



**Australian Government**

**Takeovers Panel**

# MEDIA RELEASE

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No: TP18/80

Friday, 28 December 2018

## **Benjamin Hornigold Limited 02 and Henry Morgan Limited 02 - Panel Receives Applications**

The Panel has received applications from shareholders in Benjamin Hornigold Limited and Henry Morgan Limited<sup>1</sup> in relation to the affairs of each company.

Details of the applications, as submitted by the Applicants, are below.

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

### **Details**

Benjamin Hornigold and Henry Morgan are subject to separate off market takeover bids by John Bridgeman Limited. Both applications relate to similar facts and the discussion below relates to both bids.

On 31 October 2018, John Bridgeman lodged bidder's statements. On 23 November 2018, John Bridgeman extended each bid to 14 January 2019 (which gave accepting shareholders a right to withdraw their acceptances under sections 650D(1)(a)(ii) and 650E<sup>2</sup>) and lodged supplementary bidder's statements. On 6 December 2018, Benjamin Hornigold and Henry Morgan lodged target's statements. The Voting Directors of Benjamin Hornigold<sup>3</sup> and Henry Morgan<sup>4</sup> recommended that their respective shareholders accept John Bridgeman's bid. Each target's statement contained an independent expert's report, stating that each bid was not fair but reasonable. On 24 December 2018, John Bridgeman announced that it had obtained shareholder approval to allow each bid to "*continue and ultimately proceed*".

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<sup>1</sup> In relation to both applications - Jonathan Allan Dixon, Ms Wendy Lynn Cowan, Mrs Susan Jean Dixon ATF Dixon Super Fund, GM Enterprises Australia Pty Ltd ATF GTM Super Fund and Inspired Asset Management Pty Ltd

<sup>2</sup> Unless otherwise indicated, all statutory references are to the *Corporations Act 2001* (Cth), and all terms used in Chapter 6 or 6C have the meaning given in the relevant Chapter (as modified by ASIC)

<sup>3</sup> Messrs Aardoom and Cook

<sup>4</sup> Mr Ziegler and Ms Gunner

The Applicants submit (among other things) that:

- The bids are not able to take place in an efficient, competitive and informed market.
- The bidder's and target's statements breach sections 636 and 638 and frustrate s602.
- The structure of the bids (as concurrent, non-inter-conditional offers by a single bidder in relation to two targets which are to be followed by a subsequent related party acquisition) act to frustrate the policy of Chapter 6.
- There is no reasonable basis for the recommendation by the Voting Directors of Benjamin Hornigold and Henry Morgan.
- The circumstances surrounding each bid have *"the effect of being coercive beyond the normal incidence of a change of ownership"*.

The Applicants seek an interim order prohibiting John Bridgeman receiving or processing further acceptances in relation to each bid. The Applicants seek final orders, including orders preventing John Bridgeman from proceeding with, and announcing withdrawal of, each bid.

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