



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP16/07

Wednesday, 10 February 2016

Brisbane Markets Limited – Declaration of Unacceptable Circumstances and Orders

The Panel has made a declaration of unacceptable circumstances (Annexure A) and final orders (Annexure B) in relation to an application dated 6 January 2016 by Brisbane Markets Limited in relation to its affairs (see [TP16/01](#)).

Background

Brisbane Markets is an unlisted company with more than 50 members and its issued capital consists of 42,500,000 ordinary shares and four industry shares.

The Queensland Chamber of Fruit and Vegetable Industries Co-operative Limited (**Brismark**) owns 33.89% of Brisbane Markets and holds all four industry shares.

Brisbane Markets is currently the subject of an off-market takeover bid by Produce Markets Queensland Pty Ltd (**PMQ**), a wholly owned subsidiary of VGI Partners Pty Ltd.

The application concerned, among other things, certain disclosure issues in PMQ's bidder's statement lodged with ASIC on 12 November 2015 and supplementary bidder's statements lodged on 18 December 2015 and 23 December 2015. The bid is currently scheduled to close on 28 March 2016.

The Panel considered that the bidder's statement and supplementary bidder's statements contain information deficiencies, in that in aggregate they:

- do not adequately disclose the terms of a pre-bid deed, PMQ's ability to exercise certain rights under the pre-bid deed, the process by which rights under the industry shares may be varied, PMQ's funding arrangements for its bid and PMQ's intentions in relation to Brisbane Market's future gearing in the event that PMQ obtained less than 100% control of Brisbane Markets and
- potentially mislead Brisbane Market's shareholders about the bid proceeds that could be distributed to Brismark members if Brismark accepts the bid.

Declaration

The Panel considered that the circumstances were unacceptable:

1. having regard to the effect that the Panel is satisfied the circumstances have had, are having, will have or are likely to have on:
 - (a) the control, or potential control, of Brisbane Markets or
 - (b) the acquisition, or proposed acquisition, by a person of a substantial interest in Brisbane Markets and
2. having regard to the purposes of Chapter 6 set out in section 602 of the *Corporations Act 2001* (Cth) (Act) or
3. because they constituted or constitute a contravention of a provision of Chapter 6 of the Act.

The Panel did not consider it against the public interest to make the declaration, and in making it had regard to the matters in section 657A(3) of the Act.

Orders

The Panel has made orders that:

- PMQ dispatch a supplementary bidder's statement in a form approved by the Panel so as to address the inadequacies in disclosure and to retract the potentially misleading statements, in each case referred to above
- PMQ provide Brisbane Markets shareholders who have accepted the offer with a withdrawal right
- PMQ give Brismark the supplementary bidder's statement and a cover letter (in a form approved by the Panel which explains why Brismark members are receiving a copy of the supplementary bidder's statement) and
- Brismark distribute both documents to its members.

The sitting Panel was Rod Halstead, Peter Hay (sitting President) and Sarah Rennie.

The Panel will publish its reasons for the decision in due course on its website www.takeovers.gov.au.

Allan Bulman
Director, Takeovers Panel
Level 10, 63 Exhibition Street
Melbourne VIC 3000
Ph: +61 3 9655 3597
allan.bulman@takeovers.gov.au



Australian Government

Takeovers Panel

Annexure A

CORPORATIONS ACT

SECTION 657A

DECLARATION OF UNACCEPTABLE CIRCUMSTANCES

BRISBANE MARKETS LIMITED

CIRCUMSTANCES

1. Brisbane Markets Limited (**Brisbane Markets**) is an unlisted company with more than 50 members. Brisbane Markets' issued capital consists of 42,500,000 ordinary shares and 4 industry shares.
2. The Queensland Chamber of Fruit and Vegetable Industries Co-operative Limited (**Brismark**) has a relevant interest in 33.89% of Brisbane Markets and holds all 4 Brisbane Markets industry shares.
3. On 9 November 2015, Produce Markets Queensland Pty Ltd (**PMQ**), a wholly-owned subsidiary of VGI Partners Pty Ltd (**VGI**), entered into a pre-bid deed (**pre-bid deed**) with S & D George Investments Pty Ltd.
4. On 12 November 2015, PMQ lodged a bidder's statement with ASIC in relation to an off market bid for the shares in Brisbane Markets for \$3.50 per share. It subsequently lodged supplementary bidder's statements on 18 December 2015 and 23 December 2015.
5. The bidder's statement and supplementary bidder's statements contain information deficiencies, in that in aggregate they:
 - (a) do not adequately disclose:
 - (i) the terms of the pre-bid deed and PMQ's ability to exercise certain rights under the pre-bid deed
 - (ii) the process by which rights under the industry shares may be varied
 - (iii) PMQ's funding arrangements for its bid and
 - (iv) PMQ's intentions in relation to Brisbane Markets' future gearing in the event that PMQ obtained less than 100% control of Brisbane Markets and
 - (b) potentially mislead Brisbane Markets' shareholders about the bid proceeds that could be distributed to Brismark members if Brismark accepts the bid.
6. By reason of the information deficiencies, Brisbane Markets' shareholders:
 - (a) have not been given enough information to enable them to assess the merits of PMQ's bid and

