



Australian Government

Takeovers Panel

**Reasons for Decision
Viento Group Limited 02
[2011] ATP 12**

Catchwords:

Association – association hurdle – substantial shareholders – substantial holding notice – decline to make a declaration – timing of application – beneficial tracing notice – placement – proxy

Corporations Act 2001 (Cth), sections 9, 12, 16, 53, 602, 606, 657B, 657C, 671B

Corporations Regulation 1.0.18

Aspermont Ltd v Lechmere Financial Corporation [2001] WASC 344

Viento Group Limited [2011] ATP 1, Gloucester Coal Limited 01R [2009] ATP 9, Azumah Resources Limited [2006] ATP 34, LV Living Limited [2005] ATP 5

INTRODUCTION

1. The Panel, Byron Koster (sitting President), Francesca Lee and Tony Osmond declined to make a declaration of unacceptable circumstances in relation to the affairs of Viento Group Limited. The application concerned whether the Alleged Associates were associated in relation to Viento and alleged breaches of s606 and s671B.¹ On the material available to it, the Panel was not satisfied that it could draw the necessary inferences and find the alleged associations. Accordingly, the Panel was not satisfied that the circumstances were unacceptable.

2. In these reasons, the following definitions apply.

Alleged Associates Mr Robert Nichevich and each of:

- Mrs Kerry Nichevich, Koy and Deluge
- Bell Potter Nominees Limited and JP Morgan (together, Alleged Nominee Associates)
- Mr John Farrell and Hanscon (together, Alleged Placement Associates)

Bell Potter Bell Potter Securities Limited

Deluge Deluge Holdings Pty Ltd

EGM Extraordinary general meeting of Viento held on 23 June 2011

Hanscon Hanscon Holdings Pty Limited

JP Morgan JP Morgan Nominees Australia Pty Limited

Koy Koy Pty Ltd

Mariner Mariner Corporation Limited

Vernon Vernon Finance Limited

¹ References are to the *Corporations Act 2001* (Cth) unless otherwise indicated

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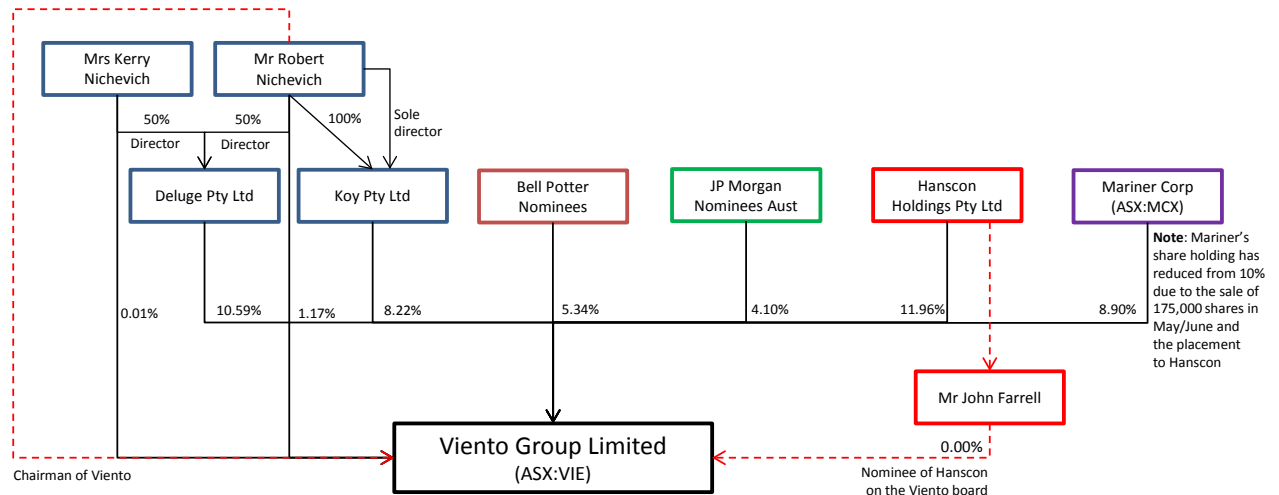
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Viento

Viento Group Limited

FACTS

- Viento is an ASX listed company (ASX code: VIE).
- Shareholdings in the company and various relationships between the parties known at the time of the application are set out below.



