



**Australian Government**

**Takeovers Panel**

# MEDIA RELEASE

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**No: 52/2011**

**Wednesday, 6 July 2011**

## **Viento Group Limited 02 - Panel Declines to Make Declaration**

The Panel has declined to make a declaration of unacceptable circumstances in response to an application dated 10 June 2011 from Mariner Corporation Limited. (see [TP11/50](#)).

On 29 April 2011, Mariner acquired Viento shares vested by the Panel for sale by ASIC in Viento Group Limited 01.<sup>1</sup> On 4 May 2011, Mariner requisitioned a meeting of Viento shareholders to replace directors. On 9 May 2011, Viento placed 11.96% of its capital to Hanscon Holdings Pty Ltd. On 23 June 2011, the requisitioned meeting was held and Mariner's resolutions to replace directors were defeated.

Mariner submitted (among other things) that there were 4 associations:

1. Mr Nichevich was associated with Bell Potter Nominees Limited, which holds approximately 5.34% of Viento, or the ultimate owners of the shares in Viento held by Bell Potter Nominees.
2. Mr Nichevich was associated with JP Morgan Nominees Australia Pty Limited, which holds approximately 4.1% of Viento, or the ultimate owners of the shares in Viento held by JP Morgan.
3. Mr Nichevich was associated with Hanscon Holdings Pty Ltd and its nominee on the Viento board, Mr John Farrell.
4. Mr Nichevich was associated with his wife Mrs Kerry Ann Nichevich, who holds approximately 0.01% in Viento.

The Panel noted that:

- The ultimate beneficial owner of the shares held by Bell Potter Nominees, Mr Richard MacLellan, had not lodged a substantial holder notice in relation to approximately 5.34% held in the name of Bell Potter and approximately 1.02%

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<sup>1</sup> [\[2011\] ATP 1](#)

held by his own company, Vernon Finance Limited.<sup>2</sup> There were some business connections between Mr MacLellan and Mr Nichevich.

- Mr Nichevich had assisted Hanscon and Mr Farrell in attempting to purchase the shares vested in ASIC, rather than subscribe for new shares in Viento.
- Mr Nichevich and Mrs Nichevich are husband and wife and are co-directors of another shareholder in Viento.

However, the Panel was not satisfied on the material available to it that it could draw the necessary inferences and find the alleged associations.<sup>3</sup> Accordingly, the Panel was not satisfied that the circumstances were unacceptable in this case.

The Panel considered that it is not against the public interest to decline to make a declaration of unacceptable circumstances. On the basis of the above, the Panel decided not to make a declaration of unacceptable circumstances.

The sitting Panel was Byron Koster (sitting President), Francesca Lee and Tony Osmond. The Panel will publish its reasons for the decision in due course on its website [www.takeovers.gov.au](http://www.takeovers.gov.au).

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<sup>2</sup> Vernon subsequently lodged a substantial holder notice on 5 July 2011

<sup>3</sup> In addition, Mrs Nichevich's interest in Viento was not material