Australian Government

Takeovers Panel

Reasons for Decision

Ainsworth Game Technology Limited 01 & 02 [2016] ATP 9

Catchwords:

Undertakings – decline to make a declaration – association – relevant agreement – understanding – acting in concert – family – structural links – voting – shareholder approval – efficient competitive and informed market – Eggleston principles – standing

Corporations Act 2001 (Cth), sections 12(2), 256C, 602, 606, 611, 657A

Australian Securities and Investments Commission Regulations 2001, regulation 16(1)(a)

Crowe-Maxwell v Frost [2016] NSWCA 46, Tinkerbell Enterprises Pty Limited as Trustee for The Leanne Catelan Trust v Takeovers Panel [2012] FCA 1272, Attorney-General (Cth) v Alinta Limited [2008] HCA 2, Bateman & Ors v Newhaven Park Stud Ltd & Others [2004] NSWSC 566, Village Roadshow Ltd v Boswell Film GmbH [2004] VSCA 16, McMillan Properties Pty Ltd v W C Penfold Ltd and Another (2001) 40 ACSR 319, Re Tiger Investment Co Ltd [1999] 33 ACSR 438, R v L (1991) 174 CLR 379, Blatch v Archer (1774) 1 Cowp 63; 98 ER 969

Guidance Note 4: Remedies General

Investa Office Fund [2016] ATP 6, Phosphate Australia Limited [2015] ATP 5, Bentley Capital Limited 01R [2011] ATP 13, CMI Limited 01R [2011] ATP 5, CMI Limited [2011] ATP 4, Viento Group Limited [2011] ATP 1, Mount Gibson Iron Limited [2008] ATP 4, Anaconda Nickel Limited 16 & 17 [2003] ATP 15, Colonial First State Property Trust Group [2002] ATP 15

Interim order	IO undertaking	Conduct	Declaration	Final order	Undertaking
NO	YES	YES	NO	NO	YES

INTRODUCTION

1. The Panel, Tracey Horton, Ron Malek (sitting President) and John Sheahan QC, declined to make a declaration of unacceptable circumstances in relation to the affairs of Ainsworth Game Technology Limited after accepting undertakings. The two applications (heard together) concerned voting by family members on the sale of Mr Leonard Ainsworth's 52.52% stake in AGI under item 7 of s611.[1] The Panel accepted undertakings that (among other things) Mr Ainsworth's wife, Mrs Margarete Ainsworth, will not vote on the resolution to approve the sale. The Panel considered that the undertakings sufficiently addressed the unacceptable circumstances.

2. In these reasons, the following definitions apply.

AGI	Ainsworth Game Technology Limited
Fortress	Fortress Centaurus Global Master Fund Ltd
Mr Ainsworth	Mr Leonard Ainsworth, including (where the context requires) his controlled entities Associated World Investments Pty Ltd, Kjerulf David Pty Ltd and Baclupas

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

	Pty Ltd
Mrs Ainsworth	Mrs Margarete Ainsworth, including (where the context requires) her controlled entity Votraint
Novomatic	Novomatic AG
Resolution	Proposed resolution for AGI shareholders to approve the Transaction pursuant to item 7 of s611 as set out in AGI's notice of meeting dated 4 May 2016
Sons	Messrs Stephen Ainsworth, Paul Ainsworth, Simon Ainsworth and Christian Ainsworth, including (where the context requires) companies controlled by any one or more of them
Transaction	Proposed sale of 52.52% of AGI by Mr Ainsworth to Novomatic, as announced by AGI on 23 February 2016
Votraint	Votraint No. 1019 Pty Ltd

FACTS

3. AGI is an ASX listed company (ASX code: AGI).

4. Mr Ainsworth is the founder and chairman of AGI and is the controlling shareholder holding 53.71% of AGI.

5. Mrs Ainsworth is the second largest shareholder in AGI holding 8.96% through Votraint.

6. The Sons collectively hold 2.51% of AGI. Of this, 1.45% is held by Baclupas Pty Ltd in which Mr Ainsworth and Mr Stephen Ainsworth each have a relevant interest. That 1.45% is included in the shares sold under the Transaction.

7. On 23 February 2016, AGI announced that Mr Ainsworth had entered into a share sale and purchase agreement pursuant to which he agreed to sell 52.52% of AGI (being his entire holding in AGI at the time) to Novomatic for $2.75 cash per share (ie, the Transaction).

8. The purchase price for Mr Ainsworth's shares included a 33% control premium over the market price of AGI shares based on the 30 day volume weighted average price prior to the announcement of the Transaction.

9. Mr Ainsworth will retain 1.19% of AGI following the Transaction. These shares were acquired under AGI's dividend reinvestment plan, after the sale to Novomatic was agreed.

10. Implementation of the Transaction requires shareholder approval under item 7 of s611.

11. On 4 May 2016, AGI dispatched a notice of meeting to shareholders in respect of the Resolution, including an independent expert's report. The notice of meeting disclosed that:

> *"Based on enquiries made by Independent Directors and in consideration of legal advice obtained by them, the Independent Directors at this time have not concluded that any Shareholders are excluded from voting on the Resolution on the basis of section 12(2)(c) of the Corporations Act. However, this is a matter of fact and will be continually monitored and the final decision as to which Shareholders will be permitted to vote on the Resolution will be made by the Chair immediately prior to the Meeting."*

12. On 9 May 2016, Votraint voted in favour of the Resolution. Votraint's parcel of shares represents approximately 19% of those that might be voted at the meeting.

13. If the Transaction is completed:

    (a) Novomatic's holding in AGI will increase to 52.74%, from 0.23% it already holds

    (b) Mr Ainsworth will hold 1.19% of AGI and

    (c) Mrs Ainsworth will hold 8.96% of AGI.

14. Prior to submitting the applications to the Panel, both ASIC and Fortress communicated to AGI their concerns that Mrs Ainsworth (and, in the case of Fortress, also the Sons) should be excluded from voting in favour of the Resolution. While AGI engaged with ASIC, it nonetheless formed the view that Mrs Ainsworth and the Sons[2] were not excluded from voting, as per the position set out in its notice of meeting dated 4 May 2016.

APPLICATION

Declaration sought

15. On 13 May 2016, ASIC made an application to the Panel and on 17 May 2016, Fortress made an application to the Panel, each seeking a declaration of unacceptable circumstances in relation to the affairs of AGI.

16. ASIC submitted that:

    (a) Mr Ainsworth and Mrs Ainsworth have a relevant agreement or are acting in concert in connection with the Transaction, and accordingly Mrs Ainsworth is an associate of Mr Ainsworth for the purposes of Chapter 6 and should be excluded from voting in favour of the Resolution under item 7(a) of s611 and

    (b) the notice of meeting containing the Resolution failed to disclose that Mr Ainsworth and Mrs Ainsworth's collective holding following completion of the Transaction could represent a blocking stake for the purposes of Chapter 6A, contrary to the requirements of item 7(b) of s611.

[2] However, Stephen Ainsworth has been excluded from voting (see paragraph 62)

17. ASIC submitted that, as a result of the association between Mr Ainsworth and Mrs Ainsworth, a contravention of s606 would occur if Mrs Ainsworth voted in favour of the Resolution and the Transaction completed.