- On 14 December 2010, Viento made an application to the Panel.² It submitted that Ms Tina Bazzo, Mr Allen Caratti and others were associates in relation to Viento. Those shareholders are different to the shareholders the subject of the alleged association in these proceedings.
- In *Viento Group Limited 01*, the Panel made a declaration of unacceptable circumstances. The Panel ordered the vesting of shares above an aggregated holding of 20% in the Commonwealth for sale by ASIC and the filing of substantial holding notices. ASIC appointed Bell Potter to conduct the sale of the shares. On 29 April 2011, Mariner acquired those shares.
- On 2 May 2011, Mariner lodged a substantial holding notice, showing the acquisition of 5,014,615 shares in Viento (10%).
- On 4 May 2011, Mariner requisitioned an extraordinary general meeting to consider resolutions to remove the existing directors of Viento (Mr Robert Nichevich, Mr Shane Heffernan and Mr Ray King) with three Mariner nominee directors (Mr Darren Olney-Fraser, Mr Donald Christie and Mr Matthew Fletcher). The EGM occurred on 23 June 2011 and the resolutions were defeated.
- On 9 May 2011, Viento announced on ASX that it had issued 6,500,000 shares in Viento at \$0.15 per share to Hanson by way of placement. On the same day,

² *Viento Group Limited* [2011] ATP 1

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Hanscon lodged a substantial holding notice, showing the acquisition of 6,500,000 shares in Viento (11.96%).

10. On 12 May 2011, Mr Farrell was appointed to the Viento board. Mariner submitted that Mr Farrell was “Hanscon’s representative” on the Viento board.
11. On 23 June 2011, Hanscon and Mr Farrell lodged an updated substantial holding notice disclosing that Mr Farrell had a relevant interest in the 6,500,000 shares in Viento acquired by Hanscon on 9 May 2011.

APPLICATION

12. By application dated 10 June 2011, Mariner sought a declaration of unacceptable circumstances in relation to the affairs of Viento. Mariner submitted that the Alleged Associates had built up a combined shareholding of approximately 41.39% in Viento.
13. Mariner submitted that the effect of the circumstances was that the acquisition of shares in Viento by the Alleged Associates, in breach of s606:
 - (a) was likely to inhibit the acquisition of control over Viento taking place in an efficient, competitive and informed market and
 - (b) resulted in the market not being fully informed regarding the identity, shareholdings and associations, resulting in an inefficient or false market.
14. While Mariner submitted that these associations gave rise to a contravention of s606, it did not specify when the associations first arose or how the acquisitions gave rise to the contravention.
15. Mariner also submitted that Viento’s shareholders were prejudiced as there was an existing and continuing unacceptable effect on control of Viento.

Interim orders sought

16. Mariner sought interim orders to the effect that:
 - (a) the parties disclose their voting power in Viento and associations between them
 - (b) the parties be prevented from acquiring further shares or increasing their voting power, be prevented from disposing of, or transferring, any shares and be prevented from exercising any voting rights attaching to shares, until the application was determined and
 - (c) in relation to the EGM:
 - (i) any votes or proxies purported to be cast by the Alleged Associates be counted for no more than 20% and
 - (ii) Mr Nichevich or any other person associated with him or any executive director not be permitted to chair the EGM or vote any open proxies at the EGM.
17. We decided not to make the interim orders requested. The disclosure request was premature. It would be an appropriate final order if association is established. We considered the strength of the preliminary evidence did not justify the other interim

orders. It was also open to Mariner to requisition a further meeting of Viento shareholders to remove the incumbent directors once the outcome of these proceedings had been determined. Mariner chose to requisition the meeting before making its application to the Panel and the interim orders went further than to maintain the status quo pending the determination of the application.

Final orders sought

18. Mariner sought final orders that:

- (a) shares acquired by the Alleged Associates in excess of 20% be vested in ASIC and sold by private tender to non-associated parties with the proceeds of sale to be paid to the account of the Alleged Associates and
- (b) following divestment, the Alleged Associates be prohibited from acquiring any further shares or increasing their voting power other than in accordance with s611.

