



Australian Government

Takeovers Panel

MEDIA RELEASE

No: 43/2011

Monday, 30 May 2011

oOh!media Group Limited - Panel Accepts Undertakings

The Panel has accepted undertakings from QMS Asia Pacific Outdoor Pte Ltd (**QMS**) and William Shaw Capital Pty Ltd (**WSC**) (see annexures A and B) and declined to make a declaration of unacceptable circumstances in response to an application dated 4 May 2011 from oOh!media Group Limited in relation to its affairs (see [TP 11/32](#)).

The application raised a number of concerns affecting an efficient, competitive and informed market. These included that the call option deed entered into by QMS with PFG Investments Pty Limited (in voluntary liquidation) (**PFG**) was not disclosed in a timely manner and that the deed with WSC may have caused QMS to contravene s606 and may have been an abuse of s609(7).

The Panel was satisfied that the terms of the undertakings adequately addressed the unacceptable circumstances alleged in the application. In particular, the terms of the undertaking by QMS require it to compensate OOH shareholders (other than PFG, WSC and their associates) in relation to on-market and certain off-market transactions from 23 August 2010 to 22 March 2011. This is expected to remedy the effects of any loss suffered. Similarly, OOH will be compensated in relation to the placements.

Call option deed 2 will be unwound and shareholdings of QMS and WSC sold down. QMS's holding in OOH will be sold down to 15%. QMS will be restricted from voting more than 4.9% of its remaining holding until 31 January 2012, and will be subject to a standstill and board nomination freeze for 6 months.

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

The sitting Panel was Paula Dwyer (sitting President), David Friedlander and Mike Roche. The Panel will publish its reasons for the decision in due course on its website www.takeovers.gov.au.

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Annexure A

Australian Securities and Investments Commission Act (Cth)

Section 201A

Undertaking

Pursuant to section 201A of the *Australian Securities and Investments Commission Act 2001* (Cth), QMS undertakes to the Panel that it will:

1. Within 2 business days after the date of this undertaking, rescind call option deed 2 by agreement between QMS and WSC by the parties entering into a deed in a form approved by the Panel.
2. Pay OOH \$3,600,000, being the difference between 22c per share and the call option deed 2 price of 30c per share in relation to the OOH shares held by WSC immediately prior to the date of this undertaking, within 5 business days after the date of this undertaking.
3. Promptly notify:
 - a. OOH and the ASX of the rescission of call option deed 2
 - b. FIRB of the rescission of call option deed 2 and withdraw the application for approval in relation to call option deed 2 made to FIRB on 9 May 2011.
4. In respect of its legal and or beneficial interest in 99,743,830 OOH shares at the date of this undertaking, reduce its holding in OOH shares to a number of shares less than 15% by divesting OOH shares (**Divestment Shares**) as follows:
 - a. Subject to paragraph 5, the Divestment Shares will comprise 24,560,100 OOH shares title in which must be transferred to LINWAR Securities Pty Limited ABN 91 103 183 606 or Evans and Partners Pty. Ltd ABN 85 125 338 785 or such other broker approved by the Panel and who can verify to the Panel's reasonable satisfaction that it is independent of each party named in the Application (**Nominee**) on trust for QMS within 5 business days after the date of this undertaking
 - b. The Nominee must be directed by QMS to effect either:
 - i. an orderly on-market sale of the Divestment Shares; or

- ii. an off market sale of the Divestment Shares to sophisticated or professional investors (as defined in the Corporations Act) that are not associated with any of WSC, QMS or any associate of either of them,

on the basis that:

- the sell down must occur within 6 months of engagement of the Nominee (**Sell Down Period**)
 - the Nominee must obtain from any prospective purchaser of Divestment Shares under paragraph 4(b)(ii) a statutory declaration that it is not associated with either WSC or QMS;
 - none of QMS or any of its associates may purchase Divestment Shares
 - the Nominee must account to QMS for the proceeds of sale, net of the costs, fees and expenses of the sale,
provided that OOH may direct QMS and notify the Nominee to cease selling any of the Divestment Shares during the Sell Down Period if it gives notice that it proposes to seek shareholder approval for a selective buy back or selective capital reduction in accordance with undertaking 5
- c. At the end of the Sell Down Period, the Nominee must certify to the Panel that it has conducted the sale of the Divestment Shares in accordance with these undertakings.
 - d. QMS and its associates must do all things necessary to give effect to the undertaking in this paragraph 4 including doing all things necessary to ensure that the Nominee is registered with title in the Divestment Shares and complying with any request of the Nominee in relation to the Divestment Shares
 - e. QMS must not dispose of, transfer, charge, or vote any Divestment Shares (except as required under undertaking 4 or undertaking 5).
5. Notwithstanding paragraph 4, during the Sell Down Period, OOH may at its election seek shareholder approval to buy back or cancel some or all of the Divestment Shares by means of either a selective buy back or selective capital reduction as permitted by the Corporations Act (**Reduction**) at a buy back or cancellation price of not less than the volume weighted average price for OOH shares sold on the ASX during the 30 day period prior to the date of the Notice of Meeting to approve the Reduction, less 10%. If OOH so elects, QMS must, if required under section 256C(2) of the Corporations Act, vote in favour of that Reduction and QMS must execute such documents, including buy back agreements and offers, as are necessary to give effect to that Reduction if approved by OOH shareholders.