18. Fortress submitted that Mr Ainsworth had entered relevant agreements with each of Mrs Ainsworth and the Sons for the purposes of voting and disposal of AGI shares. Fortress also submitted that they were acting or proposing to act in concert in connection with the Resolution. It submitted that accordingly:

    (a) Mrs Ainsworth and the Sons are associates of Mr Ainsworth under sections 12(2)(b) and (c) and cannot vote in favour of the Resolution and

    (b) *"If [Mrs Ainsworth or the Sons] vote in favour of the Resolution and those votes are improperly counted with the result that the Share Transaction completes, Novomatic will acquire a relevant interest in voting shares in [AGI] causing its voting power to increase from below 20% to more than 20% and constituting a contravention of section 606."*

19. Fortress also submitted that Mr Ainsworth's public comments indicated that he had a relevant agreement with Mrs Ainsworth and the Sons to the effect that they would each retain their shares and refuse to sell to any third party bidder. This, it submitted, gave rise to the acquisition by him of a relevant interest in their AGI shares contrary to s606.

20. Fortress submitted that, in the alternative, even if the Ainsworth family members were not associates, owing to their relationship with Mr Ainsworth and their respective interests in the outcome of the Transaction, Mrs Ainsworth and the Sons were not (and would not be seen to be) disinterested shareholders. It submitted that "*The importance of confidence in the integrity of the market for corporate control demands that they be excluded from voting in favour of the Resolution*."

21. On the question of association, ASIC and Fortress submitted there were several factors that demonstrated that Mrs Ainsworth (and, in the case of Fortress, also the Sons) were associated with Mr Ainsworth, including:

    (a) Mrs Ainsworth had demonstrated actions which were uncommercial

    (b) they have a shared purpose or goal

    (c) they have structural links

    (d) there are common investments and dealings and

    (e) they have demonstrated prior collaborative conduct.

22. As the applications concerned related matters, under regulation 16[3] we directed that they be heard together.

Interim orders sought

23. ASIC sought an interim order that Mrs Ainsworth must not dispose of, transfer or grant a security interest over any shares or interests in shares in AGI until the

[3] *Australian Securities and Investments Commission Regulations 2001*, reg 16(1)(a)

earliest of further order of the Panel, the determination of proceedings or 2 months from the date of the orders. The President accepted undertakings from Mrs Ainsworth and Votraint to this effect (Annexure A).

24. Fortress sought an interim order requiring that the AGI shareholders' meeting be adjourned until its application was determined. AGI agreed to adjourn the shareholders' meeting until 17 June 2016, and subsequently gave undertakings to the Panel to further adjourn the meeting until 27 June 2016, which we accepted (Annexure C).

Final orders sought

25. ASIC sought final orders that:

    (a) Mrs Ainsworth not vote in favour of the Resolution (and that AGI disregard any such votes cast)

    (b) Mrs Ainsworth not dispose of her AGI shares prior to the meeting

    (c) Mr Ainsworth and Mrs Ainsworth (and Votraint) give notice of their substantial holding in AGI and their association and

    (d) AGI dispatch a supplementary notice of meeting disclosing the association of Mr Ainsworth and Mrs Ainsworth, that Mrs Ainsworth will be excluded from voting on the Resolution, and what the collective holding of Mr Ainsworth and Mrs Ainsworth will be following completion of the Transaction and the implications of that collective holding.

26. Fortress sought a final order requiring AGI to disregard any votes in favour of the Resolution cast by Mrs Ainsworth and the Sons.

DISCUSSION

Standing

27. Fortress' application submitted it held 2.23% of AGI through Fortress Centaurus Global (Ireland) Ltd, which was in turn held by HSBC as nominee. AGI challenged this submission, stating that it could not identify Fortress on the register. It then became apparent that until 17 May 2016 (being the date of Fortress' application) Fortress Ireland had held cash settled equity derivatives which (before the position was unwound) notionally covered 2.20% of AGI. On 17 May 2016, Fortress Ireland acquired the beneficial interest in a physical shareholding of 2.20%.

28. Fortress initially described Fortress Ireland as *"a wholly owned subsidiary of Fortress"*, although subsequently it provided information that Fortress held a debt security issued by Fortress Ireland, rather than a shareholding in Fortress Ireland. Fortress submitted that the effect of the debt security was that the entire economic interest in Fortress Ireland and its AGI holding rested with Fortress. We informed the parties that we were minded to accept that Fortress had standing to make the application, having regard to the test in s657C(2)(d), although we invited submissions on whether there was a discretionary basis not to allow Fortress' application. We considered that Fortress was presenting an argument on policy

grounds that ASIC was not presenting, and this was an aspect of the matter that warranted ventilation.

Conduct proceedings?

29. Mr Ainsworth owns a controlling interest in AGI, being 53.7%. He decided to sell most of it to Novomatic in a transaction pursuant to which he will receive a significant premium for his parcel of shares. Other shareholders are being asked to approve the Transaction without having an opportunity to share in the premium (cf s602(c)). As far as has been communicated to us, his family members (other than Stephen Ainsworth), including his wife who holds 8.96%, are asserting a right to vote on the Resolution, on the basis that they are not associates of Mr Ainsworth and therefore not precluded from voting in favour of the Resolution under item 7 of s611.

30. This raises for consideration:

    (a) whether Mrs Ainsworth, or any of the Sons, is an associate of Mr Ainsworth, and therefore precluded from voting in favour of the Resolution under item 7 of s611 and

    (b) whether item 7 of s611 or s657A otherwise justify precluding Mrs Ainsworth, or any of the Sons, from voting in favour of the Resolution (conveniently described as "the policy question").

31. We are satisfied that there is a sufficient body of evidence to conduct proceedings on the alleged association of Mr Ainsworth and Mrs Ainsworth. In short, this includes their status as partners, their business dealings and the statements attributed to Mr Ainsworth in the press. We discuss the details below.

32. While the application by Fortress submitted that the Sons are associates of Mr Ainsworth, we do not think there is a sufficient body of material to warrant conducting proceedings on this alleged association.

33. We are also satisfied that we should conduct proceedings on the policy question raised by Fortress about voting restrictions on both Mrs Ainsworth and the Sons even in the absence of an association. There are good reasons to explore the policy question, particularly given the apparently close family relationships of the Ainsworths, the nature of the Transaction, the potential significance of (in particular) Mrs Ainsworth's vote on the outcome of the Resolution and the objects and content of the law.

Preliminary findings

34. Having considered the issues raised in the applications and submissions and rebuttals, we made preliminary findings in relation to association and the policy question and invited comments on them. When making our preliminary

assessment of the material, we relied on our skills, knowledge and experience as practitioners and as members of the sitting Panel.[4]

35. Given that we accept undertakings we have not finalised any conclusion on either the issue of association or the policy question. However, we consider it important to an understanding of the position we have reached, and for the benefit of the market, that we identify in shortened form what our preliminary findings were.

36. We therefore record an edited version of our preliminary findings following our consideration of the responses of the parties.

Association between Mr Ainsworth and Mrs Ainsworth?