DISCUSSION

Conduct proceedings

19. Viento and the Alleged Placement Associates made similar preliminary submissions to the effect that the Panel should decline to conduct proceedings because the application:
 - (a) did not provide evidence of association and
 - (b) had been made for tactical purposes, namely to influence the voting outcomes at the EGM.
20. Viento also submitted that it was suspicious that Mariner's motive for bringing the application was a further attempt to pressure Viento to sell part of its funds management business to it.
21. Mr Nichevich made preliminary submissions that the Panel should decline to conduct proceedings because the application in part related to "*circumstances alleged to have occurred several years ago*". Mr Nichevich also submitted "*It is not appropriate for the Panel to extend the time period to consider this Application as it does not relate to a takeover bid, and therefore the Panel does not have exclusive jurisdiction to deal with it...*"
22. The Panel can make a declaration within 3 months after the circumstances occur or 1 month after the application is made, and an application must be made within 2 months after the circumstances have occurred or a longer period determined by the Panel.³
23. At least some of the information we received in the application and preliminary submissions was consistent with possible unacceptable circumstances. Accordingly,

³ Sections 657B and 657C(3). The Court may extend the period for making a declaration on application by the Panel

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on balance, we considered that there was enough to justify us conducting proceedings. To the extent it was necessary we extended the time under s657C(3).

Association

24. Broadly, two or more persons are associates if:
- (a) there is (or is proposed) an agreement, arrangement or understanding between them, whether formal or informal, written or oral, and whether or not legally binding, for controlling or influencing the composition of an entity's board or the conduct of an entity's affairs or
 - (b) they are acting, or proposing to act, in concert in relation to an entity's affairs.⁴
25. The definition casts a wide net, given the broad definition of an entity's affairs,⁵ although we are principally concerned with the accumulation and exercise of voting power.⁶
26. Mariner submitted that there were four associations:
- (a) Mr Nichevich was associated with Bell Potter Nominees Limited or the ultimate owners of the shares in Viento held by Bell Potter Nominees Limited
 - (b) Mr Nichevich was associated with JP Morgan or the ultimate owners of the shares held by JP Morgan
 - (c) Mr Nichevich was associated with Hanscon and its nominee on the Viento board, Mr John Farrell and
 - (d) Mr Nichevich was associated with his wife Mrs Kerry Nichevich, who holds 0.01% in Viento.

Bell Potter

Tracing beneficial ownership

27. Bell Potter Nominees Limited holds as nominee approximately 5.34% of Viento.
28. In June 2011, ASIC issued tracing notices under s672A to Bell Potter Nominees Limited, Vernon, Mr Bruce Maloney and Mr Richard MacLellan. Responses to these tracing notices revealed that:
- (a) Bell Potter Nominees Limited holds its shares on behalf of Vernon
 - (b) Mr Bruce Maloney acts as a financial consultant and intermediary for Vernon but does not have a relevant interest in any Viento shares and
 - (c) the shares held by Bell Potter Nominees Limited on behalf of Vernon are beneficially owned by Mr MacLellan.
29. There was no evidence before us to suggest that the ultimate beneficial owner of the shares held by Bell Potter Nominees Limited is not Mr MacLellan. Mariner referred to a number of court decisions between 1998 and 2004 in support of a submission

⁴ Sections 9 and 12

⁵ See section 53 and Corporations Regulation 1.0.18

⁶ *Gloucester Coal Limited O1R* [2009] ATP 9 at [31], *Azumah Resources Limited* [2006] ATP 34 at [60], *LV Living Limited* [2005] ATP 5 at [77]

that “the holdings linked to Mr McLellan (sic) and Vernon Finance Limited are unlikely to be held beneficially”.⁷ However, these decisions do not go as far as Mariner contends.

