



Australian Government

Takeovers Panel

MEDIA RELEASE

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Brisbane Markets Limited – Panel Receives Application

The Panel has received an application from Brisbane Markets Limited in relation to its affairs. Brisbane Markets is an unlisted company with more than 50 shareholders. Brisbane Markets is currently the subject of an off-market takeover bid from Produce Markets Queensland Pty Ltd (**PMQ**), a wholly owned subsidiary of VGI Partners Pty Ltd (**VGI**).

Details of the application, as submitted by the applicant, are below.

A sitting Panel has not been appointed at this stage and no decision has been made whether to conduct proceedings. The Panel makes no comment on the merits of the application.

Details

On 12 November 2015, PMQ made an off-market takeover bid for Brisbane Markets at \$3.50 cash per share.

Brisbane Markets has two classes of shares consisting of approximately 42.5 million ordinary shares and four industry shares. The industry shares provide special rights in relation to the governance of Brisbane Markets.

Queensland Chamber of Fruit and Vegetables Industries Co-Operative Limited (**Brismark**) holds 33.89% of the ordinary shares and the four industry shares in Brisbane Markets. Brismark is a trading cooperative established pursuant to the *Cooperatives Act 1997 (Qld)*. All of its members are required to operate as wholesalers of fruit and vegetables at the premises of the Brisbane Markets.

PMQ has a relevant interest in approximately 19.99% of the issued share capital of Brisbane Markets, comprising approximately 2.20% held by funds managed by VGI and a relevant interest in 17.80% through a deed dated 9 November 2015 (**the Pre-bid Agreement**) between PMQ and S&D George Investments Pty Limited (**S&D**). Simon George is one of the two directors of S&D and the holder of 50% of the shares in S&D. Simon George was a director of Brisbane Markets until 13 November 2015 and, through a separate entity, has a shareholding in Brismark.

Brisbane Markets submits (among other things) that:

- the bidder's statement (as supplemented by the first supplementary bidder's statement and the second supplementary bidder's statement) is misleading and deceptive in several respects including:
 - the description of the Pre-Bid Agreement
 - the nature of the relationship and cooperation between S&D and Simon George, on the one hand, and PMQ and VGI, on the other
 - the description of the bid proceeds that could be distributed to Brismark members if Brismark accepted the offer in respect of its entire stake in Brisbane Markets
 - the process by which the special rights attaching to the industry shares can be varied such that they are effectively converted into, and have identical rights to, the ordinary shares or the industry shares can be otherwise cancelled (the conversion or cancellation of the industry shares is a condition to the offer) and
 - the description of the funding of the cash consideration
- the terms of the Pre-Bid Agreement provide benefits to S&D which are not offered to other Brisbane Markets shareholders contrary to the equality principle and in contravention of sections 623(1) and 622¹ and
- PMQ has failed to correct press reports regarding the takeover bid.

Brisbane Markets seeks interim orders (among others) that restrain PMQ from despatching any supplementary bidder's statement and PMQ and S&D from undertaking any actions in respect of the Pre-Bid Agreement until a determination by the Panel.

Brisbane Markets seeks final orders (among others) that the Pre-bid Agreement be cancelled, PMQ make corrective disclosure and any shareholders having accepted the offer be entitled to withdraw their acceptances.

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