The number of Divestment Shares must be calculated by reference to the number of OOH shares which must be sold and/or cancelled, such that at the end of the sale and/or Reduction, QMS holds less than 15% of the then issued capital of OOH (**Remaining Holding**).

6. Subject to the operation of undertakings 4 and 5, at no time during the 6 month period commencing on the date of this undertaking (**Standstill Period**) have a relevant interest in 15% or more of the total number of OOH shares on issue.
7. Not seek any board representation on the OOH board during the Standstill Period.
8. In relation to OOH shares in respect of the Remaining Holding, not vote any more than that number of shares comprising the Remaining Holding which is equal to 4.9% of the issued capital of OOH at any meeting of OOH shareholders held on or before 31 January 2012.
9. Within 5 business days after receiving the Registry Information, pay to each Affected Seller, for each relevant Affected Market Transaction, the relevant Market Difference by sending to each Affected Seller the required amount by bank cheque to the postal address for that shareholder provided to QMS as part of the Registry Information

where:

Affected Market Transaction means each sale of OOH Shares on market during the period from 23 August 2010 up to and including 22 March 2011;

Affected Seller means each OOH shareholder who sold any OOH shares on-market during the period from 23 August 2010 up to and including 22 March 2011 but does not include transactions where shares were sold by PFG, WSC or any associate of either of them;

Market Difference means the difference between the price paid per OOH share in the relevant Affected Market Transaction and \$0.30, multiplied by the number of shares sold by the Affected Seller in the relevant Affected Market Transaction; and

Registry Information means information held by OOH's share registry services provider of: the identity of each Affected Seller and the postal address for that shareholder appearing on the register of shareholders at that time; the number of shares sold in each relevant Affected Market Transfer; the date of the sale; and the price paid for the OOH shares sold in the relevant Affected Market Transaction.

QMS must give to OOH (to treat as unclaimed monies to be dealt with under Part 9.7 of the Corporations Act) any cheques returned, or not presented, for which it cannot reasonably establish a forwarding address for the Affected Seller concerned.

10. Pay to each Affected Off Market Seller, the relevant Off Market Difference by sending to each Affected Off Market Seller the required amount by bank cheque to the postal address for that shareholder provided to QMS as part of the Relevant Information, within 5 business days after receiving the Relevant Information for that Affected Off Market Seller

where:

Affected Off Market Seller means each OOH shareholder who sold any OOH shares off-market to PFG or any of its associates during the period from 23 August 2010 up to and including 22 March 2011 but does not include transactions where PFG or any of its associates had a relevant interest in the shares transferred prior to 23 August 2010, or transactions where QMS establishes to the Panel's satisfaction that (a) the seller was aware of call option deed 1, or (b) was aware of the arrangements between PFG and QMS in relation to OOH shares the subject of call option deed 1;

Off Market Difference means difference between the price paid per share in the relevant off market transaction and \$0.30, multiplied by the number of shares sold by the Affected Off Market Seller in the relevant transaction; and

Relevant Information means the identity of each Affected Off Market Seller and the postal address for that shareholder provided to QMS; the number of shares sold in each relevant off market transaction; the date of the sale; and the price paid for the OOH shares sold in the relevant off market transaction.

QMS undertakes to pay any Affected Off Market Seller who can reasonably establish, within one month of the date of this Undertaking, that it is an Affected Off Market Seller (as defined in this paragraph), but is not required to pay any Affected Off Market Seller for the disposal of any shares to PFG which QMS reasonably establishes (at its cost), that the relevant person is not an Affected Off Market Seller (as defined in this paragraph);

QMS undertakes to seek an undertaking from PFG to promptly provide to QMS the Relevant Information and, if it receives such an undertaking will: (i) disclose it to OOH; and (ii) enforce the rights granted to it under that undertaking, as required.

QMS must give to OOH (to treat as unclaimed monies to be dealt with under Part 9.7 of the Corporations Act) any cheques returned, or not presented, for which it cannot reasonably establish a forwarding address for the Affected Off Market Seller concerned.

11. If there is a claim for compensation, QMS will decide within 5 business days of receipt:
 - a. to pay or reject the claim or
 - b. to reasonably seek information in support of the claim.