37. In *Viento Group Limited*,[5] relying on *Mount Gibson Iron Limited*,[6] the Panel said circumstances which are relevant to establishing an association include:

    (a) a shared goal or purpose

    (b) prior collaborative conduct

    (c) structural links

    (d) common investments and dealings

    (e) common knowledge of relevant facts and

    (f) actions which are uncommercial.

38. We were prepared to infer that some of these elements exist in the current case, although as events transpired we did not need to finalise our views. We turn to these elements now.

Shared goal or purpose

Speaking for Mrs Ainsworth

39. Mr Ainsworth has made public statements in which he is quoted as speaking on behalf of Mrs Ainsworth and her shareholding in AGI. For example, on 28 February 2016 the Australian Financial Review quoted Mr Ainsworth as saying, in respect of whether he would sell to a rival bidder:

> *"If someone wants to get a conglomerate together and make an offer, well they are not going to get very far if they can't lay their hands on my 53 per cent plus another 10 per cent holding my wife has…It's very tightly held so they'd be spinning their wheels."*

40. ASIC submitted that these statements demonstrated Mrs Ainsworth's shared goal or purpose with Mr Ainsworth to ensure the successful implementation of the Transaction.

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[4] See *Tinkerbell Enterprises Pty Limited as Trustee for The Leanne Catelan Trust v Takeovers Panel* [2012] FCA 1272 at [114]
[5] [2011] ATP 1 at [120]
[6] [2008] ATP 4

41. Mr Ainsworth submitted this comment was made "*off-the-cuff*" without regard for the precision of his answer, and was a matter of opinion rather than being based on any information that Mrs Ainsworth had passed to him.

42. We were inclined not to accept Mr Ainsworth's submissions on this point for a number of reasons:

    (a) the specificity of the remarks

    (b) the certainty of the view expressed and

    (c) the importance of the implications of the remarks, especially given that they were made in a context where they were likely to be reported in the financial press.

43. Mr Ainsworth is a very experienced and astute business person and has long been involved in managing and leading public companies. He would, in our view, well understand the significance of the comments and the importance of not "*speaking off-the-cuff*" on such matters.

44. Mrs Ainsworth submitted that the fact that Mr Ainsworth made a statement to the media was consistent with an expectation as to how she would vote but an "*expectation that something will happen does not sustain a finding that an arrangement for that thing to happen is in place*." But it might, and we were inclined to think that it did, assist to sustain such a finding. Moreover, there has been no retraction by either Mr Ainsworth or Mrs Ainsworth.

45. We were prepared to infer that Mr Ainsworth publicly referred to Mrs Ainsworth's stake as a reason for bidders to think they had no hope of success without his and her support (for which he could speak). We were also prepared to infer that Mr Ainsworth's statement was intended to convey to AGI shareholders that a competing transaction was unlikely to arise and accordingly, shareholders should vote in favour of the Resolution.

46. Mr Ainsworth's statements are more consistent with he and Mrs Ainsworth having a shared goal or purpose to ensure the Transaction is implemented. If Mrs Ainsworth was truly independent of Mr Ainsworth, there would be no reason to mention her holding in this context.

47. It follows from this and the other reasons we outline below, and we were prepared to infer that, there is an agreement, arrangement or understanding between Mr Ainsworth and Mrs Ainsworth, or they are acting in concert, in relation to the affairs of AGI.

Prospect of personal gain

48. ASIC and Fortress each submitted that the prospect of Mrs Ainsworth enjoying significant personal gains from the Transaction, having regard to the consideration value and the control premium of 33%, supports there being an association.

49. Mr Ainsworth submitted:

> *"The intended use [of the proceeds of the Transaction] is twofold. Part will go straight into my Private Ancillary Fund for distribution to medical research and charities. The balance will be reinvested, with part of the earning going into the PAF and the remainder going to me for my lifestyle…None of it is to be distributed to the persons the subject of the applications before the Takeovers Panel."*

50. In the case of spouses, the wealth of one immediately or ultimately enures to the benefit of the other in most cases. We see no reason to think it is different here, noting the submission as to use of the proceeds above. We were prepared to infer that Mrs Ainsworth has some prospect of directly or indirectly benefiting from the financial rewards accruing to Mr Ainsworth from the Transaction. The same does not follow for the Sons, who are all adults and, as indicated in the submissions we received on this, make their own way. Of course, this could properly be said of Mrs Ainsworth also, but she closely shares a life with Mr Ainsworth, which in our view puts her in a different position.

51. ASIC also submitted it would be a significant and somewhat surprising act for a spouse to oppose a very large transaction proposed by their partner. We agree. In our view, a spouse would, absent unusual circumstances, prefer to see their spouse's goals achieved, rather than contribute to their disappointment. This is what we understand the Panel in *Bentley Capital 01R* alluded to when it said: "*We agree that the mere fact of being husband and wife does not make two people associates, despite the weight of human experience that might normally suggest otherwise*."[7] While inferences deriving from the "weight of human experience" might not be determinative of association, they may nevertheless be of some significance.

Structural links

52. ASIC and Fortress submitted there were structural links between Mr Ainsworth and Mrs Ainsworth that support an association, pointing to (among other things) their family relationship, historical shareholdings and directorships, and the interactions between AGI and Mrs Ainsworth.

Close family relationship

53. Mr Ainsworth and Mrs Ainsworth are married and have been together for 51 years. They reside together. Mr Ainsworth and Mrs Ainsworth have two children.[8]

54. We were prepared to infer that Mr Ainsworth and Mrs Ainsworth have a close family relationship. In our view their situation makes this a relevant circumstance. As to this, what Barrett J said in *Bateman v Newhaven Park Stud Ltd* is perhaps misunderstood. The often quoted observation is:

> *"…the mere fact of family relationship should be left to one side. King George V and Kaiser Wilhelm II were first cousins. They did not act in concert between August 1914 and November 1918 and probably at other times as well. In the absence of evidence of*

[7] *Bentley Capital Limited 01R* [2011] ATP 13 at [53]
[8] Mr Ainsworth's youngest sons

> *agreement or dependency or actual influence implying commonality of action, family relationships…of themselves prove nothing relevant to an inquiry such as the present."* [9]

55. Context is always important though. The familial connection in that case was that of siblings. Here, the familial relationship is spousal. This is generally of some significance, absent a suggestion of estrangement. Spouses are in a freely chosen legal relationship. Siblings are not. As Brennan J said in *R v L*:

> *"…Marriage is an institution which not only creates the status of husband and wife but also, without further or specific agreement, creates certain mutual rights and obligations owed to and by the respective spouses."*[10]

56. The observation of Barrett J cannot be taken as meaning that in all cases family connection is irrelevant. At the very least, as the Panel said in *Bentley Capital 01R* at [56], "*the family links make one part of the factual matrix*".[11] Fortress submitted that there is much more than just the family connections in this case. We agree. The Panel has considered family relationships relevant in previous decisions;[12] we considered it relevant here.