Relationship between Mr Nichevich and Mr MacLellan

30. We considered whether there was any evidence that Mr Nichevich and Mr MacLellan were associates in relation to Viento. Mr Nichevich explained his relationship with Mr MacLellan:

I have spoken to Richard MacLellan over many years since he became a shareholder of Viento. In my capacity now as Executive Chairman and previously Managing Director of Viento I have developed a practice of regularly telephoning shareholders and discussing the Company and its affairs. From time to time matters arise where shareholders are required to vote and I have telephoned Richard MacLellan as a shareholder of Viento to encourage him to vote. Mr MacLellan has called me on a number of occasions to discuss his investment. I met Mr MacLellan in the 1990's and at that time he was not a shareholder in Viento. I do not recall when he became a shareholder in Viento.

31. We asked Bell Potter to provide “all documents in relation to communications about Vernon Finance Limited”. From these documents, there was evidence that Mr Nichevich was a contact for Vernon in relation to its shareholding in GulfX Limited (now Syngas Limited). Mr Nichevich provided the following explanation of this:

Prior to 2006 and through to 2008 I was a director of GulfX Limited. Because of my regular conversations with Mr MacLellan (as indicated above) I had at some stage (the precise time at which I can't now recollect) suggested to Mr MacLellan that he should consider investing in GulfX. I believe this was in the context of a placement being proposed by GulfX Limited.

The documents produced by Bell Potter reveal that Mr MacLellan through Vernon Finance had two shareholdings in GulfX as at 2006. He had obviously taken these on a placement and recorded these under a [security holder reference number]. I do not have any clear recollection at the present time but I surmise that my business address was entered because Mr MacLellan agreed to subscribe to an issue by GulfX it may have been convenient for GulfX the company to use my address.....

Other than as set out above I have no past involvement with Vernon in connection with the holding and I have no present involvement with the holding.

32. Mr Nichevich's explanation was not rebutted. It shows a previous commercial dealing between Mr Nichevich and Mr MacLellan but is insufficient for us to infer that they are associates in relation to Viento.

Mr Maloney's role

33. We then turned to Mr Maloney's role in relation to Vernon and his relationship with Mr Nichevich and Mr MacLellan to consider if this could lead to an inference that Mr Nichevich and Mr MacLellan were associates in relation to Viento. Mariner submitted there were the following links between Mr Nichevich and Mr Maloney:

⁷ For example, *Aspermont Ltd v Lechmere Financial Corporation* [2001] WASC 344, at [14]

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- (a) Mr Nichevich had used Mr Maloney as a broker in the past and Mr Maloney still worked for some of his older clients. Mr Nichevich admitted that he had used Mr Maloney as his broker in the past but “*Mr Maloney does not work for Mr Nichevich and has not worked for Mr Nichevich in the last 6 years (to the best of Mr Nichevich’s recollection).*”
 - (b) Mr Maloney worked at Bell Potter (formerly Johnson Taylor Potter) at the time the JP Morgan and Bell Potter overseas nominee accounts were set up, that Mr Nichevich was his nominated client at the time and that Mr Maloney continued to give instructions on the Bell Potter account after he left the firm. In rebuttals, Mr Nichevich submitted that he was unaware when the overseas nominee accounts were set up and whether Mr Maloney nominated him as his client while working at Johnson Taylor Potter in Perth.
 - (c) Mr Maloney and Mr Nichevich and others used Pagent Mining Limited as a “*back-door listing vehicle for dot-com company Travelshop.*” Mr Nichevich denied that he and Mr Maloney ever acted in this manner.
34. It appears to us that Mr Maloney was involved in an intermediary capacity, and as a contact, for Vernon. A number of trade orders appear to have been placed on behalf of Vernon by Mr Maloney. Mr Maloney works for WP Invest Pty Ltd, an investment consulting business which, among other things, conducts some share trading for industry superannuation funds. However, there is nothing to suggest that Mr Maloney’s role in relation to Vernon was beyond that contemplated by s16(1)(b).⁸

Statements made by Mr Nichevich

35. Mr Nichevich made a number of statements in statutory declarations in *Viento Group Limited 01* and other documents, which initially concerned us. The main examples of these were the references to other shareholders who had advised Mr Nichevich “*that they would be willing to sell their shares at the right price*” and a statement in a 26 March 2011 investment proposal for Hanscon of “*Supportive investors 4.0m*”.
36. We asked Mr Nichevich for an explanation of these statements. He submitted that he was in contact with a number of shareholders and that these statements were based on those conversations. He identified Vernon as one of the shareholders he had spoken to. Given Mr Nichevich’s explanation, we do not consider that these statements indicated that there was any association.

