



**Australian Government**

**Takeovers Panel**

**Reasons for Decision  
Tranzact Financial Services Limited  
[2014] ATP 3**

**Catchwords:**

*Decline to conduct proceedings - bidder's statement - target's statement - independent expert report - VWAP - offer premia - joint bid - equal access to information*

*Guidance Note 18 Takeover documents, ASIC Regulatory Guide 9 Takeover bids*

*Minemakers Limited 02R [2012] ATP 16, Minemakers Limited 02 [2012] ATP 13, Minemakers Limited [2012] ATP 8, Patrick Corporation Limited 04 [2006] ATP 16, General Property Trust [2004] ATP 30*

Interim order	IO undertaking	Conduct	Declaration	Final order	Undertaking
No	No	No	No	No	No

## INTRODUCTION

1. The Panel, Geoff Brunson, John Humphrey and John Keeves (sitting President), declined to conduct proceedings on an application by London City Equities Limited in relation to Gro-Aust Holdings Limited's bid for Tranzact Financial Services Limited. The application concerned (among other things) timely provision of information, disclosure in Tranzact's independent expert report and whether ASIC's policy on joint bids applied. The Panel considered that there was no reasonable prospect that it would declare the circumstances unacceptable.
2. In these reasons, the following definitions apply.

<b>Gro-Aust</b>	Gro-Aust Holdings Limited
<b>Grosvenor</b>	Grosvenor Financial Services Limited
<b>LCE</b>	London City Equities Limited
<b>Tranzact</b>	Tranzact Financial Services Limited

## FACTS

3. Tranzact is an ASX listed company (ASX code: TFS) that provides financial products and services to financial planners, accountants and trustees. It is majority owned by Gro-Aust, which is in turn majority owned by Grosvenor.
4. On 30 August 2013, Tranzact announced a strategic review, noting the challenging conditions in its self-managed superannuation fund business. On 17 September 2013, Tranzact announced that it had decided to sell its interest in two businesses (Templetons and Camelot NZ)<sup>1</sup> and close its Investor Directed Portfolio Services business.

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<sup>1</sup> Tranzact disclosed that it was in discussion with Grosvenor for Grosvenor to acquire Camelot NZ

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5. On 16 October 2013, LCE was informed by Gro-Aust that it intended to make a takeover bid for Tranzact. On 6 November 2013, Gro-Aust announced an off-market bid for Tranzact at \$0.12 per share, lodged its bidder's statement and gave a copy to Tranzact. Gro-Aust had voting power of 60.43% in Tranzact at that date.
6. On 7 November 2013, Tranzact announced that it had formed a committee of independent directors to consider the offer, had appointed a financial adviser and advised its shareholders to take no action in respect of their shares.<sup>2</sup> On 12 November 2013, Tranzact announced that it had appointed Pitcher Partners to prepare an independent expert report.
7. On 22 November 2013, Gro-Aust dispatched its bidder's statement.
8. On 3 December 2013, Gro-Aust declared its bid unconditional and announced that it would pay accepting shareholders within 5 business days. At this stage, Gro-Aust had voting power of 60.99% in Tranzact.
9. On 5 December 2013, Tranzact announced that it expected to make an announcement updating shareholders on timing for the dispatch of the target's statement once it received the independent expert report from Pitcher Partners.
10. On 9 December 2013, Gro-Aust announced that ASIC had agreed to modify the *Corporations Act 2001 (Cth)* so that Tranzact's target's statement could be served on Gro-Aust, lodged with ASIC and sent to ASX by no later than 16 December 2013 and dispatched by no later than 19 December 2013. Gro-Aust agreed to extend the bid period to 6 January 2014 to facilitate ASIC giving relief.
11. On 16 December 2013 Tranzact lodged its target's statement.
12. On 3 January 2014 Gro-Aust extended the bid period to 23 January 2014.