57. The position adopted by Barrett J is more apposite to the case of the Sons in our view.

Family controlled business

58. The conduct of each of AGI, Mr Ainsworth and Mrs Ainsworth supports a view of AGI as being operated as a family controlled business, and Mrs Ainsworth being part of the family control, even though (as AGI submitted) AGI's board "*is primarily comprised of independent non-executive directors with Mr Ainsworth being the only board member from the Ainsworth family*". The evidence suggests that Mrs Ainsworth is not merely an independent, major shareholder but rather operates with Mr Ainsworth as a bloc. We had regard to, among other matters set out in these reasons, the following:

    (a) Mr Ainsworth has communicated with AGI and its officers in relation to company matters via Mrs Ainsworth's personal email account.

    (b) Mrs Ainsworth has sent company documents on behalf of Mr Ainsworth to AGI in the past.

    (c) AGI has prepared substantial holder notices on behalf of Mr Ainsworth and Mrs Ainsworth on various occasions.

59. Furthermore, the limited engagement between AGI and Mrs Ainsworth regarding her investment in AGI, including in relation to the Transaction, is not typical of a listed company's approach to one of its major, independent shareholders.

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[9] *Bateman & Ors v Newhaven Park Stud Ltd & Others* [2004] NSWSC 566 (29 June 2004) at [34]
[10] *R v L* (1991) 174 CLR 379
[11] [2011] ATP 13
[12] For example, *Bentley Capital Limited 01R* [2011] ATP 13, *Viento Group Limited* [2011] ATP1, *CMI Limited* [2011] ATP 4 and *CMI Limited 01R* [2011] ATP 5

60. Mrs Ainsworth submitted *"The fact that Mr Ainsworth may on one or more occasion have used Mrs Ainsworth's email account to communicate with AGI - no doubt an instance of domestic technological arrangements - scarcely renders Mr and Mrs Ainsworth "associates" within the meaning of the Act."* AGI and Mrs Ainsworth also submitted that the common preparation of substantial holder notices is not unusual and is indicative of the use of a similar administrative channel by AGI to service both its own, and its substantial shareholders', regulatory and compliance needs.

61. In isolation the parties' conduct may not be enough to warrant an inference of association. However, in totality, it is consistent with and supports the inference that we were prepared to draw that Mr Ainsworth and Mrs Ainsworth's holdings in AGI were operated by them as a bloc, or at least on a basis of consistent cooperation, suggestive of AGI being a family controlled business.

62. No evidence has been provided to warrant a similar inference in relation to the Sons, although we note Stephen Ainsworth is co-owner of Baclupas Pty Ltd with Mr Ainsworth.[13]

Common shareholdings and directorships

63. Mr Ainsworth and Mrs Ainsworth have held common directorship positions in fifteen entities, including AGI. We note AGI's submission that it was a shelf company and did not trade during the time in which Mrs Ainsworth was a director.

64. Mr Ainsworth and Mrs Ainsworth have commonly held shares in six proprietary companies (and continue to commonly hold shares in one of those companies). Mr Ainsworth and Mrs Ainsworth also each held shares in public company Aristocrat Leisure Ltd (ASX: ALL), and hold shares in AGI.

65. Mrs Ainsworth submitted that the last occasion on which she and Mr Ainsworth were both directors of the one company was in 2003.

66. We accept that most of these common shareholdings and directorships are historical. They are nonetheless structural links and evidence a history of Mr Ainsworth and Mrs Ainsworth working together for a common purpose. We have not been provided with any evidence that their preparedness to work together has changed. We were prepared to infer that Mr Ainsworth and Mrs Ainsworth continue to work together with respect to AGI.

[13] AGI submitted that Stephen Ainsworth has been excluded from voting any AGI shares on the Resolution

Previous "associate" classification

67. Fortress pointed to previous examples where AGI had classified Mrs Ainsworth as an "associate" of Mr Ainsworth. Relevantly:

    (a) On 22 November 2004, AGI issued a replacement prospectus in relation to the issue of convertible notes which stated *"Each of the Ainsworth Family Holders are associates of Mr Ainsworth."* The "Ainsworth Family Holders" included Votraint (Mrs Ainsworth's controlled entity).

    (b) On 21 November 2008, AGI issued a notice of general meeting, which included a resolution for purposes including Chapter 2E and ASX Listing Rules 7.1 and 10.11. The transaction the subject of the resolution involved amending the terms of the trust deed relating to the convertible notes described above. The voting exclusion statement read:

        "…the Company will disregard any votes cast on the Resolution by…Mr Len Ainsworth and associates (includes entities controlled by Mr Ainsworth, his spouse and children as per the Corporations Act)…"

68. In the case of the 2004 replacement prospectus, there was no reason to classify Mrs Ainsworth as an associate of Mr Ainsworth. She was nonetheless described that way. AGI submitted that the reference in the prospectus *"is the only reference to "associate" and nothing turned on that reference in a Corporations Act sense."*

69. In the case of the relevant resolution the subject of the 2008 notice of meeting, it is possible that Mrs Ainsworth would have been excluded as a "related party". AGI submitted *"AGI did not consider Mrs Ainsworth to be an associate of Mr Ainsworth. The language used to describe the exclusion of Mrs Ainsworth as Mr Ainsworth's spouse is poorly drafted."* However, the voting exclusion statement describes Mrs Ainsworth as an associate of Mr Ainsworth *"as per the Corporations Act"*. This is precise.

70. We were inclined not to accept AGI's and Mrs Ainsworth's submissions to the effect that the references to "associates" were a result of poor drafting or were not intended to mean "associate" in the context of the Corporations Act. In our experience, the relevant documents would ordinarily be reviewed by lawyers and the voting exclusion statements in particular would be closely considered. In addition, Mr Ainsworth himself submitted in this matter before us that the parties were "associated parties" (see below). We were prepared to infer that the references to associates were a reflection of the AGI directors' view (including Mr Ainsworth's) that the parties were associates at the time. There is no evidence that anything has changed since then that would disassociate them.

71. Mr Ainsworth submitted that the "Ainsworth Family Members" were described as associates of Mr Ainsworth in the 2004 prospectus and 2008 notice of meeting *"because they were associated parties"*. Mr Ainsworth drew this conclusion on the basis that he approached those parties and asked them to be involved in the capital raising.

72. Mr Ainsworth further submitted that he did not want to involve his family members in the decision to enter into the Transaction *"so that they are not prevented*

from voting in respect of the Share Sale Transaction." However it does not follow that there is no association between the parties. Nor is it necessarily evidence establishing that they are not associated in relation to the Resolution. We were prepared to infer that Mr Ainsworth had taken care to seek to create the appearance that he and Mrs Ainsworth were not associates in relation to the Resolution.

Common investments and dealings

73. Mrs Ainsworth submitted that *"As a result of the capital sum provided to Mrs Ainsworth in 1995…Mrs Ainsworth since that time has been financially independent of Mr Ainsworth"*. Mr Ainsworth also submitted that Mrs Ainsworth *"is fiercely independent and astute."*

74. We were willing to accept that Mrs Ainsworth is financially independent and astute, but noted that:

    (a) Mrs Ainsworth's investment in AGI is, at least indirectly, attributable to the initial capital provided by Mr Ainsworth.

    (b) Mrs Ainsworth's investment in AGI is her most significant investment. It represented approximately 46% of her portfolio as at 30 June 2015 and, with a market value of approximately $70 million,[14] represents approximately 32%.