Statements made by Mr Olney-Fraser

37. Mariner’s CEO, Mr Darren Olney-Fraser, submitted that a number of former senior executives of and advisers to Viento had said to him (among other things) that:
- (a) “*the Bell Potter nominee holding was opened by Bruce Maloney when he was at Johnson Taylor Potter (now Bell Potter) in Perth in the early 1990’s, and on the account opening form Robert Nichevich is nominated as the firm’s client*

⁸ Section 16(1)(b) provides that a person is not an associate of another person merely because a client gives instructions to a person, whose ordinary business includes dealing in financial products, to acquire financial products on the client’s behalf in the ordinary course of that business

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(b) Robert Nichevich said that the JP Morgan and Bell Potter nominee holdings are controlled by him”.

38. However, Mr Olney-Fraser was not able to get these persons to come forward and provide that evidence to us. Accordingly, we do not place a lot of weight on them.

Proxies

39. Bell Potter Nominees Limited, and Vernon in its own name, did not lodge proxies for meetings of Viento in November 2005, November 2006, September 2007, November 2007 and November 2008 but did lodge proxies for meetings in April 2009, November 2009, November 2010 and the recent requisitioned meeting in June 2011. A number of the proxies lodged by Bell Potter Nominees Limited named Mr Nichevich as proxy.

40. For the November 2010 meeting, Vernon lodged a proxy in favour of the chairperson. The proxy is signed by Mr MacLellan. There is a notation on the proxy that combines Vernon’s interest with Bell Potter’s which we think reads “RN Confirmed Holding D. Wright”. This has two possible meanings.

41. We asked Mr Nichevich and Viento to explain the meaning of this notation. Mr Nichevich submitted:

My reading of the note whilst difficult to clearly decipher is ‘RN Combined Holding’. I believe it to be a note that Damian Wright gave me in my capacity as Chairman of the Annual General Meeting confirming that the proxy lodged by Vernon Finance Limited covered a combined holding of the three share parcels that are listed in handwriting which I also believe to be that of Damian Wright on the same document”. (emphasis in original)

42. Mr Wright confirmed that the note and signature were his. He submitted:

Whilst I don’t recall the exact circumstances of the situation, I believe that the proxy form was received by our administration staff who queried the number of shares written on the form as “2,447,500”. They were only able to identify the two smaller holdings of 500,000 shares and 52,500 shares held directly in Vernon Finance Ltd’s (Vernon) name. The number of shares sought to be voted in the proxy form was raised with Viento’s Executive Chairman, Robert Nichevich, as he knew the details of the large shareholdings on Viento’s register. Robert Nichevich confirmed that Bell Potter Nominees held shares on behalf of Vernon. I noted that RN (Rob Nichevich) confirmed that the shares were all held on behalf of Vernon. It was therefore determined that the proxy was in relation to the Vernon holding held indirectly through Bell Potter Nominees. I wrote the three Vernon holdings on the form (as currently held at the time). This proxy was counted at the shareholders’ meeting dated 30 November 2010. I note that the direct holdings had already lodged proxy votes for the meeting.

43. The responses provided by Mr Nichevich and Mr Wright are inconsistent. Mr Nichevich appears to say that Mr Wright presented him the proxy confirming that it covered Vernon’s combined holding of its three share parcels whereas Mr Wright appears to say that he asked Mr Nichevich to confirm on whose behalf the 2,447,500 shares were held.

Conclusion on alleged association between Mr Nichevich and Mr MacLellan

44. We are concerned that Mr Nichevich may well have known that Mr MacLellan was the ultimate beneficial owner of the shares held by Bell Potter Nominees Limited, and that Mr Nichevich may not have been as forthright as he could have been. He is likely to have been aware of a breach of the substantial holding provisions by Vernon, but does not appear to have made any attempts to ensure disclosure to Viento shareholders. This brought into question Mr Nichevich's motive. In the end, however, this was not enough to allow us to infer that there was an association between Mr Nichevich and Mr MacLellan in relation to Viento.

