



Australian Government

Takeovers Panel

MEDIA RELEASE

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Billabong International Limited - Panel Decision

Following the execution of revised agreements between Billabong International Limited and the Altamont Consortium,¹ the Panel has declined to make a declaration of unacceptable circumstances in response to an application dated 18 July 2013 from Oaktree Capital Management L.P. and Centerbridge Partners L.P.² in relation to the affairs of Billabong (see [TP13/29](#) and [TP13/30](#)).

On 16 July 2013, Billabong announced that it had entered into:

- agreements with the Altamont Consortium, including a US\$294 million bridge facility, the sale of the DaKine business and the issue of 84,519,582 options (representing 15% of the share capital of Billabong including the options) and
- commitment letters with the Altamont Consortium and GE Capital to provide a long term financing package for Billabong, comprising a loan of US\$294 million (**loan**), including a US\$40 million tranche, convertible into redeemable preference shares if shareholder approval was obtained, and a US\$160 million revolving credit facility.

If all the options were exercised and the redeemable preference shares converted, they would have represented an interest of up to approximately 40% in Billabong. Accordingly, while financing arrangements are typically a matter for a company board, these arrangements were inter-linked with the acquisition of a controlling interest in Billabong.

The bridge facility and long term financing were negotiated in the context of Billabong's urgent need for funds and a public sale/refinancing process over more than 12 months. While the Panel took these factors (among others) into account, it considered there were unacceptable circumstances in relation to the following terms:

¹ Entities advised by Altamont Capital Partners and sub-advised by GSO Capital Partners (the credit arm of the Blackstone Group)

² On behalf of their affiliated funds Oaktree Principal Fund V, L.P., Oaktree Principal Fund V (Parallel), L.P. and Oaktree PF V (Cayman) 3 CTB Ltd, and CCP II Acquisition Luxco and Centerbridge Special Credit Partners II, L.P.

- A bridge facility termination fee of 20% of the principal amount, payable if, among other things, there was a change of control of Billabong before 15 January 2014 and as a result the bridge facility was repaid on or before 31 December 2013. The magnitude of the fee acted as a lock-up device, with the effect of deterring rival proposals.
- The interest rate on the US\$40 million tranche of the long term financing was 35% if shareholder approval to permit conversion of the tranche into redeemable preference shares, and the issue of some of the options, was not obtained, and 12% if approval was obtained. The magnitude of the 35% interest rate and the circumstances under which it was payable amounted to a “naked no vote” break fee, which was likely to coerce Billabong shareholders to approve the issue of a controlling interest in the company.
- The long term financing required the loan to be repaid in the event of a change of a control of Billabong, plus payment of a “make-whole” premium should the loan be repaid in the first two years. The make-whole premium was 10% of the principal plus interest that would have been payable during that two years. This premium, and the circumstances under which it was payable, had the capacity to deter rival proposals.

After being informed that the Panel intended to make a declaration of unacceptable circumstances, the Altamont Consortium and Billabong advised that they would re-negotiate their agreements. On 21 August 2013, Billabong announced revised agreements with the Altamont Consortium that did not include the terms of the original agreements that the Panel considered unacceptable.

On the basis of the above, the Panel decided not to make a declaration of unacceptable circumstances.

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

The sitting Panel was David Friedlander (sitting President), Richard Hunt and John Story. The Panel will publish its reasons for the decision in due course on its website www.takeovers.gov.au.

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