- (b) are required to make decisions whether to hold their shares or accept the offer on the basis of inadequate information, causing the market for control in Brisbane Markets not to be efficient, competitive and informed.
7. It appears to the Panel that the circumstances are unacceptable:
- (a) having regard to the effect that the Panel is satisfied the circumstances have had, are having, will have or are likely to have on:
 - (i) the control, or potential control, of Brisbane Markets or
 - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in Brisbane Markets and
 - (b) having regard to the purposes of Chapter 6 set out in section 602 of the *Corporations Act 2001* (Cth) (Act) or
 - (c) because they constituted or constitute a contravention of a provision of Chapter 6 of the Act.
8. 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 Brisbane Markets.

Alan Shaw
Counsel
with authority of Peter Hay
President of the sitting Panel
Dated 9 February 2016



Australian Government

Takeovers Panel

Annexure B

**CORPORATIONS ACT
SECTION 657D
ORDERS**

BRISBANE MARKETS LIMITED

The Panel made a declaration of unacceptable circumstances on 9 February 2016.

THE PANEL ORDERS

1. Produce Markets Queensland Pty Ltd (**PMQ**) must issue a third supplementary bidder's statement in relation to its bid for Brisbane Markets Limited (**BML**), in a form approved by the Panel, that includes the following changes to the draft provided to the Panel on or about 4 February 2016:
 - (a) adequate disclosure that PMQ will not exercise the call option, pursuant to a pre-bid deed between PMQ and S & D George Investments Pty Ltd dated 9 November 2016, if its exercise would contravene, or would give rise to a contravention of, s623(1) of the *Corporations Act 2001* (Cth)
 - (b) adequate disclosure that PMQ needs either the written consent or a separate resolution of The Queensland Chamber of Fruit and Vegetable Industries Co-operative Limited (**Brismark**) to give effect to the variation of the special rights of the industry shares
 - (c) either a statement that investors who have signed equity commitment letters have no influence (themselves or by associates) over the conduct of the bid or the ongoing operation of PMQ or any funds established by VGI Partners Pty Ltd (**VGI**), or adequate disclosure of the nature and circumstances of any influence together with the identities of such investors
 - (d) clarification that the statement "*each Investor will be a passive investor in each of the New Funds and will have no control over Produce Markets Queensland or its decisions with respect to how it manages its shareholding in Brisbane Markets or in relation to any of the business operations of Brisbane Markets Limited*" may not apply to the VGI shareholders, or entities associated with VGI shareholders, who are also investors, naming those investors
 - (e) adequate disclosure of PMQ's intentions in respect of the future gearing of BML in the event PMQ obtained less than 100% control of BML or that no intention regarding gearing has been formed and why and
 - (f) amendments to reflect adequately the withdrawal rights referred to in order 3.

2. PMQ must dispatch the third supplementary bidder's statement by express post to everyone to whom offers were made and any other BML shareholder.
3. PMQ must:
 - (a) give each BML accepting shareholder (being one who has accepted PMQ's offer in the period from the opening of the offer until the date 5 business days after dispatch of the third supplementary bidder's statement) a right to withdraw its acceptance for a period of 15 business days from the date the third supplementary bidder's statement is dispatched by PMQ
 - (b) inform each BML accepting shareholder of the right to withdraw, and give them a Form for exercise of that right, each in a form approved by the Panel and
 - (c) do all things reasonably required to give effect to a withdrawal.
4. On the same day that the third supplementary bidder's statement is dispatched by PMQ, PMQ must provide Brismark with sufficient copies of:
 - (a) the third supplementary bidder's statement and
 - (b) a cover letter which explains why Brismark members are receiving the third supplementary bidder's statementeach in a form approved by the Panel.
5. Within 2 business days of receipt of the third supplementary bidder's statement and cover letter referred to in order 4, Brismark must:
 - (a) dispatch the documents to its members by express post, with no other documents to accompany them and
 - (b) advise PMQ that it has completed dispatch in accordance with these orders.

Alan Shaw
Counsel
with authority of Peter Hay
President of the sitting Panel
Dated 10 February 2016