## APPLICATION

### Declaration sought

13. By application dated 17 January 2014, LCE sought a declaration of unacceptable circumstances. LCE submitted (among other things) that:
  - (a) The delay in providing the target's statement was contrary to an efficient, competitive and informed market and Tranzact shareholders "*were rushed into accepting the offer and did not have a reasonable time to consider the proposal*".
  - (b) There were information deficiencies and errors in the bidder's and target's statements, in particular:
    - (i) the bidder's use of the last trading price prior to its bid announcement of \$0.09 was misleading given LCE had to withdraw from the market at \$0.10 because it became an 'insider' on 16 October 2013 when LCE was informed of Gro-Aust's intentions and
    - (ii) there were "*errors of fact, typographical errors and illogical assumptions*" in the independent expert report.

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<sup>2</sup> Tranzact's advice to its shareholders to take no action was reiterated on 12 November, 5 December and 10 December 2013

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- (c) Given Gro-Aust's pre-existing control of Tranzact and connections between Gro-Aust, Grosvenor and other Tranzact shareholders who were officers or employees of Gro-Aust and Grosvenor, ASIC's joint bid policy should apply (in particular the requirement that joint bidders must match or accept a rival bid).
- (d) Tranzact's refusal to supply LCE with information suggested that Tranzact was under instructions not to seek a counter bidder.

#### Interim order sought

- 14. LCE sought an interim order to the effect that Gro-Aust extend the closing date of its bid until 15 February 2014 to enable Tranzact to consider whether to update its shareholders. On 22 January 2014, Tranzact extended its bid period to 14 February 2014. Therefore it was not necessary to consider whether an interim order should be made.

#### Final orders sought

- 15. LCE sought final orders to the effect that Tranzact appoint a new independent expert and commission a party to locate a competitive rival bidder and Gro-Aust offer withdrawal rights to accepting shareholders. LCE also sought a final order that the sale of Camelot NZ only be undertaken in accordance with the ASX listing rules.

## DISCUSSION

#### Delay in providing the target's statement

- 16. LCE submitted that the delay in providing the target's statement left Tranzact shareholders with inadequate information for 6 to 7 weeks and LCE had not received its copy of the target's statement until 23 December 2013, by which time Gro-Aust had increased its shareholding to at least 71.0%. LCE also submitted that during this period, Gro-Aust was promoting its bid and Tranzact shareholders were "*rushed into accepting*" and did not have a reasonable time to consider the bid.
- 17. Gro-Aust submitted that, before giving the extension of time to Tranzact, ASIC was concerned to ensure that Tranzact shareholders had a reasonable opportunity to consider the target's statement and independent expert report and requested Gro-Aust to extend its bid. Gro-Aust agreed to do so.<sup>3</sup>
- 18. Gro-Aust attached to its preliminary submission a letter from Tranzact to LCE dated 23 December 2013, which provided the following explanation of the delay in lodging and dispatching the target's statement:

*...the Independent Directors endeavoured to ensure that all up to date financial and other information in respect of Tranzact was provided to Pitcher Partners as expeditiously as possible. It transpired that the provision and analysis of that information to and by Pitcher Partners in a timely way was not without its difficulties. As you may be aware, Tranzact's senior management, in particular its Chief Financial Officer, are employees of Grosvenor. It was necessary to obtain virtually all of the historical and forecast financial information in*

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<sup>3</sup> See paragraph 10

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*respect of Tranzact which Pitcher Partners required for the purpose of preparing the IER from the CFO and other Grosvenor employees...*

*Against this background, Pitcher Partners were mindful of the need to verify as much of the information provided to them as possible to external sources and underlying transaction documents...<sup>4</sup>*