    (c) Mrs Ainsworth has demonstrated continued support for AGI since her initial investment, including participating in rights issues and (at least recently) a dividend reinvestment plan.

75. We were prepared to infer from their common investments and dealings (see paragraphs 63 – 66) as well as the background to Mrs Ainsworth's investment in AGI that Mr Ainsworth and Mrs Ainsworth have a demonstrated history of working together for a common purpose. In this regard it was of relevance that, despite invitation, Mrs Ainsworth was unable to point to occasions on which as a member of AGI she voted differently from her husband.[15] Given the size of his stake, his voting would generally have been obvious. We were further prepared to infer that Mr Ainsworth and Mrs Ainsworth working together extends to their having a common purpose in relation to the Resolution.

Uncommercial conduct

Engagement between Mrs Ainsworth, Mr Ainsworth, AGI and Novomatic

76. ASIC submitted that actions of Mrs Ainsworth in relation to the Transaction are uncommercial given her status as the second largest shareholder in AGI. ASIC pointed to a level of understanding between Mr and Mrs Ainsworth about the Transaction. We agree with ASIC.

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[14] On the basis of AGI's closing share price on 15 June 2016

[15] The principle in *Blatch v Archer* (1774) 1 Cowp 63; 98 ER 969 at 970 is that: *"… all evidence is to be weighed according to the proof which it was in the power of one side to have produced, and in the power of the other to have contradicted."* (see also *Crowe-Maxwell v Frost* [2016] NSWCA 46 at [91])

77. We had regard to the following:

    (a) Mrs Ainsworth has not discussed her voting intentions in respect of the Resolution with Mr Ainsworth. In this case, the absence of any discussion between spouses who are the largest and second largest shareholders does not indicate independence in our view. Rather it is in our view more consistent with a prior mutual understanding as to common objectives and intentions.

    (b) Mrs Ainsworth has not approached AGI or Novomatic to discuss the Transaction or her voting intentions. As the largest voting shareholder, this seems surprising.

    (c) AGI has not approached Mrs Ainsworth to discuss the Transaction and Resolution, despite her being AGI's largest shareholder who might vote on the Resolution. On the other hand, AGI has been in contact with other shareholders, including some of its 10 most significant institutional shareholders, regarding the Transaction and Resolution. Mrs Ainsworth has not engaged financial advisers to advise her about her holding and how she should respond in connection with the Transaction and Resolution. Given the value of her holding, this is surprising.

    (d) Mrs Ainsworth submitted that she formed her voting intentions on the basis of "*the ASX announcements, the Resolution to Approve the Share Transaction, the Notice of General Meeting, and Explanatory Statement including the Independent Expert's Report issued to shareholders dated 4 May 2016, as well as the recommendation of directors.*" While we would expect these to figure in the decision, we would not expect them to be the only sources of information relied on by such a significant participant in the Resolution.

    (e) Mrs Ainsworth voted in favour of the Resolution on 9 May 2016, being 5 calendar days after the notice of meeting was released on ASX. Mrs Ainsworth submitted that she voted on 9 May because she was leaving Australia on 11 May for an extended period in Europe. In our experience, independent, major shareholders would typically want to wait until nearer the deadline for voting. And one can readily make arrangements to vote from overseas.

78. Neither Novomatic nor GPS (a proxy solicitation firm retained by Novomatic to undertake shareholder engagement and proxy solicitation services in connection with the Resolution) approached Mrs Ainsworth to determine her voting intentions. Novomatic submitted that its legal advisers had recommended that *"for all purposes (ie for planning and also for public messaging) the transaction proposal should be advanced with the intention that none of the family's votes should be counted on for achieving the required majority."*

79. We regard as particularly significant that Mrs Ainsworth voted to approve such an important transaction within 5 days of the notice of meeting being released. This is inconsistent with usual commercial behaviour of shareholders (in particular, professional or sophisticated and independent shareholders), as proxies are

ordinarily lodged closer to the meeting date in order to (i) process the information in the notice of meeting and to seek advice and make necessary inquiries to determine how to vote and (ii) allow time for a potential competing transaction to arise. We regard it as particularly significant given:

(a) Mrs Ainsworth's investment in AGI represents a very large proportion of her portfolio with a market value of approximately $70 million.[16]

(b) Mrs Ainsworth's previous investment decisions with respect to AGI appear to have been largely driven by Mr Ainsworth's track record, yet completion of the Transaction would mean that Mr Ainsworth no longer controls AGI.

(c) Mrs Ainsworth's lack of engagement with Mr Ainsworth, AGI and Novomatic regarding the Transaction and her apparent reliance on information limited essentially to the information in the notice of meeting.

80. The lack of engagement between Mrs Ainsworth, Mr Ainsworth, AGI and Novomatic, in connection with the Transaction and Resolution, is inconsistent with Mrs Ainsworth being an independent, major shareholder.

81. We were prepared to infer that none of Mr Ainsworth, AGI or Novomatic considered it necessary to canvass or engage with Mrs Ainsworth, as AGI's second largest shareholder (and holder of the largest parcel of AGI shares that might be voted on the Resolution according to AGI's determination on voting), regarding her voting intentions.

82. The conduct of Mrs Ainsworth, Mr Ainsworth, AGI and Novomatic described above is consistent with, and we were prepared to infer that it was because of, an agreement, arrangement or understanding between Mr Ainsworth and Mrs Ainsworth, or because they are acting in concert, in relation to the Resolution.

Blocking stake

83. Following completion of the Transaction, Mr Ainsworth will retain a holding of 1.19% of AGI. He acquired this stake by participation in AGI's dividend reinvestment plan (**DRP**). Mr Ainsworth and Mrs Ainsworth would collectively hold a relevant interest in AGI shares of 10.15% if their holdings were aggregated.

84. ASIC submitted that this has been structured to ensure Mr Ainsworth and Mrs Ainsworth will collectively hold AGI shares which could represent a blocking stake for the purposes of Chapter 6A. ASIC submitted "*this blocking stake may have been devised to ensure Novomatic (or any other third party) cannot acquire full control of AGI without Mr Ainsworth's agreement*". ASIC referred to statements made by Mr Ainsworth and Novomatic to the effect that Mr Ainsworth was resistant to a full takeover proposal for AGI.

85. Mr Ainsworth submitted that he elected to participate in the DRP and take his dividend in AGI shares because AGI paid good dividends and he had no reason to consider that this would change by virtue of the Transaction.

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[16] On the basis of AGI's closing share price on 15 June 2016

86. We find these circumstances unusual, even accepting that he considered there to be upside. Mr Ainsworth is proposing to exit his investment in AGI by selling his entire holding (at the time) to Novomatic pursuant to the Transaction. He has then elected to participate in the DRP to acquire 1.19% in AGI, which is not included in the sale and for which he needed to seek Novomatic's permission as there is a "no dealing" clause in the share sale and purchase agreement. We were not inclined to be persuaded by Mr Ainsworth's reasons to accept his dividend in the form of AGI shares rather than cash.

87. Rather, we were inclined to agree with ASIC. We were prepared to infer that Mr Ainsworth's reason for participating in the DRP was to ensure that his holding, aggregated with Mrs Ainsworth's, was more than 10% and by virtue of that he (or they) would retain a degree of control over the future of AGI.

