remaining shares may be scaled back only if:
 - (i) the number of shares applied for exceeds the number remaining and
 - (ii) the applications are scaled back reasonably and fairly, having regard to the number of applicants, shares applied for and their shareholdings at the close of the rights issue. For avoidance of doubt:

- (A) the Corporations Act limits apply to the acquisition of shortfall shares
 - (B) TM Consulting and Bannaby Investments may participate in the shortfall on the basis that they are associates and
 - (C) shareholders who accept for shares under order 2(c) are treated as if they had subscribed for those shares pursuant to the rights issue.
- (e) the money (in cheque or other form acceptable to DataDot) for the shares accepted or applied for (as the case may be) is to be sent to DataDot with the acceptance or application. The money is to be banked in a special purpose trust account no later than the end of the day of receipt.
3. Within 5 business days of the close of the offer, DataDot must:
 - (a) scale back the applications if necessary
 - (b) disclose in a market announcement the scale back and its detailed calculation methodology
 - (c) register the transfers of the shares and
 - (d) pay over the money, and account, to TM Consulting and Bannaby Investments for the shares sold.
 4. TM Consulting and Bannaby Investments must provide proper transfers for the sale of their shares.
 5. DataDot must pay half the reasonable costs of dispatching the offers and processing the acceptances, applications and refunds (if any).
 6. TM Consulting and Bannaby Investments must pay, in aggregate, half the reasonable costs of dispatching the offers and processing the acceptances, applications and refunds (if any), but can decide between themselves the proportion each bears.
 7. DataDot must issue any refund due to an applicant within 5 business days of transfers being completed.
 8. The offer referred to in order 2 must be made in a letter of offer dispatched to eligible DataDot shareholders.

Disclosure

9. The letter of offer must include detailed disclosure on:
 - (a) the terms of the offer
 - (b) the decision of the Panel
 - (c) the intentions of each of TM Consulting and Bannaby Investments in relation to DataDot should they retain any of the shares received pursuant to the sub-underwriting
 - (d) the control effects on DataDot as a result of the current holdings of TM Consulting and Bannaby Investments recognising their association.
10. A draft copy of the letter of offer must be provided to the Panel for approval prior to its dispatch to DataDot shareholders.

11. TM Consulting must correct its substantial holder notice dated 13 May 2009 as soon as practicable to:
 - (a) specify that it and Bannaby Investments are associates in relation to their holdings in DataDot; and
 - (b) attach a copy of the sub-underwriting agreement between it and KTM Capital Pty Limited (**KTM Capital**).
12. Bannaby Investments must correct its substantial holder notice dated 14 May 2009 as soon as practicable to:
 - (a) specify that it and TM Consulting are associates in relation to their holdings in DataDot; and
 - (b) attach a copy of the sub-underwriting agreement between it and KTM Capital.

Definition of eligible shareholders

13. In these orders, **eligible DataDot shareholders** are shareholders who were eligible to participate in the rights issue announced on 24 March 2009.

Shareholders meeting

14. The meeting that is to be scheduled pursuant to a request under section 249D of the Corporations Act announced on 26 May 2009 must not take place until at least 2 business days after the transfers of the shortfall shares have been registered.

Alan Shaw
Counsel
with authority of Braddon Jolley
President of the Sitting Panel
Dated 17 June 2009