19. The Panel in *Patrick Corporation Limited 04*<sup>5</sup> stated that “legislature (and ASIC in a number of its Policy Statements) had indicated that two weeks is an appropriate minimum period for shareholders in a target company to have the bidder’s statement and target’s statement prior to closure of an offer”. Having regard to Gro-Aust’s further extension of its bid period to 14 February 2014, we do not need to consider whether Tranzact shareholders had sufficient time to consider Gro-Aust’s bid after the first extension.
20. From the time Gro-Aust announced its bid on 6 November 2013 to when it declared its bid unconditional on 3 December 2013, its voting power in Tranzact increased from 60.43% to 60.99%. On 13 December 2013, Gro-Aust’s voting power in Tranzact had increased to 69.09%. It is reasonable to conclude that those Tranzact shareholders who accepted during this period did so in the knowledge that they had not received the target’s statement but had received Tranzact’s advice to take no action in relation to the bid. We do not consider that Gro-Aust’s promotion of its bid, by declaring its bid unconditional and providing accepting Tranzact shareholders the incentive of payment within 5 business days, resulted in those shareholders being “rushed into accepting” the offer. The shareholders were free to wait.

#### **The bidder’s and target’s statements**

##### *Disclosure of premia*

21. LCE submitted that on 16 October 2013 Grosvenor advised LCE that it was intending to make a bid. As a result, LCE withdrew its \$0.10 per share buying orders.
22. Gro-Aust’s bidder’s statement disclosed that the bid represented a:
  - 33% premium to the \$0.09 closing Tranzact share price on 5 November 2013 (the day before the bid was announced)
  - 28.6% premium to the 3 month VWAP and
  - 30.6% premium to the 6 month VWAP.<sup>6</sup>
23. LCE submitted that it was incorrect for Gro-Aust to compare \$0.09 to its bid price, given that LCE was forced to withdraw from the market at \$0.10.
24. Gro-Aust submitted that it had informed LCE of its intention to make a bid after LCE had confirmed that it was willing to become an insider. LCE subsequently informed Gro-Aust that it had previously placed Tranzact on its ‘do-not-trade’ list. Gro-Aust also submitted that:

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<sup>4</sup> The letter also stated that the Pitchers Partners “considered that the Camelot structure was extremely complex and that there were uncertainties as to the approach to take in valuing Tranzact’s interest in the Camelot structure”

<sup>5</sup> [2006] ATP 16, [36(b)]

<sup>6</sup> See for example page 1 of the Chairman’s letter to the bidder’s statement. Both VWAPs were calculated up to and including 5 November 2013

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- (a) the last trade prior to 16 October 2013 occurred on 14 October 2013 at \$0.085
  - (b) the VWAP comparison would likely still have been materially correct even if LCE had remained in the market for Tranzact shares given the limited liquidity in Tranzact shares and
  - (c) a comparison of the premium implied by the offer to the last available spot price was less accurate than the comparison to the 3 or 6 month VWAP.
25. We do not consider that LCE's withdrawal from the market on 16 October 2013 resulted in misleading disclosure of the premium. The use of \$0.09 closing share price on 5 November 2013 to calculate a bid premium was made with disclosure of premia comparing 3 and 6 month VWAPs to the bid price. We agree with Gro-Aust that in this case the use of a 3 or 6 month VWAP is likely to be the most useful way to present bid premia.<sup>7</sup>

#### *The independent expert report*

26. LCE provided a list of issues in relation to the independent expert report and submitted that the report included "*errors of fact, typographical errors and illogical assumptions*".
27. The Panel in *Minemakers Limited 02*<sup>8</sup> and the review Panel in *Minemakers Limited 02R*<sup>9</sup> said that the Panel should not undertake inquiries into the correctness of an independent expert report in the absence of strong preliminary indications of:
- (a) a clear fault in the methodology, which would normally include non-compliance with relevant industry codes
  - (b) statements that are plainly false and material to the conclusion
  - (c) the expert having reached a conclusion that no reasonable expert could reasonably arrive at
  - (d) a question mark over the independence of the expert
  - (e) materially deficient disclosure to a degree that would lead to an uninformed market or
  - (f) some other basis taking the issue beyond what might be described as simply matters on which experts might disagree.
28. Tranzact provided in its preliminary submission a letter from Pitcher Partners responding to LCE's submissions in relation to its report. In addition to responding to more substantive issues, Pitcher Partners acknowledged that there were a number of typographical and other errors in the report.
29. While we consider that Pitcher Partner's report could have been better prepared, most of the issues raised by LCE were either not material or would not have caused