88. While a holding of 8.96% is likely to block compulsory acquisition, a holding above 10% makes sure of it.

Preliminary conclusions as to association

89. Having considered the material, we were prepared to make the findings set out above. On the basis of these preliminary findings, we were prepared to infer that:

    (a) Mr Ainsworth and Mrs Ainsworth are not acting independently of each other in relation to the Resolution.

    (b) There is an agreement, arrangement or understanding between Mr Ainsworth and Mrs Ainsworth that Mrs Ainsworth will vote in favour of the Resolution. Alternatively, they are acting in concert in relation to the Resolution.

90. Accordingly, we were prepared to infer that Mr Ainsworth and Mrs Ainsworth are associates in relation to the affairs of AGI.

91. Whilst we reviewed the submissions and rebuttals on our preliminary findings, we did not need to finalise our views on this given the undertakings.

Unacceptable circumstances if no association?

92. Fortress submitted that it would give rise to unacceptable circumstances if Mrs Ainsworth and the Sons voted in favour of the Transaction. This was based on a principle it submitted underpinned item 7 that approval of the Transaction should be decided only by those shareholders who are, and who are seen to be, disinterested. It submitted that Mrs Ainsworth and the Sons are not, and would not be seen to be, disinterested.

93. AGI submitted that there is no ambiguity within the text of item 7 (insofar as it applies to exclusion from voting) and the provision should be read according to its ordinary meaning. That is, it submitted, the people to be excluded from voting at the shareholders' meeting are the people identified in item 7, as expressly defined by the Act. Mrs Ainsworth also submitted there is no underpinning policy that would justify the exclusion of persons who are not associates from voting in favour of a resolution under item 7.

94. Item 7 provides a mechanism to enable the acquisition of control over voting shares provided the acquisition is approved by "*disinterested shareholders*".[17] What is meant by that is clearly the issue here. AGI's and Mrs Ainsworth's submissions are that it means associates and no more. Fortress' submissions are that it extends to other relationships.

95. The words of item 7 themselves do not lend the Fortress view support. But that is not the end of the inquiry in a Panel application.

96. The purposes of Chapter 6 set out in s602 incorporate the 'Eggleston principles' of time, information and opportunity, and also that the acquisition of voting shares should take place in an efficient, competitive and informed market.

97. Section 657A, like its forerunner provisions, is a broad power. The NCSC described the power in terms of "*an obligation of propriety*". The section overlays the black letter of the law, applying policy whether or not the law has been complied with. Thus s657A(1) says:

> "*The Panel may declare circumstances in relation to the affairs of a company to be unacceptable circumstances. Without limiting this, the Panel may declare circumstances to be unacceptable circumstances whether or not the circumstances constitute a contravention of a provision of this Act.*"

98. So, while the legislation should be given full weight, overlaying it is the Panel's power to declare unacceptable circumstances, exercisable even in the absence of a contravention. Even accepting that item 7 is limited to an acquirer, disposer or an associate (as defined in s12), we think that s657A enables us to make a declaration of unacceptable circumstances in the absence of a finding of association, if (at the risk of paraphrasing):

    (a) there is a control effect and the circumstances appear to us to be unacceptable (s657A(2)(a)) or

    (b) there are otherwise circumstances that appear to us to be unacceptable having regard to the s602 principles (s657A(2)(b)).

99. That is not to say the Panel can operate at large. Section s657A must operate according to a set of principles. Key principles are set out in s657A itself. Thus the Panel must:

    (a) consider the public interest (s657A(2)) and

    (b) have regard to the purposes of Chapter 6 set out in s602, the other provisions of the Act and any rules or regulations (s657A(3)).

100. The Panel may also consider any other matters it thinks are relevant.

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[17] *Colonial First State Property Trust Group* [2002] ATP 15 at [43]

101. As Crennan and Kiefel JJ said in *Alinta*:

> *"The policy considerations here reserved to the Panel are potentially of wide range, even with statements of statutory purpose. They may involve matters relevant to the market, corporate behaviour and the interests of stakeholders beyond those directly affected by the proposal. In this regard Panel members may be taken to be qualified to make an assessment by their knowledge and experience."*[18]

102. Having regard to these tests, we were inclined to accept that Mrs Ainsworth was sufficiently interested in the outcome of the Resolution, by virtue of her connection or closeness of relationship with Mr Ainsworth, that her voting in favour of the Resolution would give rise to unacceptable circumstances.

103. In this respect, we focussed on the following facts:

(a) Mrs Ainsworth and Mr Ainsworth are married and have been together for 51 years.

(b) They have held common investments and have made common investment decisions (such as in dividend reinvestment plans). Mrs Ainsworth's holding in AGI originated from a gift Mr Ainsworth made some years ago (accepting that she has increased the value of her investments).

(c) They are apparently very close – so much so that Mr Ainsworth appears able to speak publicly for Mrs Ainsworth as in recent newspaper reports of the Transaction.

(d) Mrs Ainsworth has not operated as, or been treated as, someone who is independent in relation to the Resolution.

(e) Mrs Ainsworth is likely to be at least an indirect recipient of the benefits of the Transaction, notwithstanding Mr Ainsworth's submissions that he intends to use 'part', or a 'major portion', of the money from the Transaction for charitable purposes and the remainder for his lifestyle. It is unlikely (and we had not been told otherwise) that Mrs Ainsworth would not share in whatever lifestyle Mr Ainsworth chooses.

104. Reference should again be made to *Bateman*.[19] His honour in that case was concerned with whether a family relationship – in that case, brothers - established association. We are not concerned with that issue in this analysis, but with whether circumstances are unacceptable. This is the policy aspect of the law. Our preliminary conclusion here was not based on association but on unacceptable circumstances.

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[18] *Attorney-General (Cth) v Alinta Limited* [2008] HCA 2 at [168]
[19] *Bateman & Ors v Newhaven Park Stud Ltd & Others* [2004] NSWSC 566 at [34]

105. In relation to whether the Sons' voting in favour of the Resolution would give rise to unacceptable circumstances, on the material provided we considered not. There was not, in our view, the same body of evidence as there was for Mrs Ainsworth. We had regard to the following:

    (a) The Sons do not appear to have the same connections or closeness of relationship with Mr Ainsworth, and accordingly are not in the same position as Mrs Ainsworth.

    (b) They appear to live separately and independently from Mr Ainsworth.

    (c) In any event, the combined holding of the Sons that could be voted on the Resolution, being 1.07% of AGI, did not appear to be significant as we are at present to understand the position.

106. Fortress submitted that the wealth of the Sons was also founded on Mr Ainsworth's generosity and they would be "*just as unlikely to act against his wishes*." There was not the same body of evidence as there was for Mrs Ainsworth to support this conclusion, and we are not inclined to accept Fortress' submission. Whilst the information we have is more limited than for Mrs Ainsworth, we do have a submission from Mr Paul Ainsworth that he is a professional investor whose AGI investment is less than 1.5% of the value of his portfolio. He denied even "*the slightest whiff of discussion on voting intentions*."