Vernon's substantial holding compliance

45. Vernon has a relevant interest in 1.02% of Viento in its own name and approximately 5.34% through Bell Potter Nominees Limited. It would appear that Vernon has held this interest for some time. The replies by Bell Potter Nominees Limited to ASIC suggest that the interest predates 8 November 2002 and the application suggested that the Alleged Nominee Associates "have held their shareholding in Viento from on or about the time that Robert Nichevich became involved in Viento (late 1980's/early 1990's)."
46. Viento submitted that "it appears that Vernon Finance Limited, as beneficial holder of the shares held by Bell Potter has not lodged a substantial shareholder notice. Viento intends to request that corrective disclosure is made." Vernon lodged a substantial holding notice after receiving our decision.⁹ We do not consider that this breach warrants a declaration of unacceptable circumstances.

JP Morgan

47. JP Morgan holds as nominee approximately 4.10% of Viento.
48. On or about 8 June 2011, Mariner requested that ASIC issue a tracing notice under s672A to JP Morgan.
49. On 14 June 2011, JP Morgan informed ASIC that it held its shares pursuant to custody arrangements on behalf of 5 clients (4 of whom were overseas) and each of whom give JP Morgan instructions about the acquisition or disposal of the securities and the exercise of any voting rights attaching to the securities. JP Morgan also informed ASIC that it was not aware of any other person who had a relevant interest in the shares.
50. On or about 28 June 2011, ASIC issued a tracing notice to the largest holder among JP Morgan's clients, Six Sis Ltd located in Switzerland. The response received by ASIC did not disclose that the shares were held for the benefit of Mr Nichevich or any of his associates. It is not clear who the beneficial owners of the shares in Viento held by JP Morgan are. There is, at this stage, insufficient material before us to establish or allow an inference of association to be drawn between Mr Nichevich and JP Morgan or the ultimate owners of the shares in Viento held by JP Morgan.

⁹ Vernon lodged a substantial holding notice on ASX on 5 July 2011 disclosing that it had voting power of 6.35% in Viento. Mr MacLellan was listed in the notice as an associate of Vernon

Placement to Hanscon Holdings

51. Mariner submitted that within a week of it becoming a shareholder in Viento and requisitioning a shareholder meeting, Viento arranged the placement to Hanscon to shore up Mr Nichevich's control of the company and to block the proposed board spill.
52. Mariner also submitted that Mr Farrell was Hanscon's representative on the Viento board and was *"a past client of Robert Nichevich, from over 20 years ago when Robert Nichevich practised as an accountant."* Mr Darren Olney-Fraser submitted (among other things) that Mr Farrell had said that:
 - (a) he was Mr Nichevich's friend
 - (b) he had sought to acquire the shares in Viento from ASIC and *"was trying to do this as a favour to Robert Nichevich"* and
 - (c) *"Robert Nichevich was possibly also involved personally in John Farrell's negotiations with Bell Potter over the ASIC stake to help make sure that the stake went to John Farrell."*
53. A letter from Bell Potter to ASIC dated 20 June 2011 stated (among other things):
 - (a) Mr Nichevich had informed Mr Tan (the Bell Potter analyst who had primary carriage of the sale of ASIC's stake) that Mr Farrell was interested in acquiring ASIC's stake and
 - (b) Mr Farrell had said to Mr Tan that *"he wished to authorise Mr Rob Nichevich to negotiate on his behalf as he would be out of range and fishing."*
54. Hanscon is controlled by Mr Johannes Versteeg. Mr Farrell submitted that he was a friend of Mr Versteeg and Mr John Silverstone through a mutual interest in boating, and that *"this friendship led to discussions about investing together in various different opportunities..."* He had recommended the investment in Viento to Mr Versteeg.
55. The Alleged Placement Associates and Viento provided documents in relation to negotiations between Mr Farrell and Mr Nichevich. In late September/early October 2010, Mr Nichevich discussed an investment proposal with Mr Farrell. This proposal involved a group of investors participating in a possible share placement, funding of real estate developments managed by Viento and a consultancy arrangement with Mr Farrell personally. Mr Nichevich and Mr Farrell could not agree, at least initially, on the terms of this proposal. Mr Farrell stated in an email to Mr Nichevich dated 4 October 2010, *"I do not see a an (sic) equitable risk/reward for us in this scenario, I see it significantly weighted in your favour & on that basis wish you luck & we will look at other options."*
56. Viento submitted that Mr Nichevich had also pursued other investment options during this period on its behalf. In February 2011, Viento received advice from Gresham Advisory Partners on a number of strategic issues, including increasing its size. The report considered proposals from Mr Farrell and six other investors. The report considered that two of the other proposals may have been attractive but neither were likely to be *"game changing"* and noted that Mr Farrell's proposal *"did not assist in identifying potential developments nor Viento's distribution network."*

