



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP13/15

Monday, 6 May 2013

Touch Holdings Limited - Declaration of Unacceptable Circumstances

The Panel has made a declaration of unacceptable circumstances (Annexure) in relation to an application made on 5 April 2013 by Mr Philip Course in relation to the affairs of Touch Holdings Limited (see [TP13/06](#)).

Background

Touch Holdings Limited is an unlisted public company with more than 50 members. In November 2012, Sabatica Pty Ltd entered an agreement to sell its entire shareholding in Touch (56.04%) to Cleevecorp Pty Ltd as trustee of The Cleeve Trust (8.02%), ATC Capital Pty Ltd (20.00%), Mr Allan Sullivan (8.02%) and Kekal Capital Ltd Co (20.00%).

Mr Philip Course, a shareholder in Touch, applied to the Panel for a declaration and made submissions that:

- Mr Adrian Cleeve, ATC and Cleevecorp are associated
- Mr Sullivan, Mr Jonathan Teck-Cheng Chi, Kekal, Mr Duncan Saville and Touch Network Investments Pty Ltd are associated and
- there have been acquisitions of shares in Touch in breach of s606.

Declaration

The Panel considers that:

1. Mr Cleeve, ATC and Cleevecorp are associated:
 - (a) under section 12(2)(b) for the purpose of controlling or influencing the conduct of Touch's affairs and
 - (b) under section 12(2)(c) in relation to the affairs of Touch
2. the share sale agreement is a relevant agreement for the purpose of controlling or influencing the conduct of Touch's affairs and controlling or influencing the composition of its board and by reason of the share sale agreement:
 - (a) Cleevecorp, ATC, Mr Sullivan and Kekal are associated in relation to Touch

- (b) Sabatica is associated with each of Cleevecorp, ATC, Mr Sullivan and Kekal in relation to Touch and
3. the voting power of Cleevecorp, ATC, Mr Sullivan and Kekal in Touch has increased from 20% or below to more than 20% other than through one of the exceptions in section 611.

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).

The Panel (by 2:1 decision) was not satisfied that there is an association in relation to Touch between Mr Saville (Touch Network), Cleevecorp, ATC, Mr Sullivan and Kekal.

Orders

The Panel is considering what final orders to make and will publish details in due course.

The sitting Panel is Sophie Mitchell, Laurie Shervington and Andrew Sisson (sitting President).

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

**CORPORATIONS ACT
SECTION 657A**

DECLARATION OF UNACCEPTABLE CIRCUMSTANCES

TOUCH HOLDINGS LIMITED

CIRCUMSTANCES

1. Touch Holdings Ltd (**Touch**) is an unlisted public company with more than 50 members.
2. Sabatica Pty Ltd (**Sabatica**), a wholly-owned subsidiary of Guinness Peat Group plc (**GPG**), owned 52,111,459 shares in Touch, representing 56.04% of Touch's issued capital.
3. In November 2012, Sabatica entered a share sale agreement to sell its entire shareholding in Touch to the following entities:
 - (a) Cleevecorp Pty Ltd as trustee of The Cleeve Trust (**Cleevecorp**), as to 7,455,729 shares (8.02%)
 - (b) ATC Capital Pty Ltd (**ATC**), as to 18,600,000 shares (20.00%)
 - (c) Mr Allan Sullivan, as to 7,455,730 shares (8.02%) and
 - (d) Kekal Capital Ltd Co (**Kekal**), as to 18,600,000 shares (20.00%).
4. On 2 January 2013, GPG announced that it had completed the divestment.
5. Cleeve Group Pty Ltd (**Cleeve Group**) is owned in equal quarter-shares by Messrs Laurence Cleeve, Keith Cleeve, Terence Cleeve and Damien Cleeve.
6. Cleevecorp is wholly owned by Cleeve Group.
7. ATC is wholly owned by Mr Adrian Cleeve.
8. Kekal is wholly owned by Mr Jonathan Teck-Cheng Chi.
9. Messrs Adrian Cleeve, Laurence Cleeve, Keith Cleeve, Terence Cleeve and Damien Cleeve are brothers.
10. There are structural links between the brothers involving Cleevecorp, The Cleeve Trust and Cleeve Group (which is trustee of The Cleeve Group Trust). Mr Adrian Cleeve is a director of Cleeve Group and Cleevecorp. Mr Adrian Cleeve brought the investment in Touch to Cleevecorp. He had previously included Cleevecorp in a proposal to purchase all of Sabatica's shares (which was not successful). Mr Adrian Cleeve negotiated the purchases and guaranteed a loan from General Provincial Insurance Company Limited to Cleevecorp to fund its purchase.

11. The Panel considers that Mr Adrian Cleeve, ATC and Cleevecorp are associated:
 - (a) under section 12(2)(b)¹ for the purpose of controlling or influencing the conduct of Touch's affairs and
 - (b) under section 12(2)(c) in relation to the affairs of Touch.
12. Further, the share sale agreement includes:
 - (a) clause 3.5, which provides that from the date of the agreement until 31 December 2013, Touch must, and each Purchaser "*must use its shareholding to ensure that the Company does*", conduct the business of Touch subject to certain restrictions (such as restrictions on the acquisition and disposal of assets greater than \$50,000 and restrictions on entry into material contracts)
 - (b) clause 3.7, which provides that, pending payment of any deferred consideration, the purchasers must not transfer shares without Sabatica's consent and
 - (c) clause 7(b), which provides that each purchaser agrees to "*not use its shareholding in the Company (including by voting) to remove Mike Jefferies [Sabatica's nominee director] as a director of the Company before 1 April 2014*".
13. The share sale agreement is a relevant agreement for the purpose of:
 - (a) controlling or influencing the conduct of Touch's affairs and
 - (b) controlling or influencing the composition of its board.
14. The Panel considers that by reason of the share sale agreement Cleevecorp, ATC, Mr Sullivan and Kekal are associated:
 - (a) under section 12(2)(b) for the purpose of controlling or influencing the conduct of Touch's affairs and
 - (b) under section 12(2)(c) in relation to the affairs of Touch.
15. The Panel considers that by reason of the share sale agreement Sabatica is associated with each of Cleevecorp, ATC, Mr Sullivan and Kekal:
 - (a) under section 12(2)(b) for the purpose of controlling or influencing the conduct of Touch's affairs and
 - (b) under section 12(2)(c) in relation to the affairs of Touch.
16. The voting power of Cleevecorp, ATC, Mr Sullivan and Kekal in Touch has increased from below 20% to more than 20% other than through one of the exceptions in section 611.
17. It appears to the Panel that the circumstances are unacceptable having regard to:
 - (a) the effect that the Panel is satisfied the circumstances have had, are having, will have or are likely to have on the control, or potential control, of Touch
 - (b) the purposes of Chapter 6 set out in section 602 and
 - (c) because they constitute or give rise to contraventions of section 606.

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

18. The Panel considers that it is not against the public interest to make a declaration of unacceptable circumstances. It has had regard to the matters in section 657A(3).

DECLARATION

The Panel declares that the circumstances constitute unacceptable circumstances in relation to the affairs of Touch.

Alan Shaw
Counsel
with authority of Andrew Sisson
President of the sitting Panel
Dated 3 May 2013