107. Fortress also submitted that, in any event, the Sons would not be seen by the market as disinterested. We are not inclined to accept this submission. In our view the market can distinguish between relationships and on the material would be likely to do so in this case. We form this view based on the material we have to date. We are not suggesting that a spouse will always be seen as interested and a child not. In another situation the reverse may be the case.

108. In *Investa Office Fund*,[20] the Panel considered the policy question of who could vote on a trust scheme merger. The Panel was not satisfied that a sufficient basis had been established to interfere with the voting rights of Morgan Stanley, which had sold the responsible entity for Investa Office Fund and would benefit if the merger did not complete. While the case is distinguishable from the present one for a number of reasons, not least of which is that the present case includes family relationships, we note that the Panel was prepared to countenance the prospect of a policy underpinning a restriction on voting. It said:

    "The regulation of control transactions starts with the proposition that proponents of a proposal are not disinterested participants in the vote. Thus, item 7 of s611 (for example) prevents voting <u>in favour</u> of a resolution by the parties to the transaction and their associates….

    That is not to say that voting against a proposal can never be prevented pursuant to the policy underpinning a provision in Chapter 6 that restricts voting in favour…

[20] *Investa Office Fund* [2016] ATP 6

> *Had there been an artifice created (for example by an option under which Morgan Stanley could recall the "platform" after the vote - and assuming this did not create an association), we would be inclined to accept that Morgan Stanley should not vote….."*[21]

109. The Panel has also been prepared to find unacceptable circumstances in the absence of a finding of association based on a consideration of policy.[22]

110. We also note AGI's undertaking to record any votes cast by the Sons on the Resolution. If the Sons' voting in favour carries the Resolution, it would be open to Fortress (or any other party) to make a further application based on the circumstances as they exist at that time. One example may be if any of the Sons acquired further shares and voted them in favour of the Resolution.

Other matters

111. In a supplementary brief we asked AGI what its reasons were for implementing a dividend reinvestment plan in respect of the interim dividend announced on 23 February 2016. AGI submitted that the information was confidential and it applied for a direction that certain documents or information be produced only to the Panel. We decided that we would not receive information not provided to all parties.

112. AGI subsequently submitted that the confidential information would have defeated the inference drawn by the Panel at paragraph 87 of these reasons and, given that the Panel has not considered the confidential information, it should refrain from drawing any conclusion regarding the dividend reinvestment plan.

113. It was AGI's decision to withhold information from Panel proceedings and it did so in the knowledge that, for procedural fairness reasons, we would only draw inferences from the information which we and the parties had been provided. It is, in our view, unsustainable to then submit that we should not draw inferences on the basis that they could potentially be defeated by information that has been withheld. It is a requirement of becoming a party to a Panel proceeding that the party provides confidentiality undertakings. If these are considered inadequate to maintain confidentiality, there are other safeguards that can be put in place. It did not appear to us that AGI explored any such safeguards.

114. Having regard to the manner in which this matter has been resolved it is unnecessary for us to form any view as to the manner in which AGI approached the proceeding. And we do not do so. However we would emphasise what should in any event be obvious: *first*, that in a matter such as this the company concerned should be, and be seen to be, neutral in its approach; and *second*, that parties generally are expected not to adopt a guarded approach to the confidentiality of possibly relevant documents or to make claims for privilege that are overreaching or lack explicit justification.

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[21] *Investa Office Fund* [2016] ATP 6 at [109] – [113]
[22] *Anaconda Nickel Limited 16 & 17* [2003] ATP 15 at [56] – [58], *Mount Gibson Iron Limited* [2008] ATP 4 at [107]

DECISION

115. Having considered the material, we made preliminary findings that we were prepared to infer that there is an agreement, arrangement or understanding between Mr Ainsworth and Mrs Ainsworth that Mrs Ainsworth will vote in favour of the Resolution. Alternatively, we were prepared to infer that they were acting in concert in relation to AGI's affairs namely, voting on the Resolution. On this basis, Novomatic may not have the benefit of item 7 of s611 if the Transaction completed and Mrs Ainsworth had voted in favour of the Resolution.[23]

116. Alternatively, if we were wrong that an association would be established, we made preliminary findings that we were inclined to accept that Mrs Ainsworth was sufficiently interested in the outcome of the Resolution, by virtue of her connection or closeness of relationship with Mr Ainsworth, that her voting in favour of the Resolution would give rise to unacceptable circumstances.

117. We were inclined not to consider the connection or closeness of relationship of Mr Ainsworth and the Sons to be the same.

118. We were also inclined to consider that AGI shareholders would not have the information required to vote on the Resolution, and the market in AGI shares would not be efficient, competitive and informed, unless advised that Mrs Ainsworth was precluded from voting in favour of the Resolution. We were also inclined to consider that AGI should disclose the expected voting power of Mr Ainsworth and Mrs Ainsworth following completion of the Transaction and that this could represent a blocking stake for the purpose of Chapter 6A, which they have done.

119. Following the indication of our preliminary views to the parties, we were offered, and we accept, the following undertakings:

    (a) From Mrs Ainsworth and Votraint (Annexure B) that they will:

        (i) not vote on the Resolution

        (ii) withdraw the vote on the Resolution already submitted by Votraint and

        (iii) not dispose of, transfer, grant a security interest over or otherwise deal with any shares or interests in shares in AGI held by Votraint (and, in the case of Mrs Ainsworth, shares or interests in shares in Votraint), until the vote on the Resolution has occurred.

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[23] Arguably her voting in favour would not invalidate the item 7 resolution unless it carried the resolution. In *Re Tiger Investment Co Ltd* [1999] 33 ACSR 438 at [444] – [445], Santow J considered, without deciding, that this should be the purposive interpretation of s256C. This finding has been firmed up in *Village Roadshow Ltd v Boswell Film GmbH* [2004] VSCA 16, per Callaway JA at [16] - [17] and in *Bateman and Others v Newhaven Park Stud Ltd and Others* [2004] NSWSC 566 at [47] in connection with correspondingly drafted provisions. There has been no reported decision in this respect on item 7, but compare *McMillan Properties Pty Ltd v W C Penfold Ltd and Another* (2001) 40 ACSR 319. In any event, even if the same purposive interpretation applied to an item 7 resolution, a vote in favour could potentially give rise to unacceptable circumstances (for example by reason of its influence on other voting where the market is not informed of the voting exclusion)

(b) From AGI (Annexure C) that it will:

(i) adjourn the general meeting of shareholders at which the Resolution will be considered

(ii) disregard any votes cast by Votraint in favour of the Resolution

(iii) announce that (among other things) Votraint is excluded from voting

(iv) dispatch the announcement to AGI shareholders by express post or (where email addresses are available) by email and

(v) keep a record of any votes cast by any of the Sons on the Resolution.

120. The undertakings sufficiently address our concerns and, in our view, obviate the need for us to reach a final conclusion on the question of association or on the policy question, and therefore on the need to make a declaration. [24]

121. Given the undertakings, we decline to make a declaration and are satisfied that it is not against the public interest to do so. We have had regard to the matters in s657A(3).