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57. Following further discussions with Mr Farrell, Mr Nichevich put forward a proposal dated 26 March 2011 for the “Farrell/Silverthorne/Versteeg group” to invest in Viento by combination of placement and participation in the sale of shares by Bell Potter. The paper stated that Viento expected from the group (among other things) “*expertise through the principles of subdivisions, industrial and commercial opportunities in mining related projects*” and access “*to projects now and in the future*”. On 7 April 2011, the Viento board resolved to issue shares to the group at 15 cents per share “*to increase their holding to approximately 9 million shares*” noting that the group might participate in the sale of shares by Bell Potter.
58. We were initially concerned that Hanscon had sought to purchase the shares sold by Bell Potter, rather than subscribe for new shares in Viento, and that Mr Nichevich had assisted Hanscon in attempting to do so. However the negotiations referred to above suggest that Viento was more in need of Hanscon’s future investments in its property developments, and Hanscon’s property expertise, than in an immediate subscription for share capital, which explains to some extent Viento and Mr Nichevich’s interest in Hanscon participating in the Bell Potter sale process as a potential strategic investor.
59. We note the statements made by Mr Olney-Fraser suggesting that Mr Farrell was a friend of Mr Nichevich and that Hanscon had invested in Viento to assist Mr Nichevich. However the negotiation of the investment by Hanscon is more consistent with an arm’s length investment than an arrangement for a control effect. The arrangement does not appear to be anything more than part of a joint venture. Mr Farrell’s appointment does not appear to be more than him representing Hanscon and providing his skill to the Viento board. Therefore, there is insufficient evidence for us to find any association between Mr Nichevich on the one hand and the Alleged Placement Associates on the other.

Association between Mr and Mrs Nichevich

60. Mrs Nichevich holds 0.01% in Viento. The applicant submitted that Mrs Nichevich “*is an associate of Robert Nichevich, as she is also a director of Deluge Holdings Pty Ltd which [is] a substantial shareholder and Declared Associate of Robert Nichevich.*”
61. A common shareholding and a husband and wife relationship may be indicators that point to an association, but are not determinative. We do not have any other evidence suggesting an association between Mr and Mrs Nichevich. In any event Mrs Nichevich’s interest in Viento was not material. It did not appear to trigger any Corporations Act thresholds.

DECISION

62. We are not satisfied on the material available to us that we could draw the necessary inferences and find the alleged associations. Therefore, we are not satisfied that the circumstances in this case are unacceptable.
63. For the reasons above, we decline to make a declaration of unacceptable circumstances. We consider that it is not against the public interest to decline to make a declaration and we had regard to the matters in s657A(3).

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Orders

64. Given that we made no declaration of unacceptable circumstances, we make no final orders, including as to costs.

Byron Koster
President of the sitting Panel
Decision dated 5 July 2011
Reasons published 15 July 2011

Advisers

Party	Advisers
Bell Potter	N/A
Hanscon and Mr John Farrell	Steinepreis Paganin
Mariner	N/A
Mr Robert Nichevich, Mrs Kerry Nichevich, Koy and Deluge	Bennett + Co
Viento	Arnold Bloch Leibler