12. If QMS seeks information, it will decide whether to pay the claim within 2 business days of receipt of the information. If QMS refuses the claim, it will advise the claimant that the claim may be referred to the Panel. If the claimant asks for its claim to be referred to the Panel, QMS will within 2 business days of receipt of the request for referral, send that claim and all supporting information and any submissions it wishes to make to the Panel, and the Panel may:
 - a. accept the claim, in whole or in part, in which case QMS will pay that amount within 5 business days or
 - b. reject the claim or
 - c. seek further information or submissions before deciding the claim.
13. As soon as practicable following these undertakings being executed but by no later than 3 business days after the date of this undertaking, notify OOH and issue a Media Release in the form attached to this undertaking **(Announcement)**
14. Within 3 business days after the date of this undertaking, pay to OOH an amount equal to the lesser of its legal fees incurred in relation to the Application and \$75,000 plus GST
15. Confirm in writing to the Panel when it has satisfied its obligations under this undertaking.
16. In this undertaking the following definitions apply:

call option deed 1	Call Option over shares, between PFG as trustee for The PFG Investment Trust and QMS, dated 22 August 2010 and released to ASX on 22 March 2011
call option deed 2	Call Option over shares, between WSC, QMS, Immunotherapies Pty Ltd, Shawn Uldridge and Hayden Kerr, dated 21 April 2011 and released to ASX on 21 April 2011
FIRB	Foreign Investment Review Board
OOH	oOh!media Group Limited
PFG	PFG Investments Pty Limited (in voluntary liquidation)

QMS

QMS Asia Pacific Outdoor Pte Ltd

WSC

William Shaw Capital Pty Ltd

Signed by Hedi Smirani
with the authority, and on behalf, of QMS

Dated 27 May 2011



Australian Government

Takeovers Panel

Annexure B

Australian Securities and Investments Commission Act (Cth)

Section 201A

Undertaking

Pursuant to section 201A of the Australian Securities and Investments Commission Act 2001 (Cth), WSC undertakes to the Panel that it will:

1. Within 2 business days after the date of this undertaking, rescind call option deed 2 by agreement between QMS and WSC by the parties entering into a deed in a form approved by the Panel (**Option Rescission Deed**).
2. Retain LINWAR Securities Pty Limited ABN 91 103 183 606, Evans and Partners Pty. Ltd ABN 85 125 338 785, Patterson Securities Limited ABN 69 008 896 311 and any other investment banker or stock broker approved by the Panel, each of whom is independent of each of WSC, QMS and any associate of either of them (**Appointed Broker**), on market standard fees and commissions for institutions to conduct the sale of the 45,161,433 OOH shares held by WSC (**Sale Shares**) to get the best available sale price for the Sale Shares within 6 months from the date of this undertaking (**Sale Period**). The sale of Sale Shares is to be conducted on the following terms:
 - a. The Appointed Broker must provide to the Panel a statutory declaration that, having made proper inquiries, the Appointed Broker is not aware of any interest, past, present or prospective which could conflict with the proper performance of the Appointed Broker's functions in relation to the disposal of Sale Shares.
 - b. The Appointed Broker must be directed by WSC to effect either:
 - i. an orderly on-market sale of the Sale Shares (provided any restriction on such sale has been consented to by OOH despite the terms to the contrary of any agreement between OOH and WSC); or
 - ii. an off market sale of the Sale Shares to sophisticated or professional investors (as defined in the Corporations Act) that are not associated with any of WSC, QMS or any associate of either of them.

- c. The Appointed Broker must obtain from any prospective off-market purchaser of Sale Shares under paragraph 2(b)(ii) a statutory declaration that it is not associated with either WSC or QMS.
 - d. All Sale Shares must be sold within the Sale Period.
 - e. At the end of the Sale Period, the Appointed Broker must certify to the Panel that it has conducted the sale of the Sale Shares in accordance with these undertakings.
3. Promptly notify OOH and the ASX of the rescission of call option deed 2 (attaching a copy of the Option Rescission Deed) and notify the ASX of the obligation to sell the Sale Shares.
 4. Not exercise any right to vote attaching to any Sale Share during the Sale Period.
 5. Comply with its obligations under section 671B of the Corporations Act within the time prescribed by the Corporations Act where a sale of Sale Shares results in a need to file a substantial holding notice and in each case attaching the relevant documents.
 6. Confirm in writing to the Panel when it has satisfied its obligations under this undertaking.
 7. In this undertaking the following definitions apply:

call option deed 2	Call Option over shares, between WSC, QMS, Immunotherapies Pty Ltd, Shawn Uldridge and Hayden Kerr, dated 21 April 2011 and released to ASX on 21 April 2011
OOH	oOh!media Group Limited
QMS	QMS Asia Pacific Outdoor Pte Ltd
WSC	William Shaw Capital Pty Ltd

Signed by Shawn Uldridge
with the authority, and on behalf, of WSC

Dated 27 May 2011