122. There remains an open question about the need for substantial holder notices, should Mr Ainsworth and Mrs Ainsworth be associates. Our decision and these reasons inform the market for present purposes, although we acknowledge that the Panel has required the lodging of notices to inform the market of voting power.[25] As we have not finalised our preliminary view, we have not taken the additional step of insisting on notices being filed now.

Orders

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

Ron Malek
President of the sitting Panel
Decision dated 14 June 2016
Reasons published 24 June 2016

[24] Guidance Note 4: Remedies – General at [39] and [40]
[25] See for example the attitude the Panel adopted in *Investa Office Fund* [2016] ATP 6. Compare *Phosphate Australia Limited* [2015] ATP 5

Advisers

Party	Advisers
Ainsworth Game Technology Limited	Marque Lawyers
Christian Ainsworth	Sovereign Private
Fortress Centaurus Global Master Fund Ltd	Johnson Winter & Slattery
Kjerulf Ainsworth	Australian Property Lawyers Pty Ltd
Leonard Ainsworth	StevensVuaran Lawyers
Margarete Ainsworth, Votraint No. 1019 Pty Ltd	DLA Piper Australia
Novomatic AG	King & Wood Mallesons
Paul Ainsworth, Writeman Pty Ltd	NA

Australian Government
Takeovers Panel

ANNEXURE A

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION ACT 2001 (CTH) SECTION 201A UNDERTAKINGS

AINSWORTH GAME TECHNOLOGY LIMITED

1. Margarete Charlotte Ainsworth undertakes to the Panel that until the conclusion of the Panel's proceedings she will not, and will procure that each of her associates does not, dispose of, transfer, grant a security interest over or otherwise deal with any shares or interests in shares in AGI held by Votraint or shares or interests in shares in Votraint.

2. Votraint undertakes to the Panel that until the conclusion of the Panel's proceedings it will not, and will procure that each of its associates does not, dispose of, transfer, grant a security interest over or otherwise deal with any shares or interests in shares in AGI held by Votraint.

3. Each of Margarete Charlotte Ainsworth and Votraint agrees to confirm in writing to the Panel when she (it) has satisfied her (its) obligations under these undertakings.

4. In these undertakings the following terms have the corresponding meaning:

AGI	Ainsworth Game Technology Limited ACN 068 516 665
Votraint	Votraint No. 1019 Pty Ltd ACN 075 045 313

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Signed by Margarete Charlotte Ainsworth
Dated 16 May 2016

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Signed by Margarete Charlotte Ainsworth
with the authority, and on behalf, of
Votraint No. 1019 Pty Ltd
Dated 16 May 2016

Australian Government

Takeovers Panel

ANNEXURE B

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION ACT 2001 (CTH) SECTION 201A UNDERTAKINGS

AINSWORTH GAME TECHNOLOGY LIMITED 01 & 02

1. Mrs Margarete Ainsworth and Votraint undertake to the Panel that they will promptly, and by no later than 10 June 2016, arrange the withdrawal and cancellation of Votraint's vote on the Resolution lodged with Computershare Investor Services.

2. Mrs Margarete Ainsworth and Votraint undertake to the Panel that they will not vote (including by person, proxy, representative or any other method) any shares in AGI held by Votraint in favour of the Resolution.

3. Mrs Margarete Ainsworth undertakes to the Panel that, until the vote on the Resolution has occurred, she will not, and will procure that each of her associates does not, dispose of, transfer, grant a security interest over or otherwise deal with any shares or interests in shares in AGI held by Votraint or shares or interests in shares in Votraint.

4. Votraint undertakes to the Panel that, until the vote on the Resolution has occurred, it will not, and will procure that each of its associates does not, dispose of, transfer, grant a security interest over or otherwise deal with any shares or interests in shares in AGI held by Votraint.

5. Each of Mrs Margarete Ainsworth and Votraint agrees to confirm in writing to the Panel when she (it) has satisfied her (its) obligations under these undertakings.

6. In these undertakings the following terms have the corresponding meaning:

AGI	Ainsworth Game Technology Limited ACN 068 516 665
Resolution	Proposed resolution of AGI shareholders to approve the proposed sale of 52.52% of AGI by Mr Ainsworth to Novomatic AG, as announced by AGI on 23 February 2016 pursuant to item 7 of s611 of the *Corporations Act 2001* (Cth) at a meeting to be held on 17 June 2016 (or any postponement or adjournment of that meeting).
Votraint	Votraint No. 1019 Pty Ltd ACN 075 045 313

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Signed by Margarete Charlotte Ainsworth
Dated 9 June 2016

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Signed by M. C. Ainsworth
with the authority, and on behalf, of
Votraint No. 1019 Pty Ltd
Dated 9 June 2016

Australian Government
Takeovers Panel

ANNEXURE C

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION ACT 2001 (CTH) SECTION 201A UNDERTAKING

AINSWORTH GAME TECHNOLOGY LIMITED 01 & 02

1. AGI undertakes to the Panel that it will:

   1.1. adjourn the Meeting until a date no earlier than 27 June 2016

   1.2. as soon as practicable and by no later than 9.00am (AEST) on 10 June 2016, release an ASX announcement (**Announcement**), in a form approved by the Panel, disclosing:

      1.2.1. that Votraint will be excluded from voting in favour of the Resolution

      1.2.2. how AGI shareholders, who have already submitted a proxy form in respect of the Resolution, may change their vote

      1.2.3. the collective holding of Leonard Ainsworth and Margarete Ainsworth following successful completion of the Transaction and explaining that this holding could represent a blocking stake for the purposes of Chapter 6A[26] and the implications of that blocking stake and

      1.2.4. that the Meeting is adjourned, in accordance with the requirements of paragraph 1.1 of this undertaking

   1.3. as soon as practicable and by no later than 14 June 2016 dispatch the Announcement to AGI shareholders by express post or (where email addresses are available) by email

   1.4. disregard any votes cast by Votraint in favour of the Resolution and

   1.5. keep a record of any votes cast by any of the Sons on the Resolution and how those votes were cast, and keep that record for a period of 12 months and provide the same to the Panel on request.

2. AGI agrees to confirm in writing to the Panel when it has satisfied its obligations under these undertakings.

[26] References are to the *Corporations Act 2001* (Cth), unless otherwise indicated

3. In these undertakings the following terms have the corresponding meaning:

AGI	Ainsworth Game Technology Limited ACN 068 516 665
Meeting	Proposed meeting of AGI shareholders to consider the Resolution to be held on 27 June 2016 (or any adjournment or postponement of that meeting)
Resolution	Proposed resolution of AGI shareholders to approve the Transaction pursuant to item 7 of s611 of the *Corporations Act 2001* (Cth)
Sons	Geoffrey Ainsworth, Stephen Ainsworth, Harold Ainsworth, Paul Ainsworth, Simon Ainsworth, Kjerulf Ainsworth and Christian Ainsworth including companies controlled by any one or more of them
Transaction	Proposed sale of 52.52% of AGI by Leonard Ainsworth to Novomatic AG, as announced by AGI on 23 February 2016
Votraint	Votraint No. 1019 Pty Ltd ACN 075 045 313

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Signed by Graeme Campbell
with the authority, and on behalf, of Ainsworth Game Technology Limited
Dated 10 June 2016