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<sup>7</sup> See *Minemakers Limited* [2012] ATP 8, [53]-[59]. For disclosing its bid premium based on the date of dispatch of a bidder's statement for a scrip bid – see *General Property Trust* [2004] ATP 30, [36]-[40] and Guidance Note 18, *Takeover Documents*, [27]

<sup>8</sup> [2012] ATP 13, [20]

<sup>9</sup> [2013] ATP 16, [10]-[11]

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the expert to reach a different conclusion were those issues to have been addressed. In considering the remaining issues raised by LCE and Pitcher Partners' response to them, nothing has come to our attention to suggest that they go beyond matters of judgment in respect of which experts might reasonably disagree. For example, LCE submitted that Pitcher Partners did not include some comparable companies which would have supported a higher valuation. Gro-Aust submitted that these companies were not comparable as they had a materially higher market capitalisation than Tranzact (by a factor of more than 2 to 1). Pitcher Partners considered that these companies were not comparable because, among other things, they had significantly more funds under management compared to Tranzact. We consider these are, prima facie, reasonable explanations, and therefore we do not have sufficient reason to second-guess the expert.

#### ASIC's joint bid policy

30. LCE submitted that ASIC's policy on joint bids should apply because:
  - (a) Gro-Aust had pre-existing control of Tranzact
  - (b) there were a number of Tranzact shareholders who were associated with, or otherwise close to, Gro-Aust and
  - (c) of the "apparent speedy" acceptances of those "close shareholders of" Gro-Aust.
31. ASIC's Regulatory Guide 9, *Takeover bids*, describes ASIC's policy in relation to joint bids. ASIC defines a joint bid as involving "two or more parties (joint bidders or acquirers) agreeing to seek control of a target entity by a takeover bid (joint bid)..."<sup>10</sup> and states that:

*The entry into joint bid or scheme arrangements will give each joint bidder or proponent the voting power of the collective pre-bid stake (i.e. the sum of each joint bidder or proponent's voting power in the target). The existence of this higher pre-bid stake, or even the mere fact of the parties joining forces, may discourage rival bids or schemes and any ensuing auction for control of the target.*<sup>11</sup>
32. One of the conditions to ASIC relief for joint bidders is a requirement that joint bidders and their associates either accept or match a rival bid.<sup>12</sup>
33. LCE did not provide any substantive evidence that Gro-Aust was associated with any shareholders who accepted the bid. If LCE had provided such evidence, it may have led to a finding that there was a contravention of the takeovers prohibition or the substantial holding provisions. Even if such contraventions were established, it would not necessarily follow that ASIC's policy on joint bids would apply in the circumstances of the application.

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<sup>10</sup> RG 9.527

<sup>11</sup> RG 9.530

<sup>12</sup> RG 9.537

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#### Tranzact's refusal to supply LCE with information

34. LCE submitted that Tranzact's refusal to supply LCE with information suggested that Tranzact was under instructions not to seek a counter bidder. LCE provided no other material that would be capable of supporting such a finding.

#### DECISION

35. For the reasons above, we do not consider that there is any reasonable prospect that we would make a declaration of unacceptable circumstances or the orders sought by the applicant. Accordingly, we have decided not to conduct proceedings in relation to the application under regulation 20 of the *Australian Securities and Investments Commission Regulations 2001 (Cth)*.

#### Orders

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

**John Keeves**

**President of the sitting Panel**

**Decision dated 24 January 2014**

**Reasons published 7 February 2014**

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### Advisers

Party	Advisers
Gro-Aust	Minter Ellison
London City Equities Limited	NA
Tranzact	HWL Ebsworth TC Corporate